

The Prosecutor v. Emmanuel Rukundo, Case No. ICTR-2001-70-T

Summary of Judgement, to be read orally on 27 February 2009

I. Introduction

1. Today the Chamber renders its Judgement in the case of *The Prosecutor v. Emmanuel Rukundo*. The Chamber will now read its summary of the judgement. The full version of the written judgement will be available in due course and is the authoritative text of the Chamber's findings and reasoning in this case. The Chamber is unanimous in its judgement, except for the dissenting opinion of Judge Park on one of the legal findings.

II. Procedural Background

2. Emmanuel Rukundo was born on 1 December 1959, at Mukingi commune, Gitarama *préfecture* in Rwanda. Rukundo studied at the Nyakibanda Major Seminary from 1985 until 1991, where he trained to become a priest. He was ordained as a priest on 28 July 1991 and then served as parish priest in Kanyanza Parish in Gitarama *préfecture*. In February 1993, Rukundo was appointed as military chaplain in the Rwandan Armed Forces. Following this appointment, he was posted to the Ruhengeri and Gisenyi military sectors in May 1993, and then transferred to Kigali in May 1994. He left Rwanda after the defeat of the Rwandan Armed Forces by the Rwandan Patriotic Front in September 1994, and went into exile to Burundi and then later to Europe.

3. In the amended Indictment of 6 October 2006, the Prosecution charged Emmanuel Rukundo with three counts: genocide, and murder and extermination as crimes against humanity. The Indictment charged the Accused with various forms of individual criminal responsibility pursuant to Article 6(1) of the Statute for these crimes.

4. According to the Prosecution, Emmanuel Rukundo was known to be a Hutu extremist throughout his schooling and prior to 1994. The Prosecution also alleges that the Accused relied on his authority as a priest and military chaplain in the Rwandan Armed Forces to order, instigate, or aid and abet soldiers, *Interahamwe* and armed

civilians in various places in Gitarama *Préfecture* to commit crimes at locations where Tutsi refugees had sought protection between April and June 1994.

5. The Defence submits that Emmanuel Rukundo was not an extremist; on the contrary, it claims that he had cordial relationships and even some friendships with Tutsi clergy members. The Defence further contends that Emmanuel Rukundo was not involved in any of the crimes in Gitarama *préfecture* as charged in the Indictment.

6. The trial in this case took place from 15 November 2006 until 22 October 2007 after hearing 18 Prosecution witnesses and 32 Defence witnesses. Closing submissions were heard on 20 February 2008.

III. Preliminary Issues

7. Before addressing the factual allegations in this case, the Chamber will address several preliminary matters.

8. First, the Defence argues that the Prosecution adduced evidence on facts not pleaded in the Indictment. The Chamber will deal with each argument, if necessary, in the corresponding factual section.

9. Second, the Defence claims that the Prosecution's pleading of joint criminal enterprise is defective. For reasons detailed in the judgement, the Chamber agrees with the Defence. The Chamber further finds that the Prosecution did not provide clear, consistent and timely notice to the Defence through the Pre-Trial Brief or any other post-indictment disclosures that it intended to rely on the criminal responsibility of a joint criminal enterprise. Therefore the Chamber will not consider any charge that Emmanuel Rukundo participated in a joint criminal enterprise.

10. Third, the Chamber notes that the Prosecution has not led any evidence on the allegation that in February 1994, in reaction to the Arusha Accords, Rukundo took part in mobilization campaigns of the Hutu against the Tutsi. The Prosecution also concedes that it did not adduce any evidence in support of the allegation that Rukundo was

expelled from the St. Léon Minor Seminary in 1973 for extremist behaviour. The Chamber therefore dismisses these allegations.

IV. Factual Findings

11. The Prosecution alleged that Rukundo was responsible for crimes which took place in 8 separate locations: 1) The Nyakibanda Major Seminary, prior to 1994; 2) The *Imprimerie de Kabgayi* (Kabgayi printing press) roadblock; 3) St. Joseph's College, 4) Nyabikenke Communal Office, 5) The Kabgayi Bishopric, 6) St. Léon Minor Seminary, 7) The CND, and 8) The Kabgayi Major Seminary.

1) Events Prior to 1994

12. The Prosecution submits that Rukundo showed extremism while a student at the Nyakibanda Major Seminary in 1990 and 1991. The Chamber's treatment of this evidence, which pre-dates the temporal jurisdiction of the Tribunal, is expressed in the written judgement.

2) The *Imprimerie de Kabgayi* (Kabgayi printing press) roadblock

13. The Indictment asserts that between 12 and 15 April 1994, Rukundo was present when Tutsi were arrested at the Kabgayi printing press roadblock and killed nearby, and that his presence instigated or aided and abetted these killings.

14. The Accused and other Defence witnesses do not dispute, and the Chamber finds, that that a roadblock manned by soldiers was established near the Kabgayi printing press sometime after President Habyarimana's death on 6 April 1994. What is disputed is Rukundo's presence and participation in crimes which allegedly took place at the roadblock.

15. Prosecution Witness BLP testified that when he saw Rukundo at the roadblock between 12 and 15 April 1994, people were having their ID cards examined, and some were seated at the side of the roadblock. He explained that the people detained at the roadblock were Tutsi who were sought after and other people that could not be identified. Witness BLP stated that when the Tutsi were found, they were very often killed. Witness BLP testified that he was later told by a man he had seen at the

roadblock on that day that the people arrested at the roadblock were taken downhill to a wooded area, about 40 metres from the roadblock, where they were killed.

16. Prosecution Witness CSE testified that he saw Rukundo sometime after 7 April 1994, in military uniform, at the roadblock, watching a person being beaten by soldiers with the butts of their guns. Witness CSE said that people were surprised that Rukundo, as a priest, did not react to the beating.

17. For reasons given in the written judgement, the Chamber considers that Witness BLP's evidence must be treated with caution and requires corroboration. The Chamber further finds that Witness BLP and Witness CSE's testimonies appear to relate to two different incidents and no evidence has been adduced to suggest that the two incidents happened on the same date or were part of the same transaction or occurrence. Therefore, Witness BLP's evidence is the only evidence of the killing of Tutsi at the roadblock as alleged in the Indictment. Since Witness BLP's evidence is vague and uncorroborated hearsay, the Chamber finds that the Prosecution has not proven beyond reasonable doubt that Rukundo instigated, or aided and abetted the killing of Tutsis at the *Imprimerie de Kabgayi* roadblock.

3) St. Joseph's College

18. The Prosecution alleges that between 12 and 15 April 1994, Rukundo brought soldiers to St. Joseph's College, where they searched the premises looking for Tutsi with ties to the *Inkotanyi*. Following the searches, the soldiers allegedly killed refugees including Madame Rudahunga, and abducted and grievously beat two of Madame Rudahunga's children and two other Tutsi civilians named Justin and Jeanne.

19. There is no dispute that Madame Rudahunga was abducted from St. Joseph's College and killed and that her two children and Justine and Jeanne were abducted from St. Joseph's College and seriously injured sometime in April 1994. The only dispute is Rukundo's presence and participation in these crimes.

20. Four Prosecution Witnesses give testimony on this event: BLP, BLJ, BLC and CCH. The Chamber notes that Witness BLP has some credibility issues. Following Witness BLP's testimony, the Defence filed a confidential motion to recall Witness BLP based on a letter given to the Defence investigator, Léonidas Nshogoza, in which

Witness BLP allegedly admitted to having given false testimony before the Chamber. The Chamber recalled Witness BLP and he testified that he did not wish to vary any of his earlier testimony. Following Witness BLP's second appearance, the Chamber ordered an independent investigation into Witness BLP's alleged false testimony and related issues. Mr. Jean Haguma, a Defence Attorney based in Kigali, who was appointed as an independent investigator, presented the findings of his investigation in Court.

21. The Haguma Report concluded that after his first time testifying, Witness BLP was influenced by a detainee at the Gitarama Prison to contact Léonidas Nshogoza in order to exculpate Father Rukundo. As a result, Witness BLP met Mr. Nshogoza on several occasions. The Chamber accepts the Haguma Report and finds that it establishes that Witness BLP's alleged recantation was due to pressure exerted upon him by the Defence investigator and the detainee at Gitarama Prison. Consequently, the Chamber does not believe that Witness BLP intended to recant his testimony before the Chamber.

22. For reasons given in the written judgement, the Chamber has further concerns regarding Witness BLP's credibility. Most important amongst those concerns is the fact that at the time of his testimony Witness BLP was on provisional release in Rwanda after having given a written confession to the Rwanda authorities for his participation in the attacks on Tutsi refugees at St. Joseph's College in April 1994; the very location he is alleging Rukundo's participation in crimes against members of the Rudahunga family and other Tutsi. As a result of all of these concerns, the Chamber will treat Witness BLP's evidence with caution and will rely on it only if it is corroborated by, or itself corroborates, other reliable evidence.

23. Witness BLP purports to be an eye witness to the abductions of Madame Rudahunga and her two children and two other Tutsi civilians, Justin and Jeanne, from St. Joseph's College. Witness BLP places the Accused at the scene of the abduction and also saw the Accused following Madame Rudahunga and the soldiers in his vehicle as they drove away from St Joseph's College. Furthermore, Witness BLP stated that approximately twenty minutes after their departure with Madame Rudahunga, the same soldiers returned to St. Joseph's College and abducted the Rudahunga's two children and Justin and Jeanne.

24. Witness BLJ, as one of the victims, testified that she was abducted about 30 minutes after Madame Rudahunga. At the Rudahunga's house, she saw Madame Rudahunga's dead body which had been shot. Witness BLJ linked Rukundo to the scene because she realised that the blue Toyota pick-up that was used to transport her from St Joseph's College was the same vehicle that she saw close to the Rudahunga's house after the attack which Father Kayibanda referred to as "Father Emmanuel's car". Witness BLJ also connects Rukundo to the crimes because she saw Rukundo with two of the same soldiers who abducted her and Madame Rudahunga from St. Joseph's College at the Kabgayi hospital after the incident. The Chamber finds Witness BLJ to be a credible witness.

25. Prosecution Witness BLC, also a credible witness, connects Rukundo to this incident because he heard Rukundo boast that "We entered in Rudahunga's Inyenzi's house, we killed the wife and the children, but the idiot managed to get away from us." Witness BLC testified that, when boasting about the killing, Rukundo had come from the Rudahunga's house, which is consistent with Witnesses BLP and BLJ's evidence. Witness CCH's evidence also connects Rukundo to the killing of Madame Rudahunga because when she saw Rukundo at the St. Léon Minor Seminary, shortly after Madame Rudahunga's death, the Accused told her that that Mr. Rudahunga had to be killed. The Chamber also considers Witness CCH to be credible.

26. The Chamber finds that all four Prosecution witnesses connect Rukundo to the incident in various ways and that the material points of Witness BLP's eye-witness account of the abductions are corroborated by the other Prosecution witnesses.

27. Also for reasons given in the written judgement, the Chamber finds that the evidence given by the Defence Witnesses does not discredit the Prosecution evidence.

28. The Chamber therefore finds that the Prosecution has proved beyond a reasonable doubt that sometime in April 1994, Madame Rudahunga, a Tutsi woman, was abducted from St. Joseph's College in Kagbayi by Emmanuel Rukundo, acting together with unknown soldiers, taken to her home and shot and killed. The Chamber also finds that the same group of soldiers returned to St. Joseph's College about twenty minutes after abducting Madame Rudahunga and took away the Rudahunga's two children, and two other Tutsi civilians, Justin and Jeanne. The soldiers severely beat and

injured the second group who were left for dead at the Rudahunga's home. In light of the short interval between the abductions, the fact that the same soldiers returned to the College a second time to abduct the 4 Tutsi civilians and Rukundo's boasting of the killing of Madame Rudahunga and her two children, the Chamber finds that these acts form part of the same criminal transaction. The Chamber further finds beyond reasonable doubt that Rukundo participated in the entire criminal transaction.

4) Nyabikenke Communal Office

29. The Indictment alleges that on or about 15 April 1994, Emmanuel Rukundo went to the Nyabikenke communal office in Gitarama and ordered or instigated policemen to shoot at Tutsi refugees hiding at that location, which resulted in several deaths. However, Witness BUW, the Prosecution's main witness on this event, testified that the Accused failed to order a group of Hutu civilian attackers who had surrounded the communal office to stop attacking the refugees and that the attacks intensified after Rukundo left, which is different than the charge in the Indictment. For reasons further given in the written judgement, the Chamber finds that the Prosecution has not proved beyond reasonable doubt that Rukundo failed to order a group of Hutu civilian attackers to stop attacking OR, as alleged in the Indictment, that he ordered, instigated or aided and abetted the policemen to shoot at the Tutsi refugees.

5) The Kabgayi Bishopric

30. The Indictment alleges that on or about 16 April 1994, Emmanuel Rukundo, armed and dressed in military uniform and accompanied by armed soldiers, moved around the Kabgayi Bishopric, yelling and asking if any Tutsi or *Inkotanyi* were hiding there. As a result of Rukundo's alleged conduct, Tutsi priests, fearing for their lives, went into hiding. The Indictment further alleges that by this conduct, the Accused caused serious mental harm to Tutsi who had taken refuge at the Bishopric in April 1994.

31. The Chamber first notes that the Prosecution evidence appears to refer to three separate incidents at the Bishopric. Prosecution Witnesses CCJ, CCN and BPA give different accounts of what the Accused is alleged to have uttered, and the dates on which the incident is alleged to have taken place.

32. Witness CCJ claimed to have heard Rukundo, on 15 April 1994, ask in a loud voice “are there no *Inkotanyis* here” as a result of which Witness CCJ was frightened. The Chamber has doubts concerning Witness CCJ’s credibility. Even if the Chamber were to believe the witness, insufficient evidence was adduced that Witness CCJ suffered serious mental harm.

33. Witness BPA testified that he saw Rukundo in the Bishopric in Kabgayi around 11 or 12 April 1994 striding down the corridor and frightening people by saying that “the time had come for them to kill the *Inyenzi*”. Witness BPA testified that he was afraid after these remarks, especially since Rukundo had a rifle and it was the first time he had seen a military chaplain. For reasons stated in the written judgement, the Chamber does not find Witness BPA to be a credible witness. Even if it were to believe Witness BPA’s testimony, the Chamber is not satisfied that Rukundo’s remarks are sufficient to support a finding of serious mental harm.

34. Witness CCN testified that upon greeting Rukundo at the Bishopric on 13 April 1994, Rukundo intimidated him by responding: “You will see, you will see, you will get it from us.” Witness CCN stated that he was afraid because of what he knew of Rukundo’s past behaviour at the Nyakibanda Major Seminary and from an argument they had previously had about the war. For reasons given in the written judgement, the Chamber finds Witness CCN to be a credible witness and therefore finds as a fact that on 13 April 1994 Rukundo uttered the threatening words. The Chamber, however, finds that the Prosecution has not established that Witness CCN suffered serious mental harm as a result of Rukundo’s remarks.

35. The Chamber therefore concludes that the Prosecution has not proved beyond reasonable doubt that Rukundo’s alleged conduct as testified to by the Prosecution witnesses caused serious mental harm to Tutsi who had taken refuge at the Bishopric in April 1994.

6) St. Léon Minor Seminary

36. The Indictment charges Rukundo with three separate allegations at the St. Léon Minor Seminary during the months of April and May 1994. First, it alleges that Rukundo ordered, instigated, or aided and abetted soldiers and *Interahamwe* to beat, kick and whip Tutsi refugees at the St. Léon Minor Seminary. Second, it alleges that the

Accused ordered, instigated, or aided and abetted soldiers and *Interahamwe* to kill Tutsi refugees at the St. Léon Minor Seminary by identifying specific refugees to be abducted, and that on one occasion, this was done using a list. Third, the Indictment alleges that Rukundo took a young Tutsi woman into his room at the St. Léon Minor Seminary, locked the door and sexually assaulted her thereby causing her serious mental harm.

i) Beating of refugees

37. The Chamber notes that Witness CSF, as the only Prosecution witness to testify on this allegation, does not link the Accused to the beatings. The Chamber therefore finds that the Prosecution has not established beyond a reasonable doubt that Rukundo ordered, instigated or aided and abetted the beating of Tutsi refugees at the St. Léon Minor Seminary.

ii) Abduction and killings of refugees

38. There is no dispute that abductions and subsequent killings occurred at the St. Léon Minor Seminary in April and May 1994. The only remaining contention is Rukundo's involvement and participation in these crimes.

39. The main Prosecution witness on this allegation is Witness CSF. Prosecution Witnesses CSG and BLC provide additional testimony. The Chamber notes that Rukundo does not deny that he visited St. Léon Minor Seminary during the months of April and May 1994. In fact, he described in detail the three times that he visited the St. Léon Minor Seminary.

40. Witness CSF testified that he saw Rukundo on four occasions, accompanied by soldiers and *Interahamwe*, during April and May 1994 at the St. Léon Minor Seminary. According to Witness CSF, Rukundo's first visit took place on 20 or 21 April 1994, where he went around and talked to a number of refugees. Then, he handed a piece of paper to one of the soldiers accompanying him and left. The soldiers then called out the names of those people who appeared on the list and started looking for them. Witness CSF saw the identified refugees board a blue truck and being taken away. According to Witness CSF, they never returned. Witness CSF testified that Rukundo returned to the St. Léon Minor Seminary approximately 4 days later. At that time the refugees, whose

names were called, protested because they realised that they were going to be killed. However they were also put on board vehicles, taken away, and never returned. On Rukundo's third visit, which again took place four days later, Rukundo had a list with names of people who had not been previously found. Rukundo walked around, handed over the list to a soldier and left. The soldier read the names aloud while other soldiers looked for the people on the list. On the fourth visit, which took place a few days before the RPF arrived in Kabgayi, a large number of refugees were taken away on a bus and never returned. Intellectuals such as teachers, lecturers, civil servants and particularly magistrates were the first to be abducted. Witness CSF mentioned that a judge from the Nyamabuye court, whom he knew, was being sought and the *Interahamwe* would not leave without that person. Finally, the judge was found and Witness CSF saw him being taken away. According to Witness CSF, when the *Interahamwe* returned to the St. Léon Minor Seminary they were singing songs and boasting about having killed the refugees.

41. For reasons given in the written judgement, the Chamber finds Witness CSF to be credible. Additionally, material aspects of Witness CSF's testimony were corroborated by Prosecution Witnesses CSG and BLC.

42. Due to extended absences of Defence Witnesses SLA and SLD from the St. Léon Minor Seminary at critical times, the Chamber does not find that their testimonies discredit the Prosecution evidence.

43. The Chamber therefore finds that the Prosecution has established beyond reasonable doubt that Rukundo came to the St. Léon Minor Seminary on at least four occasions during April and May 1994, identified Tutsi refugees using a list, and after Rukundo left the premises, soldiers and *Interahamwe* took the refugees to an unknown location, where they were killed.

iii) Sexual Assault on a young Tutsi woman

44. Witness CCH's testimony is that in the later part of May 1994, Rukundo came to the St. Léon Minor Seminary. Witness CCH greeted Rukundo and asked him if he could hide her. Rukundo responded that he could not help her because her entire family had to be killed because her relative was an *Inyenzi*. Nevertheless, Witness CCH assisted him to carry some items to his room, in the hope that he would help to hide her. Once in the room, Rukundo locked the door, placed his pistol on the table next to the bed and began

to caress her. He forced her onto the bed, opened the zipper on his trousers and lay on top of her. He tried to have sexual intercourse, and tried to spread her legs, but she resisted. Following Witness CCH's continued resistance, Rukundo gave up trying to have intercourse, but rubbed himself against her until he ejaculated. Witness CCH said that she could not escape since he was on top of her, holding her down, was in a position of authority and had a gun.

45. Rukundo admitted to visiting the St. Léon Minor Seminary on 21 May 1994, but maintained that he didn't see Witness CCH there. He further stated that he had no access to any room at the St. Léon Minor Seminary since he was not a resident. If he wanted access to a room, he would have had to get a key from the bursar.

46. For reasons further explained in the written judgement, the Chamber considers Witness CCH to be a credible witness and finds that Rukundo sexually assaulted Witness CCH as she described in her testimony.

47. The Chamber must first determine whether the act in question was of a sexual nature. Second, the Chamber must determine whether there existed coercive circumstances. Third, the Chamber must decide whether the act, if sexual and under coercive circumstances, caused Witness CCH serious mental harm as alleged by the Prosecution.

48. For reasons given in the written judgement, the Chamber finds that the act in question was of a sexual nature. It similarly finds that the circumstances were coercive. According to the jurisprudence of this Tribunal, serious bodily or mental harm includes rape and sexual violence, and the harm need not be permanent or irremediable. The harm, however, must be more than minor or temporary impairment of mental faculties such as the infliction of strong fear or terror, intimidation or threat. It has been held that serious mental harm could be found when there is a non-mortal act, such as sexual assault, combined with the threat of death. It has further been held that rape and sexual violence are some of the worst ways of inflicting harm on the victim as he or she suffers both bodily and mental harm.

49. The evidence of Witness CCH, which the Chamber accepted, describes a young Tutsi woman fearing for her life and seeking protection from a member of the clergy,

known to her and who was in a position of authority. Instead of providing protection, Rukundo abused Witness CCH by sexually assaulting her under coercive circumstances.

50. The Chamber has not had the benefit of any direct evidence on Witness CCH's mental state following the sexual assault apart from the fact she could not tell anyone about the incident. The Chamber however, Judge Park dissenting, draws an inference as to the existence of serious mental harm on the part of Witness CCH. The key to this inference is the ability to look beyond just the sexual act in question. In particular, the highly charged and oppressive circumstances merging with the physical and mental assault on Witness CCH. Those circumstances include the following: 1) Members of her ethnic group were victims of mass killings; 2) She and her family, fearing death in this way, sought refuge in a religious institution; 3) Upon seeing a familiar and trusted person of authority and of the church, i.e. the Accused, she allowed herself some hope and requested protection for herself and her family; 4) Witness CCH's hope was quickly ruined when the Accused refused her the protection she had requested and directed her mind to a specific threat— that her family was to be killed for its association with the '*Inyenzi*'; 5) Rukundo had a firearm; 6) Still keeping hope alive, Witness CCH sought to ingratiate herself to him by assisting him to carry his effects into a nearby room; and 7) While in the room, he locked her in, put his firearm down nearby and proceeded to physically manhandle her in a sexual way.

51. The Chamber finds in light of the jurisprudence and the surrounding circumstances, Judge Park dissenting, that the only reasonable conclusion is that Witness CCH suffered serious mental harm as a consequence of Rukundo's conduct.

7) The CND

52. The Chamber notes that the Indictment charges Rukundo with ordering, instigating or aiding and abetting the abduction, infliction of serious bodily or mental harm and killing of several Tutsi refugees on the basis that after Rukundo's visits to the CND, soldiers and *Interahamwe* returned to the CND and committed those crimes.

53. The Defence submits that Prosecution Witness AMA's testimony on this allegation is inconsistent with the Indictment because he testified that the abduction of about 15 Tutsi refugees took place while Rukundo was present at the CND, and not after his departure. The Chamber finds that consideration of Witness AMA's evidence

would result in an impermissible *de facto* amendment of the Indictment. Therefore, the Chamber will not consider Witness AMA's evidence in respect of the events at the CND.

54. There is no dispute that there were abductions of refugees from within the CND in April and May 1994. The only dispute concerns Rukundo's presence and involvement in the abductions.

55. Witness CSE testified that Rukundo visited the CND on a number of occasions in the company of the Bishop of the Kabgayi Diocese, and the then Prime Minister Jean Kambanda. According to Witness CSE, Rukundo and his entourage would visit certain parts of the CND and "two hours or less than two hours" after each of these visits, soldiers would come and abduct refugees from those places. Witness CSE stated that the abducted refugees never returned to the CND and were never seen again.

56. The Chamber finds that even taken at its best, Prosecution Witness CSE's evidence does not establish that Rukundo was involved in the abductions of refugees from inside the CND. The mere fact that soldiers abducted refugees from the areas that had been visited by Rukundo and his entourage "two hours or less than two hours" after the visits is not sufficient to support a finding that he was involved in the crimes. The Chamber notes that Witness CSE did not testify that Rukundo identified prospective victims at the CND. On the contrary, Witness CSE stated that Rukundo and his entourage did "nothing" during these visits. It is unclear what happened between Rukundo's visits and the subsequent abductions.

57. The Chamber therefore finds that the Prosecution has not proved beyond reasonable doubt that Emmanuel Rukundo ordered, instigated, or aided and abetted soldiers and *Interahamwe* militiamen to kill, abduct or inflict serious bodily or mental harm upon Tutsi refugees at the CND.

8) Kabgayi Major Seminary

58. The Indictment alleges three incidents which took place at the Kabgayi Major Seminary. First, it asserts that during the month of May 1994, Rukundo went to the Kabgayi Major Seminary several times, and met with priests. In public, and within the hearing of Tutsi priests, he allegedly stated that the Kabgayi Major Seminary was full of

Inyenzi, meaning Tutsi, and that they must all be killed. In so speaking, Rukundo inflicted serious mental harm on the Tutsi priests who overheard his statement. Second, the Indictment asserts that on or about 24 May 1994, Rukundo led a group of soldiers and *Interahamwe*, in attacking the Kabgayi Major Seminary. The attackers, using a list, abducted and subsequently killed about twenty Tutsi clergy and two Tutsi laypersons. Third, the Indictment alleges that on a date sometime in the second half of May 1994, Rukundo went to the Bernadine sisters' convent and told them that certain Tutsi clergy were killed at the Kabgayi Major Seminary.

i) Anti-Tutsi statements

59. The Chamber notes that Witness CSH is the sole Prosecution witness who testified on the allegation that the Accused directed anti-Tutsi statements towards a group of clergy at the Kabgayi Major Seminary. Witness CSH testified that when Rukundo arrived at the Kabgayi Major Seminary, many members of the clergy surrounded him to receive comfort and news from the outside. Instead, to everyone's shock, the priest in military attire, carrying a gun and with a military escort, told the group that the *Inyenzi* had to be killed and whoever wasn't killed would be sought out "by a local gang like the *Interahamwe*". As a result of his statement, Witness CSH testified that the group of people who had gathered around Rukundo withdrew, since they were shocked to hear him speak in this manner.

60. For reasons elaborated in the written judgement, the Chamber considers Witness CSH to be a credible witness. Defence Witnesses GSA and Dussart testified that Rukundo was indeed at the Major Seminary at that time, but they deny that he made the offensive statement. The Chamber finds that since the Defence witnesses were not in Rukundo's presence for the entire duration of his visit, their evidence cannot discredit the evidence of Prosecution Witness CSH. The Chamber therefore finds that the Prosecution has proved that while at the Kabgayi Major Seminary sometime in May 1994, the Accused said in the presence of several Tutsi clergymen that all *Inyenzi* had to be sought out and killed.

61. As further discussed in the written judgement, however, the Chamber concludes that the Prosecution has not established beyond reasonable doubt that serious mental harm occurred as a result of Rukundo's conduct.

ii) Abduction and Killing of Tutsi Clergy from Kabgayi Major Seminarya) Preliminary Issue-alibi

62. During his testimony, the Accused stated that he was not in Kabgayi on 24 May 1994, but rather he was in Kigali. The Chamber finds that the Defence should have given notice of alibi even if was relying only on the Accused's evidence. The failure to provide such notice, however, does not limit the Accused from relying on this defence, but the Chamber may attach less weight to the alibi. In any event, the Chamber does not find that the Accused's assertion that he was in Kigali on 24 May 1994, in itself, raises reasonable doubt on the Prosecution case.

b) Merits of the allegation

63. There is no dispute and the Chamber finds that at least 10 Tutsi clergy and at least one civilian, were abducted from the Kabgayi Major Seminary on 24 May 1994, and then subsequently killed at Byimana. The only dispute concerns Rukundo's presence and participation in the abductions and killings.

64. Witness BLP testified that towards the end of May 1994, he saw Rukundo with soldiers at St. Joseph's College and then at the Kabgayi Major Seminary. Witness BLP said that he saw Rukundo standing near his vehicle in the parking lot with *sous-préfet* Antoine Misago, while some soldiers searched the Seminary buildings. They asked everyone inside the chapel to come out and show their identity cards. The soldiers allowed some people to return to the Kabgayi Major Seminary, while others were told to go to where Rukundo and Misago were in the parking lot. Witness BLP said that Rukundo had a few sheets of paper, and so did the leader among the soldiers and the *sous-préfet*. Witness BLP recognised several people who were made to board a vehicle at the Kabgayi Major Seminary, which then left towards Butare. Witness BLP said that he saw Rukundo leave with them. Later, news spread in Kabgayi that the people in the vehicle had been killed in Byimana.

65. The Chamber notes that Witness BLP is the only witness who places the Accused at the scene of the abductions at the Kabgayi Major Seminary. Due to credibility issues, his evidence requires corroboration. The Chamber finds that this critical aspect of his testimony has not been corroborated. Therefore, the Chamber finds that the Prosecution has proved beyond a reasonable doubt that Rukundo ordered,

instigated or aided and abetted the abduction and killing of Tutsi from the Kabgayi Major Seminary.

66. Having found that the Prosecution has failed to prove beyond reasonable doubt that Rukundo participated in the abduction and killing of Tutsi priests at Kabgayi Major Seminary, the Chamber will not consider the allegation that he subsequently reported the death of the priests to the Bernadine Sisters' Convent.

V. Legal Findings

67. The Indictment charges Rukundo with genocide, as well as with murder and extermination as crimes against humanity. Rukundo is charged with responsibility for these crimes, pursuant to Article 6(1) of the Statute, for having planned, instigated, ordered, committed or otherwise aided and abetted the planning, preparation or execution of the crimes charged.

1) Count 1- Genocide

68. To find an accused guilty of the crime of genocide it must be established that he committed any of the enumerated acts in Article 2(2) of the Statute with the specific intent to destroy, in whole or substantial part, the members of a group, as such, defined by one of the protected categories of nationality, race, ethnicity, or religion.

69. The Prosecution has proved beyond reasonable doubt the following factual allegations in support of the charge of genocide: 1) The attack on St. Joseph's College, including the killing of Madame Rudahunga, and the beating of her children and two other Tutsi civilians; 2) The abductions and killings at the St. Léon Minor Seminary; and 3) Sexual assault, Judge Park dissenting, at the St. Léon Minor Seminary.

1) The attack on St. Joseph's College, including the killing of Madame Rudahunga, and the beating of her children and two other Tutsi civilians

70. The Chamber has found that in April 1994, Rukundo, with soldiers, abducted and killed Madame Rudahunga. Furthermore, the Chamber has found that Rukundo and the soldiers abducted and severely beat and injured the Rudahunga's two children and two other Tutsi civilians, Justin and Jeanne.

71. The Chamber recalls that “committing” is not limited to direct and physical perpetration and that other acts can constitute direct participation in the crime. The Appeals Chamber has held that where the actions of an accused were “as much an integral part of the genocide as were the killings which he enabled”, then he can be responsible for committing that crime. Rukundo participated from the outset until the completion of the crime: from the time when the soldiers, acknowledging his authority, showed him documents taken from St. Joseph’s College before abducting Madame Rudahunga, and Rukundo followed the blue pick-up which carried Madame Rudahunga away from the College until he finally boasted about killing Madame Rudahunga and her two children. The Chamber therefore finds that Rukundo’s acts were as much an integral part of the genocide as was the killing and the causing of serious bodily harm which he enabled and thus amount to “committing” under Article 6(1) of the Statute.

72. Considering the general context of mass ethnic killing in Gitarama *préfecture* and in Kabgayi, the systematic targeting of Tutsi at St. Joseph’s College and reference to the Rudahunga family as *Inyenzi*, the Chamber is satisfied that Madame Rudahunga, her children and Justin and Jeanne were targeted because they were Tutsi. Under these circumstances, the Chamber has no doubt that when committing these crimes, Rukundo possessed the intent to destroy, in whole or in part, the Tutsi ethnic group.

2) The abductions and killings at the St. Léon Minor Seminary

73. The Chamber has found that between mid-April and the end of May 1994, Rukundo participated, together with soldiers and *Interahamwe*, on at least four occasions, in the abduction and subsequent killing of Tutsi refugees from the St. Léon Minor Seminary. In light of the Chamber’s findings above, the Chamber concludes that Rukundo’s actions were as much an integral part of the genocide as were the abductions of Tutsi refugees from the St. Léon Minor Seminary and the subsequent killings which he enabled. The Chamber therefore finds that Rukundo’s conduct amounts to “committing”, under Article 6(1) of the Statute.

74. In light of the general context in Gitarama *préfecture* and in Kabgayi, Rukundo’s participation in the systematic abduction and killing of Tutsi refugees at the St. Léon Minor Seminary based on lists and his comment that “something had to be done” about the RPF sympathizers, the Chamber has no doubt that when committing

these crimes Rukundo possessed the intent to destroy, in whole or in part, the Tutsi ethnic group.

3) Sexual assault at the St. Léon Minor Seminary

75. The Chamber has found above, that Rukundo sexually assaulted a young Tutsi woman. The Chamber has further found, Judge Park dissenting, that Witness CCH suffered serious mental harm as a consequence of Rukundo's conduct.

76. In light of the general context in Gitarama *préfecture* and Kabgayi, and his utterance prior to assaulting Witness CCH that her entire family had to be killed because her relative was an *Inyenzi*, the Chamber has no doubt that when committing this crime, Rukundo possessed the intent to destroy, in whole or in part, the Tutsi ethnic group.

77. Accordingly, the Chamber finds Rukundo guilty of genocide under Article 6(1) of the Statute, for the killing Madame Rudahunga and causing serious bodily harm to two of her children and Justin and Jeanne; for the abductions and killing of Tutsi refugees from the St. Léon Minor Seminary; and Judge Park dissenting, the sexual assault of a young Tutsi woman at the St. Léon Minor Seminary.

4) Counts 2 and 3 - Crimes Against Humanity (Murder and Extermination)

78. For any of the enumerated crimes under Article 3 of the Statute to qualify as a crime against humanity, the Prosecution must prove that the act was committed as part of a widespread or systematic attack against the civilian population on national, political, ethnic, racial or religious grounds. The perpetrator must have acted with knowledge of the broader context and knowledge that his acts formed part of a discriminatory attack.

79. The crime of murder requires proof of the intentional killing of a person, or of the intentional infliction of grievous bodily harm with knowledge that such harm will likely cause the victim's death or with recklessness as to whether death will result, without lawful justification or excuse. Extermination is distinguishable from murder because it is the act of killing on a large scale. The expression "on a large scale", however, does not require a numerical minimum. It requires proof that an accused participated in a widespread or systematic killing or in subjecting a widespread number

of people to conditions of living that would inevitably lead to their death, and that by his acts or omissions the accused intended this result.

80. Based on the totality of the evidence, the Chamber finds that a widespread or systematic attack against Tutsi civilians on ethnic grounds occurred in Gitarama *préfecture* and in Kabgayi between April and the end of May 1994.

81. The Chamber further finds that Rukundo was aware of this widespread or systematic attack and that his actions formed part of the attack. By his own account, Rukundo knew that Tutsi were being targeted at roadblocks and elsewhere on the basis of their ethnicity. Furthermore, the Chamber notes that Rukundo was at the Nyabikenke communal office when Tutsi, who had sought refuge there, were attacked by *Interahamwe*. The Chamber also notes that Rukundo visited the various locations in Kabgayi, where thousands of Tutsi sought refuge and on several occasions participated, together with soldiers and *Interahamwe*, in the attacks against the Tutsi in two locations in Kabgayi.

82. The Prosecution charges Rukundo with Murder as a Crime Against Humanity for the killing of Madame Rudahunga. The Chamber has already found that Rukundo intentionally participated in the killing of Madame Rudahunga and that his acts amounted to “committing”. The Chamber notes that the killing of Madame Rudahunga was already a basis for the conviction for genocide. The Chamber recalls that cumulative convictions for genocide and crimes against humanity based on the same conduct are permitted as each crime has a materially distinct element not contained within the other. Accordingly, the Chamber finds Rukundo responsible on Count 2 of the Indictment under Article 6(1) for committing murder as a crime against humanity for the killing of Madame Rudahunga sometime in April 1994.

83. The Prosecution charges Rukundo with Extermination as Crime Against Humanity for the same allegations as for the crime of genocide.

84. The Chamber notes that there is no evidence that the murder of Madame Rudahunga and the serious bodily harm caused to the Rudahunga’s two children and the two Tutsi civilians formed part of killings on a large scale. The Chamber therefore finds that these crimes are insufficient to satisfy the charge of extermination.

85. Although the Chamber has no specific figures as to the number of deaths resulting from the abductions at the St. Léon Minor Seminary, the Chamber finds that in light of the repetitive nature of the abductions and killings and the fact that at least one bus was used in removing the identified refugees, the specific requirement for the crime of extermination, *i.e.* killing on a large scale, has been met for these abductions and killings.

86. Accordingly, the Chamber finds Rukundo guilty on Count 3 of the Indictment under Article 6(1) of the Statute for committing extermination as a crime against humanity for the abductions and killing of Tutsi refugees from the St. Léon Minor Seminary between April 1994 and the end of May 1994.

VI. Sentencing

87. The Chamber has found Rukundo guilty of genocide, murder as a crime against humanity and extermination as a crime against humanity.

88. Genocide is, by definition, a crime of the most serious gravity which affects the very foundations of society and shocks the conscience of humanity. Crimes against humanity are also very serious offences because they are heinous in nature and shock the collective conscience of mankind.

89. The Chamber considers Rukundo's stature in Rwandan society to be an aggravating factor. As military chaplain, Rukundo was a well known priest within the community and an influential figure in the Rwandan military. The Chamber considers it highly aggravating that Rukundo abused his moral authority and influence in order to promote the abduction and killing of Tutsi refugees and to sexually assault a Tutsi girl. The Chamber also considers the fact that the Accused is an educated person to be an aggravating factor. As an educated person the Accused could appreciate the dignity and value of human life and is aware of the need for a peaceful co-existence between communities.

90. The Defence claims that Rukundo did all that he could to evacuate people from various parts of Rwanda. The Chamber notes that even if it were to believe this evidence, the assistance provided by Rukundo to a selected number of Tutsis carries only limited weight, if any, as a mitigating factor.

91. The Chamber has taken into consideration the sentencing practice of the ICTR and the ICTY, and notes particularly that the penalty must first and foremost be proportionate to the gravity of the offence. In this Tribunal, principal perpetrators convicted of genocide have received sentences ranging from twenty-five years to imprisonment for the remainder of their lives, except in cases where the accused pled guilty or there existed significant mitigating circumstances. Senior authorities, in particular Ministers, have received the most severe sentences. Life imprisonment has also been imposed on those at a lower level who planned or ordered atrocities or if they participated in the crimes with particular zeal or sadism. Secondary or indirect forms of participation have usually entailed a lower sentence. The Chamber also notes that it is common for convictions for murder and extermination as crimes against humanity to form part of a single sentence of a fixed term or of life imprisonment for the totality of the conduct of the Accused.

92. Considering all the relevant circumstances discussed above and having ensured that the Accused is not being punished twice for the same offence, the Chamber sentences Emmanuel Rukundo for genocide, and murder and extermination as crimes against humanity to a single sentence of 25 years of imprisonment.

93. This sentence shall be enforced immediately and, pursuant to Rule 101(C) of the Rules, Emmanuel Rukundo shall receive credit for the time served as of 12 July 2001.

94. In accordance with Rules 102(A) and 103 of the Rules, Rukundo shall remain in the custody of the Tribunal pending transfer to the State where he will serve his sentence.