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**International Criminal Tribunal for Rwanda  
Tribunal Pénal International pour le Rwanda**

Arusha International Conference Centre  
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Arusha, 10 June 2008  
Ref: ICTR/ERSPS/06/08/169/Rm

Dear Ms. Michelyne C. St-Laurent

**Subject: Transmission of Official Document received from Madrid, Spain in response to ICTR Note Verbale dated 18 March 2008 and referenced ICTR/IOR/ERSPS/03/08/98-Rm**

On behalf of the Registrar, I wish to inform you that the Spanish Authorities have favourably responded today to your request conveyed to them by The Registrar on 17 March 2008. Kindly, please find enclosed the original document.

Yours Sincerely,

Mr. Roland Amoussouga  
Senior Legal Adviser  
Chief, External Relations and Strategic Planning Section

**Attachment:** Original Document received from Spain.

**CC: The Registrar**

**Me. Michelyne C. St-Laurent  
Lead Counsel for the Accused Casmir Bizimungu  
C/O Defence Counsel and Detention Management Section (DCDMS)  
ICTR- Arusha.**



**JUZGADO CENTRAL DE INSTRUCCIÓN NUMERO CUATRO**  
**AUDIENCIA NACIONAL**  
**Madrid**

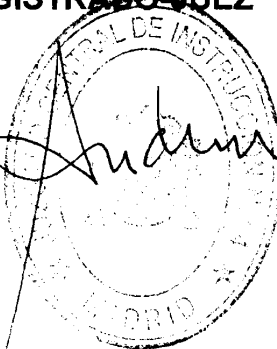
**C.R.I. Núm. 22/2008-D**

**Su Rfa.: ICTR/IOR/ERSPS/03/08/98-Rm**

En virtud de lo acordado en resolución dictada en el día de la fecha en la C.R.I. Núm. 22/2008-D y en relación a su solicitud de Cooperación Jurídica Internacional de la referencia del margen, remito a Vd. el presente, a los efectos que procedan y como ampliación a la respuesta dada a la misma por este Juzgado Central de Instrucción mediante oficio de fecha 05 de Mayo de 2008, adjuntando al mismo copia de la traducción al idioma inglés del Auto de Procesamiento dictado en fecha 06 de Febrero de 2008.-

MADRID, a Cuatro de Junio de Dos Mil Ocho

**EL MAGISTRADO JUEZ**



**TRIBUNAL PENAL INTERNACIONAL PARA RUANDA**  
**OFICINA DEL REGISTRADOR**  
**ARUSHA INTERNATIONAL CONFERENCE CENTRE**  
**P.O. BOX 6016, ARUSHA, TANZANIA -B.P. 6016 -ARUSHA-**  
**TANZANIA**

[Sealed] Administration of Justice

**JUZGADO CENTRAL DE INSTRUCCIÓN No. 4<sup>1</sup>**  
**AUDIENCIA NACIONAL**

**Case under reference: "SUMARIO 3/20008 – D"**

**ORDER OF INDICTEMENT**

Made in Madrid, the sixth of February two thousand and eight.

**I. FACTS**

**FIRST.**

The proceedings carried out so far provide prima facie evidence that, as from the month of October 1990 a political-military structured group, heavily armed and well organized, engaged in a series of criminal activities which started to be carried out in Uganda against the territory of Rwanda.

During the first four year period, various organized and systematic actions aimed at eliminating the civilian population were developed by the group, both by initiating open war hostilities against the Rwandan Army and by carrying out terrorist acts of various scales and intensity in Rwanda, particularly in the Northern and Central areas of the country. All these criminal activities were perpetrated by a structured, stable, strategically and strongly organized command.

Once the group violently seized power, a terror regime was created and developed and a criminal structure parallel to the State was set up in pursuance of their previously designed purposes. This parallel structure was put in charge of several missions, such as predetermined kidnappings, torturing and raping of women and young girls; terrorist attacks (both directly and by simulating that the same had been perpetrated by the

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<sup>1</sup> The Fourth Central Examining Court – National Court - Madrid

enemy); illegal detention of thousands of citizens without charge and without complying with legal procedures; selective murdering of persons; destruction and systematic elimination of corpses either by mass incineration or by throwing them into lakes and rivers; indiscriminate attacks against the civilian population based on a previously ethnic oriented selection for the elimination of the predominant ethnic group; and also to carry out acts of war both in Rwanda and in its neighbouring country, Zaire, (now the Democratic Republic of Congo), which resulted in the indiscriminate and systematic bloodshed of refugees who had fled to this country, and pillage on a large scale which provided the financing of their criminal activities and the unlawful enrichment of their leaders.

## SECOND

As has been stated in the legal action which originated these criminal proceedings, before the Nineties, many Rwandan citizens of Tutsi origin, especially the children of those refugees who had fled to Uganda, were militarily trained by the National Resistance Army (NRA). Many of them acquired senior ranks in the NRA and in 1986 supported this organization to seize power and backed their leader, MUSEVENI, to occupy the presidency of Uganda.

From this platform and with the government of Uganda's initial military, logistic and financial support, a large extremist group of Rwandan Tutsis, based in Uganda formed the FRONT PATRIOTIQUE RWANDAIS (F.P.R) in order to achieve three purposes:

- a) To eliminate the largest number of persons of the Hutu ethnic group, the ethnic group predominant in their country of origin;
- b) To seize power by force;
- c) To form a strategic alliance with the Tutsi ethnic group together with other western allies, to terrorise firstly the population of Rwanda and then all the Great Lakes area, in order to increase their area of power, control and influence and to invade Zaire, taking and using as their own the very rich natural resources of this country.

That's how the political and military structure of the cited group was formed, the ARME PATRIOTIQUE RWANDAISE (A.P.R) constituting the group's military apparatus and the FRONT PATRIOTIQUE RWANDAIS (F.P.R) the group's political arm.

### **THIRD**

On 1st October 1990, some 3.000 A.P.R/F.P.R militants, military trained, disciplined and well equipped, crossed in an organized manner the Ugandan border, invading a large area of Northeastern Rwanda.

During the first 30 days they were to invade a large part of Northern Rwanda, stopping some 100 km from its capital, Kigali, eliminating as from this very first stage an important number of civilians and causing a huge wave of internal displacements among the persecuted population.

Within the A.P.R. itself, its Tutsi members were classified in five categories, according to their respective origin:

- 1st category: those coming from Uganda (the best regarded);
- 2nd category: those coming from Tanzania;
- 3rd category: those coming from Buyrundi
- 4th category: those coming from Zaire
- 5th category: those coming from Rwanda (the least valued)

### **FOURTH**

Between the months of November 1990 and July 1991, a change takes place in the strategy of the A.P.R/F.P.R which withdraws to Uganda, from where attacks and organized terrorist acts rapidly executed which they call "hit and run Op.", are carried out.

At that time a group parallel to the military apparatus of A.P.R/F.P.R is formed. The group is composed of chosen military men who create the so-called DIRECTORATE

MILITARY INTELLIGENCE (D.M.I). Despite the fact that this unit figured officially as being concerned with military intelligence matters, the same would actually be in charge of planning, organizing and executing systematic crimes designed by the High Command and which were to be executed by the Intelligence Officers (I.O.) and their Intelligence staff (I.S.).

Therefore, the D.M.I. was set up as a network parallel to the official hierarchy although it secretly impregnated the latter with the purpose of carrying out special missions promptly and efficiently, without having to pass through the regular chain of command.

As will be seen below, evidence has been collected pointing to crimes which were planned by the D.M.I. and perpetrated in the areas of Northern Rwanda, namely in Kiyombe, Muvumba, Cymba, Kivube, Butaru or Nkana, the objective of which was the systematic elimination of persons of the Hutu ethnic group, the elimination of intellectuals and Hutu leaders, the elimination of potential hostile witnesses, and the elimination of those opposed to the A.P.R/F.P.R. and of the priests and missionaries who were considered to be collaborating with the Hutus.

#### FIFTH

Once more, between July 1991 and August 1993, the A.P.R/F.P.R changed their strategy and gave priority to the open attacks on inhabited areas in order to definitely control the same. As a result of that strategy, the actual massacre of the civilian population was carried out, particularly, as will be seen below, in the area of Umatara, in places such as Muvumba, Kiyombe and Mukarange, and also in Ngarama, Mukingo, Kinigu, Kigombe, Matura or Kirambo.

As is inferred from the criminal proceedings carried out so far, the civilian population of these places became the target of a decimation plan which was carried out out by means of systematic attacks. In the majority of the cases the corpses of the victims were incinerated.

The camps of displaced persons were also the target of attacks with heavy weaponry, such as 120 mm mortars, "katiuska" (107 mm multiple projectile launcher) and other heavy armament of 23 mm, 37 mm and 14,4 mm.

Parallel to these strategically planned open attacks, other attacks of terrorist nature were carried out with the purpose of creating fear among the population and in order to display the powerful resources available.

Once the Arusha negotiations began, in order to demonstrate their strong position in respect of these negotiations a group was secretly created by the A.P.R/F.P.R, which was called "COMMANDO NETWORK", the purposes and objectives of which will be described below.

In addition, one-off operations were carried out, such as the attack made on Byumba on 5 June 1992 aimed indiscriminately at the population without respecting the existing ceasefire agreement.

In the month of February 1993, the A.P.R/F.P.R started the systematic massacre of the civilian population of Byumba and its outskirts. Indiscriminate attacks on the civilian population of Ruhengeri were made at the same time. As a result of those attacks over 40.000 persons were massacred whilst over one million persons fled from those areas.

Between 7 and 10 March 1993, the A.P.R/F.P.R involved themselves intensively in the tasks of burying and burning the corpses of civilians that had been massacred in the regions controlled by their organization.

## SIXTH

Besides the open military operations and the planned, selective and systematic attacks which were carried out, at least 45 terrorist acts were recorded between July 1991 to September 1992 which were randomly perpetrated throughout the territory. A second campaign of terrorist acts took place between March and May 1993, mostly targeting markets, post offices, minibuses, taxis, hotels and bars aimed at causing the largest possible damage to the civilian population.

In turn, the M.R.N.D, the party to which JUVENAL HABYARIMANA, the president at the time, belonged, created their own militias, which would be known as "*interahamwe*" and which carried out numerous attacks against the country's Tutsi population. In order to spread chaos and confusion among the population the A.P.R/F.P.R., taking advantage of these militias, used the "Commando Network" to make numerous attacks which would then strategically be attributed to the "*interahamwe*".

And this is how the A.P.R/F.P.R, through the "Commando Network" and other military intelligence cells, carried out selective attacks against the lives of certain intellectual Hutu leaders in order to eliminate the same from social life and provoke terror, whilst observing the reaction of the civilian population (which, in turn, reacted with killings) with the intention of carrying out an attack on a larger scale, as indeed happened with the attack on the presidential aircraft in the month of April 1994.

Two important leaders were murdered: On 8 May 1993, just before signing the Arusha peace agreements, EMMANUELLE GAPYSI, the leader of "Mouvement Democratique Républicain -MDR (President Habyarimana's opposition party) and leader of the Forum for Peace and Democracy was shot by a group of four persons riding on two motorcycles, covered by another two persons driving in a car. Besides the projectile found in the victim, 6 bullet cases were also found on the scene of the murder. They were all 9mm bullet cases, with the inscription "Israel Military Industries", made in 1964, and came from purchases previously made by the Ugandan army which was the supplier of arms and ammunition of the A.P.R/F.P.R.

The second leader murdered was FELICIEN GATABACI (Founder and President of the Social Democratic Party). He was murdered on 21 February 1994, at around 22:45 hours, on his way home by car after attending a political meeting held at the Hotel Meridien in Kigali.

During the Arusha peace negotiations these two political leaders had openly rejected an alliance of their respective parties with the A.P.R..



Two other murders were committed, the murder of MARTIN BUCYANA (President of C.D.R) on 22 February 1994 and of FIDELE RWAMBUKA (member of MRDN National Committee) during the night of 25 to 26 August 1993.

The massacres and attacks on persons of the Tutsi ethnic group were always produced after a Hutu leader was murdered or as a result of the attacks on the Hutu population of Northern Rwanda.

### SEVENTH

Between the months of August 1993 and March 1994, the A.P.R/F.P.R. was ready to design the last violent assault to power. As from the signing of the Arusha Peace Agreements (Tanzania) on 4 August 1993, the open activities of the A.P.R/A.P.R. came to a halt.

In pursuance of the cited agreements, the A.P.R. placed its 3rd Battalion in the capital, Kigali. The battalion was formed by 600 soldiers and as was established in the agreements its mission was to protect the FPR political figures.

On the one hand, the A.P.R. took advantage of the truce period to obtain armaments which were necessary to carry out the final combat. 500 tons of weapons were concealed underground in excavations made for that purpose. This material was carried by trailer trucks from Uganda, unloaded on a hill alongside the Rwandan border, from where it was collected and concealed in various places by the soldiers of the A.P.R/F.P.R. This was carried out before the arrival of the international observers and the M.I.N.U.A.R.

On the other hand, the truce was also used to organize the gathering of funds, to complete the soldiers' training, to carry out the reconnaissance of the area and the strategic advance of battalions, as well as to infiltrate the political organizations and the "interahamwe" group.

Other Hutu leaders were selectively murdered during the attacks made on Cyeru, Nyamugali and Kidaho perpetrated on the night of 17 to 18 November 1993 , and in Gisenyi and Ruhengeri on 8 November 1994.

On 21 February 1994, Minister FELICIEN GATABAZI was assassinated by elements of the A.P.R.

On 14 March 1994, a meeting was held at the A.P.R/F.P.R headquarters in Mulindi which was attended by the High command members, the batallion's commanding officers and the Mulindi A.P.R Units. The Karama Training Wing units and Colonel KAYUMBA NYAMWASA and Colonel MUGAMBAGE were ordered to carry out the cleansing or "gukubura" of all the Hutus from the regions of Byumba, Umutara and Kibumgo.

#### EIGHTH

In order to begin the definite assault to power and to create a situation of civil conflict, several meetings were held in Kabale, followed by meetings subsequently held in Mbarara and in Bobo-Dioulasso (Burkina-Fasso). These meetings were attended by the high comand and the leaders of the A.P.R/F.P.R. The purpose of the meetings was to prepare an attack to assassinate President JUVENAL HABYARIMANA. The last of these meetings took place in Mulindi on 31 March 1994, at 14:30 hours, and was attended by General PAUL KAGAME, Colonel KAYUMBA NUAMWASA, Colonel THEONESTE LIZINDE, Lieutenant Colonel JAMES KARABERE, Major JACOB TUMWINE and Captain CHARLES KARAMBA.

The last arrangements for the attack against the presidential aircraft were made at thit meeting, in the sense of determining the place from where the ground to air missiles would be launched and the composition of the command which would carry out the attack.

The following day, 1 April 1994, instructions were given by the High Command to change all HF and VHF codes and military radio frequencies which were replaced by new ones.

On 5 April 1994, the President of the Republic of Rwanda JUVENAL HABYARIMANA made a quick visit to Zaire to meet President MOBUTU, who advised him to introduce some F.P.R members into the Rwandan government.

The following day, 6 April, after attending a regional meeting, the presidential aircraft leaves the airport of Dar-es-Salaam at 18:30 hours and at 20:20 hours the Falcon-50 starts manoeuvres for the approach to Kigali airport, carrying the following persons on board:

- The Rwandan delegation: President JUVENAL HABYARIMANA, Major General DEOGRATIAS NSABIMANA, Ambassador JUVENAL RENAZO, Colonel ELIE SAGATWA, Doctor EMMANUEL AKINGENEYE and Major THADEE BAGARAGAZA;
- The Burundi delegation: President CYPRIEN NTARYAMIRA, Secretary BERNARD CIZA and Minister CYARIAQUE SIMBIZI
- The French crew members, Colonel JEAN PIERRE MINABERRY, Major JACK HERAUD and Sergeant Major JEAN MARIE PERINE

From the hills of Masaka two precision missiles SA 16 or IGLA are launched against the aircraft, the first missile making a partial impact whilst the second hits the aircraft causing it to crash and causing the instant death of all passengers on board.

Those facts are the subject matter of a legal action being carried out by the French Judicial Authorities since 27 March 1998.

Both the conclusions of the Report of the Special Rapporteur of the Commission of Human Rights for Rwanda, Report E/CN.4/1995/7 of 28 June 1994 and the conclusions of the Report A/49/508/S/1994/1175 of 13 October 1994, among others, indicate that the attack on the presidential aircraft caused the continuation of the war and the perpetration of the crimes of genocide which began that very night of 6 April 1994, stating in particular: "*The attack on the aircraft on 6 April 1994 which cost the lives of Juvenal Habyarimana, President of the Rwandan Republic, Cyprien Ntaryamira, President of the Republic of Burundi, several persons in their entourage and the crew,*

*seems to have been the immediate cause of the grievous and tragic events which Rwanda is currently undergoing....The death of President Juvenal Habyarimana was the spark to the powder keg which set off the massacre of civilians”.*

## **NINTH**

As from that moment, orders from the Military High Command were given by **PAUL KAGAME** and **JAMES KABAREBE** to attack the Forces Armées Rwandaises (FAR), in pursuance of a previously designed operation, the initial operation for the final stage of seizing power, despite the fact that they were aware that their missions were not going to prevent the foreseeable massacre of the Tutsis who had not fled the country in 1999 and who would probably be murdered during the following days especially in the areas of Kibuye, Gikongoro, Gitarama, Bugeresha and Kibungo where they had gathered after the violent reactions which followed the terrorist attacks provoked by the A.P.R/F.P.R, in particular, during the two previous years.

From that moment on the previously planned killings were carried out forcing the flight of thousands of persons to neighbouring countries, especially through the borders of Cyangugu and Gisenyi heading for Zaire.

As will be seen below, witnesses who held important political and administrative positions have reported the existence of reports referring to the killing of over 30.000 Hutus by the A.P.R/F.P.R carried out at three Prefectures of the country, during a period of just two months; and the existence of detailed nominal lists of 104.800 persons murdered by the A.P.R/F.P.R as from the date of their violent seizure of power in [sic] July 1995 until July 1995 [sic] from a total figure of 312.726 persons who were known to have been selectively and deliberately murdered, despite the fact that there are not many details available regarding the same:

Capital of Kigali:	19.331 persons
Rural Kigali:	37.410 persons
Gitarama:	39.912 persons
Butare:	33.433 persons
Gikongoro:	17.545 persons

Cyangugu:	16.360 persons
Kibuye	23.775 presons
Gisenyi	3.100 persons
Ruhengeri:	8.750 persons
Byumba:	73.365 persons
Kibumgo:	39.745 persons

There is also detailed information about 173 common graves spread across the country and about the different methods used for the elimination of corpses, both by means of incinerating the corpses that had been previously carried by truck to places where the MINUAR, the NGOs and the international observers of Human Rights were denied access and by means of throwing the corpses into the rivers, etc.

To seize power, advancing through the corridor which starts in Kisaro and runs through Buyoga, Muynaza, Mugambazi, Rutungo, Kabuye, Gizozzi and Kinyinya, the APR/FPR forces, especially the Alpha Batallion led by Colonel SAM KAKA, the Bravo Batallion led by Colonel WILLIAM BAGIR and the Military Police led by Lieutenant Colonel AGUSTIN GASHAYIJA, carried out the massacre of the civilian population, namely in MUNIANZA, KINYANZA, RUTONGO and KIBUYE. Orders were given by the High Command to Colonel CHARLES NGOGA to prevent the flight of the displaced population sheltered at Nyacyonga camp. Following these instructions, the displaced population was shot using heavy armament which was positioned on Mount Jali, causing the death of thousands of civilians. Systematic cleansing operations were carried out against the Hutu population, leaving many inhabited areas totally empty. Corpses were burned or interred in the camps of Bigogwe and Mukamira and many others were carried by trucks to the common graves of Foret de Gishwati to be incinerated.

Between July 1994 and the beginning of 1995, some 50.000 persons or more, were murdered in Masaka alone. In order to carry out the incineration of the corpses, Lieutenant Colonel JACKSON RWAHAMA MUTABAZI and Lieutenant Colonel KARAKE KARENZI had trucks loaded with barrels of petrol sent twice a week.

During that same period, systematic massacres were carried out in Ndera, Gabiro, Rwinkwavu, Nasho, Kidaho, Nkumba and Ruhengeri.

Between the months of April and June 1994, the F.P.R. soldiers from the Gabiro Training Wing moved the civilian population to Akagera National Park. The civilian population was promised food, assistance and clothing but in fact they were massacred by machine-gun fire, and their corpses subsequently thrown into huge pits which had been previously dug by means of heavy machinery.

#### TENTH

The diocese of Byumba, situated in Northern Rwanda, was an area totally controlled by the A.P.R./F.P.R. In this area, just two months after the attack on the presidential aircraft on 6 April 1994, thousands of persons were murdered, among whom 64 Hutu Christian priests or their collaborators, among whom were ALEXIS HAVUGIMANA, ATANASE NKUNDABAYANGA, JOSEPH HITIMANA, FAUSTIN MULINDWA, FIDELE MILINDA, CHRISTIAN NKILIYEHE, LADISLAS MUHAYAMENGU, GASPARD MUDASHIMWA, EUSTACHE NGENZI, CELESTIN MUHAYIMANA and AGUSTIN MUSHYENDERI.

#### ELEVENTH

On 23 April 1994, some 2.500 persons were forced to gather at the Byumba Football Stadium and once there were ordered to lie down and were then shot by the A.P.R./F.P.R. soldiers. Some bodies were taken to the septic tanks of a "Minoterie" which belonged to a businessman called FELICEN KABUGA, whilst others were carried away to be incinerated at Byumba military camps, under the orders of Colonel JACKSON RWAHAMA MUTABAZI and DAN MUNYUZA who also ordered the killings which took place the following day, 24 April 1994, at the Ecole Social du Bon Conseil and at the Centre Scolaire de Buhambe, in Buymba, both operations causing over a thousand deaths.

#### TWELFTH

An operation for the search and selection of Hutu refugee intellectual figures, authorities, youngsters and able-bodied men took place on 25 April 1994, in order to proceed with their execution.

### **THIRTEENTH**

On 26 April 1994, an operation was carried out at the primary schools of Kibali, Mesero, Kisaro and Muhondo (Northeastern Rwanda) where the civilians of each of these places were taken by force to be indiscriminately shot, causing the death of over 1.500 persons.

### **FOURTEENTH**

On 1 May 1994 and during the five following days, the soldiers of A.P.R/F.P.R closed the border with Tanzania to prevent the escape of Hutu refugees who were fleeing from inhahited areas such as Rsumo, Nyakarambi, Kirehe, Birenga, Rukira and neighbouring areas, resulting in the massacre of over 5000 persons, whose corpses were subsequently incinerated or thrown into the river Akagera.

### **FIFTEENTH**

On 2 June 1994, the 157 Mobile Batallion, led by Colonel FRED IBINGIRA headed for Gitarama initiating the seizure of Kabgayi. Once that city had been captured, following the High Command instructions, threee Catholic Bishops, VICENT NSENGIYUMVA, Archbishop of Kigali, THADEE NSEGIYUMVA, Bishop of Kabgayi, JOSEPH RUZINDANA, Bishop of Byumba and nine priests: INNOCENT GASABWOYA, JEAN MARIE VIANNEY RWABILINDA, EMMANUEL UWIMANA, SILVESTRE NDABERESTE, BERNARD NTAMUGABUMWE, FRANÇOIS XAVIER MULINGO, ALRED KAYIBANDA, FIDELE GAHONZIRE HUMAN and JEAN BAPTISTE NSINGA were secretly moved to various places during the night and subsequently executed in Gakurazo on 5 June 1994.

### **SIXTEENTH**

CHRISTIAN MANNION, a British national, the General Director of the Marista Religious Institution, together with the priest JOSEPH RUSHIGAYIKI were murdered in Save on 1 July 1994.

### SEVENTEETH

On the evening of 17 October 1994, the Catholic priest CLAUDE SIMARD, a Canadian national, was murdered in his parish of Runyenzi.

### EIGHTEENTH

After the killing and murdering of hundreds of thousands of persons both from the Tutsi ethnic group and the Hutu ethnic group between the months of April and June 1994, on 17 July 1994 the A.P.R/F.P.R. violently seized power and consequently hundreds of thousands of Hutus headed for shelter to the camps of internally displaced persons situated mainly in the western areas of Rwanda, whilst over a million Rwandan Hutus crossed the borders to the neighbouring countries, especially to Zaire. (according to the Report made by the Special Rapporteur of the United Nations, Mr. RENE DEGNISEGUI, by the end of July 1994 the number of refugees reached the figure of 2.500.000 persons)

The new regime of the A.P.R/F.P.R openly declared its intention to close down the camps of the internally displaced.

During the night of 6 to 7 January 1995, soldiers of the A.P.R/F.P.R attacked the small camp of Bsanze (where 3.000 to 4.000 displaced persons were sheltered) causing death and injuries.

During the night of 4 to 5 March 1995, the Prefect of the Prefecture of Butare, Doctor PIERRE CLAVAER RWNAGABO, his oldest son and his driver were murdered.

On 12 April 1995, soldiers of the A.P.R/F.P.R threatened the inhabitants of Rwamiko Camp (5.000 displaced persons), a camp which is situated next to Kibeho Camp, with burning the camp unless the refugees disappear during the following days.



During the night of 11 to 12 April 1995, soldiers of A.P.R/F.P.R attacked the Refugee Camp of Birava (in Zaire), massacring 31 persons and injuring 54 refugees. The majority of the victims were women and children.

#### NINETEENTH

During the night of 17 to 18 April 1995, some 2.500 soldiers of the A.P.R/F.P.R penetrated the camps of N'Dago (40.000 persons), Munini (15.000 persons) and Kibeho (over 100.000 persons; This camp was known to the A.P.R/F.P.R as "the Hutu cemetery")

On 18 April the military cordon was tightened, arrests were made and 10 persons, 8 of whom were children, died as a result of the shooting carried out.

Water and food supplies were forbidden and access was denied to the humanitarian organizations.

By 20 April the events had become so serious that Medicos Sin Fronteras and UNICEF denounced the situation, although it did not prevent the killing on the following days of some 8000 persons by the A.P.R/F.P.R .

On 23 April, some 80.000 displaced persons were forced to walk to Butare. Due to the lack of food and water, many of them, women and children, could not finish the journey. Once in Butare, near the airport, members of A.P.R/F.P.R. indiscriminately shot and massacred 2.000 persons more.

#### TWENTIETH

On the eve of 12 September 1995, a massacre was perpetrated in Kanana, where at least 110 civilian died as the result of a previously organized attack perpetrated by the members of A.P.R/F.P.R.

#### TWENTY FIRST

During 1996, the following acts, murders, attacks and massacres are known to have been allegedly carried out as a result of the strategy designed, ordered and led by the A.P.R/F.P.R:

- JOSÉ RAMÓN AMUNARRIZ, a Spanish missionary escaped from an attempted kidnapping and/or murder because he was not at home when a group of five soldiers of the A.P.R/F.P.R entered his house, and after searching the house, headed to a neighbouring religious community where they interrogated and tortured seven female Franciscan missionaries, who lived in that community;
- On 19 March 1996, CARMEN OLZA, a Spanish missionary died from an explosion, when the vehicle in which she was travelling hit a mine.
- On 10 and 11 April 1996, at least 40 persons died in Gisenyiu as a result of the attacks carried out by the soldiers of A.P.R/F.P.R;
- On 5, 9 and 10 June 1996, 22 persons died in the sector of Muhungwe;
- On 7 July, 18 persons were murdered in the areas of Rushashi and Tare;
- Between 5 and 13 July, another 170 persons lost their lives in various places belonging to Gisenyi and Ruhengeri Prefectures during the operations executed by the soldiers of A.P.R/F.P.R;
- On 9 and 10 July 1996, some 100 persons were attacked and murdered in Giciye and Nyamutera;
- On 13 July 1996, in the sector of Bayi, in Ramba, a minimum of 47 civilians lost their lives at the hands of the soldiers of the A.P.R/F.P.R. Three children and two babies were among the victims.

## TWENTY SECOND

Throughout 1997 the Hutu civilian population continued to be attacked. A new technique was planned by the Intelligence Office which consisted of simulating that some predetermined civilians of the area of Ruhengeri, who were considered to be political enemies and/or potential hostile witnesses, were being attacked by rebels or infiltrated elements (Hutu extremists), which justified the prompt intervention of the

A.P.R/F.P.R army against the Hutu population, on the pretext of eliminating such extremists.

Notwithstanding that which will be described, as a result of the above mentioned strategy, on 18 January 1997 three Spanish persons who were cooperators of "Médicos del Mundo" (potential hostile witnesses) were killed and on that same day several attacks were carried out against the refugees who had just returned from the Democratic Republic of Congo, among whom there were military men of the old regime, such as the ex-smilitary JEAN DE DIEU BIZABARIMANA.

On 2 February, the Canadian priest GUY PINARD was murdered.

On 5 February a planned attack on five agents of the Observers Mission for the U. N. High Commission on Human Rights was carried out, causing the death in Karengera of SASTRA CHIM-CHAN, a Camboyan national, GRAHAM TURNBULL, a British national and the Rwandan interpreters JEAN BOSCO MUNYANEXA, AIMABLE NSENGIYUMBA and AGRIPPIN NCABO.

Between 2 and 3 March 1997, the killing of more than 100 persons was perpetrated in Muzanze (Ruhengeri).

On the night of 27 to 28 April 1997, the A.P.R/F.P.R organized the massacre of more than 22 persons in Muramba. Seventeen students, the headmistress and another 4 persons of the Primary School of Muramba were murdered.

On the night of 27 to 28 April 1997, shortly after he had investigated the killings perpetrated in Ruhengeri, EMMANUEL SENDAHAWARWA, together with his wife and his younger daughter were murdered.

On 9 June 1997, a large number of people were taken to Ruhengeri Stadium, on the pretext of arresting the "infiltrators". At least, 70 persons were executed.

On 10 June 1997, simulated attacks on Gatonde and Nyamutera were carried out. The A.P.R/F.P.R "reaction" caused the death of a total of 294 persons of the neighbouring

areas: 143 civilians in Gatonde, 80 civilians in Kinigi, 40 civilians in Nyamutera and 31 civilians in Ndusu.

On 8 August 1997, market day in Nanama, as a result of a simulated attack attributed to "the infiltrators", the A.P.R/F.P.R reacted by surrounding the market and attacking the persons who were there, causing more than 300 victims. Later, in the evening, hundreds of arrested persons, 200 in Kanama and between 200 and 300 in Rubavu were murdered. In addition, heavy weapons were used to attack the neighbouring villages (82 mm mortars).

On 3 October 1997, the A.P.R/F.P.R soldiers attacked two families in Gisenyi, killing 12 members of the same.

Between 8 and 9 October 1997, hundreds of civilians were murdered by the A.P.R/F.P.R in Byahi.

Between 24 and 27 October 1997, between 5.000 and 8.000 civilians, who had taken refuge in the caves of Nyakimana and their surroundings were murdered. The attack on that area lasted for four days, and weapons such grenades, mortars and machine-gun fire were used to indiscriminately kill men, elderly persons, women and children, both in the caves and outside as the refugees tried to escape from the massacre.

On 8 October 1997, hundreds of civilians were massacred in the village of Gisenyi, situated on the border of Rwanda with Zaire.

On 16 October 1997, more than 390 persons were executed by the members of the outpost of the Gendarmérie in Ruhengeri.

On 31 October 1997, hundreds of civilians were indiscriminately massacred during a military operation carried out by the members of A.P.R/F.P.R in the the sectors of Rwinzovuy, Busogo and Nyabirehe from the area of Mukingo.

On 9, November, the A.P.R/F.P.R soldiers, after surrounding an area known as Gashyusya, a sector of Ntaganzwa in the area of Kibuilira (Gisenyi); shot

indiscriminately persons who were standing there, amongst them elderly persons, women and children, causing the death of 150 persons.

Similar operations were carried out on 12, 13, 15, 16, 17 and 21 November and 3, 9 and 11 December 1997, in various inhabited areas of the Northeast of Rwanda. During the operations carried out on 13, 14 and 16 of November military helicopters opened fire on various inhabited areas of Gaseke, Giciye, Karago, Kanama and Satsiyi, of the Gisenyi Prefecture, and on Ndusu and Gatonde of the Prefecture of Ruhengeri, causing more than a thousand deaths.

On 10 and 11 December a massacre was perpetrated in Mudende (Gisenyi) in the Refugee Camp located at the University, causing at least 300 deaths.

### **TWENTY-THIRD**

A parallel military structure was set up by the A.P.R/F.P.R for the perpetration of selected murders, systematic massacres or infiltration activities.

The following groups formed the cited parallel structure:

- “Death Squadrons”, which were formed for specific actions and then immediately dissolved;
- “Local Defence Force” (LDF), also known as “Reserve Forces” formed by child soldiers, aged 15 or younger, who were called “kadogo”;
- “Network Commando”, a network of commandos created in 1992 the mission of which was to carry out “cleansing” operations and terrorist acts against the Hutu population and other prominent persons;
- “Directorate Military Intelligence” (DIM), a branch officially in charge of military intelligence matters, although “extra officialy” planned and organized systematic crimes, especially through its Intelligence Officers (I.O) and Intelligence Staff (I.S) and its external branch, the External Security Office (E.S.O)

- “Criminal Investigation Department” (CID), a paramilitary group in charge of the mass arrest of the population for the purpose of carrying out interrogations and inflicting torture, in order to obtain information about their next victims.
- “Surveillance and Security”, attached to DMI, which was in charge of intelligence tasks in the large cities.
- Finally, this parallel structure was formed by citizens of the local F.P.R teams, known as “Security Committees” (constituted by four members of the F.P.R), the Zone Chiefs who controlled certain territorial areas, and the “abakada” who were informers occasionally used in some criminal activities “

#### TWENTY-FOURTH

During 1995, the first contacts between senior officers of the A.P.R/F.P.R and Tutsi military “banyamulenges” of Eastern Zaire were established. These contacts were aimed at presenting, analysing and organizing the strategy for seizing power in Zaire. On May 1996, LAURENT DESIRE KABILA (the highest representative of Parti de la Revolution Populaire – PRP), Major General ANDRE KISASE NGANDU (the highest representative of Conseil National de Resistance de la Democratie – CRND), DEOGRATIAS BUGERA (the representative of Alliance Democratique des Peuples – ADP) and BISIMA KARAHHA travelled to Rwanda to meet the soldiers who were being specially trained at Nasho and Gashora. JAMES KABAREBE, in person, accompanied the delegation to introduce them to their future armed forces.

In July 1996, some military elements specifically recruited for that purpose were moved to Cyangugu (the Southwestern border of Rwanda with Zaire), to join the A.P.R/F.P.R Battalions number 101 and 157.

In August 1996, Major General ANDRE KISASE NGANDU went to Rwanda from Zaire, together with 500 Zairean combatants in order to complete their training.

On 18 October 1996, the Alliance des Forces Democratiques pour la Liberation du Congo-Zaire (AFDL) was created. LAURENT DESIRE KABILA was appointed the Alliance’s Speaker and ten days later proclaimed himself President of the A.D.F.L. Only nine months after being set up, the AFDL, together with the A.P.R/F.P.R,

conquered the immense territory of that which was called Zaire at that time and is now known as Democratic Republic of Congo.

As from 1994, hundreds of thousands of Rwandan fled their country to take refuge in Zaire. By the end of August 1994, the majority of over a million refugees were distributed in twenty camps located along the eastern border of Zaire with Rwanda.

In August 1995 the forced repatriation of the refugee population sheltered in the camps of Nor-Sivu and Sud-Sivu was initiated. In many cases the refugees were forced to get into trucks at gun point and were subsequently taken to the border of Rwanda. More than six thousand Rwandan were forced to return to their country where many of them would be persecuted and killed. Therefore, many chose to take their own lives during their journey, which they did by throwing themselves onto the river Ruzisi.

The Zairean and Rwandan authorities had set the date of 31 December 1995 as the deadline for closing all refugee camps and for evacuating all the refugees, although this was interrupted by the start of the armed conflict.

On 28 October 1996, more than a million persons initiated their personal and collective exodus, abandoning the camps and heading towards various destinations.

On 28 and 29 October 1996, the city of Bukavu was taken by the forces of the A.F.D.L with the support of the A.P.R./F.P.R. The Panzy camps situated all along the Ruzisi plains were attacked, followed by the attack on the camps of Nyamiragwe and Nyangezi, which generated waves of helpless refugees trying to escape. The refugees separated into two groups; one group headed for Sabunda and Lalima with the intention to reaching Angola, whilst the other group tried to follow the route Bukavy-Kisangani.

Among the victims was MARIE BEATRICE UMUTESI who described her escape to the Court stating that she had walked, approximately, 2000 km, as will be seen later.

#### TWENTY-FIFTH

The United Nations High Commissioner for Refugees decided to start a forced repatriation program. Once the Delegation of ACNUR arrived in Mbandaka they decided to implement the program, forcing the the refugees to get into their vehicles by threatening that they would be back with KABILA's soldiers the following day.

Since the members of ACNUR could not reach all the places where the refugees were, they created a cash reward system which they offered to Zaireans. Ten US Dollars would be given for each Rwandan refugee delivered. This system provoked an extensive "witch hunt" of refugees.

By mid February 1997, Mrs. SADAKO OGATA, the United Nations High Commisioner for Refugees, presented herself at the improvised Tingi-Tingi camp to inform that survival, security and protection of the refugees could not be guaranteed, offering humanitarian help only to those refugees who would complete an application form for their immediate repatriation.

On 28 February 1997, the A.P.R/F.P.R forces started the attack on Tingi-Tingi camp, which by 1 March was completley destroyed. An indeterminate number of refugees were killed.

The same happened at Chimanga and Shabunda camps.

### TWENTY-SIXTH

After carrying out the first attacks on the refugee camps situated along the eastern border of what Zaire was called at the time, some International Community countries mobilized themselves to create multilateral interposition forces.

The official figures reported by ACNUR/HCR showed that the situation of the refugees in Zaire, in the month of October 1996 was the following:

- \* Refugees from the region of Bukavu: 316.348 persons;
- \* Refugees from the region of Goma: 715.991 persons
- \* Refugees from the region of Uvira: 180.144 persons



Among those refugees, 117.316 were nationals of Burundi and the remaining 1.095.167 were Rwandan refugees.

In November (from 15 to 19) there was a mass return of refugees from Mugumba camp. An estimated figure of 450.000 to 700.000 Rwandan returned to their country. Their return, followed and watched by international TV film crews, provoked the paralization of the afore mentioned international peace mission.

In December 1996, given the continuing violation without any repercussions of international conventions in the matter of the Statute of Refugees, particularly regarding "non refoulement", the Tanzanian government issued an ultimatum addressed to the Rwandan refugees who were told to return to their country within a three week period.

After the return of the refugees, a forced return in many cases, common graves prepared for interment of corpses were found in the camps of North and South Kivu, Kitumba, Catale, Kahindo or Kalima.

Many of those who returned to Rwanda were murdered and many others were arrested whilst others disappeared in clandestine detention centres, losing all their belongings, property and goods. Those hundred of thousands who did not want, or were unable to return to Rwanda, were considered "genocidaires" by the authorities of the A.P.R/F.P.R,

#### **TWENTY-SEVENTH**

Besides the systematic and planned massacre of refugees, general and random attacks, executions and selective murders carried out in the Democratic Republic of Congo by the A.P.R/F.P.R, the two armed conflicts carried out in this Republic were aimed at the systematic and organized looting of its rich natural resources and were perpetrated by the armed forces, rebel groups, military political rebel groups, civil authorities and companies connected with such armed forces.

Shortly after the taking of Kinshasa, for instance, approximately 300 barrels were found filled with diamonds ready to be exported. Once discovered, the diamonds were carried to Kigali by plane.

Likewise, in the region of Lubumbashi, important quantities of gold, diamonds and coltan were looted.

These acts of pillage were used to finance the war and other military operations and were also used for the personal enrichment of high ranking military men of the A.P.R/F.P.R.

### THE SPANISH VICTIMS

**FIRST. JOAQUIM VALLMAJO I SALA**, born in Navata, Figueres (Girona), on 21 March 1941. He was an African missionary (Padres Blancos), ordained in Girona on 27 June 1965, who started his work in Rwanda that same year. He was a recognised fighter for the Human Rights.

In the last years of his life he was responsible for social and development work in the Diocese of Buyumba, in the North of Rwanda, as well as for providing assistance to the persons displaced for war reasons in the camps of Rebero, Kabondo, Muhura and Burarura.

At that time, he spoke openly about the unjust situation suffered by the population, particularly the displaced and refugee population, independent of their ethnic origin, denouncing the serious responsibilities of both sides in the conflict and announcing something which was difficult to foresee at the time "The zaireization of the conflict". In his written words "The Tutsi have launched a world campaign of disinformation to make believe that the murderers are the victims and that the victims are the murderers".

Shortly before his disappearance, speaking before some journalists he denounced the fact that on some occasions corpses which were identified as being the corpses of Tutsi

victims were being intentionally filmed, whilst they were actually the corpses of Hutu victims.

On Tuesday 26 April 1994 at 14:40 hours, the A.P.R./F.P.R soldiers arrested JOAQUIM VALLMAJO in Kageyo (Byumba). He was never seen again and his body has not been recovered.

Three days before, on 23 April, he had asked the soldiers of the A.P.R. explanations about the death of one of his collaborators.

On Monday 25 April, on his way to rescue some young female missionaries who were trapped in a combat zone, he was stopped by an F.P.R control. The person in charge recognized him and accused him of being "a disciple of André Perraudin" adding "in your homilies you have spoken badly about us...you have said that those who belong to the FPR will be condemned... someday you are going to pay for this"

On the same 26 April, JOAQUIM VALLMAJO with another three priests (Hutus) who had accompanied him on the 25th (JOSEPH HITIMANA, FAUSTIN MILINDWA and FIDELE MILINDA) disappeared without leaving any traces.

To this day the Rwandan authorities have not sent any reply regarding the investigation proceedings which might have been carried out in respect of the persons responsible for those acts.

**SECOND. SERVANDO MAYOR GARCÍA**, born in Hornillos del Camino (Burgos) on 20 July 1952;

**JULIO RODRIGUEZ JORGE**, born in Piñel de Arriba (Valladolid) on 20 October 1956:

**FERNANDO DE LA FUENTE DE LA FUENTE**, born in Burgos on 16 december 1943.

They all belonged to the Marista Congregation and formed a group which had been placed by the congregation in the Refugee Camp of Nyamitangwer (some 20 km to the west of the city of Bukavu in eastern Congo).

There were approximately 30.000 Rwandan refugees sheltering in this camp, the majority of them younger than 25 years old, mainly children. The camp was administered by the Red Cross under the sponsorship of ACNUR.

The four priests lived some 3 km from the Camp, in the village of Bugobe where they had set up a school. This Primary and Secondary school was attended by Hutu refugee minors and Congolese minors. Both the Zairean government and the Rwandan F.P.R. government were opposed to and fought against this initiative. The situation suffered by the refugees was reported by the Spanish priests, particularly when ACNUR decided to stop food aid in the month of June 1996 and the situation got even harder for the refugees who refused to return to their country.

By the end of October 1996, in spite of the news of the advance of the *banyamulenge* military rebels supported by the A.P.R/F.P.R, the Spanish priests decided to remain with the refugees who had not been able to escape in order to help and assist them.

On 30 October 1996, SERVANDO MAYOR GARCÍA, through the Spanish Broadcasting Radio Station "Cadena COPE" in the name of the refugees sent out an urgent call for help to establish a humanitarian corridor given the eminent extermination of refugees.

The following day, 31 October, the military rebels and the A.P.R/F.P.R arrived at Nyamitangwe Camp. That morning, SERVANDO MAYOR made a phone call informing that the Camp was empty, that they were alone and expecting an attack from one moment to the next.

At 20:00 hours he spoke to a cousin of his and while they were talking some people burst in and he told his cousin "I have to leave you now, we have visitors... Good or bad?... Bad, seemingly."

Nothing has been heard of the four Spanish priests ever since. According to some Zaireans, screams and shots had been heard that evening.

On 9 November 1996, the corpses of the four priests were found some 23 or 30 metres from the house in a 12 m. deep septic tank, showing signs of having been tortured, with both bullet wounds and deep machete inflicted wounds.

**THIRD. MARIA FLORS SIRERA FORTUNY**, born in Tremp, Lleida, on 25 April 1963;

**MANUEL MADARAZO OSUNA**, born in Seville, on 14 September 1954;

**LUIS VALTUEÑA GALLEGO**, born in Madrid, on 7 February 1966.

They were all members of the humanitarian organization "Médicos del Mundo".

After carrying out humanitarian work at Mugumba refugee camp (where some 250.000 Hutu refugees were sheltered), between the end of December 1996 and the beginning of January 1997 they moved their health assistance project to Ruhengeri. After difficult negotiations held with the health authorities, the health support project was approved.

This project was to be carried out in a circumscription of some 200.000 persons, 45.000 of whom were refugees who had returned to their places of origin. The objective of the same was to train and motivate the local health staff, to improve the critical health infrastructures, to improve healing and preventive activities in health matters to intensively distribute, as from the month of January 1977, medicines to the various clinics/assistance centres located in the above mentioned area.

On 16 January 1977, they went to Kabere clinic to deliver medicines. They arrived a few hours after a massacre had been perpetrated, causing the death of more than 50 persons. Faced with this situation, they assisted the population and looked after the wounded. While they were doing so, they were told about a place where a massacre had been perpetrated where people were dying and where the victims' corpses were still lying around. The cooperators, accompanied by the person who reported the situation, headed for the place of the massacre where they were shown that which had been described to them and they also saw a common grave filled with hundreds of corpses of the victims of another massacre which was allegedly perpetrated on 14 January.

The fact that the cooperators had seen in situ the results of the massacre was not unknown to the DMI agents.

On 18 January three consecutive attacks took place, the objective of which was the International Humanitarian Organizations of Ruhengeri "Save the Children" (United Kingdom); "Médicos del Mundo" (Spain) and (Medecins sans Frontieres) (Holland).

Those organizations' quarters were all situated in the same area, separated from each other only by a few hundred metres.

Nearby the quarters of the Gendarmerie National, where more than 250 police agents and soldiers of the A.P.R./F.P.R worked; the Military School with more than 120 soldiers; several military outposts; the Muhosa military camp and the HRFOR offices.

The attack on the cooperators lasted, approximately, two hours, without any reaction from any of the above mentioned soldiers.

the first shots were heard around 19:00 hours, a few minutes after curfew.

After turning off the lights, avoiding open spaces and windows and after closing the doors, MANUEL MADRAZO phoned the members of MEDICOS DEL MUNDO CARMEN COLL CAPELLA and CRISTINA PARDO, both of them located at the base camp in Nairobi (Kenia), to report that they had heard shots and they were staying alert.

Around 19:40 horas, the SAVE THE CHILDREN house suffered a first attack where its metal door was repeatedly fired on. Shortly after, two large explosions occurred, one of them the result of a grenade which caused damage to the house and the vehicles which were parked outside the house. A few minutes after the attack, some soldiers showed up at the door of the house claiming they were members of the A.P.R., but the N.G.O members refused to open the door.

Around 20:00 hours, a group formed by 8 to 12 armed men, most of them wearing military uniforms, presented themselves at the house of MEDICOS DEL MUNDO, which was locked and protected by a security guard called JEAN DE DIEU BATUYE.

Four of them, members of the A.P.R, wearing camouflage uniforms, and carrying three long guns and one short, informed the guard that they had come to guarantee the safety of the Spanish cooperators and consequently, the former allowed them to enter the house. In the meantime, the other members remained outside.

The four men went into the house and met its occupants MARIA FLORS SIRERA, MANUEL MADRAZO, LUIS VALTUNÑA and the United States national NITING MADHAV. While they were talking, one of the men stole something of small value while he was inspecting the house (some clothes and some money). Immediately after one of the soldiers who was seemingly the leader, asked the above mentioned cooperators to show their passports which he examined without making any comments and then he ordered the group to leave the house.

Some moments after leaving the house, shots were heard outside the house. MANUEL MADRAZO and NITING MADHAV threw themselves onto the floor, whilst FLORS SIRERA and LUIS VALTUEÑA ran towards the back of the house.

Suddenly the soldier who was in command, who had just left the house, came in again and without uttering a word shot MANUEL MADRAZO and NITIN MADHAV, while another soldier burst into the house and shot FLORS SIRERA. As for LUIS VALTUEÑA, he died as a result of the consecutive shooting coming from outside the house against the kitchen area where he was hiding.

MANUEL MADRAZO, FLORS SIRERA and LUIS VALTUEÑA lost their lives as a result of the gunshot wounds. NITIN MADHAV's right leg was seriously wounded and had to be amputated that same evening.

At 20:15 hours, approximately, near the headquarters of MEDECINS SANS FRONTIERES a group of 8 to 10 soldiers of the outpost of the A.P.R. in Ruhengeri tried to persuade, by firing their guns, the guards to open the doors. As the guards refused to do so, the group left.

The Rwandan Authorities have not replied yet to this Court's application for information about their own investigation of the circumstances, nature and eventual perpetrators of the facts previously described.

#### **FOURTH.**

**ISIDRO UZCUDUN POUSO**, born in Pasaia (Guipuzcoa) on 24 January 1931. He was ordained in 1957 and left for Rwanda in 1963. He served the parishes of Kayensi and Mugina (Central Rwanda). A promotor of peace and reconciliation, a defender of human rights, he was well known for denouncing social injustice and for defending those persons subject to abuse.

His position in respect of these issues and his public denunciations produced confrontation with the the A.P.R. authorities.

In the village of Mugina alone 1.325 persons were murdered by the A.P.R./F.P.R between May 1994 and August 1995.

In 1996 and 1997, the A.P.R. military authorities came to the point of classifying the local priests as "interahamwes" (Hutu extremists). Anytime the priests demanded explanations on the situation of the refugees arriving to Mugina, they were threatened by the military authorities and were verbally attacked by the same.

On 10 June 2000, a young man called SYLVAIN RULINDA who had arrived in a Toyota at 10:00 hours, approximately, together with Sergeant MARCEL KALISA and two non identified civilians, inquired on three occasions about ISIDRO UZCUDIN.

When they reached the parish house, at around 18:00 hours, Sergeant Marcel KALISA and one of the cited civilians, went into the house, taking advantage that JANVIER NDAYAMBAJE was going into the house through a side door. After immobilizing the parish priest's assistant they carried on to the parish priest's own office where they found him. The civilian was carrying a pistol and the Sergeant a Kalachnikov. After asking ISIDRO UZCUDUN for his car keys, which the latter gave them, they asked him for money and were given the money that Uzcudun had inside a drawer. They kept asking for more money which was refused by Uzcudu who eventually asked them that



if their real reason for being there was that he was going to be killed, then they should just go ahead and do it quickly, to which Sergeant MARCEL KALISA replied with a shot to the priest's face, causing his instant death.

No information has been received by the Court in the matter of proceedings which might have been carried out by the Authorities of Rwanda in order to determine the facts which produced the murder of ISIDRO UZCUDUN.

## II. EVIDENCE FURNISHED

The *prima facie* evidence which supports the Indictment Order made by this Court is founded on the evidence furnished in these proceedings as from 28 February 2006, the date when witnesses for the prosecuting party gave their statements.

**FIRST.** Witness TAP-006, a Hutu civilian, in his statement before the Court stated he was aware of the criminal acts perpetrated in Rwanda, particularly as from 19 July 1994, the date when he was appointed Secretary General for the Government of Rwanda until 22 August, when he was appointed Chief of the Secret Civil Services of the political-military government of the A.P.R./F.P.R (*Armée Patriotique Rwandaise / Front Patriotique Rwandais*) together with carrying out the functions of Chief of the Central National Bureau of INTERPOL, based in Kigali, the Rwandan capital. Both positions were continuously held by this Witness in the territory of Rwanda until 31 August 1995, the date when he decided to resign once he was on his way to exile. The facts that he declares he knows, came directly into his knowledge during the exercise of his above mentioned high command functions.

Witness TAP-006 provided detailed information regarding the responsibilities for the crimes of which he became aware, differentiating the facts that he had witnessed himself or those he had found out for himself, from those facts that came to his knowledge indirectly, or were reported to him by persons that he trusted. He clearly identified the persons responsible for specific crimes and also those mentioned in the reports made by international organizations and which were presented in the first legal action which initiated this case.

In his given statement, witness **TAP-006** explained how he had become a direct witness of kidnappings and summary executions of the civilian population and of persons displaced as a result of the war, particularly during 1994 and the first half of 1995, in various places of the Rwandan territory. He also described the systematic attacks on the civilian population he had witnessed, which were carried out particularly in the northern and central areas of the country during that period.

As the person with most responsibility over the Secret Civil Services, he had the knowledge and was in a position that enabled him to provide detailed lists with names and surnames of 104.800 persons who had died violently in various circumstances and in several places at the hands of the political-military F.P.R/A.P.R during a full year, that is to say, from the moment this group violently seized power in the month of July 1994, until shortly before his exile and resignation in July 1995 (among a total of 312.726 victims who are known to have been killed by the A.P.R).

This witness also reported in full detail, giving the names of the places and their respective situations, the existence of 173 common graves used by the F.P.R/A.P.R to dispose of the corpses which were incinerated in places such as the Akagera National Park or Nyungwe Forest (in the North and Southwest of Rwanda, respectively). These two natural areas which were practically unpopulated and difficult to access were under the strict military control of the A.P.R), as well as in the case of other places such as Mutara, Dirima, Kabutare, Save and Nshili. This information given was later confirmed and extended by some important A.P.R. members especially by protected witnesses **TAP-003**, **TAP-043** or **TAP-002**, to mention only the most relevant.

Given the information available to him as Chief of the Rwandan Secret Service, the witness identified the ten most important criminally responsible persons, and the specific crimes perpetrated by the same from August 1994 to July 1995.

- **MAJOR GENERAL PAUL KAGAME**, HCO. High Commanding Officer. Witness **TAP-006** differentiated clearly the criminal facts which are attributed directly to Major General **PAUL KAGAME** and were the result of his own decision, from those decisions taken by the latter to cover up for the crimes perpetrated by his officers to which he had agreed, had decided on, or been

aware of, as the case may be. The three crimes clearly identified are the massacres of the civilian population of the city of Byumba and outskirts (a city situated in the North of Rwanda), the most relevant being the massacre which took place at the Stadium of Byumba and Nyinawimana at the end of April 1994; the massacre of bishops and members of the clergy perpetrated near Kabgayi in the month of June 1994 (the information on the matter of those crimes and the persons responsible for the same, led by General Majaor PAUL KAGAME, was further confirmed and extended, in particular by witnesses TAP-002 and TAP-043 who had been assigned to the operations which were developed in those territories areas) The witness identified a third crime directly attributable to Major General PAUL KAGAME: the massacre of civilians in Kibeho and outskirts, carried out on 21-23 April 1995.

Regarding the covering up by Major General Kagame of the responsibility of his officers and the crimes executed by the same, the witness identified, among others, the following most relevant persons: Colonel Twahirwa Dodo; Lieutenant Colonel Fred Ibingira; Colonel Kayumba Nyamwasa; Lieutenant Colonel Charles Kayonga; Colonel Bagire. As will be seen, these persons are repeatedly mentioned by other protected and unprotected witnesses.

- **MAJOR GENERAL KAYUMBA NYAMWASA**, in his capacity as Commanding Officer of the Directory Military Intelligence-DMI until the war was officially ended in July 1994. The witness stated he was directly responsible for the massacres carried out as a result of his direct orders or of his officers' orders, such as Lieutenant Colonel Jackson Rwahama Mutabazi, Lieutenant Colonel Jack Nziza, Colonel Dan Munyusa, Captain Charles Karamba, Captain Joseph Nzabamwita, Major Steven Balinda and Lieutenant Alphonse Mbayire, among others.
- **BRIGADIER GENERAL KARENZI KARAKE**, in his capacity as Commanding Officer of the Directory Military Intelligence-DMI (the person who replaced G.M.KAYUMBA NYAMWASA) from July 1994 until March 1997 (according to the witness and to other witnesses such as TAP-043 and TAP-002 who will extend the information referring to his criminal

responsibility in later periods). The witness stated he was the person directly responsible for the massacres carried out by the DMI during the cited period. Witness **TAP-006** specifically referred to the crimes perpetrated in Kigali and across the country during the period while he was holding the position previously mentioned, that is to say, during the years 1994 and 1995. He also attributed to General Karenzi the direct responsibility for the selective strategic murders of key politicians during the war and its various truces, that is to say, between 1990 and 1994 (referring specifically to the terrorist operations aimed at murdering politicians, as in the case of EMMANUELLE CAPYISI or FELICIEN GATABAZI in 1993 and 1994, respectively, among others, operations which were carried out before the A.P.R/F.P.R violently seized power, therefore while they were a political-military rebel group. Other witnesses, as for instance witness **TAP-043** have also referred to General Karenzi as the person directly responsible for those crimes)

- **COLONEL FRED IBINGIRA**, to whom the witness attributed direct responsibility for the massacres carried out against the civilian population in Bugesera, Mayaga and Butare in 1994 and Kibeho in 1995.
- **BRIGADIER GENERAL SAM KANYEMERA "KAKA"**, to whom the witness attributed direct responsibility for the massacres committed by the Battalion Alpha in their violent military advance towards Kigali in the month of April 1994.
- **COLONEL TWAHIRWA DODO**, to whom the witness attributed direct responsibility for the massacres carried out by the Umutara-Kibungo Brigade in 1994 and 1995.
- **LIEUTENANT BRIGADIER GENERAL CHARLES KAYONGA**, to whom the witness attributed direct responsibility for the massacres carried out in the city of Kigali in 1994, as well as Gitarama and Kibuye in 1995.

- **COLONEL CHARLES NGOGA**, to whom the witness attributed direct responsibility for the massacres carried out by the Gitarama-Kibuye Brigade in 1994 and by the Butare-Gikongoro-Cyangugu Brigade in 1995.
- **COLONEL CAESAR KAYIZARI**, to whom the witness attributed direct responsibility for the massacres carried out in Cyangugu (situated on the Western border of Rwanda with Zaire, as this country was called at the time, next to Lake Kivu.)

In his statement given before the Court witness **TAP-006** gave full details and extended his testimony, furnishing reasonable evidence of the criminal acts committed by the persons responsible, as mentioned before, and particularly that which refers to the first four persons mentioned.

This witness stated that he had collaborated throughout 1997 and 1998 –already in exile - with the person who had been the Minister of Interior of Rwanda, Mr. **SETH SENDASHONGA** (murdered by a command of the External Security Office of the A.P.R. in Nairobi, on 16 May 1998, led by **JACK NZIZA**, according to witness **TAP-002**'s statement). His collaboration enabled him to prove that 1.325 persons had been violently killed between the months of May 1994 and August 1995 in the area of Mugina (Gitarama Prefecture , situated in the central area of Rwanda, where the Spanish priest **ISIDRO UZCUDUN** was murdered in the year 2000, probably because he knew many of those Hutu victims, aside from the Tutsi victims). This situation was reported by Witness **TAP-006**, in due time, through his writings to the United Nations Organization.

When witness **TAP-006** was specifically asked about the forced disappearance or the possible death of the Spanish priest **JOAQUIM VALLMAJÓ**, as well as about the death at the end of April 1994 of other Hutu Rwandan priests in the area of Byumba, he declared that he learned about it indirectly after the events since the witness had been in Byumba refugee camp until the military victory of the A.P.R/F.P.R at the beginning of July 1994.

However, the witness stated that he had no doubts, given that which he found out later as Chief of the Civilian Secret Services, that behind those violent deaths would be, at least, the following persons: **MAJOR GENERAL KAYUMBA NYAMWASA** (as the person most responsible for the country's DMI), **CAPTAIN DENYS KARERA** (as Security Officer and the person most responsible for Security in Byumba), **SUBLIEUTENANT** or **CAPTAIN JOSEPH NZABAMWITA** (a DMI member and the person who supervised the execution operations and who was in charge of the follow-up of the corpses), as well as the Intelligence Officer of Buymba **MBAYIRE ALPHONSE**, a.k.a **MBANDAHE**, as the person responsible for special information in the city of Byumba. The witness's statement basically coincided with the statements of direct witnesses **TAP-002** and **TAP-043**, among others.

Witness **TAP-006** added that during the period he was in charge of the Secret Civil Services, there were specific instructions to save ammunition during the military operations which were being carried out, and he knew that the military who disobeyed these orders had been punished, and especially, ammunition had to be saved when persons or groups were executed.

Consequently, he believed that **JOAQUIM VALLMAJO** and the other priests could have been tortured and killed without any bullets being used. This was later confirmed and detailed by protected witnesses **TAP-002** and **TAP-043**. Witness **TAP-006** confirmed in his testimony much of that which was described in the legal action which initiated this case, in paragraphs six and seven, as well as the persons responsible for the facts described therein, particularly, the information contained in pages 60, 86, 87 and 88 of proceedings.

**SECOND.** Witness TAP-004 was a soldier of the A.P.R. who belonged to the Tutsi ethnic group. In his statement given before the Court the witness replied to the questions asked by the Counsels representing the Public Prosecution Ministry and the Private Prosecution and Class action, the three parties to this case, demonstrating his thorough knowledge of the criminal acts perpetrated in Rwanda, specifically as from the year 1990, the year he joined the A.P.R. in Uganda to start his military education in that country.

Next, the witness was sent to Gashenyi front (a place in Muvumba which is under the Prefecture of Byumba) after the invasion of Rwanda by the A.P.R carried out from Uganda, until 25 February 2001 when he resigned and abandoned his post in the army of the A.P.R on his way to exile.

Similarly, witness **TAP-004** fully ratified before the Court, and also recognised as his own the signature contained on all the pages of the original document which contains a written testimony of the witness and which corresponds with another original document kept, as was stated, in a closed envelope at the Notary of Mr. Lorenzo P. Valverde Garcia, in Barcelona, under his Protocol number 672 of 8 April 2004.

**TAP-004** witnessed the planning and/or execution of numerous crimes in Rwanda throughout the period of almost 10 years (1990 to 2001) while he served as a soldier in the various military units of the A.P.R army ( which is defined by the same witness as the military arm of the Front Patriotique Rwandais –FPR), as was fully described by the witness in the aforesaid document in respect of his consecutive military postings).

The witness, in his statement given before the Court, referred to the systematic military operations carried out openly against the civilian population of the Northern area of Rwanda, specifically in the area of Mutara (Muvumba/Byumba), where the civilian population, mostly Hutus, was systematically attacked and massacred. He stated that in some cases the inhabitants of certain places were completely eliminated, a fact which was later confirmed by witness **TAP-007** who extended this information.

He also described how he had carried out intelligence operations for the APR, under the direct orders of **CHARLES KAYONGA** and **HUBERT KAMUGISHA**, from November 1993 until 6 April 1994; he explained in detail how on many occasions he had pretended to be a taxi driver, dressed in civilian clothing in order to carry out secret reporting on important strategic information, just before and during the attack on Juvenal Habyarimana who was the President of Rwanda at that time.

Witness **TAP-004** explained in full detail that on the day the of the attack, 6 April 1994, he had dressed in civilian clothing to carry out an intelligence and security operation

aimed at securing the areas surrounding the place which had been chosen by the A.P.R for launching the missiles at the presidential aircraft.

In short, witness **TAP-004** confirmed in various ways and at different stages of his testimony the general objectives of the A.P.R and of its military senior officers which were aimed at seizing power by force by eliminating the largest possible number of persons of the Hutu ethnic group, by means of supposed or simulated operations, if it were needed.

Although he knows of many other criminal acts which were carried out during the lengthy war and the official post-war periods, witness **TAP-004** concentrated particularly in the facts that he had directly witnessed and which were related to the persons responsible for the killing of the Spanish members of Medicos del Mundo, MANUEL MADRAZO, FLORS SIRERA and LUIS VALTUEÑA, perpetrated on 18 January 1997 in Ruhengeri, as well as in the systematic massacre of the Hutu civilians in Ruhengeri and its neighbouring areas during the first months of 1997.

According to his statement given before this Court, in August 1996 witness **TAP-004** was posted in Ruhengeri. In December of the same year he was appointed Intelligence Officer (IO) of the Gendarmerie of Ruhengeri, in the framework of both the official and secret military strategy which was established to deal with the mass return of Hutu Rwandan refugees who were abandoning the refugee camps and also to carry out simulated attacks which were known as "infiltrated" attacks which were used by the A.P.R (either directly or by the Military Secret Services of the Directorate Military Intelligence or by the National Police through the Gendarmerie) to ultimately justify a "necessary reaction" from its regular army.

Witness **TAP-006** described in full detail the various massacre operations carried out against the civilian population in the Northern area of Rwanda as from December 1996. He also pointed out that some humanitarian agents had started to ask themselves who was responsible for these massacres.

Witness **TAP-006** reported that it had come to his knowledge that three "white" cooperators who were working for the Spanish organization Médicos del Mundo, had



gone, as they had done on other occasions, to the clinic/assistance centre which was situated in the small Centre of Kabere (which belongs to Nyakimana) in order to give out medicines.

As will be seen later, at a meeting attended by the witness he found out that the cooperators had been contacted on 16 January 1997 by a peasant from that community, who informed them that only a few hours before some 50 persons had been massacred in a place very near the cited clinic and that the corpses of the victims had still not been removed from the scene of the massacre and that there were also persons injured as a result of the massacre, among whom the peasant himself.

Witness **TAP-004** learned through his colleagues of the Directorate Military Police who dressed in civilian clothing had followed the whole scene, and had also been present when the cited peasant was being interrogated at Muhoza Military Camp, that the peasant had informed the Spanish cooperators of Médicos del Mundo of the development of the massacre in full detail, explaining that the massacre had been carried out by the soldiers of the A.P.R. He also wanted to show to the three members of Medicos del Mundo, Spain, the result of another massacre which had been perpetrated nearby, two days before, on 14 January 1997, at the University Campus of Nyakinama. Consequently, they drove to that place where they were able to see for themselves the common graves where many corpses were lying. Apparently, either the cited peasant had been told about the massacre or he had been able to escape from it.

Witness **TAP-004** knew of these events because he was asked to attend an urgent meeting which was also attended by other A.P.R. members who belonged both to the Regular Army and the Gendarmerie. The following persons were asked to attend this urgent meeting which was held on the evening of 16 January 1997 in Ruhengeri:

- General **KAYUMBA NYAMWASA**: Commanding Officer of military operations in the Northwestern area of Rwanda, with the rank of Chief of General Staff.
- Colonel **WILLIAM BAGIRE**: Commanding Officer of Brigade 408 of the A.P.R;

- Lieutenant Colonel AGUSTIN GASHAYIJA: Commanding Officer of the Military Unit of the A.P.R. posted in the city of Ruhengeri;
- Major FIRMIN BAYINGANA: Comanding Officer of the Ruhengeri Group and a member of the Gendarmerie;
- Captain EVARISTE KABALISA: Comanding Officer of the Group and a member of the Gendarmerie;
- Captain JUSTUS MAJYAMBERE: Intelligence Officer (I.O) of Brigade 408 of the A.P.R.;
- SubLieutenant EVARISTE KARENZI: Intelligence Officer (I.O) of the Gendarmerie Group of Ruhengeri;
- SubLieutenant KUBWIMANA MEDARD: Intelligence Officer (I.O) of the Gendarmerie;
- TAP-004: Intelligence Officer (I.O) of the Gendarmerie;
- Captain EDMOND KARAKE: Intelligence Security (I.S) of the Ruhengeri Group.

The direct testimony offered by witness **TAP-004** to the Court, confirmed and extended the information specified in the initial legal action previously mentioned, in particular, regarding the purpose of this meeting. The purpose of the meeting was to verify that the three members of "Medicos del Mundo" had been given sensitive information about the attacks which had just been carried out by the A.P.R. on Hutu civilians who, in some way or other, were connected with the clinic and with the nearby villages and towns included in the health assistance project which was being developed by the above mentioned Organization "Medicos del Mundo" in the area around Ruhengeri.

This information had been directly passed on to the cooperators by a witness/survivor of the massacre, who had taken them to the place where the acts were committed. Once this situation was verified at the meeting held for that purpose, it was decided to proceed to eliminate the cooperators, as part of a broader strategy aimed at forcing the NGOs, other agents and international observers to abandon the Northeastern area of Rwanda and the Zairean border. (according to witness **TAP-004**, these specific and general objectives were both successfully achieved).

The decision to eliminate the three members of the organization "Médicos del Mundo" was made by the four first persons previously cited : General **KAYUMBA NYAMWASA**, Colonel **WILLIAM BAGIRE** (deceased), Lieutenant Colonel **AGUSTIN GASHAYIJA** and Major **FIRMIN BAYINGANA**, while the organization of the two commandos which would jointly execute the operation and which were also ordered to simulate an attack and a supposed counter-attack had fallen on Captain **EVARISTE KABALISA** and Captain **JUSTUS MAJYAMBERE**. These two Captains served in the Gendarmerie (National Police) and in Brigade no. 408 of the A.P.R. (Regular Army of Armée Patriotique Rwandaise), respectively. The Captains received specific orders to eliminate the Spanish cooperators, and once the meeting had finished they both stayed behind alone with the Commanding Officers.

According to witness **TAP-004** the person ultimately responsible for the organization and execution of the operation was Captain **JUSTUS MAJYAMBERE**, in his capacity as an Intelligence Officer of the A.P.R 408 Brigade and who was subject, in any case, to the final control and decision of General **KAYUMBA NYAMWASA**.

Witness **TAP-004** stated before this Court that , although he was not physically present at the secret meeting of the two captains with his superiors which had immediately followed the general security meeting above mentioned, in his experience and also given his military duties as a Gendarmerie Intelligence Officer, he could say he was sure that the executors need not be given specific instructions because they were well experienced in this type of promptly-executed missions carried out jointly by the two bodies of the A.P.R. Nevertheless, the identities of the soldiers who were finally chosen by the Captain among the 408 Brigade and the Gendarmerie to execute the mission, remain unknown up to this date.

It should be pointed out that **TAP-004** was specifically asked whether he knew of a certain "Major Endahiro" who, according to the Technical Report of page 516, supposedly belonged to the A.P.R of Ruhengeri. He replied that as an Intelligence Officer, he did not know of this soldier. This corroborates the doubts that arose not only about the identity but also about the truthfulness of the alleged soldier who was interviewed by the the Spanish Judicial Police during the investigation they carried out

in the area, in May 1997, and also demonstrated how absurd the statements made by this supposed soldier were.

Witness **TAP-004** was shown several maps of Ruhengeri, both the map made by the Spanish Judicial Police (page 551 of Proceedings) and the map made by the United Nations Office in the field (page 486 of these proceedings). He was able to identify the location of various military units, the Gendarmerie, the Military School and the National Gendarmerie, as well as other military houses situated throughout the whole mentioned area. According to witness **TAP-004**, none of these military units had participated in the above mentioned operation, except the group previously mentioned which was commanded by the two Captains and the Gendarmerie, and as already stated by the witness, had intervened at a later stage once the operation had finished.

Witness **TAP-004** described the type of material available to a cell, or the material which was available to a rapid-execution unit, such as the unit previously mentioned, stating that the following weapons were being used at that time in Ruhengeri for this type of mission: AK 47 (Kalashnikov) or those known as machine-guns, i.e. MMG-(M16-A1) and GPMC (M16-A-2) or RPG.

As will be seen, these guns match perfectly the bullet cases found at the place where the acts took place. (among others, those found by a member of "Médicos del Mundo" who urgently travelled the following day from Nairobi to the place where the acts were committed). Tests were also carried out by Spanish experts of the Judicial Police, who gave their testimonies on this matter before the Court during the examination stage of this case.

According to Witness **TAP-004**, the simulated operation of sending police units to suppress the attack supposedly carried out by the "infiltrated" (which was actually carried out by an A.P.R. rapid-execution group, commanded by Captain **JUSTUS MAJYAMBERE** and Captain **EVARISTE KABALISA**) was also assigned to SubLieutenant **EVARISTE KARENZI**. The latter was also an Intelligence Officer of the Gendarmerie whose task was to go to the place where the acts had taken place once the operation was completed, in order to simulate a reaction from the Gendarmerie forces to protect the population against the "supposedly enemy attacks".

This also coincides, as will be seen, with the reports of Judicial Police regarding the information they were given by eyewitnesses, in the sense that the latter had not seen any cross fire between armed groups, or any supposed attacks, or any supposed armed suppression of the same. Instead, they had observed three consecutive firearm attacks on the NGOs, with firing only going in one direction which was clearly seen because it was dark and because that area was under an effective curfew.

Witness **TAP-004** stated that secret radio frequencies were used in operations of this type and that they were only known to the people involved.. However, **TAP-004** was able to listen through an ordinary frequency that Gendarmerie soldiers had been sent to that place once the operation had "finished". He also listened to the communication made by Captain **JUSTUS MAJYAMBERE** to Lieutenant Colonel **AGUSTIN GASHAYIJA** informing the latter that the operation had finished (according to the Swahili words used "kazi imeyisha") and that they were returning to base.

According to **TAP-004**, the consecutive attacks on three NGOs located in Ruhengeri were carried out for two purposes, at least: To confuse the humanitarian agents and international observers by demonstrating that the Spanish Médicos del Mundo had not been the sole target of the attack and, at the same time, to terrorize the expatriate, and the population in general, in order to force the NGOs and the observers to abandon Ruhengeri, thus creating a general atmosphere of fear.

We know through the witnesses heard in Court that these objectives were promptly achieved, since all the NGOs and the offices of the United Nations in the area quickly returned to Kigali capital, after the attack which was described before and other acts which were carried out in that area around the same time, something which the members of the Spanish Judicial Police had the opportunity to see for themselves during their investigation carried out in May 1997, as will be described below.

Witness **TAP-004** described the real objective and purpose of these types of operations which were to prevent the external observers witnessing the massacres perpetrated by the A.P.R., in the area of Ruhengeri and, simultaneously, those carried out in two strategic places of the border, Gisenyi and Cyangugu. **TAP-004** referred that Captain **JUSTUS MAJYAMBERE** and Lieutenant Colonel **AGUSTIN GASHAYIJA**, as

leading senior officers of the military operations carried out in Ruhengeri, were undoubtedly the persons who had ordered the elimination of the civilian population (mostly Hutu) considered to be general enemies.

As a specific example of this situation, he referred to the massacre of approximately ten thousand persons (10.000) who were eliminated in Nyakinama (a place which was visited, as we have previously mentioned, by the Spanish members of "Médicos del Mundo") and the massacre carried out in Mukingo where many persons were called out and taken to the market where they were subsequently massacred under the orders of Lieutenant Colonel **AGUSTIN GASHAYIJA**.

As will be seen, witness **TAP-002** completed the information about this operation and others aimed at the systematic elimination of the Hutu civilian population and the elimination of these expatriates who were considered to be a risk because once abroad they could report the situation or make assessments of the events.

**TAP-002** indicated the following persons with most responsibility for all the operations which were carried out between the end of 1996 and the beginning of 1997 throughout the Northeast of the country: General **KAYUMBA NYAMWASA**, in his capacity as Commanding Officer of the Military operations of the Northeastern area of Rwanda, Lieutenant Colonel **KARAKE KARENZI**, as the person with most responsibility for the Directorate Military Intelligence (Military Secret Services), who were both controlled by the political-military high commander General **PAUL KAGAME**.

Both **TAP-002** and **TAP-004**, among other witnesses, stated that it was impossible that the elimination of the Spanish nationals was decided without the previous knowledge or instructions of Major General **PAUL KAGAME** himself.

**THIRD.** Witness TAP-003, a soldier of the Tutsi ethnic group serving in the A.P.R., described in his judicial statement his thorough knowledge of the criminal acts perpetrated in Rwanda, specifically as from the date when he had joined the A.P.R., 6 October 1990, five days following the start of the invasion of Rwanda from Uganda carried out by six A.P.R. battalions and 4.000 soldiers.

The witness stated that he served in several special and elite military units of the A.P.R., namely the 9th Batallion, the Yankee Combined Mobile Force, the Sierra Mobile Force, the 59th Batallion and the Network Commando. Later, as a member of the Directorate Military Intelligence, he served in the Criminal Investigation Department (CID), subsequently in the Counter Intelligence Department and finally, in the combat units which operated in the Democratic Republic of Congo until 4 February 2001, when he decided to exile in Uganda. He explained that he had direct knowledge of the facts as a result of his active military functions in the various cited units and as such he was in a position to corroborate and provide full information about the names of the persons responsible and about the criminal acts which were perpetrated at that time.

Witness **TAP-003** fully ratified before the Court, recognising as his own the signature contained in all the pages of an original document containing his written testimony which corresponds to another original document kept, as indicated by the witness, in a closed envelope at the Notary of Barcelona of Mr. Lorenzo P. Valverde García, registered under his protocol number 120, dated 7 July 2003.

Witness **TAP-003** summarized the most important acts he had witnessed directly, such as the organization and execution of the presidential attack on Juvenal Habyarimana, who was the President of Rwanda at that time. He described his own participation and his central knowledge of the Network Commando where he had served, and the various stages of the war in which he participated: In short, the first stage went from October to December 1990; second stage, December 1990 to August 1991; third stage, from August 1991 to August 1993; fourth stage, from August 1993 to April 1994; fifth stage, the presidential attack and the violent seizure of power; sixth stage, from seizing power until his exile.

He confirmed throughout his lengthy testimony, the central macro-strategies implemented by the A.P.R./F.P.R which according to the witness' definition was a political military group, structured and organized under a well defined and strongly hierarchized leadership. The witness described the above mentioned strategies, as from the beginning of his participation in October 1990, as follows:

- a) To eliminate the largest possible number of Hutus in Rwanda;

- b) To seize power by force – even by sacrificing the Tutsi population who had remained in Rwanda and who were considered to be traitors; and act subsequently, according to the development of events,
- c) To form a strategic alliance between Tutsis and Western allies firstly to brutalize and terrorize Rwanda and then the whole Great Lakes area and to invade Zaire and take possession of its natural resources.

**TAP-003** described, by order of importance, the most relevant orders and military activities which were carried out as from the beginning of the war, that is to say, the military invasion of Rwanda carried out from Uganda by the A.P.R. The witness stated that he arrived five days after the murder of **Fred RWIGEMA**, the highest commanding officer leading the invasion, and that from that moment on a situation of complete confusion arose.

According to witness **TAP-003**, he heard non confirmed rumours which indicated that **Fred RWIGEMA** had been murdered by Majors **Peter BAINGANA** and **Chris BUNYENYEZI**. At that moment, the struggle for power began within the A.P.R. something which would directly affect all subsequent events up to the present day: **YOUWERI MUSEVENI**, who was the President of Uganda at that time and still is, forced the appointment of the A.P.R high command.

Witness **TAP-003** described, as a direct witness, the arrival of **PAUL KAGAME**, a Major at that time, to the territory controlled by the A.P.R. on 13 October 1990, and how he had personally listened to Major **Peter BAINGANA** literally telling **PAUL KAGAME** on his arrival, as a result of having been sent by **MUSEVENI** to become High Commander : “...You are physically and mentally inept...how can you lead the people, Pilato ) Go and tell Museveni to send us a Ugandan Private Soldier to be our leader, if he does not trust us...”

According to witness **TAP-003**, **PAUL KAGAME**, who was at that time receiving his military education and training in the United States of America (USA), seemingly in Fort Bragg, was called by **MUSEVENI** to replace **Fred RWIGEMA** as High Commander of the A.P.R, after the latter's death.



Witness **TAP-003** pointed out that since the A.P.R./F.P.R depended on Uganda and on its President **MUSEVENI** for logistical, material, political, economic and diplomatic reasons, they consequently could not do anything else but to accept Museveni's orders and offer **PAUL KAGAME** the Military High Command of the APR/FPR, despite this public imprecation.

Shortly after, the following week, on 22 October 1990 **PAUL KAGAME** arrived escorted by 12 vehicles of the Ugandan Presidential Protection Unit (PPU, the unit in charge of protecting the Ugandan President) led by Major General **SALIM SALEH**, the half brother of the President Museveni of Uganda (General Salim is frequently mentioned in the reports of the United Nations in the matter of looting operations in Zaire/Democratic Republic of Congo).

That very day, 22 October 1990, coinciding with the physical arrival of **PAUL KAGAME** to the High Command of the A.P.R, Majors **Peter BAINGANA** and **Chris BUNYENYEZI** were murdered in circumstances which still remain unclear. According to witness **TAP-003**, a situation of internal terror was triggered by these events, with **PAUL KAGAME** as a "supreme ruler" whose orders could not be queried for fear of ending up as the two Majors did (as indeed happened to other soldiers as from that moment and during the following years). The witness pointed out that it is important to be aware of these circumstances in order to be able to understand and examine the evidence of the criminal acts that he was about to describe.

Witness **TAP-003** described the strict controls before the beginning of the internal A.P.R. war, which would vary depending on the place of origin of the soldiers. At that time, soldiers were categorized according to the following internal designations:

- "Positive 1", soldiers from Uganda (who were the majority and were the best regarded);
- "Positive 2", soldiers from Tanzania;
- "Positive 3", soldiers from Buyrundi
- "Positive 4", soldiers from Zaire;

- “Positive 5”, soldiers from Rwanda (who were the least valued and were closely watched since this Rwandan group of persons were initially mistrusted despite the fact that they were strategically used in Rwanda).

As stated by witness **TAP-003**, given that he was born in Gitagata, which is situated in the Prefecture of Rural Kigali, in Rwanda, **TAP-003** was considered a “positive 5” (just like the previously mentioned witness **TAP-004** who was also born in Rwanda)

**TAP-003**, after explaining the first stage of the war that he had experienced, and the systematic killing of the civilian population of Northern Rwanda during the first weeks of the soldiers advance, went on to describe that which he called the second stage of the war, specifically, the guerrilla activities called “hit and run operations”. These operations, as their name indicates, consisted of rapidly executed operations which were carried out by specialized commandos that had taken off from Uganda to develop such activities in Northern Rwanda, namely in Kiyombe, Muvumba, Cymba, Kibuye, Butaro.

According to the witness, the worst acts were committed in Nkana, a real “slaughter”, in his words. Such a change in their strategy was explained from the military point of view and from the point of view of the victims’.

As an example, we will refer to **MARIE BEATRICE UMUTESI**’s testimony in the document which she added to her statement given before the Court and, in particular, in the book she also presented at the time she gave her statement, as will be seen below when we refer to this witness.

**TAP-003** described in full detail the structure of the command which was created at that time to carry out the strategic activities described in the previous paragraph. According to the witness’s testimony, that structure remained unchanged until 2001, the year he had abandoned the country to go into exile. The minor changes it underwent were related to matters regarding military ranks, regular or secret military units and specific tasks which depended on that which was required at each moment.

At the head of the military political structure was Major General **PAUL KAGAME**, as C.H.C, Chairman of High Command. He was the person who directly and specifically ordered the majority of the military operations or, if it were the case, the ultimate person responsible whose instructions were required whenever there were not any preestablished specific orders, as **TAP-003** has stated several times both when he referred to crimes committed against Rwandan nationals and against expatriates and Congolese nationals (just as witnesses **TAP-004**; **TAP-002** and **TAP-043** did, to mention only the most relevant).

Major General **PAUL KAGAME**'s military orders were passed on through two newly created channels: On the one hand, the the A.P.R regular army assigned to Major General **JAMES KABAREBE**, C.O.H.C.U, Commanding Officer of the High Command Unit and on the other hand, the military intelligence services or secret services of the A.P.R., the Directorate Military Intelligence, as was reiterated by the witness. The person with most responsibility or Supreme Chief of the Directorate was Major General **KAYUMBA NWAMWASA** (who held that position until 1994 when he was replaced by Lieutenant Colonel **KARAKE KARENZI**, as will be later specified by Witness **TAP-002**).

The above mentioned four senior military political figures are frequently and specifically mentioned by the witnesses in their detailed reports regarding the international crimes which were committed and are also referred to in the documents collected throughout other proceedings carried out in this investigation. These crimes were perpetrated both in Rwanda and Zaire, the latter being now called Democratic Republic of Congo.

Both networks, the two channels above mentioned, the Regular Army of A.P.R. and the attached services of the D.M.I., were in charge of planning and executing specific military or terrorist orders. **TAP-003** described the rapidity and the way that **JAMES KABAREBE**'s orders, the direct military assistant to **PAUL KAGAME**, reached the Battallion Commanding officers and their respective units and from there down to the lower ranks of the Army hierarchy of the A.P.R.

Witness **TAP-003** provided the names of the Commanding officers of the Great Battalions or those of the most relevant Units who had carried out criminal activities: **FRED IBINGIRA**; **WILLIAM BAGIRE**; **MUBARAK MUGANGA**, **KADAFFI KAZINTWALI**, **CAESAR KAYIZARI**, **BAGABO SINDIKUBWABO**, **ZIGIRA**, **MURANGIRA**, **MUTAGOMWA**, **RUTARA**, **CYIISA**, **ALEX KAGAME**.

According to **TAP-003**, anytime Major General **PAUL KAGAME** decided to assign some particular actions to the network parallel to the regular army, the Directorate Military Intelligence Chief **KAYUMBA NYAMWASA** (or **KARAKE KARENZI**, depending on the moment of events) was used. The witness explained that whilst major military operations were assigned to the Army, the actions with a specific purpose were assigned to the D.M.I. and were carried out by commandos highly qualified to attack persons, or pre-established objectives.

**TAP-003** pointed out that, although the D.M.I. was officially in charge of the military intelligence directly available to **PAUL KAGAME** and at his service, its actual mission consisted of organizing systematic crimes against the civilian population under the latter's orders. These crimes were planned by the High Command General Staff and were executed by Intelligence Officers and their Intelligence staff.

**TAP-003** provided the following list of names of the D.M.I.'s agents with the most relevant responsibility who carried out criminal actions: **KAYUMBA NYAMWASA**; **GACINYA RUGUMYA**; **KAYONGA CHARLES**, **RWAHAMA JACKSON MUTABAZI**; **SILAS UDAHEMUKA**; **DAN MUNYUZA**; **GASANA RURAYI**; **JACK NZIZA**; **CHARLES KARAMBA**; **KAMUGISHA HUBERT**; **GUMISILIZA WILSON**, **RUBIMBURA MOSES**, **STEVEN RWABIKA**, **DONAH**, **ALEX SHUMBA**.

Some of these names have also been cited by other protected witnesses as the names of the persons responsible for specific crimes, on specific dates, independent of their belonging to the A.P.R., to the regular army or to the A.P.R.'s parallel structure, the D.M.I.

According to **TAP-003**, these persons, acting under the orders of Major General **PAUL KAGAME**, were the persons responsible for planning and executing operations which involved both the systematic elimination of civilians and the elimination of persons who were classified as hostile or who opposed to the strategies or wishes of the A.P.R/F.P.R.

As an example of this situation, the witness referred to the leaders of the MNRD political party who were in power at that time; the priests who were considered to be collaborators of the political regime which they intended to fight against; and the persons responsible at local level, or simply the persons who were not in favour of the F.P.R.

**TAP-003** went on to describe that which he called the third stage of war, the change in strategy undergone between August 1991 and August 1993, when the "hit and run" guerrilla operations came to a halt and a large spectrum of military operations started to be carried out openly, particularly against the civilian population, in addition to the "proper" attacks made on governmental military positions.

The witness pointed out once again, that the worst crimes were committed in the North of Rwanda and, specifically, in the three key inhabited areas of Northern Byumba, namely, Muvumba, Kyombe and Mukarenge, together with the killings perpetrated in the sectors of Shonga, Bushara, Tabagwe and Nyarurema and in the small centre of Rukoma. The witness identified this centre as a refugee centre, or a centre where displaced persons looked for shelter in an area largely populated by Hutus.

It should be pointed out that even though witness **TAP-003** did not know **JOAQUIM VALLMAJÓ**, he did remember clearly that in 1992 he received military intelligence information referring to a Spanish priest, or a certain white priest who was said to frequently visit some health assistance centres and centres for persons displaced for war reasons which were situated exactly in the areas previously mentioned. These centres and the situation of the same coincided with the places actually visited by the Spanish priest at that time.

Witness **TAP-003** pointed out that he had become aware of this information in the scope of his area of operations, explaining that this intelligence information had been circulating among the A.P.R. members because they had heard that the Spanish priest had been passing information out of Rwanda (as confirmed by witness **JOSEP MARIA BONET** to whom we will refer later, and by the original letters addressed by the victim himself, **JOAQUIM VALLMAJÓ**, to the aforesaid witness **JOSEP MARIA BONET** who presented these letters to the Court as written testimony to be included and considered in this case).

Witness **TAP-003** identified, at least, one of the relevant commanding officers who participated in the operations carried out against the civilian population, mainly Hutu, in the North of the country: Lieutenant Colonel **MUTAGOMWA**, one of the officers who has already been mentioned as a member of the Regular Army of the A.P.R. who reportedly used heavy armament to carry out the above mentioned operations, specifically, 120 mm mortars, under the direct orders of Major General **JAMES KABAREBE** or of **STEVEN NDUGUTE** (the latter was Paul Kagame's assistant), who had received instructions from the H.C.H. Major General **PAUL KAGAME**. The witness also referred to a military attack on the city of Byumba and its neighbouring area made on 5 June 1992 under the orders of Colonel **DAN GAPVIZI** which resulted in the systematic massacre of the civilian population and pillage.

According to witness **TAP-003**, it was also at that time, taking advantage of the initiation of the Arusha Peace negotiations (Tanzania), in the middle of the year 1992, that an elite group, the "Network Command", was designed to carry out special operations in order to reach various objectives, such as: The elimination of certain Hutu political leaders selected, above all, for their potential importance; the strategic infiltration of the Rwandan social network of a military nature in various ways or as was done later by Hutu extremist militias, the "interhamwe"; politics (political leaders and party members) and social (civilian society and human rights activists, clergy members, opinion leaders, including those belonging to the Tutsi ethnic group when it was necessary to put the blame on the army or on the governmental forces). According to the witness **TAP-003**, H.C.H. Major General **PAUL KAGAME** wanted to have a "strong, secret, efficient organization under his own direct control".

As stated by the witness, the special operations involved were planned by Major General **PAUL KAGAME** himself, his military assistant Major General **JAMES KABAREBE** and his Chief of Military Secret Services of the D.M.I, Major General **KAYUMBA NWAMWASA**. The "Network Commando" members were named in various ways (as also reported by witnesses **TAP-002** and **TAP-043**, among others) such as: "techniciens"; "commando" or "CDR".

Witness **TAP-003** stated that he had taken part in the "Network Commando", namely in the second formation of the commando which was prepared in Muvumba in August 1992. He mentioned the names of the following military instructors: (names which are also mentioned in the context of other operations) **RWAHAMA JACKSON MUTABAZI** (DMI officer); **UDAHEMUKA SILAS** (Intelligence Officer of the High Command Unit) **KARAMBA CHARLES** (DMI Intelligence officer), Sergeant **GAHONZIRE RUTINYWA**, a.k.a. "maitre".

The Network Commando was formed by some 300 members who belonged to various groups which did not have any contact with each other. It was confirmed by this witness that which was reported in the initial legal action brought in this case, that is, that the members of the Network Commando were trained especially to perpetrate cold blooded murders by means of deadly techniques such as tying the victims' hands together and subsequently striking them once with a hard blow of the already cited "agafuni" or hitting the victims repeatedly until their skulls were shattered; or by asfixiation techniques using plastic bags, after tying the victim's hands together; and by means of other techniques specifically designed to kill without bloodshed and without leaving any traces on the victim's body. Those techniques (and the contents of special operations) were to be kept secret under threat of execution.

The fact that there was a group specialized in killing did not prevent (as witnesses **TAP-002** and **TAP-043** stated below), the group from being assisted on specific occasions by a Regular Army company in the task of loading the corpses, in the collective interment in common graves, in the mass incineration of the corpses of the victims and in the transport of ashes or in any other task requiring techniques aimed at the elimination of any evidence of the massacre operations.

Witness **TAP-003**, confirmed who were the principal commanding officers among the members of the "Network Commando":

- **Major General PAUL KAGAME**, the ultimate officer responsible and the person with most responsibility for planning the operations;
- **Major General KAYUMBA BARAREBE**, a person who planned the actions to be carried out;
- **General Major KAYUMBA NYAMWASA**, a person who planned the actions to be carried out, especially the person who gave orders to the Intelligence Officers (I.O) in charge of executing such orders. As was confirmed later by protected Witnesses **TAP-003** and **TAP-043** in the three first cases of the Spanish nationals.
- **General of Brigade CHARLES KAYONGA**, a person who planned the actions to be carried out;
- **Lieutenant Colonel RWAHAMA JACKSON MUTABAZI**, a person who planned and executed the actions;
- **Lieutenant Colonel GASANA RURAYI**, a person who executed the actions;
- **Major SILAS UDAHEMUKA**, a person who executed the actions;
- **Captain KAMUGUISHA HERBERT** (deceased), a person who executed the actions;
- **Captain GATASHA**, a person who executed the actions;
- **Captain GODEFROID NTUKAYAJEMO**, a.k.a "**KIYAGO**", a person who executed the actions.

Witness **TAP-003** described some of the most relevant operations aimed at preparing for a new stage of the war, while the Peace Agreements of Arusha (Tanzania) were being negotiated and signed, a stage prior to the planning, organizing and executing the attack on President Habyarimana's aircraft.

**TAP-003** gave essential information about the execution of this attack, as a direct witness of the presidential attack and as a member of the commando which was both in charge of securing the place from where the missiles were launched and also of the security of the persons who were to launch them.



He also reported the information that he had been passed by **TAP-002** regarding the last preparatory meeting for the attack, pointing out that all the information and many other preparatory details obtained had made him conclude that the presidential attack was ordered by **Major General PAUL KÁGAME**, through **Major General James Kabarebe** to the **General of Brigade CHARLES KAYONGA**, whilst Sub Lieutenant Frank NZIZA and Corporal ERIC HAKIZIMANA were the two persons in charge of launching the two missiles which finally brought down the President's aircraft.

Coinciding with this witness' statement, **TAP-003** and later **TAP-002**, among other witnesses, reported that **Major General PAUL KAGAME** had planned the attack in order to physically eliminate Habyarimana, the President at that time, so that a chaotic situation would spread throughout the country, generating confusion in the government army and provoking a political "impasse", a situation which undoubtedly would result in violent events in a country which would be hard to control, where the victims could be mostly Tutsis from the interior of the country (given the experience of the last two years and the population's reaction to the murders of important Hutu political leaders, as explained below by **TAP-043** and **TAP-002**), all of it with the purpose of concentrating on seizing power violently by means of war operations that were planned prior to the presidential attack.

We point out that at the time witness **TAP-003** deposited his testimony before a Notary and later on when **TAP-004** gave his statement before the Fourth Central Examining Court, there was still no official information regarding the investigation which was being carried out by the French Courts in the matter of the Presidential attack.

The Fourth Central Examining Court addressed an International Rogatory Letter to the French Court, based on the facts as described in the initial legal action (Point 6, page 81 and following of proceedings). It is important to point out that page 1307 of Proceedings contains the translation into Spanish of the reply from the Tribunal de Grande Instance of Paris (By Judge Bruguiere, First Vice-president), dated 1st. August 2005, to the above mentioned International Rogatory Letter issued by the Fourth Central Examining Court, as follows:

*"...Please be informed that the mentioned international judicial delegation refers to Proceedings registered with number 1341 being carried out by this Court which I am in charge of, and which are related to the attack perpetrated on 6 April 1994 in Kigali (Rwanda) the victims of which were the President of the Republic of Rwanda and the Presidente of Burundi. We would like to inform you that this case is still open and that no investigation report has been filed up to this date. In particular, I inform that no report exists dated on 30 January 2004 with regard to which the media might have wrongly informed. Therefore, I cannot satisfy that which is requested in the present International Rogatory Letter..." (sic)*

Despite the importance of that which was disclosed by **TAP-003**, (and afterwards by witness **TAP-002**), considering that the Presidential attack is the single criminal act subject of testimony at this Fourth Central Examining Court which is at present being investigated by another Court, in this case by the Tribunal de Grande Instance of Paris, France, and bearing in mind that on 17 November 2006 a decision ( 64 pages) was made and announced by the First Vice President of the aforesaid Tribunal in the matter of the cited investigation, followed by his issuing of nine International Arrest Warrants against 9 persons, this Court shall not refer to any other information or investigation proceedings regarding this magnicide since the same is the subject matter of another legal action which remains open and is presently under development.

Given the notorious public relevancy of this case, we shall only refer to the names of the persons subject of the International Arrest Warrants which were issued by the French Courts in the matter of that attack and were identified as follows:

**JAMES KABAREBE** (Present General Staff Chief of the Rwandan Army ("Rwandan Defence Forces"); **FAUSTIN NYAMWASA-KAYUMBA** (Present Ambassador of Rwanda in India); **CHARLES KAYONGA** (Present General Staff Chief of the Rwandan Army); **JACKSON NKURUNZIZA**, a.k.a. **JACK NZIZA** (serving presently in the Presidential Guard of the "Rwandan Defence Forces"); **SAMUEL KANYEMERA**, a.k.a. **SAM KAKA** (identified in the French decision as Deputy of the F.P.R., Front Patriotique Rwandais, although he no longer holds this position); **ROSE KABUYE** (Present State Protocol's Director General); **JACOB TUMWINE** (Presently a demobilized Lieutenant Colonel), **FRANCK NZIZA** (Present Captain of the

Presidential Guard); and ERIC HAKIZIMANA (Presently serving in Department G" of the Directorate of Military Intelligence –DMI).

On pages 61 and 62 of the above mentioned French decision, specific reference is made to **PAUL KAGAME**, as the tenth person investigated and a suspect in the case against whom despite his purported participation in that attack, Judge Bruguiere decided not to issue an international arrest warrant given his present status of President of the Republic of Rwanda (who, according to that which was agreed by the French Authorities, would benefit from immunity granted to exercising Chiefs of State).

However, Judge Bruguiere submitted through diplomatic channels, an application to the Chief Prosecutor of the International Penal Court for Rwanda for the official start of investigations by this Penal Court which he considers to be temporarily, territorially and functionally competent to hear this case, given that the International Penal Court has competence to investigate and try any persons suspect of having committed an international crime, including Chiefs of State.

Many military actions were carried out prior to the mentioned attack. One of those secret pre-established missions carried out before the attack was the excavations which were made for storing ammunition and bombs, in preparation for the final attack. **TAP-003** participated in these operations stating that bombs and all types of ammunition (mainly, 7,62 mm; 11,5 mm; 12,7 mm; 14,5 mm; 23 mm; 37 mm and 76 mm) were deposited in the same, which measured 50 mt x 30 mt x 7 mt. This material was secretly transported from Uganda by trucks and was hidden in various military places before the arrival of the international observers and the MINUAR (in Kinnyabishenge, Karama, Bungwer, between Kaniga and Gatonde, Cyondo, Muvunga, among other places situated in Northern Rwandan border with Uganda). According to witness **TAP-003**, those operations were planned and organized by a very limited group of persons, among whom the witness pointed out **PAUL KAGAME, JAMES KABAREBE, KAYUMBA NYAMWASA** and Colonel **NGOGA**.

After giving testimony on the circumstances and persons responsible for the attack, **TAP-003** went on to report the strategy, which had been well planned beforehand, used for seizing the capital, Kigali. The strategy consisted of changing radio frequency codes

just before the attack and the re-initiation of the war, immediately after the attack by the Battalions and the Units of the A.P.R.. The witness reiterated the names of the persons responsible for those war operations, as follows: **STEVEN NDUGUTE, SAM KAKA, TWAHIRWA DODO, GASHUMBA, NGOGA CHARLES, BAGIRE WILLIAM, FRED IBINGIRA, KAYUMBA NYAMWASA, FRANK MUGAMBAYE**, all of them acting under the orders and leadership of **PAUL KAGAME**.

At the same time, the witness pointed out the criminal responsibility of the Hutu extremists who, from that date on and for several months perpetrated large scale massacres which were to be thereupon officially called "the genocide". As pointed out by the witness, similarly to that which was reported by **TAP-006** and was further reported by other witnesses such as **TAP-007, JEAN MARIE NDAGIJIMANA, TAP-002** or **TAP-043**, to mention only a few, in many cases innocent civilians were victims both of open military operations and systematic planned attacks on a preestablished group or on groups of persons who were gathered to be eliminated, not to mention the disappearances, extrajudicial summary executions and other similar operations.

The following inhabited areas were specially mentioned, as places known to the witness first hand : Mulyanza, Kiyanza, Rutongo, Kabuye and, above all, the "real slaughter", as the witness called it, carried out at Nyacyonga Camp.

With regard to the military operation related with the massacre perpetrated at Camp Nyacyonga in the middle of April 1994, witness **TAP-003** described in writing, in another document, that the Camp was strategically surrounded by the A.P.R. soldiers who fired from every direction, in order to force the people to run to the middle of the camp. Whoever tried to run away had their hands tied together and was killed by machete blows.

On one occasion, a group of displaced persons trying to flee from the camp were shot indiscriminately by automatic gun fire. The survivors of that massacre were channeled towards Byumba where they were ambushed by the A.P.R. and massacred. According to witness **TAP-003** this military operation was commanded by **Captain GACINYA RUGUMYA**, an Intelligence Officer (I.O) who belonged to the Bravo Mobile Unit (to whom, among others, witness **TAP-038** will refer,).

Witness **TAP-003**, similarly to that which witnesses **TAP-043** or **TAP-002** referred later, heard with his own ears the precise instructions broadcast by **Major General PAUL KAGAME** for the indiscriminate killing of the civilians of Kigali. The witness reported specifically the precise moment when Kigali was taken and how a large part of the civilians had tried to escape from the attacks, by running away from the city through the slopes of Mount Kigali (towards the west and slightly South of the city, 1852 mt high) to come down to the crossroads Ruhengeri/Gitarama. Orders were given by radio to Colonel CHARLES NGOGA to fire on and kill indiscriminately and to immediately prevent, by all means, the escape of the population. The use of heavy weapons, mainly 14,5 mm; 12,7mm; 122 mm. and 107 mm., situated on Mount Jali (in the Northeast of the city, 2070 mt high) was also ordered by radio by PAUL KAGAME. Thousands of deaths were caused as a result of this operation.

In addition to that which was directly witnessed by **TAP-003**, he had also been told by other soldiers about similar events which had taken place throughout the axis of Kigali-Ruhengeri-Siney-Goma and Kigali-Gitarama-Kibuye. In respect of all these operations, specific instructions had been given to massacre as many Hutus as possible, and as stated by the witness, those operations continued to be carried out after the violent seizure of power until the end of the year 1994 and even into 1995.

The witness also confirmed the operations involving the mass transport of corpses to Nasho, situated in the Akagera Park, where the same were incinerated and their ashes thrown onto the Lake (see map, National Park situated on the western limits of Rwanda). These operations were also previously pointed out by **TAP-006** and will be referred to below by witnesses **TAP-043** and **TAP-002**.

Finally, the witness referred specifically to some relevant operations carried out during 1995 and 1996-1997. Firstly, he generally referred to the special operations carried out at that time by Intelligence agents or members of the "Network Commando" aimed at attacking various objectives, such as human rights organizations, churches, especially the Catholic Church, alien cooperators, missionaries and other persons who were working to assist the Rwandan Hutu ethnic group.

Next, he pointed out the operations carried out during 1995 to destroy the Rwandan camps of internally displaced persons, in particular the camps of Kibeho and Kibuye where the population was attacked and massively killed following a clearly predetermined plan. **TAP-003** specifically referred to the direct participation of **Colonel FRED IBINGIRA** in the events of Camp Kibeho, who, once more, acted under the orders of **PAUL KAGAME**. Part of the information contained in the initial legal action regarding this attack was confirmed by the witness.

Finally, witness **TAP-003** narrated specifically the attacks carried out by the A.P.R at the end of October 1996, as a large offensive operation against the refugee camps in Zairean territory, pointing out the attacks on Kibumba, Mubunga, Lac Vert, followed by those on Tingi-Tingi, Kindu and Mbandaka. Those attacks were also mentioned by protected witnesses **MARIE BEATRICE UMUTESI, TAP-041, TAP-013** and **TAP-018**, among many others, who gave their statements before this Central Examining Court on later dates. He namely mentioned the Batallions with most responsibility for the most relevant attacks, that is, 5th, 15th, 59th and 3rd Batallions in the North of Lake Kivu, 31st Batallion in the Centre and Batallions Alpha, 101th and 157th through Cyangugu, South of Lake Kivu.

The witness identified the persons most responsible, whose names, as will be seen below, coincide once again with the names that have already been cited. This information will be confirmed and extended below by witnesses **TAP-002** and **TAP-043**. The names were the following:

**Colonel CHARLES KAYONGA, Colonel JAMES KABAREBE, Colonel CEASAR KAYIZARI, Major DAN MUNYUZA, Major JAQUES NZIZA, Major RUVUSHA, Colonel KARYANGO, Colonel MUBARAK MUGANGA** (as will be seen later in other proceedings regarding witnesses and documentary investigation, the above mentioned high commanders are repeatedly referred to as having been the persons responsible for operations involving open bombings with heavy armament, systematic killing carried out with light weapons, implacable persecusion and submission to conditions which led to the death of hundreds of thousands of human beings, both reported by the witnesses and specifically referred by the Panel of Experts

of the United Nations in their reports on the war crimes committed and the systematic pillage of natural resources, especially mining resources.

**TAP-003** made a clear reference to the high commanding officers who were responsible for the operations carried out against civilians at the end of 1996 and beginning of 1997, citing Colonel **KAYUMBA NYWAMUASA** and Colonel **KARAKE KARENZI** who were accompanied by their military intelligence agents.

Last, , although he did not witness directly the killing of the Spanish nationals subject of the initial legal action, he confirmed both the line of the general military instructions, and the territory, dates and types of operations carried out by the persons responsible, as referred to him by his military colleagues of the A.P.R.

**FOURTH.** Witness TAP-007, a professional soldier of the Hutu ethnic group who fled to Uganda in 1973. He belonged to the political organization Front Patriotique Rwandais-FPR in Uganda from 1990 until October 1993, when he resigned as logistic secretary of the F.P.R in Jinga/Uganda. (Although he remained a member of the F.P.R organization, in his words, to avoid being eliminated). In his statement given before the Court, he reported his sound knowledge of the criminal acts perpetrated in Rwanda, particularly those acts perpetrated as from the time he was supporting the A.P.R. rearguard from the place where he lived at that moment in Uganda (Jinja) besides being in the service of the political F.P.R.

This witness ratified before the Court, recognising as his own the signature contained in all the pages of an original written document, as well as an original copy of a letter sent by him from Coutonou (Benin) dated 10 August 1999 to the United Nations Commission in charge of investigating the role played by the U.N. in the dramatic Rwandan events. Both documents correspond to the original documents which were deposited, as stated by the witness, in a closed envelope at the Barcelona Notary of Mr. Lorenzo P. Valverde García, registered under his protocol no. 35, dated 13 June 2003.

Witness **TAP-007** was an important strategic figure within the A.P.R./F.P.R because he was a military man who from outside Rwanda opposed Habyarimana, the President at that time, although he maintained a good relationship with members of the F.A.R. of

the interior of the country where he had good contacts. In 1990, he met the future officials of the A.P.R who were at that time members of the National Resistance Army –NRA (or the army of Uganda), such as WILSON RUTAYISIRE, ALPHONSE FURUMA, FRANK MUGAMBAGE or JOSEPH KAREMERA.

The witness explained that at the very beginning of the events, he had been asked by the F.P.R/A.P.R to take the necessary steps to attract Rwandan soldiers to join the organization, and that he had learned then that two years before, that is to say in 1988, at least one Hutu soldier had been killed by an incipient FPR/APR. TAP-007 described the beginning of the war in October 1990, supplementing that which was reported by witness TAP-003, stating that Major General FRED RWIGEMA (whom he identified as Deputy Commanding Officer of the N.R.A. and Uganda's Vice-Minister of Defence under the orders of MUSEVENI and who was President of the A.P.R and F.P.R when the war began.) wanted to prevent as many casualties and victims as possible among the civilian population.

The witness continued to explain that after the death of RWIGEMA, PAUL KAKAME replaced the former as Chief of the High Military Command of the A.P.R. whilst Colonel ALEXIS KANYARENGWE (an A.P.R. Hutu soldier, like TAP-007, who is now deceased) became President of the political organization F.P.R. Witness TAP-007 indicated that when he started receiving information in Uganda about the massacres perpetrated against the civilians of the conquered towns and villages he started to realise and discovered an F.P.R/A.P.R different from that which he had imagined, a group which was showing its two difference different faces.

Later, in August 1992, while he was attending a meeting at Mulindi General Headquarters (Rwanda), he verified that the F.P.R. was not really interested in peace, judging by the words uttered by PAUL KAGAME who, according to the witness, wanted to take advantage of the peace negotiations only for military purposes strictly oriented from the very beginning to seize power by force.

As a direct witness, he had actually checked that all the inhabited areas he had gone through which were situated along the route from Gatuna border to Mulindi (the border of Northern Rwanda with Uganda, both places situated to the North of Byumba and



Cyumba) had no civilians (empty houses, fields where nothing was growing, no cattle). That which he eyewitnessed made him confirm the meaning of the military and political instructions he had personally heard while attending the meeting which had taken place at the general headquarters, in Mulindi.

On his return to Uganda, witness TAP-007 wanted to check his conclusions above mentioned with persons whom he trusted. Among those persons he wants to refer to his conversations about this matter with MUREFRU LEONARD, PAUL KAGAME's father in law. TAP-007 confirmed before the Court that he had learned from PAUL KAGAME's father-in-law about the strategies designed by the F.P.R to secure a military victory. He had told the witness literally that "Kagame cannot work with Habyarimana; Want it or not, one of them (Kagame or Habyarimana) has to die...", and he had disclosed the basic military-political strategy lines of the A.P.R/F.P.R to the witness.

These strategies, which are contained in the document which was previously mentioned, safeguarded by a Notary, were confirmed and further described before the Court by witness TAP-007. The following were the basic principles underlying those strategies:

- Military Strategy Adopted: To form military political groups which would be sent to the territory to serve as vehicles for the F.P.R ideology among the Tutsis; to infiltrate small groups of 6 to 10 specially trained soldiers throughout the Rwandan territory who would carry out consecutive terrorist actions previously planned; to sow panic, chaos and disorder, so that the country would become impossible to govern and to infiltrate secretly small military brigades which would be ready to act on "D" day; to build up as much military equipment as possible.
- Political Strategy Adopted: To demonize Habyarimana's regime; to provoke rage among the Hutu ethnic group by massacring them (particularly, to kill Hutu political leaders, putting the blame on Habyarimana and his party, Mouvement Revolutionnaire National pour le Developement MRND for the acts); to awaken and promote hatred between the Hutu and the Tutsi ethnic groups; to camouflage the ethnic identity of the F.P.R. by recruiting Hutus, and

to look for a prominent Hutu figure to lead the political-military movement of the F.P.R. in order to create the image of an integrating movement; to infiltrate all the political parties and youth movements; to slander the Catholic Church which preaches that all men are equal and which had contributed to the education of the population; to eliminate Hutu priests; to terrorize Catholic missionaries and members of the clergy, so that they would leave the country; to kill the missionaries who had been living in the country for a long time and therefore were aware of the history of Rwanda and whom they blamed for having lost power after centuries of Tutsi domination; to threaten foreign troops and to manipulate the M.I.N.U.A.R.

Diplomatic and Media Strategies Adopted: To infiltrate the foreign diplomatic missions accredited in Kigali in order to filter disinformation previously designed by the F.P.R./A.P.R political strategists; to inform the diplomatic missions of all the criminal actions perpetrated by the same A.P.R./F.P.R and to blame the MRND and the "interahamwe" extremists for these actions; To set up a radio broadcasting station which would be used to spread the ideology of the political military movement of the A.P.R./F.P.R, demonizing the regime of Habyarimana and his party MRND; to break up unity by exacerbating hatred against Hutus, hatred among the regions and between the political parties...(the radio station was called "Radio Muhabura" and was managed by a Tutsi extremist, Commanding officer SHABANI RUTA, later known as Major RUTAYISIRE WILSON). As a reaction, another radio station was set up controlled by Hutu extremists called "R.T.M.L". (A Thousand Hills Radio and Television) which was created to counteract "Radio Muhabura" and to promote ethnic hatred towards the Tutsi population).

Witness TAP-007, was particularly clear regarding the A.P.R./F.P.R intentions to attack Catholic Church members, especially the missionaries who had been in the country for a long time. The members of A.P.R./F.P.R blamed the Catholic Church, among other reasons, for their loss of power in 1969 after years of having been almost exclusively in power, something which was to be demonstrated by the criminal acts which were committed in the country against priests and missionaries, both Rwandan nationals and

foreigners, and as was later confirmed and further explained particularly by witnesses TAP-043 and TAP-002.

PAUL KAGAME's father-in-law illustrated graphically to TAP-007 that the three "Ps" mentioned in his letter had to be eliminated, referring undoubtedly to the actions to be taken against the Church and its prominent and symbolic members. TAP-007 referred to Rwandan and alien Church members whom he knew had been murdered, giving the example of Bishop **Monseigneur NSENGIYUMVA** and other bishops, priests and female Church members (a crime fully reported by witnesses TAP-043 and TAP-002 who provided the names of those directly responsible, as will be seen below); **ISIDRO UZCUDUN** (a crime which was fully reported by TAP-038 who also provided the names of the persons with most responsibility for its perpetration); **JOAQUIM VALLMAJO** (a crime which witnesses TAP-043 and TAP-002 fully reported and also gave the names of the perpetrators directly responsible) the Canadian priest **CLAUDE SIMARD**, the Croation priest **VIJEKO** and the Belgian nun **GRIET BOSMANS**.

TAP-007, in his statement given before the Court also referred and explained that the attacks of the A.P.R./F.P.R. carried out in February 1993 on Buyumba and Ruhengeri (which will be further described by TAP-043, given that he participated in the same as a member of one of the units which attacked Byumba). This witness' statement coincides with that which was stated by witness TAP-003. Both witnesses declared that they knew of the slaughter of human beings carried out in the Nyacyonga massacre, once the population had been regrouped in this Camp.

In October 1993, before resigning from the F.P.R. logistics in Uganda, witness TAP-007 checked with several persons various issues regarding the situation in Rwanda, the massacres which were known to have taken place and the reality of the A.P.R./F.P.R. He pointed out a conversation he had had with RUTAYISIRE WILSON (who was at that time Chief of the A.P.R. radio "Radio Muhabura"). The witness asked Wilson about the massacres involving civilians and the latter replied that it had to do with "the wisdom itself of **KAYUMBA NYAMWASA** and **PAUL KAGAME**", the witness understanding that the massacre of the civilian population formed part of the FPR's and its leaders' official policy, even though it was kept discreetly.

Finally, witness **TAP-007** referred to that which he had learned from **LIZINDE THEONESTE** and **MAJOR FURUMA**, both of them members of the A.P.R.

**LIZINDE THEONESTE** was an A.P.R. military man who belonged to the Hutu ethnic group. **Lizindi** was released from jail in Ruhengeri by the A.P.R for the purpose of bringing him into its military group. He eventually became one of the very few Hutu High Command members who was later killed when he was already in exile, exactly as had happened to the F.P.R Interior Minister **SETH SEMDASHONGA** (also a Hutu), purportedly killed by an A.P.R. special commando (External Security Operations – ESO, led by **JACK NZIZA** as will be seen later in **TAP-002**'s testimony). They were both killed because they were considered to be “enemies”.

As in the case of **TAP-003**, **TAP-043** or **TAP-002**, **THEONESTE LIZINDE**, before fleeing in December 1995 told witness **TAP-007** that he had listened to **PAUL KAGAME** ordering the massacre of civilians, through the A.P.R. communication channels, saying literally “cleanse those imbeciles...”. **THEONESTE LIZINDE** also confirmed to **TAP-007** that **PAUL KAGAME** had personally ordered the murder of the bishops, priests and nuns of the Church in Kabgayi, Gakurazo in 1994 (which coincides with that which was stated by witnesses **TAP-003**, **TAP-043** and **TAP-002**).

Finally witness **TAP-007**, stated the names of the persons who according to his knowledge of the facts, are the persons responsible for the crimes of genocide, crimes of war and crimes against humanity, and who are, once again: **PAUL KAGAME**, **KAYUMBA NYAMWASA**, **CHARLES KAYONGA**, **JAMES KABAREBE** and **FRED IBINGIRA**.

**FIFTH.** Witness **TAP-038**, insofar is relevant to the present case, was appointed in 1996 the Republic Public Prosecutor' Deputy. The witness belongs to the Hutu ethnic group. He was kidnapped and tortured at the end of 2002 at the Military Centre of Kami (Rwanda) and he is now exiled in Europe. In his statement given before the Court, he declared that he had knowledge of the criminal acts which took place in Rwanda, particularly those which he investigated as a Prosecutor, namely the death of a Spanish

priest named **ISIDRO UZCUDIN** on 10 June 2000, the possible principal perpetrators of the murder as well as the persons responsible for planning it.

Witness **TAP-083** described to the Court the development of the various stages of his investigation regarding the violent death of **ISIDRO UZCUDUN**. He stated that at the beginning of 2002 he was responsible for re-opening the case of **ISIDRO UZCUDUN**'s murder, as a result of pressure brought on the Rwandan Authorities by both the Spanish Ambassador in Rwanda (resident in Dar-es-Salaam, Tanzania) and the European Union at which time Spain had the presidency, to investigate the causes and the reasons which had led to the death of Spanish nationals in Rwanda, and specifically, the most recent death in the year 2000 of the Spanish priest **UZCUDUN**. As from the year 2002 the presidency of the European Union was being exercised by Spain and Rwanda was receiving important international help from the EU.

According to **TAP-038** that was the context in which an urgent meeting took place at the beginning of January 2002 between the following judicial authorities of Rwanda: the Minister of Foreign Affairs Secretary General (**MUTABA**); Minister of Justice (**J.DIEU MUCYO**); General Public Prosecutor of the Supreme Court (**GAHIMA GERARD**) and General Public Prosecutor of the Court of Appeal of Nyanza (**MBARUSHIMANA JEAN MARIE VIANNEY**). The witness learned about this meeting through the latter who put the witness in charge of re-opening the investigation.

When **TAP-038** started to investigate the events he learned that, as a result of the police proceedings carried out by Gitarama Police at that time, three persons had been initially arrested: **SYLVAIN RULINDA**, whose family lived in a house very near the Spanish priests', particularly near **ISIDRO UZCUDUN**'s; **JANVIER NDAYAMBAJE**, Isidro Uzcudun's assistant and **RWABUYOUZA**, Isidro Uzcudun's cook. He also found out that Lieutenant **KAYIJUKA**, obeying orders received from Kigali (probably given by Major **RUGUMA GACINYA**, Chief of the Police Intelligence Services Department) had released the above mentioned suspects and the case was shelved..

In 2002 the Investigation Proceedings were kept at the Gendarmerie by Lieutenant **KAYIJUKA** who initially refused to deliver the same to the witness. After the intervention of Prosecutor General **MBARUSHIMANA**, he finally accepted to hand

over the case to the witness. The witness remembered that Lieutenant KAYIJUKA, during the conversation they had on the matter of the investigation and its development, had told him that everything concerning the investigation had been supervised and decided by Major **RUGUMYA GACINYA** (“byavuye kure Gacinya”, in Kinyarwanda language). At that time, the murder was simply considered as a common crime perpetrated for theft purposes.

Witness **TAP-038** explained to the Court that after investigating the circumstances which surrounded the murder of the Spanish national he verified that although the priest had been initially asked for money, he was executed immediately after with a firearm. **TAP-038** confirmed that two important amounts of money were found later at **ISIDRO UZCUDUN**'s parish office which in fact had not been searched by the attackers.

According to witness **TAP-038**, at first sight, the person most responsible was a certain **SYLVAIN RULINDA**. According to the witness' findings **SYLVAIN RULINDA** was from Mugina (the place where the murder took place). His family was **ISIDRO UZCUDUN**'s neighbour and Sylvain had been Uzucudun's pupil. Seemingly, Sylvain and his family had been assisted by **ISIDRO UZCUDUN** on several occasions.

**TAP-038** gave the Court a resumé of **SYLVAIN RULINDA**'s several and consecutive statements once he was arrested for the second time, this time by the witness himself, **TAP-038** stated that **SYLVAIN RULINDA**, after being questioned several times and frustrated as he was with his new arrest, asked the witness “ whether the others had been arrested ...”. He stated that he had been specifically contacted by **FRED IBINGIRA**'s personal driver in order to carry out a special mission, given the fact he (Sylvain) knew the priest (in the very words of **TAP-038** that would only mean that Sylvain was trying to avoid his responsibility for the murder if subsequent events had not occurred as a result of **TAP-038**'s investigation).

According to **SYLVAIN RULINDA**'s statement to the witness, he had moved to Kigali and had accepted the mission because he needed money to survive. He was asked to accompany them to the Spanish priest's office situated in Mugina. According to Rulinda, he was told they were going to get money (he was never told that they were going to murder the Spanish priest).

According to **TAP-038**'s findings, **SILVAIN RULINDA** arrived in Mugina in the morning of the day of the murder. He did not pay a visit his family at any moment (his family lived very near the Parish). **SYLVAIN RULINDA** arrived at around 10:00 hours on 10 June 2000, accompanied by another three persons who were not known in the area. One of them wearing a red beret (which was usually used by the A.P.R. Military Police) and another dressed in civilian clothing and carrying a bag containing a dismantled Kalashnikof, driving in a Toyota Corolla which was identified by witnesses who had noted the number plates. **TAP-038** found out that **SYLVAIN RULINDA** had been given 50.000 Rwandan Francs and a motorbike, a red Yamaha AG100, which was later found in possession of Rulinda's brother, according to **TAP-037** findings.

Besides providing further details which will be undoubtedly relevant at other stages of the case, he explained the objective of his investigation and his founded reasons to conclude that there was prima facie evidence in respect of the responsibility of the two following persons: Major **RUGUMA GACINYA** (who, by the way, was put in charge by Kigali of the official investigation of the case immediately after the attack, as we learned later) and General **FRED IBINGIRA**.

Regarding the latter, it is important at this stage to point out that which was declared by **TAP-038** before the Court. The witness stated that he had several visits from General **FRED IBINGIRA** himself, who had shown his interest in the investigation of the events and in **RULINDA SILVAYN** and, especially, in the contents of the latter's statements and had asked the witness whether Syvian had informed on other persons.

Under duress, Witness **TAP-038** told General **FRED IBINGIRA** that his name and the names of his guards had been directly mentioned in the written testimony of **RULINDA SILVAYN**. General **FRED IBINGIRA**, unsuccessfully, tried to convince witness **TAP-038** to eliminate these references from Silvayn's written statement, something the witness refused to do despite Ibingira's threats.

As a consequence, as was reported by the same **TAP-038**, two days after General **FRED IBINGIRA**'s visit, on Thursday 7 November 2002, at around 22:00 hours, four soldiers from the Military Camp of Kami (an unusual Military Camp known as a place

of torture, according to that which was described by witness **TAP-002**) presented themselves at the witness' house.

Without any previous words, they shouted at him asking how he had dared to say that Afandi (using the colloquial word to refer to a superior) had killed the Spanish priest (literally in the French version: "Comment tu as osé dire que Afandi a tué le prêtre?"). Then they abruptly disconnected the telephone by pulling the cable out of its socket, they took his laptop computer and various documents (among which, the investigation documents relating to Priest Uzcudun's murder as well as the witness' personal notes), kidnapped him and forced him into a vehicle.

He was taken to Kami Military Centre where he was locked up in a dark cell which was in a deplorable condition. Two days after being locked up, from 9 November 2002 onwards, witness **TAP-038** was tortured by unidentified soldiers. He suffered all types of physical humiliations and he received inhumane and degrading treatment. Among the tortures which he suffered, his genitals were burnt resulting in serious wounds which did not heal and became infected. The hygiene conditions were deplorable and he was only fed every two days. (The witness presented medical reports which confirm the injuries caused and the physical tortures that he was inflicted).

Witness **TAP-038** found out later that his wife had been threatened, hit and terrorized and that she had been forbidden to report the disappearance of her husband and to reveal the events to her relatives or friends, under the threat that she and her children would be murdered.

**TAP-038** reported his conclusions regarding the reasons which had motivated the facts under investigation. He explained that he had verified that the Spanish priests, **ISIDRO UZCUNDUN**, in particular, had a lot of information available and a large social and community network which enabled them to have good knowledge of the events which had taken place in that area of Rwanda during the last few years, especially as from 1994, specifically about the country's central Prefectures (we will point out at this stage that **FRED IBINGIRA**, a Colonel at the time, carried out, as was previously stated by other witnesses, military operations against the central Prefectures of Gitarama and Kigali, besides the Southern Prefectures of Butare. Ibingira and was well known for his



systematic massacres of the Hutu population, precisely the persons whom the Spanish priest was assisting and serving in 2000, the year he was murdered.

Similarly, he was able to verify that **ISIDRO UZCUDUN** had been very critical of the local authorities of the F.P.R./A.P.R in Mugina/Kabgayi, not only on account of how the 1994 events were publicly dealt with (including the death of the bishops and Church members of Kabagi, as referred already by other witnesses), but above all the critical comments made by the priest in the years before he was murdered.

**SIXTH.** Witness **Dr. CARMEN COLL CAPELLA** gave her statement before the Court on 14 June 2006. In 1997 the witness was a member of “Médicos del Mundo”, a Spanish organization. She was posted at the base camp for logistics and organization situated in Nairobi (Kenia), together with witness Cristina Pardo Álvarez. She gave her testimony regarding the situation of the cooperators in Ruhengeri and regarding the several steps which were taken after the killing of 3 cooperators of the organization “Médicos del Mundo” on 18 January 1997.

In short, she confirmed that she learned that the members of Médicos del Mundo had visited various centres on the outskirts of Ruhengeri where the latter had seen common graves in the jail. She confirmed that the members of Médicos del Mundo were well aware of the critical situation in Ruhengeri in those days.

She also confirmed that on the day that the events took place, around 19:35 hours, **MANUEL MADRAZO** made a radio communication to the witness **Dr. CARMEN COLL** and also to the witness Cristina Pardo, both of them in Nairobi (Kenia) to tell them that they had heard shots nearby and had turned the lights off and were going to remain alert. They agreed to use the radio again at 21:00 hours to continue informing about the situation. The witness confirmed that no more radio communications were made.

The witness explained that one and a half days following their last conversation, on the morning of 20 January, she went to Kigali and then to Ruhengeri, in representation of “Médicos del Mundo” in order to start dealing with the repatriation of the victims’ corpses and to carry out a personal inspection of the place where the events had taken

place and to check and organize the material which was left at the headquarters of the organization. She confirmed that she made a situation map, fl. 436, after she had personally inspected the place where the events took place, the headquarters of the Spanish organization Médicos del Mundo, and that she had marked the bullet marks that she saw on the map. She added that the other rooms of the house did not show any signs of shooting, disorder or indiscriminate searches.

She pointed out that she had personally collected a bullet case that she found in the settee of the living room (where **MANUEL MADRAZO** and **NITIN MAHDAV** were shot) which she delivered to the local United Nations Offices. She remembered exactly that she had dealt with a U.N. investigator of Latin American origin named **JAVIER HERNÁNDEZ** regarding all the events.

Pages 437 and following pages of proceedings were subsequently shown to the witness who described the situation of the headquarters; the circumstances; the transcription of the tape of the survivor **NITIN MAHDAV**, a United States national (the witness, **Dr. COLL**, confirmed that she had personally made the transcription which is attached to fl.442); the fax sent by the witness **Dr. COLL** to the witness **KATY SABA** reporting that which was happening; a fax which was delivered to the former by the cooperators at the Headquarters of Médecins sans Frontières who were also attacked that night (which is attached to page no. 444 of the proceedings), besides the following documents.

The witness explained that the morning after the events, the anesthetist at the Hospital where the survivor **NITIN MAHDAV** was treated had found without much trouble the amount of three thousand American Dollars (\$3.000) and some Rwandan Francs in the victim's room, an amount which she handed to the witness **Dr. COLL**; The witness also confirmed that on the cited 20/21 January, when she had been at the headquarters of Médicos del Mundo, she had found a lot of Rwandan Francs and some American dollars inside a drawer of a piece of furniture that was in the living-room.

Witness **Dr. COLL** stated that the only thing which was missing was a laptop, although she personally collected another two laptops from the house. She also confirmed that telephone land line cable of the house had been detached from its socket

and that the respective phone was missing. (as was stated by NITIN MAHDAV when he described the first stage of the meeting of the military and the members of Médicos del Mundo); However, as pointed out by the witness, the satellite telephone, which was something very valuable and always desirable had not been taken from the headquarters of Médicos del Mundo. Finally, Dr. COLL stated that nothing was taken from the stalls situated at the back of the house, where the valuable and much appreciated medicines for the assistance of the population at the health and medicine distribution centres were stored.

**SEVENTH.** Witness **CRISTINA PARDO ALVAREZ** gave her statement before the Court on 14 June 2006. In 1997 **CRISTINA PARDO** was a member of “Médicos del Mundo”, a Spanish organization. She was posted at the base camp for logistic and organization situated in Nairobi (Kenia) together with the witness Dr. COLL.

The witness confirmed and furthered Dr. COLL’s testimony. She stated that it had been herself, together with another member of Médicos del Mundo, CHRISTIAN FUSTER, the person who had recorded the version of the events reported by the survivor NITIN MAHDAV, a tape which was subsequently handed to the headquarters of Médicos del Mundo, Spain. She confirmed that she was present when the autopsies of the three Spanish nationals were carried out in Nairobi, Kenya, (the respective reports are attached to 460 and subs. of proceedings) together with CAMILO TOMÉ, who was also a member of Médicos del Mundo.

**EIGHTH.** Witness **MARINA KATLYN SABA** gave her statement before the Court on 14 June 2006. In 1997 **MARINA KATLYN** was a member of Médicos del Mundo, Spain, working in Madrid.

She explained that all the formal steps for the repatriation of the victims’ corpses had been taken by the central headquarters of the organization in Madrid. She confirmed that she had received the fax sent from Africa by Dr. COLL containing a description of the development of the events made by the members of Médecins sans Frontières-MSF. The witness stated that once the corpses were received, she took various steps, among which were several meetings she held, accompanied on some occasions by the Administrative and Legal Director of the French International Organization Médecins

du Monde, FRANÇOIS RUBIO, with the Spanish Judicial Police which would later start an investigation of the facts, namely with Mr. JUAN LOPEZ PALAFOX, Chief Inspector of the National Police Body and with Mr. CRISTOBAL ESPINOSA MARTINEZ, 1st Sergeant of the Civil Guard.

**NINTH.** Witness **HECTOR ALONSO** gave his statement before the Court also on 14 June 2006. In 1997 **HECTOR ALONSO** was a member of Médicos del Mundo, Spain, who was working in Madrid.

He stated that he had personally received the corpses of the three Spanish nationals in Madrid, as well as their belongings and other repatriated material. He extended the testimony of the previous witnesses. The part of his testimony which does not relate strictly to prima facie evidence issues, shall be mentioned in the due procedural moment.

**TENTH.** Witness **FERNANDO RODRIGUEZ ARROYO** gave his statement before the Court also on 14 June 2006.

**FERNANDO RODRIGUEZ** is presently a member of the United Nations in Darfur (Sudan) and was a member of Médicos del Mundo, Spain, in 1997. He was working for this organization in Madrid at the time the events took place. He was a close friend of the Spanish victim **LUIS VALTUEÑA**, and who had received his corpse and his belongings in Madrid.

Besides completing the information given by the previous witnesses, he described in full detail that which happened to him in Zaire on 1 November 1996, when he escaped twice from being killed during the attack on Kahindo Refugee Camp (practically the day after the four Marista priests were executed in the neighbouring Refugee Camp of Nyamirangwe, as will be stated below by other witnesses). He reported that he was twice at the point of being shot by a small military group from Rwanda, meaning those who at that time were governing Rwanda, confirming that which has been generally stated about the systematic attacks made on camps of Rwandan refugees situated in the East of the Democratic Republic of Zaire.

**ELEVENTH.** The witness **JOSEP M<sup>a</sup> BONET PUIGVERT** also gave his statement before the Court on 14 June 2006. According to his testimony, the witness who at that time was and still is a member of Amnesty International, of Figueres (Girona), was a personal friend of the Spanish victim **JOAQUIM VALLMAJÓ**

To the effect of confirming and corroborating the prima facie evidence mentioned before, the witness completed the testimony given by **TAP-03**, who had reported in his statement that he knew, at least as from 1992, that the A.P.R. secret services were investigating **JOAQUIM VALLMAJÓ** and had found out that the latter was gathering information to pass on outside Rwanda.

Witness **JOSEP M<sup>a</sup> BONET** confirmed, among other things, and explained to the Court that **JOAQUIM VALLMAJÓ** not only had sent them letters with his personal point of view about the events happening in Rwanda and in Burundi, but he had also sent them specific information about the facts that he knew and which he wanted to be circulated through the suitable sympathetic national channels and, above all, internationally, since the priest knew that the witness was a representative of Amnesty International in Figueres.

As explained by witness **TAP-003**, it was considered by the A.P.R. military intelligence that it would be dangerous that the attacks on civilians and other human rights violations became known outside Rwanda, especially given the powerful influence of organizations such as the above mentioned in creating international opinion, particularly regarding a rebel group such as the A.P.R./F.P.R. was in those first moments of the war.

As proof, Witness **JOSEP M<sup>a</sup> BONET** presented letters and information directly sent to him by **JOAQUIM VALLMAJÓ** to be transmitted to other international organizations and to the international media (attached to pages 1.427 and following of the proceedings), as follows:

A letter dated 19 October 1990 sent from Nyagahanga, only two weeks after the first operations to invade the north of the country in which **JOAQUIM VALLMAJÓ** informs that the invaders wanted to seize power at any cost, that the country lives in fear; that *"...the army that carried out the attacks is well experienced and trained, since*

many the soldiers have fought with Yoweri Museveni to take power in Uganda...”, that “...for months they have been bringing arms and materials into Rwanda, which they are distributing among their friends, particularly in Kigali...”, Vallmajó finishes his letter asking the witness to publicise the events throughout the world so that people can hear this “fresh news”.

Another letter, dated 23 June 1992, telling the witness he had found one of his letters lying on the ground next to a “dead enemy”; or a circular letter, circulating the other way round, that is, a circular from Amnesty International sent to **JOAQUIM VALLMAJÓ** referring to a letter from the Prime Minister of Burundi to the Secretary General of Amnesty International, containing the reply and comments of **JOAQUIM VALLMAJÓ** and forwarded by the latter to **JOSEP M<sup>a</sup> BONET**, as a member of Amnesty International.

These are only a few examples given by the witness. In this sense and particularly **JOAQUIM VALLMAJÓ**'s specific references to the final destinatory of his letters, AMNESTY INTERNATIONAL, two letters shall be pointed out: A letter written by **VALLMAJÓ** from Kigali on 7 February 1992, saying literally: “...you can publish the text I'm sending you or you can send it to Amnesty International or to the Secretary General. Perhaps Amnesty International should know that the Tutsi have launched an international disinformation campaign to make believe that THE TYRANTS AND EXECUTIONERS ARE THE VICTIMS AND THE VICTIMS ARE THE EXECUTIONERS, just like they did before in 1962, 1965, 1969, 1972, 1988 and 1991. I'll be sending you more information within a few days (The capital letters were used by the same **JOAQUIM VALLMAJÓ** in his letter), finishing his letter saying “There is a lot of pressure, fear, extreme poverty and disappointment about politics in Rwanda. The following weeks may be a disaster. ¿Are we going towards a civil war like Burundi's?...¿Will we arrive in time to prevent genocide...” (sic).

Another example on page 1445. **JOAQUIM VALLMAJÓ** asks explicitly that his letter be delivered to the newspapers El País, Le Monde Diplomatique, La Vanguardia, El Periódico, Mundo Negro and to other magazines specialized in African matters, Justice and Peace from Gerona and Barcelona, and also to Amnesty International, which

was done, as witness **JOSEP M<sup>a</sup> BONET** confirmed he did everytime he was asked to do so by **VALLMAJÓ**.

**TWELFTH.** Witnesses **JUAN LOPEZ PALAFOX** and **CRISTOBAL ESPINOSA MARTÍNEZ** gave their statements before the Court on 15 June 2006. These witnesses ratified and extended before the Court the contents of the document "Technical Report on the investigation of homicides in Ruhengeri (Rwanda) which took place on 18 January 1997", attached to the Proceedings, page 500 and subs.

**JUAN LOPEZ PALAFOX**, a witness who in 1997 was Chief Inspector of the National Police Body, Doctor in Odontology, and Expert in Forensic Anthropology and Chief of the Anthropology and Necroidentification Department of the Scientific Police of the General Police Directorate. At the time he gave his statement he was no longer employed as a Police officer.

**CRISTOBAL ESPINOSA MARTÍNEZ**, a witness who was 1st Sergeant of the Civil Guard in 1997, and a Judicial Police Expert in charge of the Department of Lofoscopy of the Judicial Police Service of the General Directorate of the Civil Guard.

The Spanish Authorities (specifically the Secretary of State for International Cooperation, through the Ministry of Interior) put both witnesses in charge of carrying out an investigation in Rwanda centred on the death of the cooperators of the Spanish Organization Médicos del Mundo on 18 January 1997.

They travelled to Rwanda on 7 May where they stayed until the 17th of the same month. Until 15 May they were accompanied by the Spanish Embassy representative in Tanzania, Cristina LATORRE SANCHO to carry out an investigation in situ. Subsequently, they continued their investigations on their own, among which were their actions at the organization "Médicos del Mundo" (Witness **KATLYN SABA**).

Although the Spanish investigators could not determine the identity of the perpetrators of the crime subject of their investigation, the detailed information they obtained complemented the events reported by **TAP-004** and the elements of prima facie evidence inferred in the latter's testimony.

To start with, besides obtaining testimonies from various persons and institutions, such as from the French Ambassador and from the Consul (page 507 of Proceedings), the witnesses **JUAN LOPEZ PALAFOX** and **CRISTOBAL ESPINOSA MARTINEZ** verified for themselves that after the attack which they were investigating until the month of May 1997, the Human Rights organizations had remained in Kigali, consequently there was no representation of the same in the area of Northern Rwanda. These circumstances were the result of one the strategies designed by the A.P.R and the implementation of this particular strategy had been assigned to witness **TAP-004** by the same A.P.R. This was verified by both witnesses, who also verified that the A.P.R.'s cited strategy had indeed been implemented and, obviously, had achieved its goals.

The witnesses ratified and extended the contents of their direct inspection of the headquarters of Médicos del Mundo in Ruhengeri (Rwanda), as well as the map they had drawn in connection with their inspection. (page 552 of Proceedings) They also ratified the bullet marks on the kitchen wall and on the kitchen door, which confirms their own theories and **Dr. CARMEN COLL's** i.e. that the members of Médicos del Mundo had been attacked and shot at both from outside while the attacking group was leaving hurriedly judging by the fan shaped burst of machine-gun fire impacts on the kitchen wall, and were also shot at in the interior of their headquarters.

Both witnesses ratified and extended in their statements given before the Court the following important and revealing information, as described in their Investigation Report, which once compared with witness **TAP-004's** testimony confirmed and extended the elements of prima facie evidence he has brought to the knowledge of the Court.

First of all, the attacks on the three NGO's do not show the signs characteristic of a guerrilla attack but the characteristics of an attack made by a "vigilant patrol". The witnesses verified that, at least, the soldiers who had stayed outside the headquarters of Médecins sans Frontières, Holland, had been identified as members of the A.P.R.



Secondly, **NITIN MAHDAV**, the single survivor of the attack on the headquarters of Médicos del Mundo, reported that they had been attacked by soldiers wearing military uniforms and military hats and boots. The witnesses verified that such description corresponds to the clothing usually worn by A.P.R. soldiers (according to the photographs presented in the Annex of their Report).

This was further complemented by a laywoman missionary, Isabel Sanjuán, who reported that a non identified native witness who was present when the attack took place had identified the military clothing of the attackers as corresponding to that worn by A.P.R soldiers;

Furthermore, the tests carried on the available bullet cases concluded that the shots, came, at least, from two different guns, an AK-47 and an M-16.

According to reliable testimonies obtained by the witnesses, no fighting had taken place between any groups or any enemies for a period which lasted between two and three hours and there had been no reaction whatsoever from the Ruhengeri soldiers. (if the above mentioned statements are compared to that which was reported by witness **TAP-004** with regard to this type of operation, its planning and execution, the data obtained by the Spanish investigators become even more relevant, bearing in mind that a large number of military ouposts, gendarmeries, or military residences were situated near the headquarters of Médicos del Mundo and throughout the narrow territory of Ruhengeri); Furthermore, bursts of machine-gun fire in one direction only coming from one place only were confirmed and clearly seen in the darkness of the night, without any response or any counter-attacks having been observed.

Given that which was described above, the Spanish witnesses **PALAFIX** and **ESPINOSA** believe that the information obtained from an alleged A.P.R. officer who claimed to have been at the place of the events does not fit with other testimonies given and the witnesses consider that such information was intended for the self defence of the alleged officer. His claimed presence is doubtful, according to the Spanish witnesses and was denied by the single survivor of the attack. (added to the fact that **TAP-004** ignores this alleged officer's existence and his name, despite the fact that **TAP-004** was a Gerdarmerie' Intelligence Officer).

The Spanish witnesses **PALAFIX** and **ESPINOSA** pointed out that most persons they interviewed in the framework of their investigation had been partial, subjective and had concealed information. Moreover, false evidence had been presented to the witnesses. All of this caused enormous difficulties in accomplishing their task.

Finally, we will describe an incident which happened to **JUAN LOPEZ PALAFIX** and **CRISTOBAL ESPINOSA MARTINEZ** and the witnesses' considerations regarding the same, which, in their own words are obviously subjective considerations. In order to carry a direct inspection of the place where the events had taken place, the witnesses travelled in two pick up vehicles from Kigali to Ruhengeri, accompanied by two elements of the Gendarmerie. When they were half way through their journey they experienced a supposed security incident, which was classified by the witnesses as a "set up" incident.

**THIRTEENTH.** The expert **MATÍAS MORENO ANDRES** gave his statement before the Court on 15 June 2006. **MATIAS MORENO ANDRES**, in 1997 was Chief of Balistic Section of the General Scientific Police Station. This expert ratified and extended his Expert's Report. (pages 554 and 555 of Proceedings).

The expert informed on the conclusions of the tests carried on three bullet elements classified as "dubious", in connection with the death of the three Spanish members of the organization Médicos del Mundo. In short, he explained that the tests carried on the two bullet cases available, allow to conclude that the shots came from two different firearms, at least, one of them an AK-47 or its derivatives, and the other an M-16, possibly its initial version (A1) and the present version (A2) and their derivatives (firearms which were cited by witness **TAP-004**, although not exclusively, as the preferred arms used by the A.P.R. commandos at that time and in that area)

**FOURTEENTH.** Witness **HUBERT SAUPER** gave his statement before the Court on 4 December 2006. This witness is a Cinema and TV Documentary Director who filmed directly on the spot. The proceedings carried out before the Court regarding this witness were of two different natures.

On the one hand, to collect witness evidence centred on the events the Mr. Sauper had himself witnessed between the end of March and the beginning of April 1997 on the outskirts of the Zairean city of Kisangani (the capital of the "Orientale" Province, the Northeastern area of what Zaire was in those days.

On the other hand, to gather documentary evidence since the witness is the Director of a documentary called "Kisangany Diary" (a document deposited with the Judicial Secretary of this Court, as was agreed by the Court, (page 1012 of Proceedings) registered with number 74 and which was presented in due time at the first legal action brought in this case).

This documentary, with hardly any personal comments, shows the atrocities suffered by the Rwandan refugees in Kisangani and its neighbouring areas, some 1000 km North of the Rwandan border, along a 160 km railway line which runs between Kisangani and the inhabited area of Ubundu (South of Kisangani). The witness ratified before the Court the above mentioned document.

Next, it was agreed to proceed to record his statement, as was done in all previous instances but this time so that the witness' statement would be recorded at the same time as the filmed document was being viewed on a laptop computer to allow the witness to narrate precisely, chronologically and simultaneously the events he had witnessed. As the documentary developed, the witness was asked specific questions about that which was being viewed.

In short, his testimony dealt with his expressing his intention to United Nations officers to go to the South of Kisangani and try to find refugees in that area. He was informed by the U.N officers that it would be difficult to find any refugees because "there would be only a few refugees scattered around the jungle, since most of them had already returned voluntarily to Rwanda" (sic).

According to the witness, for alleged security reasons, he did not have access to most of the areas that he wished to visit and that thanks to his insistence and after having travelled a long distance, he was able to discover more than one hundred thousand

Rwandan refugees (100.000) (mostly Hutu, although there were also some Congolese refugees).

The witness described the circumstances of his journey of 27 March 1997 to the area where he had found the refugees, and the enormous difficulties that he had to overcome until he arrived at that area. Despite the large number of refugees and their terrible state, as shown in many of his images, on many occasions they were given neither food nor assistance, supposedly, for security reasons. The witness stated that he had seen with his own eyes the extreme conditions suffered by the refugees, as a consequence of lack of food, illness, the long journey, the environmental conditions and the lack of basic medicines which lead to the death of many of them.

He had also seen many dead refugees who had been fired at and many wounded as a consequence of the systematic attacks carried out during the night by Kinwarwanda speaking Rwandan soldiers. According to the witness the train journeys were always protected by "supposed" AFDL military guards who were mostly Rwandan soldiers, if not all, for alleged security reasons.

He also verified that all along the railway between Kisangani-Ubundo there were workers who belonged to the United Nations humanitarian organization "ACNUR" (an organization concerned with the assistance to refugees). Sometimes these workers were used by soldiers and by the Rwandan forces and also by the forces of the AFDL to locate their military objectives. As far as the witness knows, sometimes this would happen as a result of ignorance of the situation on the part of ACNUR's members, other times because of their professional slackness and on some occasions with their full knowledge and intention;

The witness told the Court he had found out that the aircraft used in humanitarian assistance missions besides carrying food were also carrying armaments hidden amongst its official cargo. He got this information from one of the Russian pilots flying those aircraft.

He explained that through many contacts he had had both with Rwandan soldiers and with soldiers who apparently belonged to the AFDL, he had verified that all the soldiers

who were the brains and/or were leading the operations which he had witnessed, were always Rwandan soldiers. This also happened when he was arrested by Rwandan soldiers while he was returning from filming in one of Kisangani airfields because they thought he was filming the transport of armaments which, many times, were carried together with the food cargo, the purpose of the flight.

The witness stated that the above mentioned Rwandan soldiers controlled everything arriving into the mentioned airfield, both material and persons; He recounted that on one of his train journeys he was accompanied by some twenty or thirty soldiers, mostly Rwandan.

He stated that some refugees who had survived the military attacks carried out during the night, had told him about some of the techniques used to massacre them, such as by asking the refugees to go to a particular place in the jungle during the day where they would be supposedly given food and instead firing at them; or by putting food in a preestablished place in the jungle to attract the refugees who would provisionally settle there during the day and who were subsequently attacked with firearms during the night. This happened in particular on the river banks of the river Congo; Shown a map of what Zaire was at that time, the witness personally marked the location of the "camps" of Kases (closer to Kisangani) and of Beiro (closer to Ubundu), the camps where the majority of the Rwandan refugees were sheltered.

He demonstrated that besides those who stayed around the camp areas and in other larger settlements, there were also refugees lost in the nearby jungle, others wandering around, many dead for various reasons, others physically, mentally and terminally ill as a result of having walked long distances, with little or no food at all and without medicines or proper assistance.

The witness stated that this situation affected people of all ages, including babies, children, women and the elderly, and showed some images of children dying at the side of the roads and in the jungle, as was later described to the Court by witnesses **MARIE BEATRICE UMUTESI** and **TAP-041**.

He also showed the Court some images stored in his computer, which were not shown in his documentary given their repulsive and cruel nature. One of these pictures showed a woman who had been violently killed, showing signs of having been raped, her genitals shot with a firearm and who was, subsequently, thrown into the jungle.

He showed and described how thousands and thousands of Rwandan refugees of the Hutu ethnic group had suffered and had died, victim of illnesses and shootings, within a very short period of time, in a specific part of the territory situated to the South of Kisangani, during those weeks in March/April 1997, while they were trying to flee from that specific area through a very narrow escaping route towards the East, Northeast and Southeast of the country.

Finally, the witness described how he had been arrested before his return by Rwandan soldiers and how he was released two days later without anything, without money or his passport, and how he was later arrested again by the same group of Rwandan soldiers and, subsequently, saved by a friend of his, a pilot who would help him to escape to Entebbe (Uganda).

**FIFTEENTH.** Witness **MARIE BEATRICE UMUTESI** gave her statement before the Court on 5 December 2006. This witness ratified the full contents of the initial legal action in this case in that which refers directly to herself.

Unlike the last witness' statement given to the Court which has just been mentioned, **MARIE BEATRICE UMUTESI** presented a document which, per se, cannot be considered as a proof (since it is an account of what she suffered herself) but in all cases shall be considered as a testimonial supplementary proof. She also ratified the contents of this supplement of documented testimony. We shall only point out the most important information given in her statement before the Court.

The witness **MARIE BEATRICE UMUTESI** stated she was born in Byumba (Northern Rwanda) on 19 March 1959. She studied in Africa and Europe. The witness had a managerial position at the Centre for Service to the Cooperatives "CSC" in Gitarama. She described some events she had learned about, how the war had began in October 1990 in the Northern area of the country where she and her family come from,

and also about some terrorist acts organized as from 1992 in the Centre and the North of the country which were aimed at creating chaos and reinitiating the war. According to the witness, many of those attacks were nothing but a “test” on the local population, to check their reaction to the murder of a local leader (a point of view which witness **TAP-043** will later confirm to have been indeed a military political strategy)

**MARIE BEATRICE UMUTESI** explained in full detail what she could remember of the attack and the systematic massacre carried out on 8 February 1993, a Monday as far as she remembers, in Byumba, the place where she comes from, and in the neighbouring areas; She explained that as a result of the attack (an attack which will be described by **TAP-043**, as a direct witness, since he was present during aforesaid operations as a soldier of the A.P.R.) some of her direct cousins, uncles and aunts, had died, their family names being **LAURENT BIZIMANA** (the oldest son of her aunt) and **KAZIMANA**.

The witness stated that she also knows about the massacre which took place that same day in a camp of persons displaced by war reasons, situated some 3 km away, where men, women, children and elderly persons were indiscriminately killed; The witness explained that she had been told, by a survivor from the Gaseke Camp of internally displaced persons, that three days after, on a Thursday, at the request of the military men of the A.P.R. some “supposed” “information meetings” had been held in Muhendo. These meetings were used for the arbitrary execution of the persons who had gathered in that place, either by firing at them or by means of grenades.

**BEATRICE UMUTESI** described that she was in Kigali on the day of the presidential attack, perpetrated on 6 April 1994; she stated that she had fled from the attacks which took place immediately after the National Radio started broadcasting the news of the attack carried out against the President at that time.

She had fled from the neighbourhood where she lived in Kingali towards the West of Gitarama, in the direction of Cyangugu, the Rwandan border with Zaire; she settled at Inera Refugee Camp, in Zaire, as from the weeks following the attack until February 1996; that she involved herself in the self-organization of women (which will be later mentioned by other witnesses, such as **TAP-018**); She stated that, among others, the

Spanish priest CARLOS OLIVERAS, a member of Caritas, Spain, was staying at that Camp.

**MARIE BEATICE UMUTESI** informed that she was aware of the murders and massacres which were being carried out in her country which discouraged her and thousands of refugees from returning to their country of origin. She also described the attack suffered by herself while she was staying at Panzi Refugee camp, made on Women's International Day in 1995, that is 8 March 1995, as well as the attack made on 12 April 1995 on Birava Refugee Camp. The witness remembers that there were, at least, 160 victims, most of them children, minors and women.

**MARIE-BEATRICE UMUTESI** described how the principal refugee camps situated in the Eastern area of Zaire were attacked by soldiers from Rwanda using heavy and automatic weapons. The witness escaped specifically from Bukavu, where she had been staying in those days, on Monday, 28 of October 1996, when the city was practically besieged and being bombed.

She had arrived shortly after to the western area where thousands of refugees had taken refuge. These refugees came mostly from the Inera, Kashusha and Adi-Kivu Refugee camps. The witness calculated that there must have been some 100.000-200.000 refugees unexpectedly sheltered in that area. She can remember that most of camps were destroyed between the end of October and 2nd of November 1996, as a result of coordinated operations aimed at causing the largest number of victims amidst the refugees.

To the question asked whether she knew the four Spanish Marista Brothers who were at Nyamirangwe Refugee Camp, the witness replied that she had personally not met the same because she had been at Inera Camp previously, although later, while she was escaping, she had learned from some refugees that the Marista Brothers had been murdered on the same dates as the attacks made on the camps.

She had also found out through the refugees about the death of **CHRISTOPHE MUNZHIRWA**, the Bishop of Bukavu who a few days before the attacks had requested urgent assistance for the refugees, speaking publicly about certain A.P.R.



agents who had infiltrated Zaire in order to prepare military operations. As a result of his denunciation , the above mentioned Bishop was murdered the day before the murder of the four Spanish Marista Brothers.

**MARIE-BEATRICE UMUTESI** continued her statement describing, above all, her journey to the proximities of Mbdanka (Western point of Zaire), some 2000 km from Bukavu, an escape route taken by hundreds of thousands of refugees, walking an average of 25 to 40 km every day. As a result, many refugees died due to the extreme inhumane conditions such as, lack of food, water, and illness, and as direct result of being systematically attacked in the middle of the Zairean jungle. An area of the jungle unsuitable for the occupation where, somehow, the refugees had been driven as a consequence of the Rwandan soldiers's attacks. (APR and AFDL).

**MAIRE-BEATRICE UMUTESI** stated that she had decided to enter, together with some 10.000 refugees, a not recommendable wild area of the National Park of Kahuzi Biega , on 3 November 1996, because they were being attacked by soldiers.

When she was asked how she knew they were Rwandan soldiers (APR), she replied that she knew it because in Central Africa, the only persons who can speak Kinyarwanda are the Rwandan, whilst Luganda (or Kiganda) is spoken in Uganda and the Congolese speak either Swahili or Lingala. Consequently, the Rwandan soldiers were easily recognised since they spoke Kinyarwanda among themselves, the official Rwandan soldiers being those who belonged to the A.P.R.

The witness referred to several identifications made by her escaping refugee companions, mentioning for instance the attack on Ruzizi Bridge, which was bombed with the support of both Cyangugu and Bukavu soldiers (once seized), and also the attack which was made later on Tingi-tingi Camp. The witness described how hundreds of thousands of refugees coming from the area of Goma (situated North of Lake Kivu) had gathered in increasing numbers near Lubutu (see map, following the road Bukavu-Lubutu-Kisangani to the North). According to the witness, the refugees who were progressively arriving in Lubut were concentrated in an area near Lubuto (some 20 ks approximately) which would later be known as Tingi-Tingi Camp.

According to the witness as from December [sic] 1996 to the end of February [sic] 1996, some 200.000 persons who had gathered in this Camp lived in extreme inhumane conditions, stating specifically that an average of 50 persons were interred every day and that all the 2 and 3 year old children died in the camp.

The witness showed her surprise and outrage, as many refugees who had been at Tingi-Tingi camp had done, when it was reported in the international news that all refugees had gone back to Rwanda and that there were no refugees left in Zaire (whilst 500.000 were actually missing, which would be the equivalent of erasing Luxembourg from the map). She stated that there was nothing compared to the cruel reality experienced every day by the refugees. She said she could remember well the combat planes and helicopters flying over the Camp.

She referred to Ms. EMMA BONINO's visit (as the E.U. European Commissioner for Humanitarian Action) to Tingi-Tingi Refugee Camp which took place in mid February 1997 and what a cause of joy and relief Ms. Bonino's visit to the camp had been to herself and to the other refugees.

The witness compared Ms. Bonino's visit to the visit paid by the U.N. High Commissioner for Refugees, Ms. SADAKO OGATA, which took place two weeks later, not only because Ms. Sadako's unfortunate role during such official visit, but also because the role played throughout the refugee crisis by the organization which Ms. Sadako Ogata represented (ACNUR).

According to the witness, as from the very beginning until the Tinti-Tingi events the refugees had been encouraged to return to Rwanda where they were treated as if they all were a group of genocide perpetrators. The witness's accusations against the members of ACNUR were even more specific at a later stage of her statement.

**MARIE BEATRICE UMUTESI** confirmed that both her suspicions and other refugees' became a reality (the same **TAP-018** also refers to those suspicions, as a Secretary serving in Tingi Tingi Camp): On 28 February 1997, only three days after Ms. SADAKO OGATA's visit, Tinti Tingi Camp was attacked and destroyed by soldiers and as a result of this attack an uncountable number of refugees had died. When, that

same day, **MARIE-BEATICE UMUTESI** saw the Zairean soldiers fleeing as a result of the rumours heard about the troops of the APR/AFDL (commanded by Rwandan officers) being only some kilometres away from Tingi-Ting, the witness made the decision to escape during the night.

**MARIE-BEATRICE UMUTESI** continued to explain that many refugees escaped in the direction of Lobutu and became trapped and jammed, as in a funnel, next to a bridge, and had to stay there for a long time, standing, practically without being able to move or to continue their journey. Once more, the witness survived several bursts of automatic gun fire directed against them which caused the death of many persons, either as a direct result of the shooting or because many people drowned in the river, especially many children, elderly persons and persons who could not swim. **MARIE-BEATRICE UMUTESI** stated that it was at that moment that she lost two of the children who were travelling with her. She never saw them again. The witness was able to save her life by hiding in the jungle, accompanied by an 8 year old girl named ZUZU. She explained that while she was escaping she came across many corpses and saw many people dying.

The witness continued her statement about the events which became cruder and cruder as she advanced through her route to escape accompanied by two other persons and a child (**VIRGINIE, MARCELLINE** and **ZUZU**).

She stated that she crossed Obilo (80 km South of Kisangani), Boende (almost at the point of exhaustion, after 2 weeks of being seriously ill, fever making them delirious). The witness said that she must have weighed around 35 kg. She had to leave ZUZU behind, the child who was travelling with her who had become seriously ill (the child died three days after, according to that which she learned later).

She ended up near Mbdanka where she was found by members of an NGO, after her companion **MARCELINNE** had been repatriated to Rwanda and had let her know that she was alive.

The witness referred to the atrocious suffering and hardship experienced by herself and other refugees, as was already described in the initial legal action brought in this case, in the point referring to the "Facts".

Finally, she pointed out, that she was about to be forcibly repatriated as a consequence of a perverse strategy offered by the staff of ACNUR to the Zairean poor and to the persons with no means. She explained that ACNUR's staff offered 10 American Dollars to anyone who would inform of the whereabouts of the Rwandan refugees. The witness avoided being forcibly repatriated by pretending she was a Zairean national.

In short, she described how she had been ruthlessly persecuted together with thousands of Rwandan Hutu refugees for more than 2.000 km., and how many of her companions had violently lost their lives as a result of military attacks and as a consequence of the innumerable physical and psychological hardship suffered by thousands of persons during the journey that she knows of and that she has reported to the Court.

**SIXTEENTH.** In his turn, witness TAP-041 gave his statement before the Court on 5 December 2006.

Witness **TAP-041** ratified the whole contents, in the part which refers to himself, as stated in the initial legal action previously mentioned.

Similarly to **MARIE BEATRICE UMUTESI** he presented a document to the Court, as a supplement to his testimony, which he ratified. The document contains a description of the events experienced by himself and other refugees.

**TAP-041** was born in Rwanda on 28 June 1969. He stated before the Court that he fled from his place of birth (Kinyamakara, Gikongo Prefecture) just after the presidential attack and the subsequent advance towards this area of the soldiers of the A.P.R./F.P.R. He took the Western route to Cyangugu (a place situated on the border with Zaire, South of Lake Kivu, Southwestern Rwanda, see map). He was able to cross Rusizi bridge at the end of June 1994, and settled, as well as he could, in the Zairean city of Bukavu.

**TAP-041** was helped on his way to Kashusha refugee camp where he settled at first. Later, he attended a training program in Adi-Kivu camp, a program which was being carried out by the Jesuit Service to Refugees and which was coordinated by the Spanish Jesuit **LLUIS MAGRIÑA**.

When he was asked whether he knew of four Spanish Marista brothers, he replied that he had met them at the refugee camp of Nyamirangwe which he visited on some occasions. He stated that he was able to see for himself the difficulties the Spanish brothers had to overcome to be able to carry out their basic task of educating the refugees. According to the witness, this was due to the Congolese authorities –under Rwandan pressure- and also ACNUR who several times tried to close the refugee camps and force the refugees to return to Rwanda. Later, while he was escaping to the West of Zaire, he learned about the death of the Spanish Marista brothers and also about the death of the Zairean Bishop **CHRISTOPHE MUNZHIRWA**.

**TAP-041** explained that he had remained in the above mentioned camp until the same was attacked on 2 November 1996. The attack started when he was about to have his small portion of food, which he had to leave behind as a result of bursts of automatic shooting coming from all directions against himself and other refugees at the camp. He saw his companions being hit by fire which missed him by only a small distance. He explained in full detail that Kalashnikov machine guns had been used both in this attack and in others and that he had become familiarised with the sound of these firearms.

Furthermore, he had been attacked in Kashusha Camp by heavy armament, namely Katusuka mortars and the witness indicated that the attack made on Kashusha Camp was carried out by Rwandan soldiers who were not wearing uniforms. He explained, just as the witness **MARIE BEATRICE UMUTESI** did, that he was able to identify those soldiers because of the language they were talking, that is Kinyaruanda.

**TAP-041** stated that he was able to escape from the above mentioned attack and, as in the case of **MARIE BEATRICE UMUTESI** he had fled to the National Park Kahuzi-Biega' which he crossed in four days, practically without food. On his journey, accompanied by witness **TAP-010**, they came across **MARIE BEATRICE UMUTESI**, whom the latter recognised. She was poorly. She was lying on the ground.

her gums swollen. Witness **TAP-010** helped her out and gave her money to get her two infected mollars pulled out. Later, after crossing through dense dark jungle, walking through river beds because there were no paths, they met her again on their way to Hombo and were pleased to see that **MARIE BEATRICE** looked slightly recovered.

While they were escaping from the Rwandan soldiers who continued to persecute them, they lost companions who had to be left behind because they were exhausted, ill and starving. However, sometimes, they would meet new companions and reencounter people whom they knew. The witness gave the following examples:

On the night of 7-8 December 1996, A.P.R. soldiers coming from the route Bukavu-Miti-Bunyakili cut off the Chambuca bridge in Hombe which was the only way out for the refugees who were trying to escape through the jungle, specifically, through the axis Nyabibwe-Shanje. Later, **TAP-041** coincided with witness **TAP-011**, who was part of a group coming from Shanje, who told him that he had survived the massacre in Hombo crossroads, perpetrated in the above mentioned bridge. The attack had caused many victims, two hundred people had died, at least, as there were also many wounded. Two of the victims of this massacre were **TAP-041**' friends.

The witness was also told by another two refugees of another massacre perpetrated in Tebero. They described the attacks made on the camps of Nort-Kivu, in the area of Goma, where a strategy similar to the attacks that the same **TAP-041** suffered had been used. The latter, together with other refugees who were trying to escape, arrived in Tebero where they saw a huge number of corpses. Among the corpses, the corpse of one of his companions at Inera Camp named Théophile as well as the corpse of Manase's sister, (the author of a well known Rwandan popular song). They had all been killed by firearms.

It was while he was continuing his journey when the witness came across the two cited survivors from the above mentioned Tebero massacre, witnesses **TAP-012** and **TAP-013**. These witnesses told him that armed soldiers hidden in the jungle along the Hombo - Tebero route had organized several ambushes, both in the jungle and on the arrival of the refugees in Tebero. This group of refugees had been walking in a queue through the jungle.

Furthermore, **TAP-012** told the witness about the massacre carried out on 19 December 1996. He could remember clearly the face of two abandoned children who were crying as they ran to escape. The above mentioned group of refugees was attacked by surprise on the dawn of that day by soldiers of the A.P.R., using firearms and mortars. They tried to flee in all directions and **TAP-012**, desperate and paralyzed with fear, threw herself on the ground waiting to be killed. Around her the wounded were screaming for help which they never got, and the women were abandoning their children, trying to run for their lives. The long attack lasted at least four hours and after waiting for a short while to be sure it had actually finished, the survivors stood up.

**TAP-012** tried to find her mother and sister who had been walking with her, but she could not find them. She still does not know her mother and sister's whereabouts. **TAP-012** told the witness that she saw some 500 corpses of refugees in Tebero. Similarly, another 500 persons were killed in another massacre carried out by the soldiers of the A.P.R. The same **TAP-041** told the Court that he knows the parents of two children who were killed in the Wallikale massacre who now live in Benin.

**TAP-041** stated that he arrived in Tingi-tingi Camp before Christmas. He remembered, as **MARIE BEATRICE UMUTESI** did, **EMMA BONINO**'s visit to Tingi-Tingi, stating that he had seen the refugees in the camp who reportedly did not exist. He also remembered the visit of ACNUR's High Commissioner and remembered her saying that they could only guarantee assistance and security to those who immediately accepted repatriation to Rwanda. **TAP-041** was able to escape from Tinti Tingi just before the Camp was destroyed. He learned from other refugees that many persons had also been killed in this camp.

**TAP-041** also described other massacres carried out in February and March 1997, as the massacre at Shabunda's metal bridge carried out by Rwandan soldiers who, speaking in Kinyarwanda language, told the refugees to go back to Rwanda. He also referred to the members of the Church killed in Kalima, both male and female. The witness pointed out that one of them was able to save his life.

TAP-041 described how he was able to cross the river *in extremis* when he arrived in Ubundo, South of Kisangani. Not knowing what to do next, whether to get into the jungle or head for Kisangani, where according to the rumours circulating the A.P.R soldiers were apparently in control and attack were being carried out. The witness told the Court that he had finally decided to head for Maniema jungle (where he lost his friends ALFRED HABINSHUTI and OBERTE NYIRAMWIZA, the former as a result of illness and the latter as a result of an hemorrhage which could not be controlled when she came into labour)

TAP-041 finished his statement at the point when his journey was coming to an end, in Wendji-Secli, an inhabited area near Mbandaka, at the beginning of May 1997, after walking 30 to 40 km a day, most times with hardly any food and with several physical problems, having crossed Opala, Ikela, Boende and Ingende in extreme conditions.

He specifically referred that, at one point, after having walked a long distance they arrived somewhere exhausted and starving and at the sight of some barrels, they immediately run towards the same thinking they might contain food, only to discover that the barrels were filled with chopped bodies covered in blood).

TAP-041 told the Court that he weighed 68 kg when he left Kashusha camp, Eastern Zaire, and when he arrived in Wendji-Secli, seriously ill as a result of a bleeding dhorrea, he could not have weighed more than 25 to 30 kg. A priest of that area told them that there were Rwandan soldiers nearby and suggested they should move immediately. Although the witness could not move by himself, given his poor physical condition, a friend had helped him and carried him to a safer place.

According to the witness, two days later, during the night, they were woken by shots. His companions took him to a stream in the jungle where they left him and fled, trying to escape from the attack. The witness never saw them again. He explained that the A.P.R. soldiers, using automatic firearms shot all the refugees who were trying to escape from that area.

Since the witness could neither run nor escape, he hid as best as he could, among the bushes in the river. He told the Court that for five days he remained submerged in the



river up to his neck and from that position he saw many corpses floating in the river and a lot of blood. From the place where he was hiding he was able to see how some refugees, who thought that the attacks had finished, were killed.

The witness learned later that most of the refugees who had fled towards Mbandaka had been massacred. He remembered that a French or a Belgian priest of the order "Padre Blanco" who had an orange coloured van had filmed images of the massacre which was carried out in the city of Mbandaka.

Finally, he told the Court he was able to reach Congo-Brazzaville and that he survived starting from zero and was sheltered, not without difficulties, by the pygmies.

**SEVENTEENTH.** Witness **JEAN MARIE VIANNEY NDAGIJIMANA** gave his statement before the Court on 5 November 2006.

In short, **JEAN MARIE VIANNEY NDAGIJIMANA** stated that as from 1977 he worked as a civil servant, as Ambassador of Rwanda in various countries (pointing out he was the Rwandan Ambassador in Paris between 1990 and 1994 and, as such, the diplomatic relations with Spain came under his functions and territorial competence) and as the Rwandan Representative in the A.U.O and other international organizations. He was appointed Minister of Foreign Affairs of Rwanda in 1994 (as a representative of the MDR political party in the National Union Government led by the F.P.R). On October 1994, because he disagreed with the killing of thousands of civilians (Hutus) carried out by the F.P.R/A.P.R troops, he took the decision to resign and to exile himself, as he will explain below.

He stated that an International Commission was established in 1993 in order to investigate what was happening in Rwanda but that the A.P.R/F.P.R did not allow this Commission to enter the territories under their control. In short, he described the governmental system and how decisions were made during the period while he was participating in the Government as a Foreign Affairs Minister, in July 1994. He pointed out that he never had any access to the matters which were addressed outside the Council of Ministers, and that he had felt that he was carrying out his mission without being aware of the decisions taken behind his back.

He stated that, as Foreign Minister of Rwanda, he was aware of the report which is known as "Gersony Report". He pointed out that this Report referred to the investigation of the Rwandan *status quo*, a mission carried out by ACNUR as soon as the A.P.R/F.P.R seized power, and as a result of the tragic Rwandan events of 1994 and the humanitarian crisis suffered by over a million refugees who had fled to the neighbouring countries, especially to Zaire although also to Tanzania and Burundi, in an attempt to escape from the military attacks. The objective of this mission of the United Nations Organization was precisely to establish whether Rwanda had security conditions sufficient as to allow for a mass repatriation of refugees.

**JEAN MAIRE VIANNEY NDAGIJIMANA**, in his capacity of Foreign Minister, learned about this mission at a meeting with a United Nations official delegation held in his own official office, in 19 September 1994. The following persons attended this meeting: U.N. Deputy General Secretary and Responsible for Peace Missions Department, Mr. **KOFI ANNAN**; Special Representative in Rwanda for the U.N. Secretary General, Mr. **SHARYAR KHAN**; ACNUR'S African Director; ACNUR's Delegate in Rwanda and the expert Mr. **ROBERT GERSONY**, a U.S.A national. From the Foreign Ministry, besides the witness who was the Minister at that time, his collaborator **SIMON NSONERE** and a Ministry's officer attended the meeting.

In the statement given before the Court he explained that he, **JEAN MAIRE VIANNEY NDAGIJIMANA** was informed by the Official Delegation of the conclusions, practically final, of the Report. These conclusions indicated that in three Rwandan Prefectures alone, that is Byumba (Northern Rwanda), Kibungo (Southeastern Rwanda) and Giseny (Northwestern Rwanda), which were the three prefectures investigated in first place, since they were potentially the prefectures with more repatriated refugees, and in two months only, that is to say as from mid July until mid September, according to the information gathered, the A.P.R/F.P.R had carried out selective executions or systematic killings of at least 30.000 persons, mainly Hutus.

As pointed out by Mr. **KOFI ANNAN** and Mr. **ROBERT GERSONY**, everything was described in full detail: places, dates, nature of the crimes, techniques used, disappearance of corpses, victims' names, etc. According to the provisional conclusions of the Report, there were not the security conditions in Rwanda necessary to initiate the

operations for the refugees' repatriation. **JEAN MARIE VIANNEY NDAGIJIMANA** was able to read this long Report and discussed the details and the findings of the investigation with the Delegation. The Foreign Minister asked for a copy of the Report, and was given the excuse that it would not be possible at that moment, since a round of contacts was about to be initiated aimed at informing on the situation reported and with the objective of ending of the same. He was assured that once the conclusions became final, a copy of the Report would be sent to the Government of Rwanda.

As far as he knows, meetings to discuss similar matters were held by the Delegation with, at least, the President of the Republic, **PASTEUR BIZIMUNGI** (who belonged to the F.P.R) with the Prime Minister **FAUSTIN TWAGIRAMUNGU** (who belonged to the MDR, the party to which the witness also belonged) and with the Vice President and Defence Minister **Major General PAUL KAGAME** (Chief in Command of the A.P.R).

**JEAN MARIE VIANNEY NDAGIJIMANA** explained that at the end of September 1994 he had attended a United Nations General Assembly and in that framework, both in New York and in Washington, both the United Nations Organization (in the high level meetings held, including those with the U.N. Secretary General **BOUTROS BOUTROS-GHALI**) and the Department of State of the United States who were aware of the cited investigation and knew of the Report as well as the conclusions of the same (in a meeting held with the Deputy Secretary of State for African Affairs **GEORGE E. MOOSE** and the Director General of USAID, the official U.S.A Agency for Cooperation) they had been asked to end the situation and stop the killings, offering not to bring the Report to the public's knowledge and to forget about the victims if the situation was redressed.

After his presence in New York and Washington, and after being made to return by **PAUL KAGAME** as a consequence of the first news filtered by the press about the Gersony Report, **JEAN MARIE VIANNEY NDAGIJIMANA** travelled to Paris, asked for exile for political reasons and never went back to Rwanda.

The Gersony Report was seized by the United Nations Organization and was never seen again.

EIGHTEENTH. Witness MARIA ANGELES CANDEL AGUILAR gave her statement before the Court on 25 January 2007.

The witness stated that it was her husband **MANUEL MADRAZO**'s third mission as a cooperating physician in the area of the African Great Lakes. She told the Court that during his third mission he had to come back to Spain, on 22 December 1996, to visit a dentist and that the witness thought that he looked very worried and concerned, although her husband was used to serious situations. However the witness was surprised that he wanted to leave things organized in case something went wrong.

She remembered the last conversation she had with **MANUEL MADRAZO**, on 15 or 16 January (two or three days before he was violently killed): During this conversation, in the witness's words "*...she noticed he was frightened; he told her that they had to be taken away from there "or else they would be back home before due time", because they had seen some terrible barbarities and he was not referring to the situation as a whole, but to something specific they had seen which was his reason for telling her that they had to be removed from that place, explaining to her that they had witnessed something very serious...*" (both the date and the contents of this conversation correspond to that which was stated by witness TAP-004 regarding what they had personally seen on 16 January 1997, as described before). The witness continued "*...that, on some occasion, her husband had told her that he feared that his phone conversations were being tapped and therefore he was not very explicit when he talked on the phone...*"

NINETEENTH. Witness CYNTHIA ANN Mc KINNEY gave her statement before the Court on 8 May 2007.

**CYNTHIA ANN Mc KINNEY**, a U.S.A. national, stated that given that she was a Human Rights activist, among other reasons, she had been elected as a Congress woman for the U.S.A Democratic Party and had participated in the Foreign Policy Commission. She pointed out that in the framework of her political functions, important events related to the conflict in Central Africa had come to her knowledge, as well as documents and information she had exchanged with many of its key interlocutors, to whom she will refer below.

She stated that she made two important trips to Zaire, as was then called. Her first trip took place in the Summer of 1996 (specifically in August, just before that which is known as the first war of Zaire (Congo and, consequently, just before the attacks made on the refugee camps). The witness explained that the purpose of her trip was to meet "Kabila, the father" (referring to LAURENT DESIRÉE KABILA). On this first occasion she flew to Lubumbashi (Southern Republic of Congo) on a plane chartered by the U.S. American Company AMERICAN MINERAL FIELDS.

She told the Court that during her journey she found out that in the aircraft, besides this company's representatives there were also arm dealers. She specifically referred to a Swiss national who was travelling with them and who told her that he did not like what she was doing (he was referring to the political nature of her journey). She explained that after this journey, and as a result of the investigation she carried out "...*She had come to the conclusion that certain companies, American Mineral Fields among them, were providing arms and funds to Kabila so that the latter could invade some territories in exchange for mining concessions...*" (We point out that the U.N. Security Council Report, S/2002/1146, with regard to the Panel of Experts who were put in charge of reviewing the illegal exploitation of natural resources and other riches of the Democratic Republic of Congo refers to evidence gathered by the group about the violation of the OCDE principles by some multinational companies, specifically the company AMERICAN MINERAL FIELDS..

Similarly, with regard to that which was stated by the witness, the First Report made by the Panel of Experts of the United Nations S/2001/357 "... *The illegal exploitation by aliens aided by Congolese nationals started with the first "war of liberation" in 1996. The AFDL's rebels, with the support of soldiers from Angola, Rwanda and Uganda, conquered the eastern and southeastern territories of Zaire and as they advanced, Laurent Desirée Kabila, deceased, who was at that time the leader of AFDL, signed contracts with a certain number of foreign companies...*"

The witness stated that later she had an official second meeting, with LAURENT DESIRÉE KABILA who was a rebel leader at that time (when the witness participated in a U.S.A. official Delegation sent by BILL CLINTON, President of the U.S.A. at that time, to Zaire in May 1997, led by Richardson) She explained that she was included as a

member of the delegation at the personal request of President Clinton, given her relationship of trust with Kabila established on her first visit)

She stated that she had also travelled to Rwanda on various occasions, and that she had had meetings with key figures of the country. The witness learned at a later stage about the reports made by the C.I.A. with regard to the possible number of human victims if “there was a change of regime in Rwanda”. She found out later that the above mentioned change of regime formed part of instructions and of an instrument of the United States of America.

The witness told the Court that when she started to discover all these elements of conflict which had been concealed, she asked for an official investigation which was never carried out. As a result, she started to involve herself politically in the investigation of the facts concealed, concluding that “...*When Uganda and Rwanda invaded Congo in 1998, the leaders of the invading countries had the financial support of the United States of America...*”

**CYNTHIA ANN Mc KINNEY** described the main actions she she had taken regarding her investigation and review of the concealed events connected with these war conflicts, which she carried out in the United States and with key figures.

She presented a list of different persons from the U.S. Administration, the United Nations (The Secretary General, Koffi Annan included), authorities of the countries of the conflict areas (Rwanda, Burundi and Democratic Republic of Congo) and of other countries, and also investigative journalists, key members of NGOs, etc. (enclosed in page 2.152 of Proceedings).

She presented (Page 2153) a photocopy of the original letter (the contents of which she ratified) which she had addressed to President Clinton, dated 31 August 1999 informing the President of her country and of her Party (Democratic Party) of the crimes against humanity which were being perpetrated in the Democratic Republic of Congo and in Africa which, apparently, were supported by the U.S.A Administration, according to the conclusions of her investigations and to the information the witness had gathered in the field and also from the contacts she had maintained with key figures.

The witness, after indicating that she had addressed a further letter to President G.W.Bush, explained that, in her capacity of Representative of the Committee for International Relations of the U.S.A. Congress, she had asked for the presence of a selected number of key figures and investigative journalists to review the influence on the African conflicts of the U.S.A. and multinationals. The meeting took place at the U.S. Congress (Capitol Hill) on Friday 6 April 2001.

The witness presented as documentary evidence the documented records of this meeting (which was enclosed in pages 2156 and subs. of Proceedings), a document which was titled "Undercover actions in Africa: "A Smoking Gun in Washington D.C".

Among the persons who participated in the meeting and whose names figure in the records, the independent journalist WAYNE MADSEN, a former officer of the U.S.A. Navy, a former member of the National Security Agency, NASA and of the Naval Telecommunications Command.

This journalist, after referring to PAUL KAGAME's military training in the U.S.A. as well as the training of his forces in ground to air missile operations (referring to the investigation which at that time was already being carried out by the French Judge J.L.Bruguière in connection with the presidential attack), pointed out the secret investigations of the C.I.A. regarding the possible victims that the death of the Rwandan president could cause, and ended up suggesting an investigation into the role of the U.S.A. companies in the Central African events.

In the records of the meeting figures in second place KEITH HARMON SNOW, a well known U.S. national journalist. This journalist collected many testimonies and information *in situ* in Central Africa from which it was clear to conclude that minerals, such as diamonds, gold, columbium-tantalite, niobium, cobalt, manganese, petroleum, natural gas, aluminum and possibly uranium had been looted during the war in the Democratic Republic of Congo. (The witness told the Court that she has information on the important financial interests of the U.S.A. in the exploitation of columbium-tantalite, also known as coltan). She stated that she had obtained testimony in the Western area of Uganda with regard to the U.S. multinational named BARRICK GOLD CO. (G.W. Bush

was the company's Consulting Director) which was operating the mines of Kilo-Moto, near Bunia (the latter in the Democratic Republic of Congo).

She explained that she had been informed that **PAUL KAGAME** had been in Washington D.C. in August 1996 to inform the Pentagon about his plans for the war (his plans about what was Zaire at that time). She named three key multinationals situated in the South of Katanga, an influential Zairean area and a key area for the important operations of the A.P.R. Rwandan soldiers as well as L.D. Kabila's, (as stated later by witness **TAP-002**) as follows:

The multinationals **LUNDIN GROUP**; **AMERICAN MINERAL FIELDS INTERNATIONAL** and **ANGLO AMERICAN** which were carrying out the operation of mines in these areas (a specific reference which was made much before that which the United Nations Expert Group made in 2002 in their documented report in the matter of the illegal exploitation of natural resources).

She stated that U.S. Green Berets had trained and coordinated military actions in the Democratic Republic of Congo, Sudan, Uganda and Rwanda, pointing out that the presence of "Black Americans" had been witnessed both in Uganda and the Democratic Republic of Congo.

She also pointed out that, when everybody was talking about the Tutsi being the only victims of genocide, there was a huge number of Hutus who had been killed by Tutsis as a result of many massacres which had not been the subject of an investigation. At that time, the figure of Hutus killed reached already 1.7 million, victims who were totally ignored as such by the media.

**CYNTHIA ANN McKINNEY**, in her statement given before the Court spoke especially about these two key investigators previously mentioned, pointing out that "*...share the conviction of the witness in the sense that a criminal organization basically formed by dealers in arms, resources and diamonds places corrupt people in power in order to obtain persona profit...*" (sic)



The investigator and writer JANINE FARREL ROBERTS, figures in third place in the records. She referred to the diamond company DE BEERS and to MAURICE TEMPLESMAN and their operations and huge interests in the area (a company which was also mentioned later in the Report of the Experts Group).

The witness made a special reference to Templesman and his special relationship with MADELEINE ALBRIGHT, who was Secretary of State at that time, stating that it is possible that thanks to this special relationship, the A.P.R./F.P.R was not considered as a terrorist organization in the United States of America.

The following persons also participated in the meeting, as shown on the records: ELLEN RAY, who referred to the "Balkanisation" of Africa and the destruction of Congo; JIM LYONS, a former member of the Federal Bureau of Investigation, FBI, who was contracted by the U.S.A. State Department as an investigator attached to the International Criminal Tribunal for Rwanda – TPIR, who informed of his investigations together with the Investigations of Director AL BREAU (Royal Canadian Mounted Police) and the person responsible for one of the investigation teams, MICHAEL HOURIGAN (a former Prosecutor of the Australian Crown), all of it regarding their investigations carried out in 1997 about the circumstances and the persons possibly responsible for the presidential attack.

CYNTHIA ANN Mc KINNEY explained that as a result of her investigations and her political compromise with the issue of human rights in Africa, she had been contacted by many people who had given her relevant information. The witness specifically referred to the information she had obtained from a Congolese priest regarding the companies which were carrying out systematic acts of pillage in the Democratic Republic of Congo. An employee of the Central Bank of Congo who had brought her documents in connection with the theft carried out during the war by the Rwandan authorities in the Democratic Republic of Congo was also referred to by the witness.

The witness stated that she knew that before the second war in the Democratic Republic of Congo, in the first war (i.e. 1996-1997) *"...there was a huge number of victims who belonged to the Hutu ethnic group, both Rwandan and Congolese..." (sic).*

Finally, the witness pointed out the threats suffered by **Ms. SAFIATOU BA-N' DAW**, the person responsible for the United Nations investigation of pillage issue in the Congo (namely, Safiatou Ba—N' Daw, President of the Panel of Experts appointed by the U.N. Secretary General, as in page 788 of Proceedings relating to the Panel of Experts' first Report, S/2001/357 dated 12 April 2001).

The witness told the Court that she had given the latter both information and documents to be considered in the cited Report (Pages 786 and 845 of Proceedings) which document the looting activities mainly carried out by the military authorities of Rwanda and Uganda. She pointed out that she suspected that the threats to the cited President of the Panel of Experts following the publishing of the Report in 2001, came from Rwanda's President, **PAUL KAGAME**.

**TWENTIETH.** Witness TAP-043 gave his statement before the Court on 2 October 2007.

Witness **TAP-043** belongs to the Tutsi ethnic group and was born in Rwanda. (He stated that he lost his parents and some of his brothers in 1994 in Rwanda). He served as a soldier the A.P.R.. He reported he had knowledge of many criminal acts perpetrated in Rwanda, particularly, as from 1991 when he joins the A.P.R. in Uganda (Nakivale military centre). He subsequently served in various military units of the A.P.R., specifically Delta Mobile Force, Bravo Mobile Force, High Command, Artillerie and Air Defence (Heavy Artillery and Air Defence), as well as in other brigades and battalions until the year 2001, when he decided to go into exile in Uganda.

The events he claims to know of came directly to his knowledge as an active soldier in the various cited units. The witness corroborated and gave full details of the events, mentioning the names of the persons responsible and the criminal acts which were carried out during this period of time and which were described in the first legal action (specifically its paragraphs 1st, 5th, 6th, 7th and 10th, where the persons responsible are mentioned)

The first statement before the Court given by witness **TAP-043** was centred on his testimony of the relevant events which took place in Rwanda during the years 1993 and

1994 and, in particular, on the events of April 1994 Byumba, including the kidnapping and subsequent killing of the Spanish priest **JOAQUIM VALLMAJÓ** and of other Rwandan priests, as well as the killing of Rwandan civilians perpetrated in the same territory in those days. The witness also referred to the attack made on the city of Byumba in February 1993 and to the strategic murder of several political leaders perpetrated by the A.P.R.

According to this witness, in the second half of April 1994 he was serving in the High Command (Military High Command or Presidential Guard of Major General **PAUL KAGAME**, which was formed by two companies of approximately 150-200 men each) deployed in Mulindi (North of Byumba in the North of Rwanda). Their mission was to reinforce the 21st Battalion which operated in the territory of Byumba. Witness **TAP-043** stated that between 19 and 21 April 1993, only two weeks approximately after the presidential attack, the city of Byumba was militarily seized by the A.P.R. He explained that the commanding officers invited the refugees displaced by reasons of war, through Radio Muhabura (a broadcasting station used by the F.P.R/A.P.R) to return to their places of origin since the same were under the control of the military forces.

With regard to Byumba, the witness remembered that the displaced persons who fled from this city to the capital, Kigali, and had settled specifically in the neighborhood of Nyacyonga were invited to head north, where they would be received by the new F.P.R/A.P.R authorities. They were also told to go to the Prefecture, in order to be relocated in their places of origin. **TAP-043** knows many displaced persons who accepted this invitation and explained that all the displaced persons from Byumba or those who were arriving from other areas were regrouped in the Prefecture premises. According to the witness, they were all unarmed citizens and peasants.

The witness recalls that they were given orders to wait at the headquarters which indeed they did. Most of them were waiting on the spot for two to four days without being given any type of food. He gave full details about the military orders for regrouping the said displaced persons at Byumba Football Stadium, where consequently some two thousand five hundred persons gathered, all of them Rwandan Hutus. According to the witness **TAP-043**, the orders came from **Colonel JAMES KABAREBE** (from the part of A.P.R. regular Army) and **Colonel RWAHAMA**

**JACKSON MUTABAZI** (from the part of DMI-Directorate Military Intelligence), and the execution of the refugees was carried out, among others, by **Captain JOSEPH NZABAMWITA**,. (Captain Nzabamwita was also a member of DMI Directorate Military Intelligence).

Witness **TAP-043** told the Court that he had been put in charge, together with Lieutenant **KABUGA**, deceased, of securing the access control to Byumba Football Stadium, which was situated some 400 metres from the Stadium. Lieutenant Kabuga and witness **TAP-043** were given specific military orders not to allow anybody to enter the stadium, unless they were specially authorised to do so.

These orders referred particularly to Major **TEONESTE LIZINDE**, whose entry into the Stadium was not to be allowed in the event that he presented himself at the security control. Major Lizindi was a Hutu who belonged to the A.P.R. High Command, who after the seizure of Byumba had been appointed Head of its Prefecture (He was released from jail in Ruhengeri on 23 January 1991 by the A.P.R. and was later murdered abroad by the same A.P.R., a murder carried out by ESO, as was mentioned before). **TAP-043** had to obey these instructions given that Major **LIZINDE** presented himself at the Stadium's security control. The witness immediately understood what would happen next to the latter.

**TAP-043** stated that no type of food or assistance of any kind were given to the refugees gathered in the Stadium. **TAP-043** identified the following high commanders whom he had personally seen crossing the cited Security controls, and who were the coordinators of the military operation carried out in Byumba Stadium:

- **KAYUMBA NYAMWASA**, Head of DMI;
- **RWAHAMA JACKSON MUTABAZI**, Operational Commanding Executor;
- **DAN MUNYUZA**, DMI's Intelligence Officer;
- Doctor **JOSEPH KAREMERA**

**TAP-043** told the Court that he had heard personally, both before and after the seizure of Byumba, **Major General PAUL KAGAME's** specific orders (whose radio code

was "0 BRAVO") to carry out a "screening", a word used internally by the A.P.R. to signify indiscriminate elimination, as explained by the witness. **TAP-043** stated that on some occasions during the war **PAUL KAGAME** would give direct orders to lieutenants. Although in the case of the events previously described the witness had not heard it personally, he had no doubts that the ultimate orders for this operation had come from **PAUL KAGAME** directly.

**TAP-043** described the operation which took place on 23 April 1994 at the Byumba Football Stadium, as follows: Around midnight the soldiers were ordered to surround the Stadium completely. Once the Stadium was surrounded, grenades were thrown onto the interior of the Stadium. Once this stage was over, the soldiers went into the Stadium, firing with machine guns. The attack lasted for several hours and its purpose was to eliminate the displaced, all of them unarmed civilians. Only very few persons survived the attack, which according to **TAP-043**, caused the killing of some soldiers among themselves, as a result of the confusing situation created in the Stadium.

The following morning, according to **TAP-043**, the corpses of the victims were loaded onto lorries by the A.P.R. soldiers. These lorries were subsequently driven to Akagera National Park in order to proceed with the mass incineration of the dead. **TAP-043** stated that **Lieutenant KARAKE KARENZI** was the person most responsible for coordinating the mass incineration of the corpses of the refugees killed in Byumba Stadium and also of the corpses of those who had been killed in other operations carried out in Byumba and in the neighbouring areas.

Considering that the military operation carried out in Byumba Stadium took place on 23 April 1994 and that the alleged disappearance of the priest **JOAQUIM VALLMAJÓ** and other Rwandan priests took place three days later, on 26 April 1994, the witness was questioned about the distance between the Stadium and the place where these priests were staying.

Witness **TAP-043** replied that the priests' residence was quite close, some 800 to 1000 metres from the Stadium, and that he was sure that the priests had been able to hear the massacre being carried out in the Stadium on the night of 23 April. He added that several soldiers of the APR, among them the witness himself, were in this area and had

gone into a place to have some beer where they saw the priests. The witness recalled having seen four Rwandan priests and a white one.

**TAP-043** told the Court what he found out and personally saw with regard to the aforesaid white priest. He stated that he learned from the person responsible for the unit, an A.P.R. sergeant named **DIDIER**, who came from Burundi and whose family name the witness cannot remember, about the orders the same had received from **JAMES RUZIBIZA** (the Company's commanding officer) to kill the priests and to prepare his unit to carry out the murders on the following morning.

However, according to that which **Didier** told witness **TAP-043**, shortly afterwards he was ordered by the same **JAMES RUZIBIZA** to carry out other military operations. Consequently, **Didier's** mission to murder the priests was abandoned.

**TAP-043** reported that which he saw for himself the following day, approximately, around midday: From his position the witness was able to clearly see **RWAHAMA JACKSON MUTABAZI**, accompanied by other A.P.R. soldiers, forcing the white priest into a car which immediately was driven away. **TAP-043** stated that there were no obstacles in his field of vision and that he was as close as necessary to be able to see perfectly what was happening.

Among the pictures shown to **TAP-043**, he recognised without any doubt the white priest who was being referred to in two photographs of priest taken in his later years, confirming that was indeed Priest **JOAQUIM VALLMAJÓ**. The witness was asked whether he could remember the colour or type of vehicle or any other circumstance regarding the car in which **RWAHAMA JACKSON MUTABAZI** forced the Spanish priest into. The witness replied that he could remember it was a blue Mazda.

Next, the witness was shown a photograph attached to page 379 of Proceedings, recognising without any doubt the blue car into which the Spanish priest was forced. **TAP-043** added that the same car had been driven during the following days by the same **RWAHAMA JACKSON MUTABAZI** (the car was belonged to the Diocese Committee and was used by **VALLAMAJÓ** in his activities).

The witness told the Court that although he had seen only **RWAHAMA JACKSON MUTABAZI** together with other APR soldiers forcing the white priest to get into the blue Mazda he immediately understood the purpose of this mission and the results of the same. According to the unofficial information which later came into the witness' knowledge, he learned that both the white priest and the three Rwandan priests had been executed.

**TAP-043** described the two main killing methods used at that time in Byumba, that the soldiers were ordered to employ: Either by means of a rifle or by means of a farming implement called **AGAFUNI**. Despite the fact that the witness was not present at the execution, he stated that he was quite sure that the priests had been executed with the **AGAFUNI** (given that at the time of these events, the soldiers were specifically instructed to spare ammunition). The witness believes they were executed that same day or just after, and subsequently taken to Akagera National Park where their corpses were incinerated, the same as the corpses of the victims of the operations carried out in Byumba on the same days. What is certain is that the four priests have been missing ever since that day and their bodies have not yet been found. Although **TAP-043** did not know the identity of the three Rwandan priests who were also executed, according to the information available, the same were **JOSEPH HITIMANA, FAUSTIN MULINDWA** and **FIDELE MILINDA**.

According to **TAP-043**, the following persons were undoubtedly involved in the disappearance and the killing of the four cited priests:

- **KAYUMBA NYAMWASA**, Head of DMI;
- **RWAHAMA JACKSON MUTABAZI**, DMI's Second in Command;
- **CHARLES MUSITU**, Commanding officer of the 21st Battalion, in charge of taking the priests to the chosen spot.
- **DENYS KARERA**, A.P.R. Political Commissair
- **JOSEPH NZABAMWITA**, a former DMI officer (at present Commanding Officer of the External Security Office-ESO);
- **MBAYIRE ALPHONSE**, deceased;
- **DANY MUYNUSA**, **RWAHAMA JACKSON MUTABAZI** DMI's assistant.

**TAP-043** explained that “once the war had finished” the international community, in his words, became aware of the massacres which had been perpetrated by the A.P.R., and consequently the High Command had ordered the removal of all the corpses which had not been incinerated, those which had been interred in the common graves dug in the places where the massacres had taken place, in order to proceed with the transport of the same to the Akagera National Park where they were to be incinerated.

**TAP-043** stated that in April 1994, the Directorate Military Intelligence-DMI’s priority mission was to kill those considered to be their enemies or potentially dangerous, among the civilian population in general, as well as using preestablished operations. With regard to these operations in Byumba the witness indicated the names of the three DMI persons with most responsibility:

- **KAYUMBA NYAMWASA**, Head of DMI;
- **RWAHAMA JACKSON MUTABAZI**, DMI’s Second in Command, or DMI’s Deputy in Command
- **STEVEN BALINDA**, DMI’s Third in Command.

Before finishing his first statement, **TAP-043**, told of important details regarding some criminal activities carried out by the A.P.R. and the persons responsible for the same which had come directly to his knowledge or which he had learned from reliable sources.

He explained that during 1992 and 1993 many persons and many Hutus were massacred in Byumba (a place almost wholly populated by Hutus) with the objective of making the Tutsi families living in Uganda return to Byumba. According to the witness, this was done repeatedly at various different moments. He referred in particular to the killings perpetrated on 8 February 1993 and the following days in Byumba and its surrounding inhabited areas. At that time the witness was a sergeant serving in the Bravo Battalion which was commanded by **Colonel TWAHIRA DODO**. In this regard, the witness pointed out that these were the tactics employed to intimidate the then President Habyarimana. He explained that following these tactics sometimes uncooperative Tutsis were killed (or Tutsis who belonged to a tribe different to that of **PAUL KAGAME**, the



Mwega tribe, as was the case of the Bagowe Tutsis), blaming the governmental army for these killings, consequently provoking a reaction in order to create the so called "bottleneck" zones.

He also reported other operations involving similar selective killings aimed at provoking a violent reaction from the civilian population, used as a test for other larger military operations, as in the cases of the assassination of politicians or opinion leaders such as **EMANUEL GAPYSI, FELICIEN GATABAZI, GATUMBA, MARTIN BUCYANA, FIDELE RWAMBUKA**, among others. The witness stated that the person with most responsibility for these operations was Senior Officer **KARAKE KARENZI** and **CHARLES NGOMANZIZA**, deceased, a colleague and a friend of the witness. In his second statement given to the Court **TAP-043** extended the information about the above mentioned operations.

Witness **TAP-043** gave his second statement before the Court on 10 December 2007.

The witness continued reporting the events and extended his first statement, especially in that which refers to the massacres carried out as from 8 February 1993 in Byumba and its surrounding inhabited areas, perpetrated by the Bravo Bataillon to which he belonged at that time. He specifically referred to the massacres carried out in Ngarama, Nyagahita and Kigasa, situated in the Northwestern area of Rwanda, inhabited exclusively by persons who belonged to the Hutu ethnic group.

According to **TAP-043**, the political military purpose of these operations was "to kill everybody", as ordered by the Commanding Officer of High Command (COHC) **Major General PAUL KAGAME**, by hierarchical order, to the Commanding Officer of the Bravo Bataillon **Colonel TWAHIRWA DODO** (previously mentioned by **TAP-043**) to **Colonel JOHN BAGABO**, to the third person in charge of these operations, Operation Training Officer -O.T.O. who also served in the Bravo Batallion **KADAFI KAZINTWALI**, down to **Intelligence Officer I.O. GACINYA RUGUMYA** (to whom, among others, **TAP-038** referred).

According to **TAP-043** these operations were used to decimate and to eliminate completely the Hutu civilian population (as previously reported by witness **MARIE**

**BEATRICE UMUTESI** whose family members were murdered). The land and the belongings of these civilians were looted by the A.P.R. soldiers or F.P.R. members and also by the Tutsi refugees returning from Uganda. **TAP-043** stated that each Company had to bury the dead it had caused, recalling that his Company had interred some 200 to 300 persons.

He continued his statement referring to his specific knowledge regarding the organized violent murder perpetrated on 8 May 1993 (a non declared war period and just before the signing of the the Arusha Peace Agreements) of an important Rwandan politician **EMMANUEL GAPYSI**, leader of Mouvement Democratique Républicain – MDR (The party opposed to President Habyarimana) and leader of the Forum for Peace and Democracy, an political integrating platform. Irrespective of the irrelevance in criminal law of the real or supposedly actual reasons which led the persons responsible to perpetrate the above mentioned murder, **TAP-043** pointed out that **EMMANUEL GAPYSI** had initially been well regarded by the F.P.R./A.P.R for his strong opposition to President Habyarimana and his regime, a position which fitted with the group's with purposes. However, soon after he became considered as an enemy of the A.P.R./F.P.R. given his political position which was against seizing power by force and at any price (as defended by the A.P.R./F.P.R. leaders).

Although **TAP-043** did not explain the specific preparation details for killing **EMMANUEL GAPYSI**, (since this was not usually done among the A.P.R.), he did inform about the persons and the structure used by the A.P.R./F.P.R. for carrying out his violent death, since one of the executors, **CHARLES NGOMANZIZA**, was a childhood friend of the witness and they remained good friends.

Charles Negomanziza was born in Guikondo, Kigali capital, and was a sub lieutenant serving in the A.P.R. Third Batallion. He died in the middle of 1994, seemingly caused by "friendly fire". Before he died he had told the witness that "The Tecniciens", (the name also given to the Network commando which was already mentioned by **TAP-003**) was put in charge of ending **GAPYSI's** life. **CHARLES NGOMANZIZA** told the witness that besides himself others had participated in **GAPYSI's** violent death, such as Sergeant **DAN NDARUHUTSE** (also deceased in 2001), Sergeant **MUGISHA**, a.k.a. "interahamwe" (a soldier serving in the High Command who was known by the

previously mentioned name because he organized the killing of Tutsis who were considered to be A.P.R./F.P.R.'s "enemies", so that the violent Hutu extremist group, the "Interahamwe" would be blamed for the killing), and Captain HUBERT KAMUGISHA.

According to the same TAP-043 this operation was coordinated by **KARAKE KARENZI**, a Lieutenant at that time (Senior Officer – S.O. of the A.P.R) and by **Lieutenant Colonel CHARLES KAYONGA** (Third Battalion's Commanding Officer and a member of the Network Commando) under the orders of **Major General PAUL KAGAME** (as in any strategic operations given that the decision could not have been made by the two officers mentioned alone).

TAP-043 stated that the same commando and the same persons, together with other soldiers, organized the murders of some relevant politicians, such as **FELLICIEN GATABAZI's** (the founder and President of the Social Democratic Party, a party also opposed to Habyarimana's regime) at the beginning of 1994, namely, on 21 February 1994. The witness mentioned the following persons as directly responsible for the above mentioned murder: Captain HUBERT KAMUGISHA, **Captain GODEFROID NTUKAYAJEMO** and **DIDIER MAZIMPAKA**, besides **Lieutenant Colonel KARAKE KARENZI**, and **Lieutenant Colonel CHARLES KAYONGA**.

TAP-043 pointed out that after **GATABAZI's** death, "les Techniciens" (Network Commando members) killed a Tutsi woman called EMERITA who worked as a taxi driver in Kigali who apparently had seen or heard some inconvenient information about **GATABAZI's** death. They blamed the deaths, including the taxi driver's, as they had done on other occasions, on the "interahamwes", when these murders had actually been committed by relevant members of the Network Commando.

With regard to **Lieutenant Colonel KARAKE KARENZI** further information was given by the witness. **Karake Karenzi** was **PAUL KAGAME's** field assistant during the war and, as soon as the war finished, he was appointed Chief of the Directorate Military Intelligence –DMI. in July 1994 (replacing **KAYUMBA NYAMWASA** who was appointed the Gendarmerie's Chief of General Staff and, subsequently, the A.P.R. Chief of General Staff).

**TAP-043** points out that he is sure that **Lieutenant Colonel KARAKE KARENZI**, in his capacity as Supreme Chief of the military intelligence services from July 1994 to March 1997, knew of and was in agreement with the massacres carried out against the civilian population after the war, throughout 1994 and 1995, as well as the massacres of the civilian inhabitants of the areas of Ruhengeri, Gisenyi and Cyangugu at the end of 1996 and the first three months of 1997 (therefore he was aware of the death of 4 U.N. observers on 11 January 1997 in Gicye; the death of the Spanish members of the organization Médicos del Mundo; the bullet wounds inflicted on a U.S.A. national on 18 January 1997 in Ruhengeri; the death of the Canadian national Guy Pinard on 18 January 1997 in Kampanga; the death of five Observers Mission agents from the U.N. High Commission for Human Rights (HRFOR) on 4 February 1997 in Karengera/Cyangugu; the killing perpetrated in Ruhengeri Stadium on 2 and 3 March 1997). **Lieutenant Colonel KARAKE KARENZI** was also aware of the systematically prepared massacres of civilians, mainly Hutus, in strategic places such as Ruhengeri, Gisenyi and Cyangugu during the first three months of 1997.

**TAP-043** continued his statement referring to the violent deaths of the bishops and members of the clergy in Gakirazo at the beginning of June 1994. He stated his two sources of information regarding these events.

On the one hand, his sister (hereinafter designated as **TAP-AAA**) who besides being present when the events took place had also lost her own child (**TAP-043**'s nephew), as will be seen below.

On the other hand, **TAP-043** carried out his own discrete investigation among the A.P.R. members (discretely carried out since he wanted to find out about his own nephew's death and also because he did not want to risk his own life, given what he knew regarding the elimination of persons considered as enemies carried out by the A.P.R.).

The last piece of information about these events came from an A.P.R. officer (an officer who served in the 157th Battalion and was put in charge of the operation. At present

this officer is a refugee in Uganda who fears for his own life and will be hereinafter designated as **TAP-BBB**)

**TAP-043** explained that at the beginning of June 1994, still during the period of the "official" war, the 157th Mobile Battalion, under the command of Commanding Officer Colonel **FRED IBINGIRA**, surrounded and seized Kabgayi, near Gakurazo (a Central Rwandan area which belonged to the Gitarama Prefecture, Southeast of Mugina, the area where the Spanish priest **ISIDRO UZCUDUN** was serving at that time, as has already been stated by witness **TAP-038**)

After the military seizure of Kabgayi, the A.P.R. forces warned **Commanding Officer FRED IBINGIRA** that among the thousands of persons who were gathered in this place there were also three high ecclesiastic figures accompanied by various priests. **TAP-043** explained that **Colonel Fred Ibingira** decided to separate the above mentioned bishops and priests from the rest of the civilians and wait for specific instructions referring to these "enemies".

After moving the same to various places for alleged security reasons and inviting them to collect their belongings also for security reasons, the bishops and the priests were taken some 3 km from Kabagayi, namely to Gakurazo where the Josefite Brothers' Headquarters were located. **TAP-043**'s sister and nephew, among other persons, had voluntarily sheltered in the aforesaid headquarters looking for their own protection and security.

**TAP-043** gave the names of the three bishops who were at the above mentioned Josefite Brothers' premises: **VICENT NSENGIYUMVA** (Archbishop of Kigali) **THADEE NSENG** (Bishop of Kabayi) and **JOSEPH RUZINDANA** (Bishop of Byumba). As for the priests, **TAP-043** recalls two in particular: **INNOCENT GASABWOOYA**, (the former General Vicar of Kamony Diocese) an excellent Hutu priest and a good friend of **TAP-043**'s family and **TAP-AAA** and **JEAN BAPTISTE NSINGA**, who was also a Tutsi priest whom the witness remembered as the Father Superior of the Josefite Brothers (Brothers of Saint Joseph).

According to that which **TAP-AAA** told her brother, the witness **TAP-043**, at some point during the evening of 5 June 1994 several persons were together in a room, **INNOCENT GASABWOYA**, among them. The 8 year old son of **TAP-AAA**, **RICHARD SHEJA**, was playing with **Innocent Gasabwoya** when suddenly an unidentified soldier came into the room, asked the latter to follow him to another room and told the child to stay behind. As the child refused to leave the priest, they were both taken away by the soldier.

Although **TAP-043** does not know the exact day and time, **TAP-BBB** learned that **Colonel FRED IBINGIRA** informed **Major General PAUL KAGAME** of the situation and asked the latter what he should do with the bishops and the priests (probably informing Kagame that there were two Tutsis among the same). The reply Ibingira received was that he was to kill them all, irrespective of their ethnic group (as will be seen below these orders were ratified by witness **TAP-002** who had personally heard the same because he was standing next to **PAUL KAGAME** at the moment they were talking on the radio).

**TAP-043** described that the bishops and the priests were brought together in a room and were all shot immediately, including his own nephew **RICHARD SHEJA**. **TAP-043** identified two of the persons who fired against the group: **Lieutenant WILSON GABONZIZA** and **Corporal SAMUEL KARENZEZI**, a.k.a. "VIKI". He also identified the commanding officers who participated directly in this operation and pointed out in hierarchical order, the following persons:

- **Colonel FRED IBINGIRA**, Commanding Officer of 157th Mobile Batallion, under the strict orders of **Major General PAUL KAGAME**;
- **Colonel ERIK MUROKORE**, Deputy Commadning Officer of 157th Mobile Batallion;
- **Captain WILSON GUMISIRIZA**, Intelligence Officer (I.O.) of 157th Mobile Batallion;
- **Captain WILLY BAGABE**, Deputy Intelligence Officer (I.O.) of 157th , Mobile Batallion.

Apparently, once the group had been fired at with machine guns they realised they had also killed **RICHARD**. As learned by witness **TAP-043**, the A.P.R. officers had an argument about whether they should kill **Richard's** mother or not (**TAP-AAA**), given the risk of her disclosing the events (we point out that **TAP-AAA's** husband, who belonged to the Tutsi ethnic group, was an important FPR collaborator). The A.P.R. officers told **TAP-AAA** that they had killed her son by mistake. Seemingly, later the DMI had wanted to compensate her, threatening her at the same time in order to secure her silence about the murders.

Regarding the year 1994, **TAP-043** extended and specified some of the crimes he had referred to in his first statement which were perpetrated during that year. He specifically referred to the Simba Bataillon (Lion Batallion as translated from Swahili by the witness), a military unit formed by the Instructors of the Training Wing, created especially to attack and to kill the civilian population of Byumba and its surrounding area. He specifically referred to two officers responsible for this unit, who stood out for their numerous operations in the above mentioned area:

**DAN MUNYUSA**, a Training Wing Intelligence Officer who also belonged to the Centre d'Entrainement situated in Akagera Park, and a DMI member (to whom several protected witnesses have referred) who participated, among other activities, in the massacre carried out at Byumba Stadium on 23 February 1994 (previously described); in the massacre of Ecole Social du Bon Conseil in Buymba, on 24 April 1994 and Byhambe School Centre in Byumba on 26 April 1994 (described in page no. 91 of Proceedings), together with **RWAHAMA JACKSON MUTABAZI** (as has been confirmed and extended by **TAP-002**) in systematic massacres of civilians in Giti (see map, Southeast of Byumba) between the months of April and June 1994, as well as in the selective murder of young soldiers recruited by the APR in the Centre d'Entrainement, young Hutu recruits considered as the enemy's accomplices.

Furthermore, **Witness TAP-043** referred to **DAN MUNYUZA's** participation in various attacks on the refugee camps of Kivu-North and Kivu-South, and Kisangani and various selective murders, all perpetrated in Zaire as from 1996. He also pointed out the name of Colonel **PATRICK NYAMBUMBA** regarding the massacres carried out, above all, in 1994 on Murambi, Kizimbo and Kigali Rural.

In addition, **TAP-043** explained that he had direct knowledge of the events which occurred the day of the presidential attack, that is on 6 April 1996. Although these events are being investigated by the French Courts, as was previously stated, the Court shall refer to the brief summary made by the witness since the same will confirm up to a certain point the prima facie evidence pointing to the responsibility of some of the A.P.R./F.P.R. high commanding officers.

**Witness TAP-043** pointed out he was present in the High Command on the evening of 6 April 1994. He explained that at that time the A.P.R. General Headquarters were situated in Mulindi and that **Major General PAUL KAGAME's** Personal Guard was posted at the headquarters as well as the F.P.R.'s top civilian political officials such as, for instance, the P.M.M. –Political Mass Mobilization, Tite Rutaremara, Director of the F.P.R. Political Committee, and Pasteur Bizimungu, the future President.

He explained that on the same 6 April 1994 there were some 60 High Command officers in a room known as "Arusha" (key place for political meetings) watching an African Cup football match between Zambia and Mali (Semi-final), remarking the absence of **JAMES KABAREBE** who was not there and had been absent during the day. **Kabarebe** was in a place known as "Sign Office". Half way through the match, **JAMES KABAREBE**, without wearing a hat, burst into the room, (something which in different circumstances would have been considered as serious breach of discipline) rushed to greet his Superior Chief **PAUL KAGAME** and without uttering a word, showed the latter the palm of his hand. **TAP- 043** was standing nearby, some 6 to 7 metres. **PAUL KAGAME**, left the room immediately, without saying anything, and was followed by the others. Although the witness at that time did not know what was happening, a friend of his, Lieutenant Rodi, told him that he had seen with his own eyes the sign of the cross drawn in **JAMES KABAREBE's** hand, the hand the latter had shown to **PAUL KAGAME**.

**TAP-043** confirmed that the military units were on "Stand by Class I", that is to say, they were ready for military action. He pointed out the first Battalion that was to attack the governmental army positions (FAR) was specifically the 157th Battalion which also attacked the civilian population all way from Byumba to Gitarama. This batallion was lead by **Colonel FREDI IBINGIRA** was joined later by other batallions heading from



North to South which confirmed that military operations had been previously arranged and prepared to be carried out just after the presidential attack (coinciding with that which was fully described by TAP-003)

Next, TAP-043 reported in full detail some military operations which were ordered directly by Major General PAUL KAGAME which he had witnessed himself. He told the Court that he had personally heard the military instructions from PAUL KAGAME by radio to JAMES KABAREBE. The latter and the witness were serving together in the Heavy Artillery Unit at the end of April beginning of May 1994 located in the city of Byumba. He pointed out that the radio code for PAUL KAGAME was 0.BRAVO (0.B) and JAMES KABAREBE's was 10.Hotel (10.H). Witness TAP-043 had heard with his own ears PAUL KAGAME ordering the "screening" (referring to cleansing all the civilian population) of the city of Byumba, bearing in mind that almost all the inhabitants of this city belonged to the Hutu ethnic group).

In addition, at the end of June 1994 he was also a direct witness of PAUL KAGAME's orders, given by radio, to JAMES KABAREBE. At that time the witness was still serving in the Heavy Artillery Unit, preparing the final seizure of the capital Kigali. The orders were to fire with heavy artillery against the civilian population of Kigali, indicating as the specific targets the market and churches where the majority of refugees were sheltering. (the armament used had been delivered by Uganda, namely 122 Howtzer canons and 122 Guns, and also 76 mm, 120 mm, 107/Katiuska and 14 mm).

The witness compared these two military orders which were carried out by JAMES KABAREBE to other military operations which were carried as a result of receiving general orders which did not need the direct approval or the direct instructions from PAUL KAGAME (as for instance, during the seizing of Kanombe International Airport (Kigali) the massacre of the civilian population which was fleeing to Gikomero without knowing that JAMES KABAREBE was precisely in that place. In this case KABAREBE did not need any instructions from his military superiors, since general instructions had already been given to this effect).

Finally, TAP-043 referred to the two wars in Zaire/D.R. of Congo, that is in 1996-1997 and 1998 onwards. First he stated clearly and with certainty that the leadership in both

wars was in the hands of the A.P.R./F.P.R., although in each case some type of cover was used, explaining that the number of Congolese participants had been very small and that they had always acted under the orders of Rwandan members of the the A.P.R.

After a brief summary about the principal batallions involved in the operations in the D. R.C and the persons responsible for the same, the witness pointed out the two main objectives of these wars: Looting of property and belongings and the mass killing of Rwandan refugees in first place and secondly the killing of Congolese civilians in the key areas of natural resources. Both objectives involved military operations of different scales. He mentioned **JAMES KABAREBE**, in this case in his capacity as Commanding Officer of the A.P.R. Batallions in Zaire/D.R.of Congo, as the highest ranking officer acting under the direct orders of **Major General PAUL KAGAME**, both of them the persons with most responsibility for the macro military operations carried out in this territory.

**TAP-043** stated that the Directorate Military Intelligence was the principal organizer and executor of the pillage carried out, involving both money and minerals, and also other valuable natural resources. He added that the proceeds of pillage in Zaire/D.R.C. was delivered to the DMI headquarters. The witness referred to the relevant DMI members who had participated both in the systematic looting of property and in the above mentioned killings: **KARAKE KARENZI**, in his capacity as Chief of DMI until March 1997, **DAN MUNYUZA** and **JACK NZIZA** (although no specific details were given by this witness, the information available points to the responsibility of the latter for the massacres perpetrated in Shabunda, Kisangani and Maniema from April to July 1997), in their capacity of important DMI members also outposted in Zaire/D.R.of Congo to carry out special operations.

It needs to be pointed out that both **JAMES KABAREBE** and **DAN MUNYUZA** and **JACK NZIZA** have been identified by the United Nations Experts Panel as having been involved in pillage in the Democratic Republic of Congo. They were both included in the lists of the Annexes of the two U.N. Reports presented in this case, Report S/2001/357 and Report S/2002/1146.

**TWENTY-FIRST.** Witness **TAP-018** gave his statement before the Court on 2 October 2007.

**TAP-018** centred his statement on his long journey as a refugee in Zaire, mainly during 1996 and 1997 and his forced return to Rwanda. As in the case of hundreds of thousands of Rwandans, he took refuge in neighbouring Zaire after the presidential attack and the violent events which followed the same. Similarly to witness **BEATRICE UMUTESI**, **TAP-018** was in the city of Bukavu when the same was attacked by Rwandan soldiers (as was stated by some witnesses belonging to the A.P.R., the attack was carried out by the 101st Battalion, lead by Colonel **ALEX KAGAME**). As in the case of thousands of refugees, he had fled from the refugee camps situated in Eastern Zaire heading West. The witness told of both the return to Rwanda of a certain number of refugees and the massacres carried out in the various refugee camps and on the escape routes, as the survivors arrived at the place where **TAP-018** was staying.

**TAP-018** told the Court that from the very beginning of the events many refugees did not trust ACNUR and **SADAKO OGATA**, Acnur's High Commissioner for Refugees, since the latter thanked the "rebels" (Rwandan soldiers of the A.P.R. and banyamulenges) for their "efforts" in the mass repatriation of refugees which from the very beginning had not been a voluntary repatriation in many cases.

He centred his statement on the events of Tingi Tingi Camp where he arrived in December 1996. He told the Court that he was chosen by the refugees as one of the three persons responsible in that Camp. He was appointed Secretary (after the President and Vice-president). He confirmed the existence of reconnaissance flights. As a representative of Tingi Tingi Camp he participated in the Delegation which received **EMMA BONINO** (in her capacity as European Commissioner for E.U. Humanitarian Action).

He explained that the visit caused relief since it served to recognise that they existed and he compared Ms. Bonino's visit to the visit paid later by Ms. Sadako Ogata. The witness stated that he had decided not to be present as Secretary during the latter's visit and he pointed out that Ms Ogata received a cold welcome from many of the refugees who reproached ACNUR and their highest representative for having failed to protect

them. During her visit to Tingi Tingi, ACNUR's highest representative offered the refugees the option of repatriation, which was considered the best option for the same and the only way ACNUR could help them (only to return to the country).

The witness described the deplorable conditions in Tingi Tingi Camp where many people died, explaining that many refugees had fled Tingi Tingi as a result of the rebels' advance, the attacks made on the camp and the abandonment by the humanitarian organizations. Witness **TAP-018** left the camp, as did many other refugees, at the end of February 1997.

**TAP-018** stated he had met both **TAP-041** and **MARIE BEATRICE UMUTESI** during his journey to escape. He gave a short summary of the massacres which were carried out at the river Lobutu and in Lobotu Camp where many refugees were sheltering.

Next, he described the events that occurred in KASESE-2 Camp (a refugee camp situated in the axis between Ubundu and Kisangani taking advantage of an existing railway line, as has been documented by the document shown and the statement given by witness **HUBERT SAUPER**).

The witness estimates that between KASESE-1 and KASESE-2, closer to Kisangani, there must have been some 100.000 refugees. He explained he had arrived at this Camp in April 1997. The Rwandan soldiers arrived at Kasese Camp on 22 April and attacked it with heavy armament and automatic rifles, causing the death of thousands of persons (the witness could not describe at that moment all the details of some of the most dramatic events he had experienced). **TAP-018** fled to the forest where he hid for 10 days.

**TAP-018** went back to KASESE-2 Camp after surviving in the forest for the days mentioned above. He told the Court that a few days later ACNUR started the forced repatriation of the refugees who had survived and had decided to go back to the camp. He gave a short description of his journey through Kisangani up to Kigali. As soon as he arrived in Rwanda he was immediately put in jail. He stated he was in various Rwandan detention centres until the moment of his release, thanks to a Tutsi family who

informed the authorities that between April and July 1994 the witness had saved the lives of some Tutsis.

**TWENTY-SECOND.**      Witness TAP-013 gave her statement before the Court on 2 October 2007.

Just like hundreds of thousands of Rwandans he took refuge in neighbouring Zaire after the presidential attack and the violent events which followed the same. He fled in July 1994, coinciding with the violent seizure of power by the A.P.R./F.P.R. **TAP-013** told the Court she had stayed in Mugunga Camp until September 1996 and later on 2 November 1996, just before the attack on Kashusha Refugee Camp where 50.000 persons were living, she was forced to escape given the expected attack. The witness learned that heavy armament had been used in this attack and as far as she knows the nearby camps of Inera and Adi-Kivu were also attacked with heavy armament.

Next, she summarised her flight from the area of Bukavu which ended up in Wedji-Secli, near Mbandaka. She walked 2.000 km in extreme conditions, from the East to West. She survived in spite of suffering real hardship of all types, military attacks included, until the end of her journey. In short the most important parts of her journey were the following: From Kashusha to Nyambiwe, crossing Shanmi, Lumbishi, Walikale, Tingi Tingi (heading for Kisangani but changing route before arriving), and later crossing Ikela and Bokoungu, arriving exhausted to Wendji-Secli where she coincided with **TAP-041**.

The witness lost two of her brothers in Lumbishi: **PAUL TWAGIRAMUNGU** and **JOSEPH BINEMINANA**. Similarly to that which was stated previously by the witnesses who reported similar events, **TAP-013** stated that the soldiers who attacked them spoke Kinyarwanda among themselves, a language which is not spoken in Zaire and is only spoken in Rwanda and therefore she had arrived at the conclusion that they were being chased by A.P.R./F.P.R. soldiers. Since the witness had been in Tingi Tingi she gave her opinion regarding the events that had occurred in this Camp and confirmed that which was stated above by witnesses **MARIE BEATRICE UMUTESI, TAP-041** and **TAP-018**. The witness confirmed as well **EMMA BONINO**'s visit to this camp and the visit paid later by **SDADAKO OGATA**.

TAP-013 described the attack on Wendji-Secli in May 1997. Although the international community and the majority of the organizations thought there were no refugees left, the truth is that many of these had arrived in Wendji-Secli and Mbandaka in extreme conditions and once there, the refugees were attacked again by soldiers using automatic rifles which caused the death of many of them (The witness' older sister TERESA MUKAMUYEMA died in Sendji-Secli).

**TWENTY-THIRD.**            Witness TAP-002 gave his statement before the Court on 11 December 2007.

TAP-002 an A.P.R. officer who belonged to the Tutsi ethnic group, born in Mbarara (Uganda), replying to the questions asked by the Prosecution Ministry and the Counsel representing the other parties in this case (Private Accusation and Class action), showed his sound knowledge of the criminal acts perpetrated in Rwanda and in particular during the period between 1988 when he joined the National Resistance Army-NRA (Ugandan Army) and later in March 1991 when he became a member of the A.P.R. and was attached to its High Command and until November 2001, the date he escaped to Uganda to exile, because he found out through a colleague of his from the A.P.R. High Command that he was going to be killed.

TAP-002 ratified before the Court, as other witnesses did, recognising the signature on all its pages as his own signature, an original document containing his written testimony which corresponds to another original document deposited, as stated by the witness, in a closed envelope at the Notary of Barcelona, Mr. Lorenzo P. Valverde García, registered in his protocol with number 1091, dated 28 May 2004.

TAP-002 then described how the High Command and Major General PAUL KAGAME's Presidential Guard were formed. His description was similar to TAP-043's. He pointed out that he was one of the eleven (11) officers of a selected military group who were directly in charge of PAUL KAGAME's personal security and therefore he had accompanied the latter on many military operations carried out during various periods.

Bearing in mind that he belonged to the military intelligence circle which was closest to **Major General PAUL KAGAME, C.H.C.**, he had carried out numerous intelligence tasks with the purpose of being permanently informed of key actions carried out by the A.P.R./F.P.R in various places in Rwanda and later in Zaire/D.R.C. Consequently, the witness had first hand information about key criminal acts perpetrated against the expatriates, against the Rwandan civilian population and later against Congolese civilians, or he learned about the same through the officers and soldiers who participated directly in these operations. As will be described below, he was also aware of criminal acts of large scale pillage.

**TAP-002** referred to what he knew about the abduction and subsequent killing of six priests and/or priests's assistants in Byumba on April 1994, among whom was **JOAQUIM VALLMAJO**. He separated the information he had obtained directly from that which had come to his knowledge indirectly. Regarding that which he witnessed directly he pointed out two specific events:

Firstly, the message sent by **Colonel CHARLES MUSITU**, the 21st Battalion Commanding Officer (operating in Byumba, confirming **TAP-043's** statement) to the High Command through "Radio ManPack", informing that "six enemies" had been arrested and that they had been taken to the Directorate Military Intelligence- DMI Headquarters by the A.P.R. soldiers. (At that time the headquarters were situated in the city of Byumba). **TAP-002** had personally read the contents of this message at around 14:00 hours in the High Command Headquarters.

Secondly, he described his own visit to Byumba in pursuance of his mission as a High Command Intelligence Officer, with the purpose of obtaining direct information *in situ* regarding the contents of the above mentioned message received at the Headquarters so that the witness could inform about the circumstances to **Chairman High Command C.H.C. PAUL KAGAME** if he so requested.

**TAP-002** told the Court he had gone to Byumba late in the evening to meet **Colonel RWAHAMA JACKSON MUTABAZI** (**TAP-002** explained that if it were not for his work as an Intelligence Officer attached to the High Command, a 2nd. Lieutenant, as he was, would never dare to address himself directly to a Colonel who would never have

received him). **Colonel Jackson Mutabazi** informed him and showed him the six persons arrested, classifying the same as “the enemies”, and did not say anything else.

TAP-002 explained that he had seen with his own eyes **Colonel RWAHAMA JACKSON MUTABAZI** striking the white priest’s face and shouting at him, saying literally “*You will never inform anybody again, Vallumayó...*” He stated that he did not know the white priest’s name and that he had never heard it before. It was in these circumstances that he first heard this name which he thought sounded as he pronounced it before (given that the name was not familiar to the witness, that is to say it was neither a Rwandan or an African name).

Next, the witness was shown the photographs which have been presented in this case. He easily recognised the white priest who had been arrested and was in the hands of **Colonel RWAHAMA JACKSON MUTABAZI**, who had slapped the priest on the face. He also explained that the six arrested persons were in a terrible state, they looked exhausted, dirty and had no shoes on. He told the Court that he had come back to the A.P.R. Headquarters with the absolute certainty of what was going to happen following his visit as an intelligence officer: Basically these “enemies” would be tortured, then murdered and their corpses subsequently interred in a common grave or burnt.

Although TAP-002 had only met **Colonel RWAHAMA JACKSON MUTABAZI** for the purpose above mentioned, he gave the names of the following persons who, according to his knowledge and his functions as an intelligence officer, one way or other would have been involved in planning and executing the murder of **JOAQUIM VALLAMAJÓ** and of the Rwandan priests and their assistants. (as can be seen these names coincide with those given by other witnesses, particularly, TAP-043 and TAP-006):

- **General KAYUMBA NYAMWASA**, identified by TAP-002 as the Second in command after the High Command Chairman, **Major General PAUL KAGAME**.
- **Colonel RWAHAMA JACKSON MUTABAZI**, identified by TAP-002 as the Second in rank in this case;



- **Colonel DANY MUNYUZA**, identified by **TAP-002** as the Third in rank in this case;
- **Major or Captain DENYS KARERA**;
- **Major or Captain JOSEPH NZABAMWITA** (who would later become Lieutenant Colonel)
- **Major or Captain MBAYRE ALPHONSE**, deceased.

Finalizing his testimony regarding the death of **JOAQUIM VALLMAJÓ** and the other Rwandan priests's, **TAP-002** pointed out that three days after his visit to the DMI Headquarters in Byumba described above, his Byumba DMI colleague, 2nd. Lieutenant **DANIEL NDARUHUTSE** confirmed that the priests had been murdered somewhere on the outskirts of Byumba.

Although his colleague had not explained anything else about the murders, witness **TAP-002** is convinced that in this particular case, considering that a white man was involved, their corpses must have been incinerated with petrol in order to eliminate any evidence. **JOAQUIM VALLAMAJÓ**, **JOSEPH HITIMANA**, **FAUSTIN MULINDWA** and **FIDELE MILINDA** have been missing for 14 years and their corpses have never been found.

The witness was shown Page no. 379 of Proceedings and he stated that he recognizes the blue car in the photograph as the car which **Colonel RWAHAMA JACKSON MUTABAZI** drove for a few days.

Next, **TAP-002** told the Court how he had found out about the death of the four Marista brothers in the East of Zaire. He stated that although he had not witnessed the events directly he had learned indirectly about them given his function as an Intelligence Officer.

**TAP-002** was informed by **General KAYUMBA NYAMWASA** (once again we have a high ranking officer informing an I.O. attached to the High Command) about four brothers or priests who "*had been murdered because they were causing problems regarding the operations in Congo*". However, the witness learned the details of this

military operation through **Captain JOAQUIM HABIMANA** who was commanding a DMI section formed by eleven (11) persons operating in Zaire. According to that which TAP-002 found out, **Captain JOAQUIM HABIMANA** was the commanding officer in charge of the group who executed the 4 Marista brothers who, apparently, had been separated into groups of two, had been tortured before being violently killed at two different moments and then their corpses had been thrown into a septic tank.

Although witness TAP-002 was not present *in situ*, he was shown page 409 of Proceedings. The witness stated that the septic tank he was being shown was compatible with the short description given to him by **Captain JOAQUIM HABIMANA** regarding the place into which the corpses of the Spanish Marista brothers had been thrown.

According to TAP-002, **Captain JOAQUIM HABIMANA** acted within the framework of his functions as an officer attached to the DMI and with the support of the 157th Mobile Battalion based in Bukavu (a key place situated in Sud-Kivu, Zaire in those days and now the Democratic Republic of Congo). Based on what he learned from the above mentioned Captain and on the military intelligence information available to him, the following persons were responsible for the deaths of the 4 Spanish Marista brothers:

- **Colonel CEASER KAYIZARI**, Commanding Officer of 157th Mobile Battalion;
- **Lieutenant Colonel ERIK MUROKORE**, 157th Mobile Battalion Commanding Officer Deputy;

These two officers who would never have carried out this type of operation without previous instruction or authorization. They firstly would have asked for the pertinent authorization and then would have informed the following persons:

- **Lieutenant Colonel KARAKE KARENZI**, identified by TAP-002 as the person with most responsibility in the DMI and a superior of **Captain JOAQUIM HABIMANA** (chief of the DMI Section and the person responsible for the operation)

- **General KAYUMBA NYAMWASA**, identified by **TAP-002** as the Commanding Officer of all the military units of the A.P.R. in Zaire/D.R.of Congo;
- These three officers are directly under the order of C.H.C. **Major General PAUL KAGAME**.

**TAP-002** told the Court that the same **Captain JOAQUIM HABIMANA** informed him about the operation carried out against members of the clergy in Kalima (a massacre perpetrated on 25 February 1997). This Captain was leading a DMI Command, this time under the direct orders of **Lieutenant Colonel ALEX KAGAME**, 101st Battalion Commanding Officer and of **Lieutenant Colonel KARAKE KARENZI** in his capacity as the person with most responsibility within the DMI and as a superior of the Captain and, ultimately under the orders of **Major General PAUL KAGAME**.

**TAP-002** explained that **Captain JOAQUIM HABIMANA** was arrested shortly after this operation since it became known that one of the priests had escaped from this massacre. The witness stated that the Captain had complained about his arrest to the witness.

**TAP-002** confirmed in his statement given before the Court, the military operations carried out by the A.P.R/F.P.R against the civilian population belonging to the Hutu ethnic group in strategic places such as Ruhengeri, Gisenyi and Cyangugu during the years of 1997 and 1998 (Three Spanish cooperators of the organization Médicos del Mundo were murdered in one of these operations). As a military intelligence officer **TAP-002** was in a position to describe which strategy was used and who were the persons in charge of carrying out the same.

He explained that special operations of the A.P.R/F.P.R were carried out in Ruhengeri, led by **Captain JUSTUS MAJYAMBERE** (Intelligence Officer, I.O. of the Ruhengeri Military Brigade) and **2nd LIEUTENANT EVARISTE KARENZI** (Intelligence Officer, I.O. of the DMI) directly controlled by **General KAYUMBA NYAMWASA**. A highly specialized mixed commando was organized and put in charge of attacking the Hutu civilian population of Ruhengeri. Simulated attacks from "infiltrated Hutus" were

selectively and rapidly carried out, which, in turn, provoked the "necessary" reaction of the regular army who used it as an excuse to "*cleanse the area from rebels or persons who were considered to be enemies*" (identifying in this way the persons who were opposed to F.P.R./A.P.R. objectives).

The officers in charge of the A.P.R. regular Army in Ruhengeri were **Captain KARARA MISINGO** and Lieutenant **ALPHONSE KAJE**. These officers gave specific orders to their soldiers who belonged to the structure parallel to the A.P.R./F.P.R. (usually two sections of the A.P.R./F.P.R. army formed by a total of 20 to 30 soldiers) to "*cleanse the area from the infiltrated*" (causing massacres of 40 to 50 civilians) following the simulated attack by the alleged "*rebels and infiltrated*".

As pointed out by witness **TAP-002**, some of these operations were carried out in Kabere-1, Kabere-2, Nyakinama (as was stated by **TAP-004**, the members of the Spanish organization Médicos del Mundo found out about two of these operations, a circumstance which could have led to their murder), Mukingo, Nyamutera, Gatonde, Ndusu, Cyabingo and other nearby inhabited areas belonging to the Ruhengeri Prefecture. Between 40 to 50 persons were massacred in each of these operations

According to **TAP-002**, the same method was used in the events which took place in Gisenyi Prefecture (situated in the Northeast of Rwanda, North of Lake Kivu next to Zaire). Planned attacks were also carried out on Kanama, Rwerere, Nyanyumba and Mutura, each one causing some fifty deaths. In these cases the person responsible for these special operations was **PETER KALIMBA** (101st Battalion Deputy Commanding Officer), **Captain MATAYO** (Intelligence Officer, I.O. of 101st Battalion of the Gisenyi Brigade) and **Lieutenant FRANK BAKUNZI** (Intelligence Officer of Gisenyi Gendarmerie). The same methods were always used, that is a mixed group led by military members of the structure parallel to the A.P.R./F.P.R. who belonged both to the army and to the police (Gendarmerie). **Lieutenant Colonel GASANA RURARYI** was the person responsible for the operations carried out in Cyangugu Prefecture where the same methods were used.

**TAP-002** stated that within the framework of his intelligence work attached to the High Command, he he was confirmed by the proper **General KAYUMBA NYAMWASA**,

during a meeting held in Cyangugu, that "*the problem had been promptly eliminated*", referring to the elimination of three or four white men in Ruhengeri who seemingly had been talking with survivors of one of the attacks carried out in the area of Ruhengeri.

This operation was well known by some Intelligence Officers situated in the area who knew, as did witness **TAP-002**, that the rumours were immediately communicated to **General KAYUMBA NYAMWASA** who proceeded to order the immediate elimination of the white men by means of the above described method. General Kayumba put **Captain JUSTUS MAJYAMBERE** and **2nd Lieutenant EVARISTE KARENZI** in charge of this operation. This coincides exactly with the direct testimony offered by **TAP-004** regarding the secret meeting which was held and the operation of elimination of the three cooperators of the organization Médicos del Mundo (**MANUEL MADRAZO, FLORS SIRERA and LUIS VALTUEÑA**).

Furthermore, **TAP-002** described the systematic operations of forced disappearances of persons carried out by the A.P.R. mainly during 1994, 1995, 1996 and 1997, although according to the witness the same methods are being used even at present. He described the structure created for this purpose, i.e. firstly soldiers would block the road from Kigali to the West (or the road to Kigali to the East) exactly at the crossroads of two roads, one in the direction of Ruhengeri and the other to Gitarama (both roads heading west). The witness explained that the vehicles arriving at this crossroads were often stopped by the military who were blocking the road. Next, some persons chosen by the military command (generally Hutus, although not exclusively) were taken by force into trucks and driven to the military prison of Kami (a special military prison where the persons considered as enemies were put by the A.P.R./F.P.R. Witness **TAP-038** specifically referred to this prison).

From Kami Prison they were carried in trucks to Nyungwe Forest (See map, this forest is situated in the Southwest of Rwanda) where they were murdered and their corpses subsequently incinerated. According to the witness, Nyungwe Forest was used to massacre previously selected civilians as well as Hutu refugees from Zaire/D.R.C or both during the first Zaire/D.R.C. war (1996-1997) and the second war in this territory (1998 onwards).

The witness gave the names of the following persons who were responsible for the operations carried out in Kami Prison: Lieutenant Colonel **KARAKE KARENZI** until March 1997, and **EPHREM RURANNWA** from that date on, besides Lieutenant **KIBINGO**, at least until 2001.

According to the witness, hundreds of persons were massacred in Nyungwe Forest, most of them belonging to the Hutu ethnic group, but there were also persons of the Tutsi ethnic group murdered because the military high command considered they were opposed to the interests of the A.P.R./F.P.R.

Within his duties as a military intelligence agent attached to the Military High Command, **TAP-002** was aware of the military operations which were carried by the A.P.R. in the country which was then called Zaire and the military instructions given to attack the refugee camps, to kill the refugees living in these camps and to proceed subsequently to the mass incineration of their corpses.

He pointed out that the persons most responsible for these operations which involved systematic and mass attacks on the refugee camps were the following: **JAMES KABAREBE**, in his capacity as Commanding Officer of all the military battalions of the A.P.R. regular army operating in Zaire/D.R.C and **JACK NZIZA**, in his capacity as the person most responsible in the Directorate Military Intelligence in Zaire/D.R.C.

Considering his knowledge of these operations, he was shown a list of persons responsible for the battalions and for military operations enclosed in page 174 of Proceedings. **TAP-002**, based on the information available to the military intelligence, proceeded to confirm the names of the persons responsible for both the units and the operations carried out, the most relevant being the following:

- 21st Battalion led by Major **GASHAYIJA BAGIRIGOMWA**: Attack on Mugunga Camp;
- 5th Battalion led by Captain **RUSAGANWA**: Attack on Kibumba Camp;
- 3rd Battalion, first led by Captain **MUSISI KUGAYA** and afterwards by Major **RUGAMBWA**: Attack on Katale Camp;

- 59th Batallion, led by **Major DAN GAPPFIZI** who commanded operations en route to Kinshasa, passing through Lubutu where systematic massacres were organized against Lubutu Refugee Camp; also through the axis Ubundu-Kisangani where many Rwandan refugees were concentrated;
- 157th Batallion, led by **Colonel CEASER KAYIZARI, Lieutenant Colonel ERICK MUROKORE** and **Lieutenant JOHN BUTERA**, who carried out numerous systematic massacres of Hutu Rwandan refugees and Congolese civilians throughout Bukavu, Numbi, Walikale, Tingi-Tingi, Ubundu, Bokungu, Boende and Mbandaka (inhabited areas and massacres to which the survivors, witnesses **MARIE BEATARICE UMUTESI, TAP-041, TAP-018 and TAP-013** specifically referred in full detail);
- 101st Batallion, led by **Lieutenant Colonel ALEX KAGAME**, the batallion which after attacking the city of Bukavu (where some of the witnesses who have given their statements before the Court were), carried on operating through the axis of the following inhabited areas: Uvila, Isiro, Shabunda, Kalima, Kingurube and Kindu, among others. **Captain JOACHIM HABIMANA** who initially belonged to the 157th Batallion was transferred to the 101st Batallion as an Intelligence Officer, I.O.

◦ The three previously mentioned, that is 101st, 157th and 59th batallions met in Mbandaka and carried out in coordination the systematic massacre of refugees arriving at Wendji-Secli and at Mbandaka, who had fled across the Equatorian Congolese jungle for 2.000 km. Very few refugees escaped this slaughter.

**TAP-002** continued his statement pointing out that, besides the systematic massacres carried out against Hutu Rwandan refugees (and later against Rwandan civilians), the A.P.R., and especially its high ranking military officers, had been involved in systematic pillage. The witness mentioned some acts of pillage he had personally witnessed. He specifically mentioned that half way through 1997 he went to a small airport situated in the heart of the jungle, near Lubumbashi (Southeast of what was Zaire in those days). the witness remained there for a week to observe, in his capacity as an Intelligence Officer, the transport of cans/barrels (one metre tall and some 60 cm. wide, weighing around 50 kg each, approximately) loaded with diamonds, diamonds

which had been looted in Lubumbashi. The flights leaving the aforesaid airport were headed for Kigali, the capital of Rwanda, arriving through the airport of Kanombe. Once the planes landed in Kanombe airport, the cargo was loaded onto trucks and transported to two different premises;

- a) External Security Office-ESO, the governmental offices of "Congo-Desk" based in Kigali (information which coincides with that which is reported in the United Nations Experts Panel Reports regarding the above mentioned pillage);
- b) GOMAIR offices, a company owned in fact by **PAUL KAGAME** which was formally operated by a close friend of his named **FRANCIS KALIMBA**, who was apparently a relative of **PAULS KAGAME's** wife, Mrs. **JANETTE KAGAME** (The company **NEW GOMAIR** is mentioned in the First Report of the United Nation Experts, Page 801 of Proceedings, specifically in paragraph no. 75).

As stated by **TAP-002**, the witness personally saw three of these flights which were loaded with, approximately, 20 of these cans/barrels filled with diamonds, on each flight. The plane was piloted on these three mentioned flights by a Rwandan civilian belonging to the Tutsi ethnic group named **SEVERE**. Such operations as observed by witness **TAP-002**, were carried out under A.P.R. surveillance and were guarded by their officers.

According to the witness, the person responsible for securing the place was Captain **RICHARD GATURAMO**, together with 120 Rwandan soldiers and Tutsis from Zaire (known as Banyamulenges) who had been trained in Rwanda. The operations observed by the witness were controlled and coordinated by the A.P.R. Commanding Officer in Zaire, as this country was then called, **JAMES KABAREBE**.

**TAP-002** confirmed before the Court that during the week the witness was observing the operations above mentioned, the persons who was commanding the pillage operation was **JAMES KABAREBE** who remained at the airport for the whole week.

It is interesting to point out that both the United Nations Experts Panel and other international organizations such as Global Witness, whose Reports are enclosed in



Proceedings, page 908 and following pages, in particular Page 938 "DRC Illicit and conflict diamonds" remarked on the Rwandan export of diamonds during the war although diamonds are not produced in its territory.

A last piece of information important to understand the killings and the pillage of natural resources was given by witness **TAP-002**, when he was specifically asked about this operation carried out near Lubumbashi involving the looting of diamonds. The witness was asked how it could be that such significant looting activities were taking place in a place like Lubumbashi, an area from where the control and influence of the person who figured as the leader of the military rebellion and the supposed high commander of the AFDL, **LAUREN DESIREE KABILA** had originated. **TAP-002**'s reply was clear and straight forward. He stated that **LAUREN DESIREE KABILA** did not in fact have effective military power since he really was under the orders of the A.P.R. Rwandan officer **JAMES KABAREBE** who was the person who had effective control during the first war.

**TAP-002** described other looting operations involving natural resources which he had witnessed directly. He referred namely to a company which dealt in timber that was situated near Kigali (namely in Kiyovu) where all the timber processed came from Zaire in 1996 and 1997. **TAP-002** had seen with his own eyes trucks coming from Zaire arriving at this company, a company which in his precise words "*...was directly under the personal control of KABAREBE...*" (sic)

Another act of war pillage witnessed personally by **TAP-002** was the transport of Zairean cows which were transported during the night from Masisi (situated in the Northeast of D.R.C. near Goma) to Rwanda, using an uncontrolled crossing through Goma airport after Kibumba. **TAP-002** pointed out that he was in Goma in January 1997 and that he had seen that three times a week for a period of three weeks a large number of cows were secretly transported during the night to Rwanda by the A.P.R. soldiers.

Finally, he referred to the events that he did not witness personally, referring among others to two important and systematic looting activities:

- I) He referred to the usual procedure adopted by the soldiers of the A.P.T. anytime a Zairean/Congolese town was seized. This consisted of stealing money from the banks, the facilities where, supposedly, larger amounts of money were stored. The witness pointed out that these operations were commanded by **JAQUES NIZA** (the person responsible for the DMI in the Congo), under the control and coordination of **JAMES KABAREBE**. The procedure used consisted of taking the money from the banks, carrying it to a place under their control in Zaire/Congo and then loading the same onto a plane and flying it to Rwanda. The witness does not know the facilities where the money was finally stored. This information given by the witness corresponds exactly with evidence obtained by the Experts Panel of the United Nations in the matter of exploitation of natural resources in the Democratic Republic of Congo. Namely, Report no. 37 S/2001/357 Paragraph 37 "Mass Scale looting" (Page 793 of Proceedings) referring to the testimony offered to the Experts Panel by a CCD defector who participated in some looting operations "*...As soon as a town was conquered the Rwandan soldiers systematically emptied out the local banks. In many cases they would use CCD soldiers to collect the money while those who were armed would surround the bank...*", giving as an example the Bank of Kisangani, a central bank branch from which "*... Congolese Francs equivalent to an amount between 1 million and 8 million dollars were taken...*" This was taken to the Palm Beach Hotel, the hotel management recalling that "*...bags full of money were stored in one of the hotel rooms. and that during those days armed soldiers who could not speak Lingala (the most commonly spoken Congolese language) guarded the hotel premises*". The Experts Panel end up asking themselves "*...Could such an operation involving a number of armed soldiers be carried out without the knowledge and consent of the highest Rwandan Commander in the Democratic Republic of Congo?*"
- II) Acts of systematic looting of the ore "coltan" (short for Columbum/tantalum) carried out in Bunia (Northeast Congo, Oriental Province) by a company attached to the External Security Office -ESO of the A.P.R. directed by **PATRICK KAREGEYA**. This company carried out

systematic mining operations, extraction of minerals, Columbum/tantalum and its transport to the two places mentioned by the witness ("Congo Desk", the governmental facilities based in Kigali and GOMAIR). The witness learned about these events through GRATIEN NSABIMANA, one of the A.P.R. soldiers who participated in these operations. Once more this corresponds to the evidence collected by the United Nations Experts Panel namely, Report no. 37 S/2001/357 Paragraphs no. 32 and 33 "Mass Scale looting" (Page 792 of Proceedings) referring to the testimony offered to the Experts Panel documenting the systematic looting of columbo/tantalite from SOMINKI (Société Minière et Industrielle du Kivu), specifically those looting activities carried out from November 1998 to April 1999 by the Rwandan forces and their CCD allies involving the removal of Sominki's seven year's worth stock of this mineral, and its transport to Kigali (The Experts Panel pointed out that according to a very reliable source: "*The Rwandans took about about a month to fly this coltan to Kigali...*") The Panel had evidence that CCD alone had removed coltan and cassiterite from Sominki with a total value of US\$ 772.482.

TAP-002 finished his statement referring to his direct knowledge of the criminal acts perpetrated directly by **Major General PAUL KAGAME** or those the latter ordered in the presence of the witness, pointing out two relevant events:

- a) Massacre committed personally by **PAUL KAGAME** in the presence of the witness: TAP-002 described the events which occurred in the middle of May 1994, seemingly May 12, when two military vehicles were on their way to Musha from Byumba (on the road which leaves Byumba towards the Southeast, crossing Rukomo, Kinyami, Muhura, Murambi and Rwamagana. Musha is situated just after Rwamagana and just before Gikoro). The witness explained that they were heading for Musha, near Kigali, where the new military headquarters were based during the war. Both vehicles were occupied by A.P.R. soldiers. **Chairman High Command C.H.C. PAUL KAGAME** was travelling in the second vehicle accompanied, among others, by witness TAP-002 as a member of his personal guard. According to the witness the first vehicle stopped

half way through the journey (near Muhura) to inform by radio to the second vehicle "*there are some interahamwe in front of us*" requesting instructions to deal with the circumstances. The witness told the Court that **PAUL KAGAME** (at that time the rebel leader who commanded the rebel military forces of A.P.R./F.P.R) stepped off the second vehicle, followed immediately by some of his armed guards, among whom the same **TAP-002**, walked towards the first vehicle, got in and directly grabbed the 12,70 mm anti-air machine gun available in this vehicle and, after looking at who were in front of him started firing against these persons without uttering a word. It happened that these persons were unarmed civilians who were on the road and on the side of the road. The witness estimates that as a result of the semi circular burst of shots some 30 to 40 persons must have died, among whom men, women, children and elderly people. According to **TAP-002** after the shooting above mentioned, the convoy followed its route to the cited military headquarters in Musha.

- b) Massacre personally ordered by **PAUL KAGAME** in the presence of the witness. **TAP-002** listened personally to a radio conversation between the **Commanding Officer of the 157th Batallion FRED IBINGIRA** and the **Chairman High Command C.H.C. PAUL KAGAME**. The witness explained that at the beginning of June 1994 **PAUL KAGAME** was at Musha Headquarters and that the witness was with him carrying out his Personal Guard functions. **TAP-002** recalls that one morning **FRED IBINGIRA** had a radio communication with **PAUL KAGAME** (Paul KAGAME's radio code was O.B.) to inform the latter about the detention of the three bishops in Kabgayi and of the other priests who were accompanying him, requesting KAGAME's specific instructions (**TAP-043** described this operation in full detail in his statement before the Court) **TAP-002** was able to hear with his own ears Kagame's words: "*I told you to remove these rubbishes...*", as literally reported to the Court by this witness. Furthermore, besides having heard these military orders, the witness explained that on the following day he confirmed that which he had heard personally -since it was his duty as

an Intelligence Officer of the High Command- through the "Radio Report" which documented in full detail the military operations and the decisions made which was carried out and kept at the Headquarters. These Reports were checked punctually by **PAUL KAGAME** and by other high command officers and military intelligence officers.

### **III. LEGAL ARGUMENTS**

#### **FIRST**

The criminal conducts as described above could constitute the following offences established in the current Penal Code:

#### **A) Offence of Genocide**

##### **Article 607:**

1. Those who, with intent to destroy in whole or in part, a national, ethnic, racial or religious group, perpetrate any of the following acts, shall be punished with the following penalties:
  - 1st. Fifteen to twenty years' imprisonment, if any members of the group were killed. If two or more aggravating circumstances concurred, a penalty in a higher grade shall be imposed.
  - 2nd. Fifteen to twenty years' imprisonment, if any members of the group were sexually assaulted or if any of the injuries established in art. 149 are caused.
  - 3rd. Eight to fifteen years' imprisonment if the group or any of its individuals, were subject to conditions which would jeopardize their lives or seriously damage their health, or when some of the injuries established in art. 150 are caused.

- 4th. The same penalty is imposed if the forced displacement of the group or its members is carried out, if measures are imposed with the intention of destroying the group lifestyle or births within the group, or if individuals are forcibly removed from one group to another.
- 5th. Four to eight years' imprisonment, if any other injuries different to those established in paragraphs 2nd and 3rd of this sub-article 1 are caused.
2. The dissemination, by means of ideas or doctrines negating or justifying the offences specified in sub-article 1, or intending to rehabilitate regimes and institutions and the practices which support the generation of the same, shall be punished with a penalty of one to two years' imprisonment.

#### **B) Offences against humanity**

##### **Article 607 bis:**

1. Those who carry out the acts established below, as part of a general or systematic attack on the civilian population or on a part of the same, shall be punished for the commission of an offence against humanity.  
In any case, it shall be considered as an offence against humanity if any of the following is committed:
  - 1st. By virtue of the victim's belonging to a group or a collective group persecuted for political, racial, national, ethnic, cultural, religious and gender reasons or other universal reasons recognized as unacceptable, according to international law.
  - 2nd. In the context of an institutionalized regime adopted by a social group for the systematic oppression and domination over other(s) racial group(s) and with intent to maintain that regime.
2. Those who commit an offence against humanity shall be punished with the following penalties:

- 1st. Fifteen to twenty years' imprisonment if death of a person is caused.  
If any of the aggravating circumstances established in art. 139 concur, a penalty in a higher grade shall be imposed.
- 2nd. Twelve to fifteen years' imprisonment in the case of rape, and four to six years' imprisonment if any other type of sexual assault is involved.
- 3rd. Twelve to fifteen years' imprisonment, if any of the injuries established in article 149 were caused; and eight to twelve years' imprisonment, if the persons are subject to conditions which would jeopardize their lives or seriously damage their health, or if any of the injuries established in article 150 are caused. Four to eight years imprisonment if any of the injuries established in article 147 are caused.
- 4th. Eight to twelve years' imprisonment if one or more persons are forcibly deported or removed to another State or place by means of expulsion or other coercive acts, without founded legal reasons, pursuant to International Law.
- 5th. Six to eight years' imprisonment if a women is forced to become pregnant in order to modify the population's ethnic composition, without prejudice to the penalty corresponding to other offences, if it were the case.
- 6th. Twelve to fifteen years' imprisonment when, with regard to a detainee his/her respective detention is denied and/or information about his/her whereabouts and fate is denied.
- 7th. Eight to twelve years' imprisonment if a person is deprived of liberty without complying with the international norms in the matter of detention.  
A penalty in a lower grade shall be imposed when detention lasts less than fifteen days.
- 8th., Four to eight years' imprisonment when grave acts of torture are committed against persons under their control and custody and a penalty of imprisonment for two to six years if the acts committed are less grave.

To the effect of this article, torture signifies the infliction of physical or psychological suffering.

The penalty established in this paragraph shall be imposed without prejudice to the penalties which would correspond, if it were the case, to the violation of other rights of the victim.

- 9th. Four to eight years' imprisonment if any prostitution related conducts were carried out as established in article 187.1; and six to eight years imprisonment in the cases established in article 188.1.

Likewise, a six to eight years' imprisonment penalty shall be imposed on those who carry out the removal of persons from one place to another with the intention of their sexual exploitation, by means of violence, intimidation or deceit or by taking advantage of a situation of power, necessity or of the victim's vulnerability.

When the conducts established in the previous paragraph and in article 188.1 involve under age or physically or mentally disabled persons, penalties in a higher grade shall be imposed.

- 10th. Four to eight years's imprisonment if a person is subject to slavery or a situation of slavery is maintained. Without prejudice to impose other penalties which could be imposed, if it were the case, for other specific violations of the persons' rights.

Slavery signifies a situation suffered by a person over whom another person(s) carries(y) out any or all the attributes of the right to property, such as buying, selling, lending and exchanging.

### **C) Offences against the persons and property protected in the case of armed conflict**

#### **Article 608**

To the effect of this Chapter, protected persons signify:



- 1st. The wounded, sick, shipwrecked and health and religious personnel, protected by I and II Geneva Conventions of 12 August 1949, or by Additional Protocol I of 8 June 1977.
- 2nd. Prisoners of war protected by the III Geneva Convention of 12 August 1949 or by Additional Protocol I of 8 June 1977.
- 3rd. Civilian population and the civilians protected by IV Geneva Convention of 12 August 1949 or by Additional Protocol I of 8 June 1977.
- 4th. Non-combatants and the personnel of Protecting Powers and their substitutes protected by the Geneva Conventions of 12 August 1949 or by Additional Protocol I of 8 June 1977.
- 5th. Truce negotiators and their entourage, protected by the The Hague II Convention of 29 July 1899.
- 6th. United Nations personnel and associates, protected by the Convention for the Security of the U. N. Personnel and Associated Personnel of 9 December 1994.
- 7th. Any other person who is considered to be a protected person by virtue of Additional Protocol II of 8 June 1977 or of any other International Treaties to which Spain is a party.

**Article 609 [Ill-treatment]**

Those who, during an armed conflict, ill-treat or seriously endanger the life, health or the integrity of a protected person, torture and submit the same to inhuman treatment, including biological experiments, cause suffering, or submit the same to a medical action which is not indicated for his/her health condition, or is contrary to the medical norms generally recognized, as in analogous medical conditions the Party responsible would apply to its own nationals not deprived of liberty, shall be punished with a four to eight year imprisonment penalty, without prejudice to the penalty which could correspond to the harmful results produced.

**Article 610 [Means of Combat Prohibited]**

Those who during an armed conflict, use or order the use of methods or means of combat prohibited or which are foreseen to cause unnecessary suffering or superfluous harm, as well as those which are foreseen to cause or are expected to cause extensive, permanent and serious damage to the natural environment, to the detriment of the population's health and/or its survival, shall be punished with a ten to fifteen years imprisonment penalty, without prejudice to the penalty which could correspond to the results produced.

**Article 611 [Indiscriminate Attacks]**

Without prejudice to the penalty which could correspond to the results produced, an imprisonment penalty of ten to fifteen years shall be imposed on those who, during an armed conflict :

- 1st. Carry out or order indiscriminate or excessive attacks or attacks targetting the civilian population, reprisals, acts or threats of violence that are especially intended to terrorize the civilian population.
- 2nd. Destroy or damage non military vessels and aircraft from a neutral or Adverse Party, unnecessarily or without warning, or without adopting the measures necessary to provide the persons' security or the conservation of the documentation on board, breaching the norms of International Law applicable to armed conflicts.
- 3rd. Make a prisoner of war or a civilian serve in any way in the Armed Forces of the Adverse Party, or deprive the same of their right to a fair trial without delay.
- 4th. Deport, forcibly transfer, take as a hostage, detain or illegally confine any protected person or use the same to protect certain points, zones or military forces from attacks made by the Adverse Party.

- 5th. Directly or indirectly transfer to and settle in occupied territory, the population of the Occupiers Party, so that the same inhabits the territory with a permanent character.
- 6th. Carry out, order to carry out or maintain, with regard to any protected person, racial segregation practices and other inhumane and degrading practices, based on other distinctions of unfavourable character which entail an outrage upon personal dignity.
- 7th. Prevent or delay, without any justification, the release or repatriation of prisoners of war, or civilians.

**Article 612 [Violation of Health Units]**

Without prejudice to the penalty which would correspond to the results produced, an imprisonment penalty of three to seven years shall be imposed on those who, during an armed conflict:

- 1st. Knowingly violate the protection due to hospitals, facilities, materials, units and means of medical transport, prison camps, medical and security zones, neutral zones, facilities for interning the civilian population, undefended inhabited areas and demilitarized zones displaying emblems or other appropriate distinguishing signs.
- 2nd. Exercise violence against health or religious personnel or on those participating in a medical mission, relief societies or against the personnel entitled to display the distinctive emblems of the Geneva Conventions, pursuant to International Law.
- 3rd. Insult, deprive or fail to provide and to seek food indispensable and medical assistance necessary to any protected person, or make the same the object of humiliation or degrading treatment, omit to inform the protected person without a reasonable justified delay, about his/her situation, impose collective punishments for individual acts, or violate those regarding the accommodation of

women and families or regarding the special protection of women and children, as established in the International Treaties to which Spain is a party.

- 4th. Improperly or with disloyalty use the distinctive emblems or distinguishing signs established and recognized in the International Treaties to which Spain is a party, especially the distinctive emblems of the Red Cross and the Red Crescent.
- 5th. Improperly or with disloyalty use during an attack the flag, uniform, distinctive emblems of neutral States, of the United Nations or of States which are not a part in the conflict, or the Adverse Parties', to cover up, favour, protect or hinder military operations, except in the cases specifically provided in the International Treaties to which Spain is a party.
- 6th. Improperly or with disloyalty use truce negotiators or surrender flags, attempt against the inviolability of truce negotiators or unduly retain the same or any person who accompanies them. This shall also be applicable to the personnel of the Protecting Power, or their substitutes, and to the members of the International Survey Commission.
- 7th. Dispossess the corpses, the wounded, sick, shipwrecked, prisoner of war or an interned civilian person from their belongings.

**Article 613 [Attacks on property]**

1. Those who carry out or order to carry out any of the following acts during an armed conflict, shall be punished with a four to six years' imprisonment penalty.
  - a) Attack or commit an act of hostility or reprisal directed against clearly recognized cultural objects or places of worship which constitute the cultural or spiritual heritage of peoples, which have been afforded protection by virtue of special agreements, or cultural objects under special protection, causing as a consequence extensive damage, as long as the same are not situated next to military objectives or are not used to support the adversary's military effort.

- b) Attack or commit an act of hostility or reprisal directed against the Adverse Party's property of civil nature, causing its destruction, as long as the same do not offer, as the circumstances may be, a clear military advantage or does not contribute efficiently to the adversary's military actions.
  - c) Attack, destroy, render useless or remove objects indispensable to the survival of the civilian population, unless the Adverse Party uses said objects to directly support a military action or exclusively as a means of subsistence for the members of its Armed Forces.
  - d) Attack, or make the object of reprisal, works or facilities containing dangerous forces, if such attack may cause the release of such dangerous forces and consequently severe losses are caused among the civilian population, unless such works or facilities are used as regular, substantial and direct support for military operations and that such attacks are the only means of ending such support.
  - e) Destroy, damage or take possession, without military necessity, of objects or property which do not belong to them, or force the surrender of the same or commit any other acts of pillage.
2. A penalty in a higher grade can be imposed if the cultural objects are under special protection or in other exceptional cases.

**Article 614 [Acts contrary to the provisions established in International Treaties]**

During an armed conflict, those who commit or order the commission of any other crimes or acts contrary to that which is established in the International Treaties to which Spain is a party, regarding hostilities, protection of the wounded, sick and shipwrecked, treatment of prisoners of war, protection of the civilian population and protection of cultural objects in case of armed conflict, shall be punished with a six months to two years' imprisonment penalty.

#### **Article 614 bis**

When any of the conducts contemplated in this chapter form part of a plan or a policy and are committed on a large scale; the respective penalties shall be imposed in their higher half'

#### **D) Common Provisions**

#### **Article 615 [Preparatory Acts]**

Incitement, conspiracy and proposition to commit the offences established in this caption shall be punished with a penalty one to two grades lower than the penalty which would otherwise correspond to the same offences.

#### **Article 615 bis.**

1. The authority, military chief or whoever acts effectively in this capacity who do not adopt any possible measures to prevent the forces under his/her command or his/her effective control from committing the offences established in Chapters II, II bis and III of this caption, shall be punished with the same penalty as the penalty imposed on their perpetrators.
2. A one or two grade lower penalty shall be imposed in the case of gross negligence being involved in the previously mentioned conduct.
3. The authority or military chief or whoever acts as in this capacity who does not adopt any possible measures to prosecute the offences committed by the persons under his/her command or his/her effective control established in Chapters II, II bis and III of this caption, shall be punished with a penalty two grades lower than the penalty imposed on their perpetrators.
4. Any person with a senior rank not included in the previous sub-articles who, within his/her competence, does not adopt any possible measure available to prevent his/her subordinates from committing the offences established in

Chapter II, II bis and III of this caption, shall be punished with the same penalty as the penalty imposed on their perpetrators.

5. Any person with a senior rank who does not adopt any possible measure available to prosecute the commission by his/her subordinates of the offences established in Chapter II, II bis and III of this caption, shall be punished with a penalty two grades lower than the penalty imposed on their perpetrators.
6. The civil officer or the authority who, without incurring in the conducts established in the previous sub-articles and not complying with the obligation proper to his/her function fails to promote the prosecution of any of the offences he knows of as established in Chapters II, II bis and III of this caption that he/she knows of, shall be punished with a penalty of specific disqualification from work or barred from public office for a two to six year period.

#### **E) Belonging to a Terrorist Organization**

##### **Article 515 [Illegal Associations]**

Illegal Associations are punishable, the following being considered as such:

- 2nd. Armed groups, organizations or terrorist groups.

##### **Article 516 [Penalties applicable to the illegal associations foreseen in art.512.2]**

In the cases foreseen in the previous article, 2nd. sub-article, the following penalties shall be imposed:

- 1st. Eight to fourteen years' imprisonment and a specific disqualification from work or barred from public office for an eight to fifteen year period to those who promote or direct armed groups and terrorist organizations.
- 2nd. Six to twelve years' imprisonment and specific disqualification from work or barred from public office for a six to fourteen year period to the members of the aforesaid organizations.

## **F) Terrorist Acts**

### **Article 572 [Attacks on persons]**

1. Those who, belonging to, acting in the service or in collaboration with the armed groups, organizations or terrorist groups as described in the previous article, carry out attacks on persons, shall be punished with the following penalties:
  - 1st. Twenty to thirty years' imprisonment if the death of a person is caused.
  - 2nd. Fifteen to twenty years' imprisonment if the injuries foreseen in articles 149 and 150 are caused or if a person is abducted.
  - 3rd. Ten to fifteen years' imprisonment if any other injuries are caused or if a person is illegally detained, threatened or unduly influenced.
2. A penalty in its higher half shall be imposed if the attacks are made against the persons pointed out in the 2nd. sub-article of article 551 or against members of the Armed Forces, Forces and Security Bodies of the State, the Police of the Autonomous Communities or of Local Entities.

All the above mentioned in concurring relation with the offences of manslaughter and its forms (Caption I), injuries, crimes against liberty, torture and others against moral integrity, against property and against social economic order.

Where these offences were committed before 24 May 1996 the same are punished pursuant to the penalties established in articles 173, 174 and 174 bis of the former Penal Code, as follows:

#### **“Article 174**

- 3rd. A penalty of imprisonment in its highest grade and a fine of 150.000 to 750.000 pesetas shall be imposed on the promoters and heads of armed groups, terrorist organizations, rebels or the leaders of any of their groups. A penalty of imprisonment in its highest grade and a fine of 150.000 to 750.000 pesetas shall be imposed on the members of the aforesaid groups or organizations



**Article 174 bis – a)**

1. A penalty of imprisonment in its highest grade and a fine of 150.000 to 750.000 pesetas shall be imposed on those who obtain, seek or facilitate any act of collaboration which is intended to benefit the activities of an armed group, terrorist elements or rebels or to secure their goals.
2. The following are considered acts of collaboration: Information on, or surveillance of persons, property or premises, construction, cession, use of lodgings or deposits, hiding and transfers of persons belonging to, or related to armed groups, terrorist elements or rebels, organization and assistance in training practices and any other form of collaboration, help or mediation, either economic or of other type with the activities of the above mentioned groups or elements of the same.

**Article 174 bis – b)**

Those who, being part of an armed group or of a terrorist or rebel organization, or in collaboration with their objectives or goals, carry out any criminal act which contributes to the activity of the same, by means of firearms, bombs, grenades, substances, or explosives, inflammable or incendiary devices of any kind, irrespective of the result produced, shall be punished with a penalty of imprisonment in its highest grade, unless an imprisonment penalty in its highest grade is applicable by virtue of the offence committed. A Penalty of imprisonment in a lower grade shall be imposed on those who promote or direct the execution of any of the above mentioned acts.

**Article 137 bis**

Those, with intent to destroy the whole or a part of a national ethnic group, a racial or religious group who perpetrate any of the following acts, shall be punished with the following penalties:

- 1st. Imprisonment in its highest grade, if any of the members of the groups above mentioned die, are castrated, sterilized, mutilated or serious injuries are caused.

2nd. Imprisonment in a lower grade, if the group or any individuals of the same are subject to conditions which jeopardize their lives or their health.

The same penalty shall be imposed on those who carry out the forced movement of a group or of its members, who adopt any measure which is intended to destroy the group lifestyle or births within the group, or if individuals are forcibly removed from one group to another.”

\*

The Court's competence to hear and try the crimes which are the subject matter of this case has not been disputed, given that article 23.4 of the Organic Law of the Judicial Power establishes that Spain has jurisdiction to prosecute those crimes which could constitute the Spanish offences of genocide and terrorism, committed outside Spanish territory either by Spanish nationals or Aliens, and any other crimes that, according to the following International Treaties and Conventions should be prosecuted in Spain:

Convention against Torture and Other Cruel, Inhumane or Degrading Treatment, made in New York, 10 December 1984; Geneva Convention of 12 August 1949 on the Protection of Civilians during Armed Conflicts and its Additional Protocols I and II; Convention on the Prevention and Punishment of the Crime of Genocide of 9 December 1948 and the International Covenant on Civil and Political Rights of 16 December 1966, among other instruments.

## SECOND

With regard to the cooperation with the International Tribunal for Rwanda, the Organic Law 157/1988 of 2 July establishes the following provisions on concurrent jurisdictions and on the principle *ne bis in idem*:

### “Article 4

1. Where the Spanish Courts of ordinary or military jurisdiction are competent, pursuant to their respective organic and procedural norms, to hear cases within the scope of application of the Statute of the International Tribunal for Rwanda,

they shall institute proceedings or continue to follow-up the same, until the time they are required by the cited International Tribunal to pass the case on.

2. Once such an application is received, the Judge or the Court shall order stay of proceedings and, without prejudice to continue carrying out the proceedings which are considered urgent, shall pass them on to the National Court which will proceed to make an order for passing the case on to the International Tribunal for Rwanda. The military judicial organs, if it were the case, shall pass the proceedings on to the National Court through the Central Military Court.
3. The National Court can dismiss such an application, when it considers that the the same is beyond the time and territorial competence of the International Tribunal for Rwanda.
4. No Spanish Judge or Spanish Court can present a jurisdictional conflict to the International Tribunal for Rwanda and the same are limited to explaining the reasonings which were considered to conclude that a case falls within their own competence.

#### **Article 5**

The persons tried in Spain can also be tried by the International Tribunal for Rwanda for the same offences, where the specification given by the Spanish Courts was not founded on that which is established in the Statute of the International Tribunal.

#### **THIRD**

An Order of Indictment has been defined as a procedural act carried out by an Examining Judge consisting of a formal declaration of the presumed guilt of a person, based on prima facie evidence furnished in the proceedings carried out until this act of his/her probable participation in a punishable criminal conduct.

From this moment on, and with a provisional and procedural character, a suspect becomes an indictee and as such is granted a whole series of new guarantees provided

for this new procedural situation. By means of an order of indictment, an indictee is informed of the purpose of the judicial inquiry and the direction of the same. An order of indictment is not itself a definitive act, but a mere provisional act whose principal guarantee is to ensure the essential valuation by the Examining Judge of the factual circumstances and the evidence obtained in the proceedings carried out.

In this sense, the legal doctrine says that an order of indictment is only an act of mere probability or possibility of a criminal conduct, a provisional judgement which is reviewed in the final judgement. The sound review of all evidence which could contradict beyond any doubt the considerations resulting from the measure adopted at the examining stage -the indictment order- is carried out in the final judgement. It should be borne in mind that such criminal appearance refers to a simple formal possibility, its only purpose being to bind the indictee and his/her property to the final result of the case, as well as giving the same the opportunity to prepare his/her defence, whilst the definitive legal specification of the crimes committed must be made in the final judgement and not in the indictment order, as established in article 384 of the Criminal Rules of Procedure (*Ley de Enjuiciamiento Criminal*). In accordance with this provision, to order an indictment there must present prima facie evidence against one or more persons, that is to say, evidence sufficient to establish that a criminal conduct which constitutes an offence has been carried out by the person(s) who is/are indicted.

The foregoing is endorsed by the Constitutional Tribunal's doctrine which confirming that, as a rule, no fundamental right can be breached by virtue of an order of indictment given the procedural and provisional nature of the same (Judgements delivered 17 April 1989 and 5 April 1990) insists on its quality as a prerequisite essential to commence trial. Therefore, it is only appropriate to review the "purity" of an order of indictment and if the same meets the prerequisites contained in the first paragraph of article 384 of the Law of Criminal Procedure.

The importance of the indictment, given its repercussion and social implication, compels the Examining Judges to examine rigorously the prerequisites that justify taking such a grave measure, the material prerequisite being the concurrence of prima facie evidence as established in this respect in article 384 of the Law of Criminal Procedure.

Following the above reasoning, we should now analyse what is understood as prima facie evidence. According to the doctrine and jurisprudence, a Judge must be convinced that a certain person(s) has/have committed a punishable act, based on his/her assessment of the investigation and evidence produced. The conclusion reached by the Judge must not be a consequence of vague indications or light suspicions, but the logical result of an act which can fundamentally originate responsibility for the person(s) who is/are to be indicted.

The Constitutional Court, Resolutions of 2 and 16 February 1983, states that prima facie evidence is connected with the issue of probability. In order to commence a judicial Inquiry the possibility of the commission of an offence is a necessity; to make an Order of Indictment the probability of the participation of a particular person is necessary, whereas to pass a sentence the certainty beyond doubt is necessary.

Furthermore, to order an indictment it is not sufficient that there are indications that a criminal act has been committed, since it is necessary that such evidence is reasonable so that such a grave decision is not made as a consequence of vague indications or suspicions. This implies that Judges have to base their decisions on data of factual value which, representing more than a possibility and less than a certainty, suppose the probability of the existence of crime, given that the assertion on which the indictment must be adopted, although logically sufficient, is a relative assertion that does not require an unequivocal testimony of certainty.

### **THIRD**

Applying these arguments to this case, there is reasonable evidence that the persons with most responsibility for the military political organization **FRONT PATRIOTIQUE RWANDAIS (FPR) – ARMÉE PATRIOTIQUE RWANDAISE (APR)**, among whom the persons indicted in this case, have unfolded a whole range of criminal methodology in their operations firstly carried out from outside of Rwanda, from Uganda and later from Rwanda and in its territory. They seized power by force by means of strategic terrorist attacks and open war operations, and took absolute control of the structure of the State, generating from then on a real terror regime.

This terror regime was generated not only from the dictatorial structure of the State itself but, above all, from a complex hierarchical parallel structure which was put in charge of perpetrating heinous criminal acts against the population, both national and foreign, which were previously selected for ethnical and/or political reasons. Their criminal plan, for alleged security reasons, culminated in the invasion and conquest in two phases of the immense Democratic Republic of Congo, with the support of other political-military groups or allies created for this purpose. An indeterminate number of persons were exterminated throughout these two phases of hostilities at the hands of a systematic, organized and strongly hierarchical structure.

According to some sources, the number of persons exterminated during the period to which this case refers to, could be four million people, approximately, a figure which includes Rwandan refugees belonging to the Hutu ethnic group, as well as the civilian population of the Congo, mainly the Congolose Hutus.

Furthermore, pillage and large scale looting was carried out, centred above all in valuable natural resources such as timber and high valued and strategic minerals. The criminal network created for the exploitation and pillage of these riches enabled them to maintain a powerful position and the geostrategic domination of the zone, as well as to finance their wars, enriching both individuals and the group, and to continue and extend their criminal plan for extermination and domination.

It is clear that all the criminal acts carried out in Rwanda from 1990 until today are not included in the narrow framework of the present case, which is centred on those acts which have not yet been the subject of prosecution. The International Criminal Court for Rwanda is the appropriate Court to hear and try the acts committed during 1994 and, especially, the extermination of the Rwandan population of Tutsi origin, as deplorable as the acts which are reported in this case. The present case has not yet been closed and refers to the indictment of the persons indicated below, based on the evidence produced so far, without prejudice to the actions still pending and those which must be carried out.

#### **FOURTH**

From the evidence produced in this case, there is reasonable and founded *prima facie* evidence pointing to the following persons:

1st PAUL KAGAME, Major General

President of the Republic of Rwanda. Head of State and High Commanding Officer of the Rwandese Army –Rwandan Defence Forces / RDF, the former A.P.R. (Rwandese Patriotique Army).

*Prima facie evidence* is inferred from the proceedings carried out so far as being sufficient to accuse him of having participated in the criminal conducts which constitute the offences contained in paragraphs A); B); C); D); E); and F) of the previous point.

However, given his capacity as President of the Republic, his prosecution cannot be agreed on this Order of Indictment, since article 21 of the Organic Law of Judicial Power which determines **the scope and limitations of Spanish Jurisdiction** establishes that among the cases within its competence “...are excluded the cases of *immunity from jurisdiction and execution established in the norms of Public International Law*”.

In this sense, if we review the judicial precedents relating to this matter, we must conclude that the national Courts are incompetent to hear his case. This conclusion has been reached both by the Plenum of the Criminal division of the National Court, the Supreme Court and the International Court of Justice.

The Judgement delivered by the Plenum of the Criminal Division of the National Court on 4 March 1999 in this respect concluded as follows:

*“In Criminal matters it will correspond to Spanish jurisdiction to hear cases which involve criminal acts which constitute the offences established in article 23 of the L.O.P.J. (Organic Law of Judicial Power), based mainly on the territory principle and on the principle of personality or of universal protection, as provided in the four sub-articles of this article. The Second Criminal Court of the Supreme Court in their Judgement number 87.4315 establishes as follows “however, there are some important exceptions with regard to the territory principle provided in fundamental legal instruments, and with regard to the principle of equality of all persons before the Law, as established in article 14 of the Spanish Constitution. Some of these exceptions refer to domestic Public Law, others are generated by the nature of the act and, finally, the remaining exceptions*

*are founded in the norms of Public Law, external or international. With regard to the latter, article 334 of the former Organic Law of Judicial Power of 1870, establishes "exceptions to that which is ordered in the previous articles are the Princes of reigning families, the Presidents or Heads of other States, the Ambassadors, the Plenipotentiary Ministers and resident Ministers, other public officials and foreign citizens employed in legations, who in the case of their committing an offence shall be put under orders of their respective governments".*

*There is, consequently, no doubt, given the specific reference to Presidents and Heads of State made in article 334 of L.O.P.J. of 1870 that until the Organic Law of 1985 of the Judicial Power comes into force, the immunity of an alien Head of State from jurisdiction was an unescapable reality by virtue of a legal requirement.*

*In the present situation, we should start from the second paragraph of article 21 of the L.O.P.J. (Organic Law of the Judicial Power) in force, which provides "The cases of immunity from jurisdiction and execution established in the norms of Public International Law shall be an exception", and complete with the final clause of article 23 of L.O.P.J. which says "without prejudice to the provisions established in the International Treaties to which Spain is a party".*

and, furthermore:

*"these guidelines, applied to the current case, enable the declaration of the existence of an immunity, or if it is preferred, a jurisdictional exception according to other terminology favoured by the doctrine, making a distinction between inviolability, immunity and jurisdictional exemption, the latter concerning an alien Head of State whose source is not the Vienna Conventions in the matter of Diplomatic and Consular Relations, but the proper bilateral treaties signed by the States and the international customs".* As was concluded in the above mentioned Judgement in the matter of incompetence of the Spanish Courts to prosecute Mr. Fidel Castro, the President of the Republic of Cuba for the commission of the acts being attributed to him.

Similarly, the decisions reached by the National Court's Criminal Division in the cases against the King of Morocco (Judgement of 23 December 1998) and against the President of Equatorial Guinea.



Furthermore, the Supreme Court's Judgement delivered on 23 February 2003, as follows  
*"Jurisdiction is one of the expressions of a State's sovereignty. It is understood as a faculty or power to try, that is to say to exercise one of the powers of the State against certain persons and in relation to certain acts, subjecting the same in the case of Criminal Law to ius puniendi as attributed by the law...The scope of jurisdiction depends only on the law, and when the question arises, the Court must apply its provisions, it not being appropriate either to accord to the parties a jurisdiction of which it lacks or waive the jurisdiction to which the Court is attributed by the law.*

*Organic Law of the Judicial Power no. 6/1985 of 1st of July, which abolished the former 1870 law in its article 23.4 establishes that Spanish jurisdiction shall be competent to hear the cases referring to crimes committed outside national territory by Spanish nationals or aliens, which could be consistent with the Spanish offence of Genocide, among others [Terrorism; Piracy and illegal seizing of aircraft; Counterfeiting of foreign currency; Prostitution related offences and Corruption of minors or physically or mentally disabled persons (the latter were established in the Organic Law of 11/1999); Illegal traffic of psychotropic and toxic substances and narcotics; and any other crime which according to the international treaties and conventions should be prosecuted in Spain]. Without prejudice to the noticeable differences between some crimes and others, nothing is specifically established with regard to the extra-territorial criminal prosecution of the same.*

*Such general provision raises some questions.*

*In the operative framework of the Spanish National Courts this article cannot be construed as to lead, in practice, to the institution of criminal proceedings as soon as the Spanish National Courts know of criminal acts which could constitute any of the offences above mentioned were committed, irrespective of the place where they were committed or of the nationality of the perpetrator(s) or victim(s). And neither our criminal law nor our law of criminal procedure establishes the principle of opportunity, nor has this principle been introduced by the treaties signed in this matter.*

*From another point of view, a wider perspective, an analysis should be specifically made as to whether the principle of universal jurisdiction can be applied without bearing*

*in mind other principles established in public international law. As a principle and with general character, the provisions of Spanish law should be compatible with the requirements derived from international order, as is understood by States.*

*Jurisdiction is an expression of the sovereignty of a State and therefore its initial limitations coincide with those which correspond to the same which, in many aspects is defined by other States' sovereignty. In this sense, the cases referring to places not subject to any state sovereignty are not at all comparable to those where jurisdictional intervention affects an act executed within the territory of another sovereign State.*

*Consequently, the extra-territorial scope of criminal law is justified by the existence of each State's specific interest. This explains that, at present, the faculty to prosecute the perpetrators of acts committed outside national territory cannot be disputed, given the international recognition of the principle of defence, protection of interests and active or passive personality. In such cases, the unilateral establishment of jurisdiction has its meaning and is supported fundamentally, although not exclusively, on the necessity of a national State to provide protection to these interests.*

*When the extra-territorial scope of criminal law is based on the nature of the crime, in so far as the same affects the juridical interests of the International Community, the question of compatibility between the principle of universal justice and other principles of public international law is raised.*

*In this respect, it must be taken into account that the doctrine of public international criminal law does not raise any objection to the principle of universal justice when the latter comes from a recognized source of international law, in particular, when it has been accepted contractually by States which are parties to a Treaty. In such cases it is admitted that the principle is justified beyond any doubt. On the contrary, when it has only been recognized by the domestic criminal law, the scope of this principle has been limited in practice by the application of other international legal principles equally recognized. In this sense, it has been understood that the exercise of jurisdiction as has been stated before- can neither be contrary to other public international law principles nor operate when there is not a direct link with national interests. Both limitations have*

*been specifically accepted by the German Courts (Federal German Supreme Court, BGHSt 27,30: 30,340, order of 13.2.1994 [BGs 100/941].*

*For its part, the Belgian Court of Appeal in its judgement on the case "Sharon, Ariel, Yaron, Amost, and others", although the peculiarities of its domestic legislation were undoubtedly taken into account (articles 12 and 12 bis of the Procedural Law of 17 April 1878), after recognizing that international custom is opposed to submitting heads of state or government in function to trials before foreign Courts, in the absence of international laws binding the concerned States, concluded that the exclusion of immunity contemplated in article IV of the Convention on the Prevention or Punishment of the Crime of Genocide [Persons committing genocide or any of the acts enumerated in article III shall be punished whether they are constitutionally responsible rulers, public officials or private individuals] is only applicable to the cases tried by competent Courts, as established in this Convention, and it does not encompass those cases being followed up by a Court whose competence is not established under conventional international law.*

*Before this, the International Court of Justice, in its judgement delivered on 14 February, had declared, based on the breach of the statute of diplomatic immunity, the nullity of an arrest warrant issued by the Belgian Judicial Authorities against a former minister of the Congo in the exercise of the principle of universal jurisdiction pursuant to Belgian Law.*

The International Court of Justice refers in the cited Judgement to the importance of customary law when determining the contents of immunities in criminal matters, and concludes that indeed is customary law, and not the conventional law, which establishes that certain public officials of the State, such as Heads of State, Heads of Government and Foreign Affairs Ministers, are to be conferred immunity from jurisdiction in other States, both in civil and criminal matters, so that compliance with their functions is ensured. The International Court makes a thorough review of customary International Law and affirms that, immunity from jurisdiction is not a personal advantage given to these organs of the State, i.e. a privilege conferred *in tuito personae*, but a protection conferred by virtue of the functions of the same to ensure the effective fulfilment of their responsibilities as government officials. According to the International Court, the immunity from jurisdiction conferred to the cited organs of State is such that during their

term of office the acts carried out in an official capacity cannot be differentiated from those carried out in a private capacity, without distinction.

In the view of the International Court of Justice, no exception to the rule can be made on criminal immunity from jurisdiction in respect of war crimes or crimes against humanity before the national courts, given that the rules which deal with questions of competence of the national courts are different from those which regulate the immunities from jurisdiction.

Furthermore, the Court considers that the rule of immunity cannot lead to the impunity of the crimes committed by Heads of State or Heads of Government and establishes the possibility to criminally prosecute the same in certain circumstances, establishing to this effect the four following requisites:

1st. Where the same are not protected in their own State by the privilege of absolute criminal immunity from jurisdiction. In such cases, they can be tried by the Courts or Tribunals of their own State and according to their domestic Law;

2nd. Where they are deprived, by virtue of a decision made in their own State, of their protective immunity in criminal matters;

3rd. Where they are deposed from office. In such a case, the International Penal Court recognizes the jurisdiction of any State to try a former Foreign Affairs Minister (and analogously, a former Head of State) for acts committed either prior or subsequent to their term of office, as well as in respect of acts committed during that period of office in a private capacity.

4th. Where competence to try such senior officers is attributed to a competent international jurisdictional criminal organ, such as the International Penal Court.

In the interests of preventing that the immunity granted to these senior officers leads to their impunity, the evolution in the matter of defence of the International Community against crimes against human rights has followed two paths. On the one hand, to impose on States the obligation to investigate and sanction crimes of this nature which are committed within their territory and on the other hand, to promote the creation of

International Tribunals which shall fulfil this obligation, in the event that the State where such crimes were committed or are being committed fails to do so.

The fruit of this historic evolution is the creation and commencement of operations of the International Penal Court.

According to that which is established in the Convention on the Crime of Genocide, the persons accused of committing this crime shall be tried by the Tribunals of the territory where the act was committed or before a competent International Tribunal. Given that the Spanish Tribunals do not meet any of these cited requirements, while the accused is in office the immunity from jurisdiction which protects him shall prevent his indictment.

**2nd. Major General JAMES KABAREBE**

Currently the Head of General Staff of the Rwandan Army (FDR), formerly designated as A.P.R. (Rwandan Patriotic Army).

From the proceedings carried out so far *prima facie evidence* points to his participation in the following criminal acts:

1. The crimes previously described perpetrated in the north of Rwanda, in particular in key inhabited areas to the north of Bymba, i.e. Muvumba, Kiyombe and Mukarenge, and in the killings carried out in the sectors of Shonga, Bushara, Tabagwe and Nyarurema and the small centre of Rukomo.
2. He would be one of the persons most responsible for the actions carried out by the Network Commando.
3. He would have passed on PAUL KAGAME's orders to carry out the attack which caused the death of President Habyarimana and other deaths.
4. He would be one of the persons most responsible for the attacks carried out by the A.P.R. at the end of October 1996, as well as those on the refugee camps situated in the territory of Zaire, namely, on the camps of Kibumba, Mubunga, Lac Vert and later, Tingi-tingi, Kindu and Mbandaka.

5. He would have ordered to regroup displaced persons in Buymba football stadium where some 2.500 persons were gathered to this purpose, all of them Rwandan nationals of Hutu ethnic origin, who were subsequently murdered.
6. He would have passed on PAUL KAGAME's orders to carry out the so called "screening" (cleansing of the civilian population without distinction) in the city of Byumba (inhabited mainly by Hutus).
7. He would have ordered at the end of July 1994, directed by PAUL KAGAME, to carry out an attack with heavy armament on the civilian population of Kigali, targetting especially the markets and churches where the majority of refugees were sheltered.
8. He would have ordered the massacre of the civilian population fleeing in the direction of Gikomero, on the occasion of seizing control of Kanombe international airport (Kigali).
9. He was the appointed Commanding Officer of all the A.P.R. military units in Zaire, the Democratic Republic of the Congo. The person responsible for the mass death of Rwandan refugees, Congolese civilians and pillage.
10. He would have ordered the attack on the refugee camps, to kill the population which occupied the same and to proceed to the mass incineration of the corpses.
11. He would have planned and organized military missions, such as the excavations made underground in Kinnyabishenge, Karama, Bungwe, situated between Kaniga and Gatonde, in Cyondo or in Muvumba, in order to store ammunitions and armament to carry out the final assault to power.
12. He would be the person who ordered, coordinated and controlled, at least, three flights where substantial quantities of diamonds were loaded onto aircraft which left from the Congolese locality of Lubumbashi.
13. During the first Congo war, he would have held the effective military power, putting LAURENT DEISREE KABILA under his orders.
14. The timber pilfered in Zaire would have been processed by a company that he owned in Kiyovu.

The above mentioned criminal acts would constitute the offences as described in paragraphs A); B); C); D); E); and F); of the first point of these legal arguments.

**3rd. Major General KAYUMBA NYAMWASA**

Currently the Rwandan Ambassador to India.

From the proceedings carried out so far, there is *prima facie evidence* which points to his participation in the following criminal acts:

1. He would be directly responsible for the massacres carried out either by himself or by his subordinates, such as Lieutenant Colonel Jackson RWAHAMA MUTABAZI, Colonel DAN MUNYUSA or Captain Joseph NZABAMWITA, among others.
2. Following his orders, the abduction and subsequent murder of the Spanish priest JOAQUIM VALLAMAJO was perpetrated, as well as the murder of other Hutu Rwandan priests in the area of Byumba, at the end of April of 1994.
3. He would have decided, ordered and controlled the murder of the three members of MÉDICOS DEL MUNDO, the Spanish nationals M<sup>a</sup> FLORS SIRERA FORTUNY; MANUEL MADRAZO OSUNA and LUIS VALTUEÑA GALLEGO.
4. He would have been the person with most responsibility for the operations carried out by the A.P.R. between the end of 1996 and beginning of 1997 in the Northeast of Rwanda, among which, the massacres carried out in the region of Ruhengeri, and those in Gisenyi and Cyangugu, in Nyakinama and Mukingo.
5. He would have planned the actions carried out by the Intelligence Officers, especially the selective and terrorist attacks on persons.
6. He would have planned and organized military missions, such as the operation to conceal armament and ammunition in underground deposits, in preparation for the final assault to power.
7. He would have been responsible for systematic and planned attacks on predetermined populations, or on those persons who were gathered to this effect, disappearances, extra-judicial executions and other similar operations, above all those carried out in Munyanza, Kiyanza, Rutongo, Kabuye and the so called "real slaughter" massacre which was carried out in Nyacyonga Camp.
8. On 23 April 1994, he would have coordinated the military operation that took place at the Byumba football stadium, where he regrouped some 2.500 refugees.

Rwandan nationals belonging to the Hutu ethnic group, in order to proceed to their massacre, firstly by launching grenades, and after indiscriminately opening fire with automatic rifles.

9. In his capacity as Chief of the D.M.I., he would have organized and executed terrorist attacks on the enemies of the regime.

The above mentioned acts would constitute the offences as described in paragraphs A); B); C); D); E); and F); of the first point of these legal arguments.

#### 4th. Brigadier General KARENZI KARAKE

General of the Rwandan Defence Forces. Currently, the appointed –with the approval of the United Nations- Deputy Commander of the hybrid contingent of the United Nations and the African Unit in Darfur, named the UNAMID FORCE.

From the proceedings carried out so far there is *prima facie evidence* sufficient to determine his participation in the following criminal acts:

1. He is the person responsible for the crimes perpetrated by the D.M.I. in Kigali, as well as in the rest of the country, during his term of office in 1994 and 1997, among which, the terrorist assassinations of key political figures such as EMMANUELLE GAPYSI and FELICEN GSTABAZI.
2. He would be the person most responsible for carrying out massacres and “elimination” of the Hutu population in Myakinama and Mukingo.
3. He would have ordered operations against the Hutu civilian population, the systematic killing of expatriates, ordering open bombings with heavy armament.
4. He would have been aware of and he would have approved the killing of the civilian population from 1994 to 1997, carried out in Ruhengeri, Gisenyi and Cyangugu among which, the killing of the three Spanish cooperators of MÉDICOS DEL MUNDO.
5. He would have organized and executed acts of looting of money, minerals and other valuable natural resources.
6. He would be the person most responsible for the operation carried out against priests in Kalima.



7. He would be the person responsible for the disappearance of persons who were taken to the prison of Kami, and from there to Nyumbwe forest where they were murdered and their bodies incinerated.

The above mentioned acts would constitute the offences as described in paragraphs A); B); C); D); E); and F); of the first point of these legal arguments.

#### **5th. Major General FRED IBINGIRA**

Presently, Commander of the First Division of the F.R.D., Rwandan Defence Forces, the former A.P.R.

From the proceedings carried out so far, there is *prima facie evidence* pointing to his participation in the following acts:

1. He would have been the person directly responsible for the massacres carried out against the civilian population in Bugeresa, Mayaga and Butare in 1994 and in Kibeho in 1995.
2. He would have carried out systematic attacks on the civilian population, both by means of open military operations and on the population grouped to the effect of being killed, disappearances, extra judicial executions and other similar attacks carried out in Munyanza, Kyianza, Rutongo, Kabuye and Nyacyonga.
3. He would have participated in the attacks on the refugee camps of Kibeho and Kibuye.
4. He would have been the person responsible for the murder of ISIDRO UZCUDUN.
5. He would have directed the massacres perpetrated against the population both in Gitarama and Kigali.
6. He would have been the person responsible for the killing of priests and bishops on 5 June 1994 in Gakurazo.
7. He would have attacked the civilian population fleeing from Byumba in the direction of Gitarama.

The above mentioned acts would constitute the offences as described in paragraphs A); B); C); D); E); and F); of the first point of these legal arguments.

**6th. Colonel RWAHAMA JACKSON MUTABAZI**

Currently retired. His last known appointment was as Presiding-Judge of the Martial Court. Later he would have set up a private security agency with Rujugiro Tribert as a partner. He is PAUL KAGAME's cousin.

From the proceedings carried out so far, he would have participated in the following criminal acts:

1. He would have planned and executed the actions attributed to the Network Commando.
2. He would have commanded the execution of the massacre carried out at Byumba Football Stadium.
3. He would have participated in the abduction and subsequent execution of six priests, among whom, the Spanish national JOAQUIM VALLAMAJO.
4. He would have participated in the massacre at Ecole Social du Bon Conseil of Byumba, on 24 April 1994 and the School Centre of Buhambe, in Byumba on 26 April 1994.

The above mentioned acts would constitute the offences as described in paragraphs A); B); E); and F); of the first point of these legal arguments.

**7th. Brigadier General JACK NZIZA or (JACKSON NKURUNZIZA or JAQUES NZIZA)**

Presently, Commanding Officer of the Army G-5 unit of the Rwandan Defence Forces (FRD).

From the proceedings carried out so far he would have participated in the following criminal acts:

1. He would have participated in the attacks on Kibuma, Mubumga, Lac Vert and later Tingi-Tingi and Mbandaka camps, at the end of October 1996.
2. He would have participated in the massacres of Shabunda, Kisangani and Msaniema from April to July 1997.
3. He would have organized acts of pillage of money, minerals and other valuable natural resources of the R.D.C.
4. He would have attacked the refugee camps situated in Zaire, in his capacity as the most responsible person for the D.M.I. in Zaire.

The above mentioned acts would constitute the offences as described in paragraphs A); B); C); and D); of the first point of these legal arguments.

#### **8th Lieutenant Colonel RUGUMYA GACINYA**

A former Intelligence Officer serving in the Bravo Mobile Unit. Presently the Defence, Military, Naval & Air Attaché to the Embassy of Rwanda in the U.S.A.

From the proceedings carried out so far there is *prima facie evidence* pointing to his participation in the following criminal acts:

1. He would have been the person responsible for the massacre carried out in Nyacyonga Camp in the middle of April 1994.
2. He would have been responsible for the massacres of the civilian population in Ngarama, Nyagahita and Kigasa.
3. He would have participated in the murder of ISIDRO UZCUDUN.

The above mentioned criminal acts would constitute the offences as described in paragraphs A); B); C); D); E); and F); of the first point of these legal arguments.

#### **9th. Colonel DAN MUNYUZA**

He was one of the highest representatives of the "Congo Desk/External Security Office" (ESO) in the Democratic Republic of the Congo. Later he carried out various high office

functions in the Administration of the Democratic Republic of Congo. Presently, serving as a Colonel in the Rwandan Defence Forces (FDR), 204th Brigade.

He is accused of having committed the following criminal acts:

1. He would have carried out numerous massacres of Rwandan refugees belonging to the Hutu ethnic group and of the Congolese civilian population throughout the axis Bukabu, Numbi, Walikale, Tint-Tingi, Ubundu, Bokungo, Boende and Mbandaka.
2. He would have participated in the operation against the population gathered at Byumba Football Stadium on 23 April 1994.
3. He would have participated in the attacks on the camps of refugees situated in Kivu-North and Kivu-South, on the city of Kisangani and in selective murders.
4. He would have organized acts of pillage of money, minerals, property and natural resources of the R.D.C.
5. He would have participated in the killing carried out at Ecole Social du Bon Conseil and at the School Centre in Buhambe, in Byumba, in April 1984.

The above mentioned criminal acts would constitute the offences as described in paragraphs A); B); C); D) E); and F); of the first point of these legal arguments.

#### **10. Lieutenant General CHARLES KAYONGA**

Presently the Chief of General Staff of the Army of the Rwandan Defence Forces (FRD)

From the proceedings carried out so far there is *prima facie evidence* pointing to his participation in the following criminal acts:

1. He would have been directly responsible for the systematic massacres of Rwandan refugees of the Hutu ethnic group and the Congolese civilian population carried out throughout the axis Bukavu, Numbi, Walikale, Tinti-Tingi, Ubundu, Bokungo and Mbandaka.
2. He would have planned the terrorist actions to be committed by the Network Commando.

3. He would have participated in the massacres of the civilian population in Kigali in 1994 and in Gitarama and Kibuye in 1995.
4. He would have been one of the persons who participated in the attack on the presidential aircraft.
5. He would have coordinated the operations for the killing of EMMANUEL GAPYSI.
6. He would have been directly responsible for the murder of FELICIEN GATABAZI

The above mentioned criminal acts would constitute the offences as described in paragraphs A); B); C); D); E); and F); of the first point of these legal arguments.

**11th Lieutenant Colonel JOSEPH NZABAMWITA**

A former DMI member. Presently, External Security Office's Second in command.

From the proceedings carried out so far, there are indications pointing to his participation in the following criminal acts:

1. Disappearance and murder of the Spanish priest JOAQUIM VALLAMAJÓ, as well as other Rwandan priests' in the area of Byumba.
2. Execution of massacres of the civilian population in the city of Byumba and its surrounding areas. He would have participated in the massacres of refugees at Byumba football stadium and in Nyanawimana.

The above mentioned criminal acts would constitute the offences as described in paragraphs A);D); and F); of the first point of these legal arguments

**12th Major General CEASER KAYIZARI**

Former commander and chief of operations of the APR 157th Mobile Batallion. His last known appointment was as Commander of Division, in Butare, Rwanda.

From the proceedings carried out so far, there are indications pointing to his participation in the following criminal acts:

1. He would have participated in the murder of the four Spanish priests SERVANDO MAYOR GARCÍA; JULIO RODRÍGUEZ JORGE; ANGEL ISLA LUCIO and FERNANDO DE LA FUENTE DE LA FUENTE.
2. He would have carried out systematic massacres of the civilian population and of Rwandan refugees of the Hutu ethnic group, throughout the axis Bukavu, Numbi, Walikale, Tinti-Tingi, Ubundu, Bokungu and Mbdanka.

The above mentioned criminal acts would constitute the offences as described in paragraphs A); B); E); and F); of the first point of these legal arguments

#### **13th Colonel ERIK MUROKORE**

Former Second Commanding Officer of the 15th Mobile Battalion. Presently he would be in command of an armed group named "Rasta" in the region of Kivu in the R.D.C.

From the proceedings carried out so far there are indications of his participation in the following criminal acts:

1. Indiscriminate murder of priests and bishops and of an eight year old child on 5 June 1994, in Gakirazo, at the Josefite Brothers headquarters.
3. He would have participated in the murder of the Spanish priests SERVANDO MAYOR GARCÍA; JULIO RODRÍGUEZ JORGE; ANGEL ISLA LUCIO and FERNANDO DE LA FUENTE DE LA FUENTE.

The above mentioned criminal acts would constitute the offences as described in paragraphs E); and F); of the first point of these legal arguments

#### **14th Major DENYS KARERA**

Formerly in charge of the APR Security in the city of Byumba. Presently CEM, Deputy Commanding Officer of the General Police Station of Kigali, Rwanda.

He would have participated in the disappearance and subsequent murder of JOAQUIM VALLAMAJÓ and of other Rwandan Hutu priests in Byumba.

The above mentioned criminal acts would constitute the offences as described in paragraphs E); and F); of the first point of these legal arguments

**15th Captain EVARISTE KABALISA**

Former Second in Command of Ruhengeri Gendarmerie's

He would have participated in the attack on the MÉDICOS DEL MUNDO headquarters and in the murder of MANUEL MADRAZO, FLORS SIRERA and LUIS VALTUEÑA.

The above mentioned criminal acts would constitute the offences as described in paragraphs E); and F); of the first point of these legal arguments.

**16th Major JUSTUS MAJYAMBERE**

Former Intelligence Officer (I.O) serving in the 408th Brigade of the APR. Presently a Unit Commanding Officer.

1. He would have been one of the members who participated in the attack on the headquarters of MÉDICOS DEL MUNDO and in the murder of MANUEL MADRAZO, FLORS SIRERA and LUIS VALTUEÑA.
2. He would have carried out military operations in the region of Ruhengeri for the purpose of eliminating the Hutu civilian population.

The above mentioned criminal acts would constitute the offences as described in paragraphs A); E); and F); of the first point of these legal arguments

**17th Sub- lieutenant EVARIST KARENZI**

Former Intelligence Officer (I.O) of the Ruhengeri Gendarmerie.

1. He would have been one of the members who participated in the attack on the headquarters of MÉDICOS DEL MUNDO and in the murder of MANUEL MADRAZO, FLORS SIRERA and LUIS VALTUEÑA.
2. He would have carried out operations in the region of Ruhengeri for the purpose of eliminating the Hutu civilian population.

The above mentioned criminal acts would constitute the offences as described in paragraphs A); E); and F); of the first point of these legal arguments

### **18th Brigadier General ALEX KAGAME**

Formerly attached to the 101st Batallion. Presently a Commanding Officer of the *Garde Republicaine* of President Paul Kagame.

He would have participated in the following criminal acts:

1. Attack carried out by the 101st Batallion on the civilian population of Bukavu
2. Operation against the lives of priests in Kalima
3. Attacks on the civilian population throughout the axis of Uvila, Isiro, Shabunda, Kalima, Kingurube and Kindu.
4. Massacre carried out by his 101st Batallion in Wendji-Secli and in Mbandaka.

The above mentioned criminal acts would constitute the offences as described in paragraphs A); B); C); D); E); and F); of the first point of these legal arguments

### **19th Colonel CHARLES MUSITU**

Former Commanding Officer of the 21st Batallion, operating in the area of Byumba.

He would have participated in the disappearance and subsequent murder of JOAQUIM VALLMAJÓ and of Rwandan priests belonging to the Hutu ethnic group in Byumba.

The above mentioned criminal acts would constitute the offences as described in paragraphs E); and F); of the first point of these legal arguments.



**20th Lieutenant Colonel GASANA RURAYI**

Former Intelligence Officer and a member of the Network Commando.

As an officer serving in the Network Commando he participated in the cleansing operations carried out against the Hutu population in the Prefecture of Cyangugu.

The above mentioned criminal acts would constitute the offence as described in paragraph A); of the first point of these legal arguments.

**21st. Brigadier General SAMUEL KANYEMERA or SAM KAKA**

According to the testimonies obtained, there is prima facie evidence that he was one of the persons responsible for the military operations against the civilian population, besides participating in disappearances, summary executions and other similar operations against the Hutu civilian population in Munyanza, Kiyanza, Rutongo, Kabuye and, above all, in the “real slaughter” carried out at Nyacyonga Camp.

The above mentioned criminal acts would constitute the offences as described in paragraphs A); B); C); and D); of the first point of these legal arguments.

**22nd Colonel TWAHIRWA DODO**

He was the Commander of the Mobile Bravo Battalion

According to the testimonies obtained, there is prima facie evidence that he was one of the persons responsible for the military operations carried out against civilians, besides participating in disappearances, summary executions and other similar operations against the Hutu population in Munyanza, Kiyanza, Rutongo, Kabuye and, above all, in the “real slaughter” carried out at Nyacyonga Camp.

He would have been commanding the Mobile Bravo Battalion which perpetrated the massacre of the Hutu population in Byumba and its surrounding areas (Ngarama, Nyagathita, Kigasa).

He would also be the person directly responsible for the killing of the civilian population carried out by the Umutara-Kibungo axis Brigade in 1994 and 1995.

The above mentioned criminal acts would constitute the offences as described in paragraphs A); B); C); and D); of the first point of these legal arguments.

### **23rd Lieutenant Colonel FIRMIN BAYINGANA**

Former Group Commander in Ruhengeri.

He would have participated in the decision to murder the Spanish cooperators of MÉDICOS DEL MUNDO, MANUEL MADRAZO; FLORS SIRERA and LUIS VALTUEÑA.

The above mentioned criminal acts would constitute the offences as described in paragraphs B); E); and F) of the first point of these legal arguments.

### **24th Brigadier General AGUSTÍN GASHAYIJA**

Former Commander of the A.P.R. military Unit posted in Ruhengeri.

1. He would have participated in the decision to murder the Spanish cooperators of MÉDICOS DEL MUNDO, MANUEL MADRAZO; FLORS SIRERA and LUIS VALTUEÑA.
2. He would have been one of the persons responsible for the mass murder (10.000 people approximately) committed in Nyakimana.
3. He would have ordered the massacre carried out at Mukingo market.

### **25th Brigadier General WILSON GUMISIRIZA**

A former Intelligence Officer serving in the 157th Mobile Batallion. According to the last information available he would be commanding the 1st Sector of the FRD -Rwandan Defence Forces attached to the African Union in an United Nations mission in Sudan (UNAMIS), presently a unified hybrid force named the UNAMID FORCE.

From the proceedings carried out so far, there is founded *prima facie evidence* pointing to his direct participation in the murder, by means of machine guns, of priests, bishops and an eight year old child who were gathered at a room of the Josefite Brothers Headquarters in Gakurazo, on 5 June 1994.

The above mentioned criminal acts would constitute the offences as described in paragraphs A); E); and F) of the first point of these legal arguments.

**26th Colonel WILLI BAGABE**

Formerly attached to Intelligence Office (I.O.) of the 157th Mobile Batallion.

From the proceedings carried out so far there is founded *prima facie evidence* of his direct participation in the murder, by means of machine guns, of priests, bishops and an eight year old child who were gathered in a room at the Josefite Brothers Headquarters in Gakurazo, on 5 June 1994.

The above mentioned criminal acts would constitute the offences as described in paragraphs A); E); and F) of the first point of these legal arguments.

**27th Lieutenant WILSON GABONZIZA**

Formerly attached to the 157th Mobile Batallion.

From the proceedings carried out so far there is *prima facie evidence* of his direct participation in the murder, by means of machine guns, of priests, bishops and an eight year old child who were gathered in a room at the Josefite Brothers Headquarters in Gakurazo, on 5 June 1994.

The above mentioned criminal acts would constitute the offences as described in paragraphs A); E); and F) of the first point of these legal arguments.

**28th Corporal SAMUEL KARENZEZI, a.k.a. "VIKI"**

Formerly attached to the 157th Mobile Battalion.

From the proceedings carried out so far there is founded *prima facie evidence* of his direct participation in the murder, by means of machine guns, of priests, bishops and an eight year old child who were gathered in a room at the Josefite Brothers Headquarters in Gakurazo, on 5 June 1994.

The above mentioned criminal acts would constitute the offences as described in paragraphs A), E); and F) of the first point of these legal arguments.

**29th Captain JOAQUIM HABIMANA**

Former Head of Section of the DMI in Zaire (now the RDC)

From the proceedings carried out so far there are indications of his participation in the following criminal acts:

1. He would have commanded the military group who killed the Spanish priests SERVANDO MAYOR GARCÍA; JULIO RODRÍGUEZ JORGE; ANGEL ISLA LUCIO and FERNANDO DE LA FUENTE DE LAFUENTE.
2. He would have lead the D.M.I. commando which carried out the operation against the priests in Kalima, a massacre which took place on 25 February 1997.

The above mentioned criminal acts would constitute the offences as described in paragraphs A), E); and F) of the first point of these legal arguments.

**30th Captain KARARA MISINGO**

According to the latest news he has been appointed as one of the three member group UNDP NEPAL, directing the mission of Verification and Registry of the Mission of the United Nations Program for the Development of Nepal.

According to the evidence produced he would have ordered his soldiers to carry out "cleansing operations" (the indiscriminate killing of the hutu civilian population) in

Kabaere 1, Kabaere 2, Nyakimana, Mukingo, Nyamutera, Gatonde, Ndusu, Cyabingo and other inhabited places of the Ruhengeri Prefecture.

The above mentioned criminal act would constitute an offence as described in paragraphs A) of the first point of these legal arguments.

**31st Captain ALPHONSE KAJE**

From the proceedings carried out so far he would have ordered his soldiers to carry out “cleansing operations” (the indiscriminate killing of the hutu civilian population) in Kabere 1, Kabere 2, Nyakimana, Mukingo, Nyamutera, Gatonde, Ndusu, Cyabingo and in other inhabited places of the Ruhengeri Prefecture.

The above mentioned criminal acts would constitute an offence as described in paragraphs A) of the first point of these legal arguments.

**32nd Captain FRANK BAKUNZI**

A former Intelligence Officer of the Gisenyi Gendarmerie. According to the last available information he is presently the Speaker for the FRD, Rwandan Defence Forces, in Khartoum (Sudan) as well as the Captain attached to the African Union Rwandan contingent, in an United Nations Mission in Sudan (UNAMIS), presently a hybrid force unified under the name of UNAMID FORCE.

From the proceedings carried out so far, he would have participated in the attacks on the Hutu civilian population, carried out in Kanana, Rwerere, Nyanyumba and Mutura.

The above mentioned criminal acts would constitute an offence as described in paragraphs A) of the first point of these legal arguments.

**33rd Brigadier General DAN GAPFIZI**

Former Commanding Officer of the 59th Battalion

From the proceedings carried out so far his participation in the following criminal acts are inferred:

1. Attacks on the Hutu civilian population at the Lubutu refugee camp.
2. Military attack on the city of Byumba and on its surrounding inhabited areas, on 5 June 1992.

The above mentioned criminal act would constitute an offence as described in paragraphs A) of the first point of these legal arguments.

**34th Lieutenant JOHN BUTERA**

Formerly, an officer attached to the 157th Battalion.

From the proceedings carried out so far there are indications of his participation in the massacres carried out in Bukavu, Numbi, Walikale, Tinti-Tingi, Ubundu, Bokungu, Boende and Mbandaka.

The above mentioned criminal acts would constitute the offence as described in paragraphs A) of the first point of these legal arguments.

**35th Colonel CHARLES KARAMBA**

A former member of the Network Commando. Presently serving in the Rwandan Defence Forces as a Colonel. According to the latest information available, he has been appointed as a Military Attaché to the Rwandan Embassy in Eritrea and also as Director of investigation and development of the Rwandan Defence Forces attached to the African Union in an United Nations mission, carrying out the UNAMIS program in Sudan, at present a unified hybrid force named the UNAMID FORCE.

As a member of the Network Commando he would have participated in the genocide and terrorist actions he was entrusted with.

The above mentioned criminal act would constitute an offence as described in paragraphs A); E); and F) of the first point of these legal arguments.

**36th Captain MATAYO**

Former Intelligence Officer (I.O) of the 101st Battalion of the Gisenyi Brigade.

He would have participated in the planned attacks on the civilian population of Kanana, Rwerere, Nyanyumba and Mutura, which caused 50 deaths in each one.

The above mentioned criminal acts would constitute an offence as described in paragraphs A) of the first point of these legal arguments.

**37th Colonel PETER KALIMBA**

Former Commanding Officer attached to the 101st Battalion.

From the proceedings carried out so far there are indications of his participation in the attacks on Kanana, Rwerere, Nyanyumba and Mutura.

The above mentioned criminal acts would constitute an offence as described in sub-paragraphs A) of the first paragraph of these legal arguments.

**38th Major SILAS UDAHEMUKA**

Former Intelligence Officer (I.O) attached to the High Command Unit.

As a member of the Network Commando he would have participated in the genocide and terrorist actions he was entrusted with.

The above mentioned criminal act would constitute the offences as described in paragraphs A) E), and F) of the first point of these legal arguments.

**39th Major STEVEN BALINDA**

Former Commander of the DMI in Byumba.

He would have been one of the persons responsible for the operations against the civilian population carried out in April 1994 by the D.M.I.

The above mentioned criminal acts would constitute the offences as described in paragraphs A); E); and F) of the first point of these legal arguments.

**40th Colonel JOHN BAGABO**

Formerly attached to the Mobile Bravo Battalion Company.

He would have participated in the massacres perpetrated by the battalion to which he belonged, namely in the massacres carried out in the inhabited areas of Ngarama, Nyaghita and Kigasa.

**41st Captain GODEFROID NTUKAYAJEMO, a.k.a. "KIYAGO"**

Former member of the Network Commando.

He would have been the material perpetrator of the assassination of FELICIEN GATABAZI, the founder and president of the Social Democratic Party, an operation which was carried out on 21 February 1994.

The above mentioned criminal act would constitute the offences as described in paragraphs E) and F) of the first point of these legal arguments.

**FIFTH**

In the light of the proceedings carried out and in accordance with that which is established in article 384 of the Law of Criminal Procedure, there are grounds to indict the above cited persons. Considering the penalties applicable under the Penal Code to the crimes attributed to the accused and the circumstances of the same, pursuant to articles 490, 492, 503 and 504 of the above mentioned Criminal Procedural Law we order the provisional remand in custody of the accused and that the necessary International Arrest Warrants and European Arrest Warrants to the effect of their extradition be issued.



## SIXTH

In accordance with the provisions of Article 589 of the Law of Criminal Procedure, those who are criminally responsible are also liable to civil responsibility. Therefore it is necessary to secure the civil liability which may ultimately be established in this case in separate proceedings which shall be instituted to this effect.

Whereas, having regard to the aforementioned articles and any other relevant articles of general application,

### I ORDER

#### THE INDICTMENT OF THE FOLLOWING PERSONS:

1. JAMES KABAREBE, Major General
2. KAYUMBA NYAMWASA, Major General
3. KARENZI KARAKE, Brigadier General
4. FRED IBINGIRA, Major General
5. RWAHAMA JACKSON MUTABAZI, Colonel
6. JACK NZIZA (or JACKSON NKURUNZIZA or JAQUES NZIZA), Brigadier General
7. RUGUMYA GACINYA, Lieutenant Colonel
8. DAN MUNYUZA, Colonel
9. CHARLES KAYONGA, Lieutenant General
10. JOSEPH NZABAMWITA, Lieutenant Colonel
11. CEASER KAYIZARI, Major General
12. ERIK MUROKORE, Colonel
13. DENYZ KARERA, Major
14. EVARISTE KABALISA, Captain
15. JUSTUS MAJYAMBERE, Major
16. EVARISTE KARENZI, Sublieutenant
17. ALEX KAGAME, Brigadier General
18. CHARLES MUSITU, Colonel

19. GASANA RURARYI, Lieutenant Colonel
20. SAMUEL KANYEMERA or SAM KAKA, Brigadier General
21. TWAHIRWA DODO, Colonel
22. FIRMIN BAYINGANA, Lieutenant Colonel
23. AGUSTIN GASHAYIJA, Brigadier General
24. WILSON GUMISIRIZA, Brigadier General
25. WILLY BAGABE, Colonel
26. WILSON GABONZIZA, Lieutenant
27. SAMUEL KARENZEZI, a.k.a. "VIKI", Corporal
28. JOAQUIM HABIMANA, Captain
29. KARARA MISINGO, Captain
30. ALPHONSE KAJE, Captain
31. FRANK BAKUNZI, Captain
32. DAN GAPFIZI, Brigadier General
33. JOHN BUTERA, Lieutenant
34. CHARLES KARAMBA, Colonel
35. MATAYO, Captain
36. PETER KALIMBA, Colonel
37. SILAS UDAHENUKA, Major
38. STEVEN BALINDA, Major
39. JOHN BAGABO, Colonel
40. GODEFROID NTUKAYAJEMO, a.k.a. KIYAGO", Captain

These indictees shall remain hereinafter subject to the subsequent proceedings which are established in the Law of Criminal Procedure.

## **I ORDER**

### **THE PROVISIONAL CUSTODY OF THE ABOVE MENTIONED INDICTEES.**

Issue the respective national and international warrants for their search, arrest and remand in custody subject to this Court, which shall be published on the General Orders of the Police, the Civil Guard and in INTERPOL. Issue the necessary European Arrest Warrants to be inscribed in SIRENE and displayed on this Court's Notice Board. Pass

necessary orders so that the above mentioned persons appear before this Court within TEN DAYS to proceed to their remand in provisional custody, with the warning that if they fail to do so they shall be declared in default

When the accused are arrested, notify them the contents of the present indictment order and inform the same of their legal rights and of the appeals that can be lodged; Notify the Public Prosecution Ministry and institute separate proceedings in this respect, if the same have not yet been instituted.

This decision is not final and an appeal against the same can be lodged before this Court within THREE DAYS.

The Hon. Mr. Fernando Andreu Merelles, Judge of the Fourth Central Examining Court of the National Court, sitting in Madrid, so resolves, orders and signs. I certify.