

RWANDA / JUDGMENT

THE PROSECUTOR v. SIMON BIKINDI

ICTR-01-72-T

COURT

International Tribunal for Rwanda

DECIDED

2 December 2008

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Text

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International Criminal Tribunal for Rwanda

Tribunal pénal international pour le Rwanda

UNITED NATIONS

NATIONS UNIES

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TRIAL CHAMBER III

Before Judges: Inés Mónica Weinberg de Roca, Presiding
Florence Rita Arrey
Robert Fremr

Registrar: Adama Dieng

Judgement of: 2 December 2008
THE PROSECUTOR
v.
Simon BIKINDI
Case No. ICTR-01-72-T

JUDGEMENT

Counsel for the Prosecution Counsel for the Defence

William T. Egbe Andreas O'Shea Veronic Wright Jean de Dieu Momo Patrick Gabaake Peter Tafah
Iain Morley Sulaiman Khan Amina Ibrahim Disengi Mugeyo

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CHAPTER I:

INTRODUCTION

1. THE TRIBUNAL AND ITS JURISDICTION 1. The Judgement in the case of The Prosecutor v. Simon Bikindi is issued by Trial Chamber III of the International Criminal Tribunal for Rwanda (“Tribunal” or “ICTR”), composed of Judges Inés Mónica Weinberg de Roca, presiding, Florence Rita Arrey and Robert Fremr (“Chamber”). 2. The Tribunal is governed by its Statute (“Statute”), annexed to Security Council Resolution 955,1 and by its Rules of Procedure and Evidence (“Rules”).2 3. Pursuant to the Statute, the Tribunal has jurisdiction to prosecute persons responsible for serious violations of international humanitarian law committed in the territory of Rwanda and Rwandan citizens responsible for such violations committed in the territory of neighbouring States.3 Its jurisdiction is limited to genocide, crimes against humanity and serious violations of Article 3 common to the Geneva Conventions of 12 August 1949 and Additional Protocol II thereto of 8 June 1977, committed

between 1 January 1994 and 31 December 1994.⁴

2. THE ACCUSED 4. Simon Bikindi (“Bikindi” or “Accused”), a Rwandan citizen, was born on 28 September 1954 in Rwerere commune, Gisenyi préfecture, Rwanda. In 1994, he was a composer and singer and worked at the Ministry of Youth and Association Movements of the Government of Rwanda.⁵
3. THE INDICTMENT 5. Under the second amended Indictment of 15 June 2005 (“Indictment”),⁶ the Prosecution charges Bikindi with six counts pursuant to Articles 2 and 3 of the Statute: conspiracy to commit genocide; genocide or, alternatively, complicity in genocide; direct and public incitement to commit genocide; murder as a crime against humanity; and persecution as a crime against humanity. The Prosecution charges Bikindi under Articles 6(1) and 6(3) of the Statute for genocide and murder as a crime against humanity. Bikindi’s criminal liability is sought only under Article 6(1) of the Statute for the charges of conspiracy to commit genocide, complicity in genocide, direct and public incitement to commit genocide and persecution as a crime against humanity.

1 UN Doc. S/RES/955 (1994), 8 November 1994. 2 The Rules were originally adopted on 5 July 1995 and were last amended on 14 March 2008. 3 Articles 1 and 5 of the Statute. 4 Articles 1, 2, 3, 4 and 7 of the Statute. 5 The Prosecutor v. Simon Bikindi, Case No. ICTR-01-72-I, Statement of Matters Not in Dispute Pursuant to Rule 73bis(B)(ii), 25 July 2006 (“Defence Statement of Matters Not in Dispute”); Bikindi, T. 2 November 2007,

- p. 11. The Chamber notes that the Minister of Youth and Association Movements has also been referred to by the Prosecution, the Defence and witnesses as the Minister of Youth and Sports. For the purposes of this Judgement, the Chamber will use “Minister of Youth and Association Movements” as the official designation, as found in Exhibit P87, Arrêté du Premier Ministre N° 08/02 du 28 août 1992 portant organisation des services de l’Administration centrale, Ministère de la Jeunesse et du Mouvement associatif, pp. K0239355- K0239359. 6 The Prosecutor v. Simon Bikindi, Case No. ICTR-01-72-I, Amended Indictment Pursuant to Decisions of Trial Chamber III of 11 May 2005 and 10 June 2005, 15 June 2005. Judgement 2 December 2008 1

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4. SUMMARY OF PROCEDURAL HISTORY 6. The initial indictment against Bikindi was confirmed on 5 July 2001. Bikindi was arrested in The Netherlands on 12 July 2001 and transferred to the Tribunal on 27 March 2002. The present trial commenced on 18 September 2006 with the Prosecution case and the Defence concluded its case on 7 November 2007. Closing Arguments were heard on 26 May 2008. Over the course of sixty-one trial days, fifty-seven witnesses were heard. The Prosecution called twenty witnesses,

including two expert witnesses in thirty-two trial days. During twenty-nine trial days, the Defence called thirty-seven witnesses, including an expert witness and Bikindi. The procedural history of this case is set out in full in Annex I to the Judgement.

5. OVERVIEW OF THE CASE 7. The Prosecution alleges that, following the death of President Habyarimana up to July 1994, a campaign of violence was unleashed against the Tutsi population of Rwanda particularly in Kigali-ville and Gisenyi préfectures. The Prosecution submits that the scope and systematic nature of the violence and the massacres of Tutsi that took place indicate the existence of a strategic and coordinated campaign to destroy the Tutsi at national level. 8. The Prosecution alleges that Bikindi participated in this campaign through his musical compositions and by speeches which he made at public gatherings that incited and promoted hatred and violence against Tutsi. According to the Prosecution, Bikindi collaborated with government figures, leading figures of the Mouvement républicain national pour la démocratie et le développement (MRND), of the Interahamwe and of the Coalition pour la défense de la République (CDR), as well as with the RTLM (Radio Télévision Libre des Mille Collines) and persons responsible for media programming, to disseminate anti-Tutsi ideology and encourage the genocide. Further, the Prosecution alleges that Bikindi participated in military training of Interahamwe, encouraged the militias to target the Tutsi population for attack and was responsible for specific attacks and killings perpetrated in Gisenyi préfecture, by virtue of his direct participation or his command over Interahamwe, particularly Interahamwe members of the Irindiro ballet, and civilian militias. 9. The Defence contends that Bikindi was not a political man, but a musician whose songs did not incite discrimination or violence against Tutsi. It argues that Bikindi did not take part in the anti-Tutsi campaign through his songs or speeches and did not participate in any of the killings or attacks alleged in the Indictment. The Defence also argues that Bikindi had no authority over the Interahamwe and no influence over the Government, the MRND, the CDR or the RTLM.

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CHAPTER II: FACTUAL FINDINGS

1. PRELIMINARY MATTERS 1.1. Allegations on which Evidence was not Presented 10. During the status conference held on 15 May 2007, the Prosecution acknowledged that Bikindi was not in Rwanda from 4 April through to approximately 12 June 1994 and clarified that it was not pursuing any allegations regarding Bikindi's "physical acts" during that period.⁷ Accordingly, the Prosecution withdrew the allegations set out in paragraphs 30(k) and 47(g) of the Indictment that in early April 1994 Bikindi arrived in Kicukiro commune on a bus with about 20 Interahamwe, and participated there in the killing of an unnamed wealthy Tutsi.⁸ 11. At the close of the trial, the Prosecution conceded that it had not presented any evidence concerning the allegation set out in paragraphs 24, 30(e), 45 and 47(b) of the Indictment regarding the killing of a group of Tutsi women escaping to Zaire.⁹ In addition, the Chamber

agrees with the Defence observation in its Closing Brief that the Prosecution has not adduced evidence in support of the allegations in paragraphs 30(i), 38 and 44 of the Indictment regarding the attack on the Gatenga Youth Center in February 1994 or the killing of an unnamed wealthy Tutsi businessman in Nyamyumba commune in June 1994.¹⁰ Furthermore, the Chamber observes that the Prosecution has not led evidence on the allegation in paragraph 37 of the Indictment that Bikindi advocated the extermination of the Tutsi over the public radio air-waves, an allegation the Prosecution did not mention during Closing Arguments or in its Closing Brief. The Chamber summarily dismisses these allegations which will therefore not be addressed in the following sections of the Judgement.

1.2. Alleged Defects in the Indictment 12. The Defence submits that the allegations regarding the killings of Stanislas Gasasira and Karasira cannot constitute the basis for a conviction since they are not specified in the Indictment.¹¹ In this respect, the Chamber recalls that the related issue of whether the evidence led by the Prosecution on these two allegations should be excluded has already been adjudicated.¹² The Chamber points out that the Defence moved to exclude the evidence concerning these allegations a full six months after the evidence was heard, and then failed to raise proper objections to the form of the Indictment before the end of the trial.¹³ However, in light of the Accused's fundamental right to be informed of the charges against him and to be afforded adequate time for the preparation of his defence provided for

7 T. 15 May 2007, pp. 17-18. 8 T. 15 May 2007, pp. 16-18. 9 Closing Arguments, T. 26 May 2008, p. 37. 10 Defence Closing Brief, public version, 30 April 2008 ("Defence Closing Brief"), paras. 777, 871, 891(j) and

893. See also *Requête aux fins d'acquittement de Simon Bikindi en vertu de l'article 98 bis du Règlement de Procédure et de Preuve*, 15 March 2007, para. 132; Closing Arguments, T. 26 May 2008, p. 27. 11 Defence Closing Brief, paras. 653, 675, 794-795, 876; Closing Arguments, T. 26 May 2008, pp. 20-21. 12 Decision on the Defence *Requête en exclusion des éléments de preuve produits par l'Accusation pour établir des faits non contenus dans l'Acte d'accusation*, 26 June 2007 ("Decision on Exclusion of Evidence"). 13 Although the evidence was heard in October 2006 (Witness BKW was heard from 16 to 19 October 2006, Witness AHP on 19 and 20 October 2006), the motion for exclusion of evidence was only filed on 25 April 2007 (*Requête en exclusion des éléments de preuve produits par l'Accusation pour établir des faits non contenus dans l'Acte d'accusation*, 25 April 2007). See also T. 25 October 2007, p. 55. Judgement 2 December 2008 3

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in Articles 20(4)(a) and (b) of the Statute, the Chamber will address the issue, notwithstanding the failure of the Defence to raise the matter in a timely fashion. 13. The Prosecution acknowledges that the killings of Gasasira and of Karasira and his family are not specifically alleged in the Indictment. While the Prosecution argued in its Closing Brief that both allegations fall under

paragraph 47(e) of the Indictment,¹⁴ it submitted during Closing Arguments that “the evidence relating to [...] Bikindi’s role in the killing of Tutsi applies to Gasasira and Karasira, and that is in relation to paragraphs 19 and 20 of the Indictment.”¹⁵

14. Paragraph 47(e) of the Indictment reads as follows: (e) In early July 1994, Simon BIKINDI in the company of Interahamwe to whom he gave orders, transported three Tutsi women to the Commune Rouge where they were killed. In this paragraph, the Prosecution unambiguously pleads a specific allegation which does not encompass the killings of Gasasira and Karasira.
15. Paragraphs 19 and 20 of the Indictment, which relate to the count of genocide, read: 19. During the events referred to in this indictment, particularly from 6 April 1994 through the first days of July 1994, Interahamwe militias engaged in a campaign of extermination against Rwanda’s Tutsi population. Hundreds of thousands of Tutsi men, women and children were killed. 20. Simon BIKINDI, among others, planned, instigated and prepared such killings by recruiting members for the Interahamwe militias, organizing and participating in military training for Interahamwe militias, indoctrinating Interahamwe militias with anti-Tutsi ideology and by engaging in a propaganda campaign to characterize civilian Tutsi citizens of Rwanda as accomplices of an invading enemy, and by specifically encouraging the militias to target the Tutsi population for attack, as set out in paragraphs 21-30 below. 16. Whereas paragraphs 22 to 30 of the Indictment allege specific incidents, paragraph 21, referred to in paragraph 20, contains general allegations: 21. During June and early July 1994, particularly in Gisenyi préfecture, Simon BIKINDI led, participated in, instigated and incited a campaign of violence against civilian Tutsis and against Hutus perceived to be politically opposed to the MRND and MRND-aligned political parties, resulting in numerous deaths. 17. Paragraph 21 explicitly alleges that Bikindi participated in a campaign of violence against civilian Tutsi resulting in numerous deaths: a campaign which could include the killings of Gasasira and Karasira and his family. Yet, the Prosecution failed to particularise the underlying incidents. By framing the charge in such a general manner, the Prosecution failed to fulfil its obligation to provide Bikindi with a description of the charges against him with sufficient particularity to enable him to prepare his defence.¹⁶ Unacceptably vague, paragraph 21 does not provide sufficient notice to Bikindi that he was charged with the killings of Gasasira and Karasira and his family. Accordingly, the Chamber finds the Indictment to be defective in this respect.

¹⁴ Prosecution’s Final Trial Brief, 25 April 2008 (“Prosecution Closing Brief”), para. 667. ¹⁵ Closing Arguments, T. 26 May 2008, p. 35. ¹⁶ Cf. Ntagerura et al., Judgement (AC), para. 121. Judgement 2 December 2008 4

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18. The Chamber must then determine whether the vagueness of the charge in paragraph 21 of the Indictment was subsequently cured by the Prosecution through the provision of timely, clear and consistent information detailing the factual basis underpinning the charges

against Bikindi.¹⁷ 19. Although the Prosecution failed to provide the necessary information in its Pre-Trial Brief,¹⁸ the Chamber notes that clear reference was made to the killings of Gasasira and Karasira and his family in the Summary of Anticipated Testimony of Prosecution Witnesses, filed on 14 August 2006.¹⁹ In this document, the Prosecution specified that Witness AHP would testify about the killing in June 1994 of a Tutsi named Stanislas Gasasira, who was ordered out of a vehicle in which Bikindi was sitting, and then shot dead after Bikindi drove away.²⁰ The Summary also specified that Witness BKW would testify that on 16 June 1994, he, Bikindi and Sibomana shot dead Karasira and seven members of his family,²¹ including his wife.²² Both testimonies were intended to support paragraph 21 of the Indictment, among others.²³ The Chamber also notes that the written statement of Witness AHP recounting Gasasira's killing was disclosed to the Defence on 28 September 2005 in redacted form and on 11 July 2006 in unredacted form,²⁴ and that a written statement of Witness BKW referring to the killing of Karasira and his family was disclosed on 11 July 2006 in unredacted form.²⁵ Witness AHP's written statement, while not specifying the name of the victims, also contains an account of the killings of Karasira and other Tutsi.²⁶ 20. The Chamber is of the opinion that the Summary of Anticipated Testimony of Prosecution Witnesses, together with the written statements of Witnesses AHP and BKW, provided timely, clear and consistent information sufficient to put Bikindi on notice that the Prosecution intended to charge him with genocide on the basis of the aforementioned killings. Further, the Chamber observes that the Defence did not raise any objection at the time of the testimony of Witnesses AHP and BKW. The Defence cross-examined both witnesses at

17 Cf. Muvunyi, Judgement (AC), para. 20; Nahimana et al., Judgement (AC), para. 325; Ntagerura et al., Judgement (AC), paras. 28, 126. 18 See The Prosecutor's Final [sic] Trial Brief Pursuant to Article 73bis(B)(i) of the Rules of Procedure and Evidence, 16 August 2006 ("Prosecution Pre-Trial Brief"), para. 32. 19 The Prosecutor v. Simon Bikindi, Case No. ICTR-2001-72-I, Filing of Witness Summaries and Points in the Indictment on Which each Witness Will Testify (Rule 73bis(B)(iv)(a) and (b)), 14 August 2006 ("Summaries of Anticipated Testimony of Prosecution Witnesses"). 20 Summaries of Anticipated Testimony of Prosecution Witnesses, Witness AHP, p. 6, para. 7. See also Decision on Exclusion of Evidence, para. 17. 21 While the *Requête en exclusion des éléments de preuve produits par l'Accusation pour établir des faits non contenus dans l'Acte d'accusation* of 25 April 2007 and the Decision on Exclusion of Evidence refer to the killings of Karasira and eight members of his family, the Chamber notes that both the summary of Witness BKW's anticipated testimony and his statement of 15 February 2005 (appended to the 11 July 2006 Disclosure referred to below) refer to the killings of Karasira and seven other persons. 22 Summaries of Anticipated Testimony of Prosecution Witnesses, Witness BKW, p. 39, para. 7. See also Decision on Exclusion of Evidence, para. 11. 23 Summaries of Anticipated Testimony of Prosecution Witnesses, Witness AHP, p. 5, and Witness BKW, p. 37. 24 The Prosecutor v. Simon Bikindi, Case No. ICTR-2001-72-I, Interoffice Memorandum from the Prosecution, subject: "Disclosure of Redacted Witness Statements", 28 September 2005 ("28 September 2005 Disclosure"), Witness AHP's written statement dated 18-19 June 2002; The Prosecutor v. Simon Bikindi, Case No.

ICTR-2001-72-I, Interoffice Memorandum from the Prosecution, subject: “Rule 66 A (II) Disclosure”, 11 July 2006 (“11 July 2006 Disclosure”), Witness AHP’s written Statement dated 18 and 19 June 2002 enclosed together with other statements on a CD-Rom. See also Decision on Exclusion of Evidence, para. 17. 25 11 July 2006 Disclosure, Witness BKW’s written statement dated 15 February 2005. See also Decision on Exclusion of Evidence, para. 11. 26 28 September 2005 Disclosure, Witness AHP’s written statement dated 18-19 June 2002; 11 July 2006 Disclosure, Witness AHP’s written statement dated 18-19 June 2002. See also Decision on Exclusion of Evidence, para. 12. Judgement 2 December 2008 5

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length on these incidents,²⁷ and called witnesses who testified specifically on these events.²⁸ As mentioned above, the Defence motion for the exclusion of evidence was filed on 25 April 2007, six months after the testimonies of these two witnesses. The Chamber is therefore convinced that Bikindi received timely, clear and consistent notice that he would have to defend himself against the allegations pertaining to the killings of Gasasira and Karasira and his family, and that the preparation of his defence has not been materially impaired. 21. In light of the foregoing, the Chamber finds that the Prosecution’s failure to specify the killings of Gasasira and Karasira and his family in the Indictment did not prejudice Bikindi’s ability to defend himself against these charges. Accordingly, the Chamber will proceed to make factual findings on these allegations. 1.3. Alibi 22. On 7 September 2006, the Defence filed a notice of alibi pursuant to Rule 67(A)(ii)(a) of the Rules, in which it stated that “at the time of the crimes alleged in the Indictment” Bikindi “was resident in Belgium, the United Kingdom and the Democratic Republic of Congo (formerly Zaire).”²⁹ In response, the Prosecution argued that the information provided in the Notice of Alibi was “so general” that it was “unable to meaningfully investigate the alibi”.³⁰ In its reply, the Defence mentioned certain evidence on which it intended to rely in support of the alibi.³¹ 23. Before the commencement of its case, the Defence requested disclosure of a letter from the Prosecution, dated 20 September 2006, addressed to Defence Counsel representing Protais Zigiranyirazo (an accused before the Tribunal), in which the Prosecution allegedly admitted that Bikindi was outside of Rwanda from 4 April to approximately 12 June 1994 (“Letter of 20 September 2006”).³² Simultaneous to the request for disclosure, the Defence proposed an agreement with the Prosecution to recognise as a fact not in dispute that Bikindi was not in Rwanda between 4 April and 12 June 1994. The Defence stated that if such an agreement were made, it would not call witnesses in relation to this period of the alibi.³³ The same day, the Prosecution disclosed its Letter of 20 September 2006 to the Defence, in which it “concede[d] that Simon Bikindi left Rwanda on 4 April 1994 and returned via Gisenyi, around 12 June 1994.”³⁴

27 Witness BKW, T. 18 October 2006, pp. 15, 26-36 and T. 19 October 2006, pp. 6-13; Witness AHP, T. 19 October 2006, p. 34 and T. 20 October 2006, pp. 2-5. 28 Defence Witness WQK, T. 26 September 2007, pp. 17-20 (examination-in-chief), 35 (re-examination); Defence Witness RH, T. 25 October 2007, pp. 50-58 (examination-in-chief); Defence Witness Dominique Munyangoga, T. 7

November 2007, pp. 5-6 (examination-in-chief), 12-14 (re-examination). 29 The Prosecutor v. Simon Bikindi, Case No. ICTR-2001-72-PT, Notice of Defence of Alibi Pursuant to Rule 67(A)(ii)(a) of the Rules of Procedure and Evidence, 7 September 2006 ("Notice of Alibi"), para. 2. 30 The Prosecutor v. Simon Bikindi, Case No. ICTR-2001-72-PT, Prosecution Response to Defence Notice of Alibi Pursuant to Rule 67(A)(ii)(a) of the Rules of Procedure and Evidence, 11 September 2006, para. 5. See also *ibid.*, para. 8. 31 The Prosecutor v. Simon Bikindi, Case No. ICTR-2001-72-PT, Defence Reply to the Prosecution Response to Defence of Alibi Pursuant to Rule 67(A)(ii)(a) of the Rules of Procedure and Evidence, 15 September 2006. 32 Letter from Jean de Dieu Momo to William Egbe, subject: "Demande de communication d'une pièce et Accord réciproque sur les points non litigieux", 27 April 2007. 33 *Idem.* 34 Letter from William Egbe to Jean de Dieu Momo, subject: "Your request dated 27 April 2007", 27 April 2007, attaching the Prosecution Letter of 20 September 2006. The Letter of 20 September 2006 was admitted as Exhibit D85 on 18 October 2007 (T. 18 October 2007, p. 11). Judgement 2 December 2008 6

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24. The issue of alibi was discussed during the status conference held on 15 May 2007. The Defence made it clear that if the Prosecution would not be pursuing the charge related to Bikindi's alleged participation in an incident in Kicukiro in April 1994,³⁵ there was "no need for the evidence which ha[d] been categorised as alibi."³⁶ As the Prosecution clarified that it was not pursuing any allegation regarding Bikindi for that period, the Defence confirmed that there was no longer any issue of alibi.³⁷ As a result, the Defence abandoned its argument that Bikindi was away from Rwanda during the whole period of the crimes charged in the Indictment.³⁸ 25. The Chamber will therefore not address the issue of alibi any further and notes that the fact that Bikindi left Rwanda on 4 April 1994 and returned to Gisenyi, Rwanda, via Zaire (now Democratic Republic of the Congo) around 12 June 1994 is not in dispute.³⁹ 1.4. Temporal Jurisdiction 26. The Chamber is mindful that it has jurisdiction only in respect of crimes committed between 1 January and 31 December 1994, which means that the acts or omissions of the Accused establishing his responsibility under any of the modes of liability referred to in Article 6(1) and (3) of the Statute must have occurred in 1994.⁴⁰ In this respect, the Appeals Chamber recently clarified that, "even where [a criminal] conduct commenced before 1994 and continued during that year, a conviction may be based only on that part of such conduct having occurred in 1994."⁴¹ 27. However, the provisions of the Statute relating to the Tribunal's temporal jurisdiction do not preclude the Chamber from admitting and considering evidence concerning events that occurred prior to 1994 where, for example, the purpose of such evidence is to (i) clarify a given context; (ii) establish by inference the elements of criminal conduct occurring in 1994; or (iii) demonstrate a deliberate pattern of conduct.⁴² 28. In the present case, as will appear in the following sections, the Chamber has admitted, considered and relied on considerable evidence relating to pre-1994 acts as means of clarifying the context and establishing by inference certain elements of Bikindi's conduct in 1994, notably his *mens rea*. The Chamber

emphasises that none of its factual findings concerning Bikindi's criminal conduct before 1994 will form the basis for a conviction. 1.5. Evaluation of Evidence General Principles 29. The Chamber has considered each piece of evidence in light of the totality of the evidence admitted at trial. It emphasises that it has duly considered and given appropriate weight to all the evidence, even if not expressly referred to in the Judgement. The evidence was assessed in accordance with the Statute, the Rules, and the jurisprudence of the Tribunal. When no guidance was found in these sources, the Chamber has decided matters of evidence

35 Indictment, para. 47(g). 36 T. 15 May 2007, p. 15. 37 T. 15 May 2007, pp. 15-18. 38 T. 15 May 2007, pp. 16-18. 39 See also Defence Closing Brief, paras. 18, 41, 270 and 566; Prosecution Closing Brief, para. 391. 40 Articles 1 and 7 of the Statute. See Nahimana et al., Judgement (AC), para. 313. 41 Nahimana et al., Judgement (AC), para. 317. 42 Nahimana et al., Judgement (AC), para. 315. Judgement 2 December 2008 7

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in such a way as would best favour a fair determination of the case in consonance with the spirit of the Statute and the general principles of law.⁴³ Burden and Standard of Proof 30. Pursuant to Article 20(3) of the Statute, an accused shall be presumed innocent until proven guilty. This presumption places on the Prosecution the burden of establishing the guilt of the accused, a burden which remains on the Prosecution throughout the entire trial. A finding of guilt may be reached only when a majority of the Trial Chamber is satisfied that guilt has been proven beyond reasonable doubt.⁴⁴ Accordingly, the Chamber determined whether it was satisfied that every element of the crime charged and of the mode of liability and any fact indispensable for a conviction were proven beyond reasonable doubt by the Prosecution.⁴⁵ In so doing, it has been necessary on certain occasions for the Chamber to draw inferences from circumstantial evidence. In such cases, the Chamber drew the only reasonable conclusion available from the evidence.⁴⁶ Where there was another conclusion reasonably open from that evidence inconsistent with the guilt of the Accused, the Chamber did not enter a finding of guilt. Viva Voce Evidence 31. When evaluating viva voce evidence, the Chamber considered various factors, including the witnesses' demeanour in court, the plausibility and clarity of their testimony, and whether there were contradictions or inconsistencies within their testimony or between their testimony and their prior statements relied upon in court or admitted as exhibits. It also considered the individual circumstances of the witnesses, including their role in the events in question, their relationship with the Accused and whether the witnesses would have an underlying motive to give a certain version of the events. 32. The Chamber recognises that a significant period of time has elapsed between the events alleged in the Indictment and the testimonies given in court. Therefore, lack of precision or minor discrepancies between the evidence of different witnesses, or between the testimony of a particular witness and a prior statement, was not regarded in general as necessarily discrediting their evidence. When deciding

not to rely on certain aspects of a witness's testimony, the Chamber nevertheless sometimes relied on other parts of the testimony deemed to be reliable and credible. 33. The Chamber also recalls that the testimony of a single witness on a material fact does not, as a matter of law, require corroboration.⁴⁷ However, when only one witness presented evidence on a particular incident, the Chamber examined the evidence with particular care before accepting it as a sufficient basis for finding guilt. 34. Applying these criteria, the Trial Chamber assessed the testimony of Witness BKW, a former motorcycle taxi-driver sentenced to death for his participation in the genocide,⁴⁸ with great caution. Not only is the witness an alleged accomplice to Bikindi, but he also admitted lying to a court in Rwanda and hiding the truth from Tribunal investigators.⁴⁹ Prosecution

43 Rule 89(B) of the Rules. 44 Rule 87(A) of the Rules. 45 See Ntagerura et al., Judgement (AC), para. 174. 46 See Ntagerura et al., Judgement (AC), paras. 304 and 306, referring to Čelebići, Judgement (AC), para. 458. 47 See, e.g., Muvunyi, Judgement (AC), para. 128; Seromba, Judgement (AC), para. 79. 48 Witness BKW, T. 16 October 2006, pp. 40-42. 49 Witness BKW, T. 16 October 2006, p. 42; 19 October 2006, p. 10. Judgement 2 December 2008 8

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and Defence Counsel both pointed out that the witness denied having killed anyone when testifying before the Tribunal in the Nahimana et al. case,⁵⁰ although he testified to the contrary in the present case.⁵¹ As set out in following sections, the Trial Chamber found portions of his testimony to be largely unreliable.⁵² Consequently, the Chamber relied on Witness BKW's evidence only insofar as it corroborated, or was corroborated by, other reliable and credible evidence and never as the sole basis for a finding of guilt. 35. The Chamber has also considered Witness KRQ's testimony that, while detained in Gisenyi Prison, sometime between 2003 and 2004, he and four co-detainees were taken to the Rwandan public prosecutor's office and asked by an employee of that office to level accusations against Bikindi.⁵³ However, in the absence of any corroboration of this serious accusation proffered by a witness with a criminal record, the Chamber has accorded no weight to the witness's assertion. Expert Witnesses 36. When assessing and weighing the evidence of the expert witnesses, the Chamber considered factors such as the professional competence of the expert, the position held by the expert, the scope of his expertise, the methodologies used, the credibility of the findings made in light of these factors and other evidence, and the relevance and reliability of their evidence. Documentary Evidence 37. Factors such as authenticity and proof of authorship assumed the greatest importance in the Chamber's assessment of the weight to be attached to individual pieces of documentary evidence. Interpretation and Transcription 38. In a number of instances, the Chamber identified discrepancies between the French and English versions of the transcripts of testimonies given in Kinyarwanda. In those instances, because the testimonies given in Kinyarwanda were first interpreted in French, and then from French to English before being transcribed in English, the Chamber relied on the French version of the transcripts as more accurate. When in doubt, the

Chamber resorted to the original testimony in Kinyarwanda with the assistance of the Tribunal's Languages Support Section. 39. The Chamber also took into account that, as a result of translation and transcription, names of individuals or locations given by witnesses which were similar, but not identical, may actually have referred to the same place or person.

50 Witness BKW, 19 October 2006, pp. 3, 10, referring to *The Prosecutor v. Ferdinand Nahimana et al.*, Case No. ICTR-96-11-T, T. 4 September 2001, p. 25. 51 Witness BKW, T. 19 October 2006, pp. 3, 10. 52 See *infra* paras. 99-100, 316-317. 53 Witness KRQ, T. 4 October 2007, pp. 5-7, 14, 19. Judgement 2 December 2008 9

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2. WELL-KNOWN COMPOSER, SINGER AND LEADER OF THE IRINDIRO BALLET 40. The Prosecution alleges that Bikindi was a well-known composer and singer of popular music who founded and directed the Irindiro ballet.⁵⁴ It further alleges that members of the Irindiro ballet were Interahamwe or CDR members,⁵⁵ who, as a result of the mobilising effect of Bikindi's music, were recruited into the Interahamwe, participated in military training and subsequently killed Tutsi.⁵⁶ 41. It is not disputed that Bikindi was a well-known singer, composer, member,⁵⁷ and leader of the Irindiro ballet.⁵⁸ The Chamber accepts the evidence that the ballet was composed of approximately 50 artists⁵⁹ of different ethnicities, including many Tutsi,⁶⁰ against whom Bikindi did not discriminate.⁶¹ The ballet included dancers, singers and drummers, and had a varied repertoire of traditional songs and dances.⁶² Bikindi testified that the ballet was created in 1987 and formally established as a private profit making association in 1989.⁶³ He explained that it was organised as an association, of which he was elected President and which had a Committee comprising other members.⁶⁴ He asserted that the decisions concerning the troupe's performances were taken by the Committee and then put to the general assembly of the ballet.⁶⁵ Defence witnesses confirmed that the Committee was in charge of coordinating the activities of the ballet.⁶⁶ In its Closing Brief, the Defence referred to Bikindi as the manager of the ballet.⁶⁷ Based on the evidence before it, the Chamber is unable, however, to clearly delineate the responsibilities of Bikindi from that of the Committee.⁶⁸

⁵⁴ Indictment, Preamble II and para. 30(c). ⁵⁵ Indictment, para. 30(c). ⁵⁶ Indictment, para. 16. ⁵⁷ Defence Statement of Matters Not in Dispute; Bikindi, T. 1 November 2007, pp. 44-45; Defence Closing Brief, paras. 1, 512, 836. ⁵⁸ Bikindi, T. 5 November 2007, p. 40; Defence Closing Brief, para. 4. ⁵⁹ Exhibit P59(B), Leaflet of the Irindiro Ballet; Witness JCH, T. 9 October 2007, p. 30. ⁶⁰ Angeline Mukabanana, T. 2 October 2007, p. 19; Witness KMS, T. 1 October 2007, pp. 7-8; Witness JCH, T. 9 October 2007, p. 30; Witness DZS, T. 24 September 2007, pp. 12-13, 25-26, T. 24 September 2007, pp. 12-13 and p. i (extract); T. 24 September 2007, p. 26 and p. iii (extract - the Chamber notes that the reference to "Pale" in the extract should read "ballet"). ⁶¹ Witness DZS, T. 24 September 2007, pp. 12-14, T. 24 September 2007, pp. 12-13 and p. i (extract); Witness DVR, T. 27 September 2007, p. 15; Witness AQH, T. 3 October 2007, pp. 14-15; Witness KMS, T. 1 October

2007, p. 44; Witness CQR, T. 10 October 2007, pp. 6-9, 14. 62 Exhibit P59(B), Leaflet of the Irindiro Ballet. 63 Bikindi, T. 1 November 2007, pp. 44, 45. See also Witness KMS, T. 1 October 2007, pp. 6, 36; Witness JCH, T. 9 October 2007, pp. 28-30. 64 Bikindi, T. 1 November 2007, pp. 44, 45; T. 2 November 2007, p. 18. 65 Bikindi, T. 1 November 2007, p. 45 and T. 2 November 2007, p. 18. See also Witness KMS, T. 1 October 2007, pp. 6-7; Witness JCH, T. 9 October 2007, p. 30. 66 Witness JCH, T. 9 October 2007, p. 30; Witness KMS, T. 1 October 2007, pp. 6-7; Apolline Uwimana, T. 8 October 2007, p. 25; Witness TIER, T. 16 October 2007, p. 35. 67 Defence Closing Brief, para. 214. 68 Witness KMS, T. 1 October 2007, p. 42. See also the following in respect of Bikindi's leadership role: Witness KMS, T. 1 October 2007, p. 6; Witness JCH, T. 9 October 2007, p. 19; Witness AQH, T. 3 October 2007, p. 15; Witness RVH2, T. 29 October 2007, p. 5; Witness AJY, T. 27 September 2006, pp. 35, 39 and T. 28 September 2006, pp. 4, 5, 6; Witness AJS, T. 29 September 2006, p. 38 and T. 2 October 2006, p. 6; Witness BKW, T. 17 October 2006, pp. 6, 36; Exhibit P92, Letter of Minister of Youth and Association Movements to the Belgian Ambassador, dated 22 March 1994; Exhibit P93, Letter of the Minister of Youth and Association Movements to the Consul of Great Britain and Northern Ireland, dated Judgement 2 December 2008 10

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42. Prosecution Witness AJS testified that some members of the Irindiro ballet were also members of the Interahamwe.⁶⁹ This was corroborated by Witnesses BKW, AJY, AHP and BUY,⁷⁰ some of whom named specific individuals as members of both the Irindiro ballet and the Interahamwe.⁷¹ 43. The Chamber also notes that a number of witnesses identified an individual in a photograph exhibit, who it appears may be wearing the Interahamwe attire, as a member of the Irindiro ballet.⁷² While the outfit this individual was wearing may be that of the Interahamwe, no evidence confirmed that this member of the ballet was an Interahamwe. The Chamber will therefore not rely on that photograph to find that ballet members were Interahamwe. Similarly, the Chamber finds the fact that an Irindiro member wore the Interahamwe cap during a meeting at Amahoro Stadium is insufficient to conclude that he could actually be considered Interahamwe.⁷³ 44. Bikindi denied that some of his ballet members were also Interahamwe,⁷⁴ as did Defence Witnesses JCH, TIER and CQK.⁷⁵ Defence Witnesses CQK, JCH, QUTI and Angeline Mukabanana gave the names of specific ballet members who they denied were Interahamwe.⁷⁶ 45. The Chamber notes that Defence Witnesses JCH, TIER, CQK (members of the Irindiro ballet),⁷⁷ QUTI and Angeline Mukabanana all had close personal relationships with Bikindi. Like Bikindi, Witnesses JCH, TIER and CQK may have had reasons to deny that members of their ballet may have belonged to a movement accused of having played a significant role in the genocide. Moreover, Witnesses JCH and CQK had particular motive to deny that members of the Irindiro were Interahamwe as they both testified that they had been accused of being Interahamwe and imprisoned.⁷⁸ As a result, the Chamber viewed the testimonies of these witnesses on the matter with caution.

22 March 1994. Angeline Mukabana, Bikindi's second wife, referred to the ballet as Bikindi's (T. 2 October 2007, p. 31). 69 Witness AJS, T. 29 September 2006, p. 38. 70 Witness BKW, T. 16 October 2006, p. 44 and T. 17 October 2006, pp. 14-15; Witness AJY, T. 27 September 2006, pp. 37, 39; Witness BUY, 19 February 2007, p. 43; Witness AHP, 19 October 2006, pp. 18-19, 24. 71 Witness AHP, 19 October 2006, pp. 18-19, 24; Witness BKW, 18 October 2006, p. 15; Witness AJY, 27 September 2006, p. 39. 72 Witness JCH, T. 9 October 2007, pp. 21-22, referring to Exhibit D73, Photograph of Bikindi and two others hanging off a bus (taken from a book); Witness CQR, 10 October 2007, p. 9; Bikindi, T. 2 November 2007,

p. 21 referring to Exhibit P86, Photograph of Bikindi and two others hanging off a bus (taken from a book and the same than Exhibit D73); Angeline Mukabanana, T. 2 October 2007, p. 19 (The Chamber finds that although the name is spelt slightly differently in the transcripts, they refer to the same person, any discrepancy being a spelling mistake). 73 See Exhibit P31, Video of Bikindi and the Irindiro ballet performing at an MRND rally at Amahoro Stadium, which Bikindi identified from a still photograph (Exhibit P79) taken from the video as occurring in 1992 (T. 2 November 2007, pp. 15-20). The Chamber notes the testimony of Irindiro members that they often wore the colours of the party they performed for (Witness JCH, T. 9 October 2007, pp. 17, 44; Witness KMS, T. 1 October 2007, pp. 14-16; Witness TIER, T. 16 October 2007, pp. 19; Witness DUC, T. 28 September 2007, pp. 9, 10). 74 Bikindi, T. 2 November 2007, pp. 16, 24. 75 Witness CQK, T. 10 October 2007, pp. 48-49; Witness JCH, T. 9 October 2007, p. 31; Witness TIER, T. 16 October 2007, p. 16. 76 Witness CQK, T. 10 October 2007, pp. 36, 41, 49; Witness QUTI, T. 27 September 2007, pp. 44-45; Witness JCH, T. 9 October 2007, pp. 14, 30-31; Angeline Mukubanana, T. 2 October 2007, pp. 19, 22. 77 Witness JCH, T. 9 October 2007, p. 28; Witness TIER, 16 October 2007, p. 35; Witness CQK, T. 10 October 2007, p. 49. 78 Witness CQK, T. 10 October 2007, pp. 35-36, 41, 49; Witness JCH, T. 9 October 2007, pp. 11, 14, 38-39. Judgement 2 December 2008 11

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46. In contrast, the Chamber has no reason to question the credibility of Witness AJS on the matter. His testimony was reliable, coherent and corroborated by Witnesses BKW, AJY, AHP and BUY. In reaching this conclusion about Witness AJS, the Chamber has considered the Defence challenges to his evidence but finds that they concern minor aspects of his testimony and do not affect its substance or his credibility.⁷⁹ As discussed in other sections of the Judgement,⁸⁰ the Chamber has concerns regarding the reliability and credibility of Witnesses BKW, AJY, AHP and BUY. However, it finds that it can rely upon them in relation to this general allegation, as they corroborate not only each other, but particularly the reliable testimony of Witness AJS that some members of the ballet were Interahamwe. The evidence of Witnesses BKW, AJY and AHP about the specific ballet members who were alleged to be Interahamwe will, if necessary, be discussed together with the witnesses' evidence on the participation of those ballet members in the crimes specifically alleged in

the Indictment. 47. Based on Witness AJS's testimony, as corroborated by Witnesses BKW, AJY, AHP, and BUY, the Chamber finds that some members of the Irindiro ballet were members of the Interahamwe. However, the Chamber notes that the Prosecution failed to adduce evidence in support of its allegation that Irindiro members joined the Interahamwe as a result of the mobilising effect of Bikindi's music. Nor did the Prosecution lead any evidence on whether some ballet members were also members of the CDR. 48. The Chamber will discuss the evidence on the alleged participation of members of the Irindiro ballet in the crimes charged, as well as the evidence adduced in support of the allegation that Bikindi's music played a role in motivating Irindiro or Interahamwe members to participate in military training and kill Tutsi in subsequent sections of this Judgement. The extent of Bikindi's authority over the Irindiro ballet and its members will, if necessary, be discussed in the section of the Judgement addressing Bikindi's criminal responsibility under Articles 6(1) and 6(3) of the Statute.

3. COLLABORATION WITH GOVERNMENT FIGURES, MRND AND CDR PARTIES 49. The Prosecution alleges that Bikindi agreed or collaborated with President Habyarimana, Minister of Youth and Association Movements Callixte Nzabonimana ("Minister"), and national leaders of the MRND to militarise and indoctrinate the MRND youth wing, the Interahamwe, with anti-Tutsi ideology and to disseminate anti-Tutsi propaganda.⁸¹ The Prosecution also alleges that Bikindi participated in the campaign "to defeat the enemy militarily" by conducting MRND membership drives⁸² and performed at political gatherings of the MRND and CDR political parties in different parts of Rwanda.⁸³
50. Before examining the evidence led on these allegations, the Chamber notes that the Prosecution failed to lead any evidence substantiating a number of related allegations. First, the Prosecution led no evidence that Bikindi agreed or collaborated with MRND-aligned military leaders, such as Théoneste Bagosora or George Rutaganda, to militarise and indoctrinate the Interahamwe with anti-Tutsi ideology, and to disseminate

79 Defence Closing Brief, pp. 75-82. 80 See *supra* and *infra* paras. 34, 99-100 and 316-317 (Witness BKW); paras. 160 and 330 (Witness AJY); paras. 163-167 and 296 (Witness BUY); paras. 306-308 and 318 (Witness AHP). 81 Indictment, paras. 3, 7, 12, 13. See also *ibid.*, paras. 30 and 32. 82 Indictment, para. 7. 83 Indictment, paras. 13, 32. Judgement 2 December 2008 12

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anti-Tutsi propaganda.⁸⁴ Neither did the Prosecution adduce any evidence that Bikindi organised and rehearsed his compositions with youth groups at the commune level in late 1993 and early 1994 with the financial support of the Minister, with money being paid to the youth groups.⁸⁵ Similarly, the Prosecution failed to produce evidence that Callixte Nzabonimana, in his capacity as Minister, authorised and sponsored recording of Bikindi's musical compositions, through, and at, the Ministry of Youth and Association Movements ("Ministry") in Kigali.⁸⁶ Lastly, the

Prosecution did not adduce evidence in support of its allegation that Bikindi consulted President Habyarimana, Minister Nzabonimana and MRND-aligned military authorities on his song lyrics.⁸⁷ The Chamber therefore summarily dismisses these allegations. 3.1. Collaboration with President Habyarimana 51. Prosecution Witness BKW is the sole witness who testified that Bikindi was close to President Habyarimana. When asked how he knew they were very close, Witness BKW stated that he, Bikindi and Habyarimana were natives of Gisenyi.⁸⁸ The Prosecution also entered into evidence a copy of a photo showing Bikindi shaking hands with President Habyarimana.⁸⁹ The Chamber is of the view that the photo does not in any way demonstrate that Bikindi collaborated with the President. 52. In light of Witness BKW's doubtful credibility,⁹⁰ and in the absence of any other evidence, the Chamber finds that the Prosecution has not proven that Bikindi agreed or collaborated with President Habyarimana for any specific purpose. 3.2. Collaboration with Minister of Youth and Association Movements 53. As noted earlier, the Prosecution has not presented evidence in support of some of its allegations about Bikindi's collaboration with Callixte Nzabonimana. The Prosecution attempted to prove the broader allegation of this collaboration with evidence that the Minister authorised and sponsored rehearsal of the Irindiro ballet through and at the Ministry, and that the Minister sponsored a private European tour of the ballet. 54. Although Bikindi denied that the ballet as a whole trained at the Ministry, he admitted that the choreographers and their trainers did train there.⁹¹ He explained that it was not an exclusive arrangement; other groups also used the Ministry premises to train including the Impala Orchestra and the National Ballet.⁹² Bikindi stated that in 1993, the Minister had granted him permission to use the Ministry premises for the choreographers of the Imbonezamihiho group, and thereafter, since he already had the key, he simply requested authorisation from the Director General of Sports.⁹³ He testified that the rest of the ballet trained at Amaharo Stadium having been granted permission to do so by the Ministry.⁹⁴

84 Indictment, para. 3. 85 Indictment, para. 12. 86 Indictment, para 12. 87 Indictment, para 13. 88 Witness BKW, T. 17 October 2006, pp. 36-37. 89 Exhibit P104, Photograph of Bikindi shaking hands with President Habyarimana. The Chamber recalls its oral decision to exclude the text on the photograph which purported to state when and where the photograph was taken (T. 1 November 2007, pp. 67-69). 90 See supra para. 34. 91 Witness Bikindi, T. 2 November 2007, pp. 11-12; Defence Closing Brief, para. 266. 92 Witness Bikindi, T. 2 November 2007, p. 11; T. 5 November 2007, p. 30. 93 Witness Bikindi, T. 2 November 2007, pp. 11-12. 94 Witness Bikindi, T. 2 November 2007, p. 12. Judgement 2 December 2008 13

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Defence Witness CQR, a member of the Irindiro ballet, testified she attended ballet training sessions at the Ministry and did not see the Minister or any other senior official coming to see how the ballet was performing.⁹⁵ This was corroborated by Angeline Mukabanana, Bikindi's second wife, who gave evidence that Bikindi trained the Irindiro artists in the backyard of the ministerial building.⁹⁶ Defence Witnesses KMS and JCH, both members of the ballet, denied that

rehearsals were held at the Ministry,⁹⁷ and Witness KMS added that they rehearsed at the Amahoro Stadium.⁹⁸ 55. The Chamber concludes, based on Bikindi's own admission, that some members of the Irindiro ballet, namely the trainers, trained at the Ministry. However, the Prosecution did not lead any evidence that this was authorised or sponsored by the Minister himself. Rather, according to Bikindi's testimony, authorisation was received from a different individual, the Director General of Sports. 56. Regarding the Irindiro troupe's European tour departing Rwanda on 4 April 1994 allegedly sponsored by Callixte Nzabonimana in his capacity as Minister, the Prosecution adduced two letters from Callixte Nzabonimana to the Belgian ambassador and UK consul, respectively, requesting visas for the Irindiro ballet in his official capacity.⁹⁹ 57. The Defence asserts that the letters were necessary for visa arrangements only and do not support the Prosecution's claim that the visit was a ministry or government mission as the Minister was the normal and official channel for dealing with embassies.¹⁰⁰ Bikindi acknowledged that the Ministry played a very important role in the Irindiro ballet's private tour of Europe, but testified that this was standard procedure to go via the Minister to obtain a visa for such a trip.¹⁰¹ Bikindi stated that the Ministry did not provide any funding for the trip; rather he obtained a loan from Bacar Bank.¹⁰² The existence of the loan was confirmed by his first wife, Apolline Uwimana, who testified that she signed the papers to obtain it.¹⁰³ 58. Although it is clear that Callixte Nzabonimana played an important role in the visa application, the Chamber accepts Bikindi's evidence that this was the normal and official procedure. The Chamber does not accept that the letters demonstrate that the government was sponsoring the tour. While couching the application in the spirit of cultural exchange between the countries, there is no suggestion in either letter that the Irindiro ballet was sponsored or financially supported by the Rwandan Government. 59. As an employee of the Ministry and a popular artist, Bikindi necessarily collaborated with the Minister to some extent. However, the Chamber finds that the Prosecution has failed to prove that Callixte Nzabonimana, in his capacity as Minister, collaborated with Bikindi for any anti-Tutsi purpose.

95 Witness CQR, T. 10 October 2007, pp. 2, 13. 96 Witness Angeline Mukabanana, T. 2 October 2007, pp. 31-32, 37. 97 Witness JCH, T. 9 October 2007, pp. 14, 49; Witness KMS, T. 1 October 2007, pp. 6, 36. 98 Witness KMS, T. 1 October 2007, p. 36. 99 Exhibit P92, Letter of Minister of Youth and Association Movements to the Belgian Ambassador, dated 22 March 1994; Exhibit P93, Letter of the Minister of Youth and Association Movements to the Consul of Great Britain and Northern Ireland, dated 22 March 1994. See Bikindi, T. 1 November 2007, pp. 2, 3; T. 2 November 2007, p. 14; Prosecution Closing Brief, para. 945. 100 Defence Closing Brief, para. 265. 101 Bikindi, T. 1 November 2007, pp. 2, 3; T. 2 November 2007, p. 14. Bikindi testified that the Ministry of Youth encouraged cultural promotion and to this end supported and became involved in trips of other groups such as Amasimbi N'amakombe. 102 Bikindi, T. 1 November 2007, p. 3. 103 Apolline Uwimana, T. 8 October 2007, p. 33. Judgement 2 December 2008 14

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3.3. Collaboration with National Leaders of the MRND 60. To support its allegation that Bikindi agreed or collaborated with leading figures in the national leadership of the MRND, such as Mathieu Ndirumapatse, André Ntagerura and Joseph Nzirorera, to militarise and indoctrinate the MRND youth wing,¹⁰⁴ the Prosecution called witnesses who testified that he was often seen in the company of MRND leaders during MRND political events such as rallies. 61. Prosecution Witness BGH, an economics journalist for ORINFOR (Rwandan Office of Information), who attended MRND demonstrations as a journalist for an international press agency,¹⁰⁵ testified that she saw Bikindi attend three political demonstrations organised by the MRND in 1993. During such demonstrations she often saw Bikindi talking to leaders such as Mathieu Nzirorera (Executive Secretary of the MRND) and Jean Habyarimana (MRND official in Kigali). Also present at these meetings were Mathieu Ndirumapatse (national President of the MRND), Édouard Karemera (first Vice-President of the MRND), Ferdinand Nahimana (a well-known member of the MRND), and MRND ministers, and it was clear to her that Bikindi knew them well.¹⁰⁶ However, the witness testified that she could not get close enough to them to hear what they were saying.¹⁰⁷ 62. Witness BGH stated that she also saw Bikindi at an MRND demonstration at Nyamirambo Stadium towards the end of 1992, beginning of 1993. He was discussing something with the MRND officials in Kigali, as well as those at the national level.¹⁰⁸ She testified that Jean Habyarimana, Mathieu Ndirumapatse, Joseph Nzirorera, Édouard Karemera, and other ministers and “heavyweights” who belonged to the MRND party were present.¹⁰⁹ 63. Witness BGH further testified that on one occasion Édouard Karemera publicly congratulated Bikindi for the support he was providing through his compositions. She testified that Karemera congratulated Bikindi because the officials of the MRND shared the same ideas as Bikindi and, consequently they used Bikindi in order to propagate their ideology through his compositions.¹¹⁰ The Prosecution entered into evidence an RTLM transcript of this address, dated 16 January 1994, in which Karemera states that all the MRND militants like Bikindi, and goes on to praise Bikindi, which reads in its relevant part: Bikindi whom you know. Haa! Even the Inkontanyi (sic) know him, even all the soldiers know him. Hmmm... Bikindi is well known [...] All the MRND militants like him. [...] Dear militants, the Irindiro troupe has just reminded me of Bikindi’s talent. It has enabled me to remember this song which praises the heroic deeds of the Rwandan Armed Forces [...] Dear militants, brothers and sisters, I would like to request you to help thank Simon Bikindi for the significant contribution he has made to Rwandans but especially in a particular way to the members of the MRND through the numerous and rational advice which he has been giving. Assist me therefore to thank him (Applause).¹¹¹ 64. The Prosecution also entered into evidence a video and transcript of an MRND rally at Nyamirambo Stadium in late 1993 at which Bikindi was accompanied by important

104 Indictment, paras. 3 and 30. 105 Witness BGH, T. 4 October 2006, p. 28. 106 Witness BGH, T. 2 October 2006, pp. 40-41. 107 Witness BGH, T. 4 October 2006, p. 25. 108 Witness BGH, T. 3 October 2006, p. 2; T. 4 October 2006, p. 31. 109 Witness BGH, T. 3 October 2006, p. 3. 110 Witness BGH, T. 3 October 2006, pp. 29-30. 111 Exhibit P47, Transcript of RTLM Broadcast of 16 January 1994, pp. 5-6. Judgement 2 December 2008 15

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MRND figures.¹¹² Following a speech by President Habyarimana, Bikindi made a short speech, punctuated with a song, celebrating the victories of the MRND and Interahamwe.¹¹³ The Chamber observes that his role appeared to be that of an entertainer, performing a motivational animation session for the audience. ⁶⁵. In addition, the Prosecution alleges that Bikindi's close relationship with MRND leaders was evident through witness testimony that he stayed at the M ridien Hotel in Gisenyi when he returned to Rwanda in June 1994, the hotel where authority figures were staying.¹¹⁴ Bikindi himself denied having ever spent a night at the M ridien Hotel, but stated that he went to the Palm Beach Hotel three times in 1994.¹¹⁵ ⁶⁶. Prosecution Witness BKW testified that on the day they went into exile, he saw Bikindi in the company of members of the interim government and high ranking officers, including General Augustin Bizimungu, Anatole Nsengiyumva, Major Juv nal Bahufite,  douard Karemera, Hassan Ngeze, Joseph Nzirorera and Major Kabera.¹¹⁶ ⁶⁷. The Defence called witnesses who rejected the claim that Bikindi was seen with MRND leaders. Apolline Uwimana testified that Bikindi was not friends with any politicians.¹¹⁷ While she was not constantly with her husband she had never seen him with Andr  Ntagerura, George Rutaganda or Robert Kajuga. She added that she had never seen senior MRND officials such as Mathieu Ngirumpatse or Joseph Nzirorera prior to seeing them in the United Nations Detention Facility in Arusha.¹¹⁸ She also testified, as corroborated by Witnesses TIER and DZS, that she did not see Bikindi in the company of politicians during the period they were in Nyundo,¹¹⁹ or when in exile in the Mugunga camp in Zaire.¹²⁰ ⁶⁸. The Defence witnesses' testimony that they did not see Bikindi in the company of politicians may be true. However, the Chamber notes that these witnesses were not at Bikindi's side at all times and therefore were not in a position to state with any certainty that Bikindi was not close to leading MRND politicians. The Chamber is also mindful of Apolline Uwimana's possible self-interest to distance her husband from the allegations proffered by the Prosecution. The Chamber finds the evidence of Witness BGH to be coherent and articulate and has no reason to doubt its veracity. The Chamber rejects the Defence challenges to Witness BGH's evidence,¹²¹ insofar as it believes that the minor inconsistencies identified in her testimony can be attributed to the passage of time and do not negatively impact her credibility.

¹¹² Exhibit P30(E), Transcript (undated), pp. 1-2, admitted with Exhibit P30, a video of the same meeting in Nyamirambo stadium, dated 7 November 1993 in script at the beginning of the video, admitted into evidence at T. 18 September 2006, p. 24 ("Transcript of 7 November 1993 MRND Meeting in Nyamirambo"). See also T. 25 September 2006, p. 2 and T. 3 October 2006, p. 21. ¹¹³ Exhibit P30(E), Transcript of 7 November 1993 MRND Meeting in Nyamirambo, pp. 1-2. ¹¹⁴ Witness AEY, T. 12 October 2006, pp. 4, 31; Witness RH, T. 25 October 2007, p. 48 and T. 26 October 2007, pp. 8-9, 14. ¹¹⁵ Bikindi, T. 5 November 2007, pp. 15-16, 35-36. On his third visit, Bikindi testified that the hotel was closed. Regarding the distance between the two, Bikindi confirmed the two hotels were side by side (T. 5 November 2007, p. 34), Witness RH estimated that it would take approximately two to three minutes walking at normal speed to reach the Hotel

Palm Beach from the Méridien Hotel (T. 26 October 2007, p. 14), and during the site visit, the Chamber observed that the two hotels were no more than 150 metres apart. 116 Witness BKW, T. 17 October 2006, p. 36. 117 Apolline Uwimana, T. 8 October 2007, p. 32. 118 Apolline Uwimana, T. 8 October 2007, p. 18. 119 See *infra* para. 278. 120 Apolline Uwimana, T. 8 October 2007, pp. 25, 31; Witness DZS, T. 24 September 2007, pp. 15, 22; Witness TIER, T. 16 October 2007, p. 34. 121 See Defence Closing Brief, paras. 171-172. Judgement 2 December 2008 16

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69. The Chamber considers that, even if it were to rely on Witnesses RH and AEY's evidence that Bikindi stayed at the Méridien Hotel, where they stated that other authority figures stayed, this would not be a sufficient basis to conclude that Bikindi had a close relationship with them. Likewise, Witness BKW's evidence that he saw Bikindi with important political leaders on his way to exile is insufficient to prove any collaboration between them. 70. Witness BGH's testimony, together with Karemera's praising, clearly suggests that Bikindi was perceived as an important and influential member of the MRND and was familiar with MRND leaders. This is supported by Bikindi speaking at an MRND rally in Kivumu in 1993,¹²² an MRND rally at Nyamirambo Stadium in 1993 where he was accompanied by important MRND figures,¹²³ and confirmed by the perception of many witnesses.¹²⁴ 71. The Chamber is not convinced by the Defence argument that Bikindi's inability to comment on the MRND Statute supported its position that Bikindi was not an influential MRND member. The Chamber notes that when asked by Defence Counsel whether he was "familiar with the statute of the MRND". Bikindi replied that he was "very familiar". He was also able to provide the motto of the party.¹²⁵ Nor does the Chamber find that Bikindi's testimony that he was not present at meetings in 1991 when changes were made to the MRND Statute precludes him from being seen as an influential member of the party. Finally, the Chamber is not persuaded by the Defence assertion that it is significant that Bikindi was not in attendance and was unable to say anything about the meeting at Nyamirambo Stadium at the end of 1993 when Hutu power was allegedly born.¹²⁶ In the Chamber's opinion, it is not essential for an individual to attend every MRND rally to be perceived to be an important MRND figure. 72. Although the Chamber is unable to conclude that Bikindi had any official role in the party,¹²⁷ it finds that he was perceived to be an influential member of the MRND and was familiar with important MRND figures. Based on his participation and address at the Kivumu meeting in 1993,¹²⁸ his speech at the meeting held in Nyamirambo in November 1993, Karemera's praising and Witness BGH's evidence, the Chamber is convinced that Bikindi approved the dissemination of anti-Tutsi propaganda by the MRND and its leaders. As discussed under the section on Bikindi's Musical Compositions, Bikindi himself participated in the anti-Tutsi propaganda campaign. However, the evidence adduced at trial does not prove beyond reasonable doubt the Prosecution's allegation that Bikindi specifically agreed

122 See *infra* para. 141. 123 Exhibit P30(E), Transcript of 7 November 1993 MRND Meeting in Nyamirambo, pp. 1-2. 124 See the reliable testimony of Witness AJS corroborated by Witnesses AJY, ALQ, AHP, BUY and BKW: Witness AJS, T. 29 September 2006, p. 9; Witness AJY, T. 27 September 2006, p. 30 and T. 28 September 2006, pp. 37-38; Witness ALQ, T. 13 October 2006, p. 38 and T. 16 October 2006, p. 2, 3; Witness AHP, T. 19 October 2006, p. 17; Witness BUY, T. 19 February 2007, p. 44; Witness BKW, T. 17 October 2006, p. 37. 125 Bikindi, T. 1 November 2007, p. 11. 126 Bikindi, T. 1 November 2007, pp. 13-14. 127 Bikindi (T. 1 November 2007, pp. 11, 53) and two Defence witnesses testified he had no official role in the MRND party (Charles Zilimwabagabo, T. 22 October 2007, p. 15, and Apolline Uwimana, T. 8 October 2007, p. 18). The Chamber accepts that their testimony is supported by four MRND documents which do not contain Bikindi's name: Exhibit D123, Manifesto, Programme and Statutes of the Mouvement Républicain National pour la Démocratie et le Développement (MRND), September 1991; Exhibit D10, Liste des élus dans les Comités préfectoraux, dated 12 February 1992; Exhibit D112, Les Membres du Comité préfectoral du MRND-Gisenyi, undated; and Exhibit D113, MRND National Committee Elections Report, undated. See Defence Closing Brief, para. 11. 128 See *infra* para. 141. Judgement 2 December 2008 17

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or collaborated with leading MRND figures for such a purpose. While the evidence shows that Bikindi was close to them, it does not establish the nature or extent of their association. 73. Accordingly, the Chamber finds that the Prosecution failed to prove beyond reasonable doubt that Bikindi agreed or collaborated with MRND leaders to militarise or indoctrinate the Interahamwe with anti-Tutsi ideology, or to disseminate anti-Tutsi propaganda. 3.4. Conducting MRND Membership Drives 74. The Prosecution alleges that Bikindi participated in the campaign to defeat the enemy militarily by conducting MRND membership drives at the end of 1993 and the beginning of 1994.¹²⁹ 75. Witness ALQ testified that Bikindi was responsible for campaigning for the MRND so that it could obtain members.¹³⁰ The witness explained that at rallies Bikindi was involved in sensitising members of the population to recruit MRND members, and took whatever time was required to explain the nature of the MRND regime and its objectives and the evil or pain that the Tutsi had brought upon the Hutu.¹³¹ He stated that when the "MRND realized that it might lose in the political arena, Bikindi began to show how the Tutsi were wicked. He therefore began to sensitise the people so that they could hate the Tutsi. [...] [H]is objective, in fact, was to recruit members for the MRND party."¹³² Witness ALQ gave specific examples of rallies at Gikongoro and Kibungo in 1992 or 1993 which he claimed were membership drives.¹³³ He testified that when Bikindi began to sing songs at these rallies, those who refused to join the MRND were beaten up and seriously wounded.¹³⁴ 76. Witness ALQ's evidence of Bikindi's involvement in recruiting MRND members was corroborated by Witness BHI, who testified that Bikindi campaigned on behalf of the MRND at political rallies.¹³⁵ Witness BHI stated that Bikindi was in charge of "sensibilisation or mobilisation" for the MRND across the

country.¹³⁶ He was, the witness said, “waging propaganda for the MRND [...] so that the MRND could have members”.¹³⁷ 77. Bikindi denied that he was seen by people, including top members of the government in 1994, senior military officials, the Interahamwe leadership, and civil administrators, as being an effective mobiliser of the Hutu population.¹³⁸ Witness KMS also denied that Bikindi campaigned for the MRND, testifying that if she heard that someone said that, she would say that such a person were “a liar in the sense that I was always in the presence of Bikindi.”¹³⁹ 78. The Chamber notes that the evidence of Witness ALQ, a former minibus taxi-driver whose conviction and sentence to life imprisonment was under appeal at the time of his testimony,¹⁴⁰ contains significant inconsistencies which leave the Chamber with doubts as to

129 Indictment, para. 7. 130 Witness ALQ, T. 13 October 2006, p. 38; T. 16 October 2006, p. 2. 131 Witness ALQ, T. 16 October 2006, p. 4 (French). 132 Witness ALQ, T. 13 October 2006, p. 38. 133 Witness ALQ, T. 16 October 2006, pp. 5, 6, 8, 14, 19. 134 Witness ALQ, T. 16 October 2006, p. 25. 135 Witness BHI, T. 12 October 2006, p. 40. 136 Witness BHI, T. 13 October 2006, p. 11. 137 Witness BHI, T. 13 October 2006, p. 5. 138 Bikindi, T. 2 November 2007, pp. 30-31. 139 Witness KMS, T. 1 October 2007, p. 21. 140 Witness ALQ, T. 13 October 2006, p. 33; T. 16 October 2006, p. 29. Judgement 2 December 2008 18

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his credibility. Of particular concern are the witness’s inconsistencies regarding his membership of the Interahamwe,¹⁴¹ his presence in Nyundo,¹⁴² and Bikindi’s participation in military training.¹⁴³ The Chamber also emphasises that although in his testimony he incriminates Bikindi for his participation in killings in Gisenyi in June 1994,¹⁴⁴ the witness admitted that he had not previously mentioned Bikindi in relation to incidents in Gisenyi during that period to any Rwandan or Tribunal investigators.¹⁴⁵ The Chamber is therefore hesitant to rely on Witness ALQ’s testimony without sufficient corroboration. 79. The Chamber also has some concerns regarding the veracity of the evidence of Witness BHI, a former Interahamwe who was convicted in Rwanda and sentenced to life imprisonment for his participation in the genocide,¹⁴⁶ as it would appear that he is particularly intent on implicating Bikindi. In response to a question about whether Bikindi was at an MRND rally in Ruhengeri in 1991, Witness BHI testified that Bikindi attended all MRND meetings in the préfecture as he was in charge of “sensibilisation or mobilization” for the MRND across the country and if the Defence believed the contrary, it should prove it.¹⁴⁷ However, when challenged regarding a previous statement he had given to Tribunal investigators in which he stated that he did not attend all the MRND rallies, but saw video footage of them at Hassan Ngeze’s home,¹⁴⁸ the witness blamed the inconsistency on the passage of time.¹⁴⁹ The Chamber views this as an example of a tendency of Witness BHI to stress Bikindi’s guilt at any opportunity, such as repeatedly stating without prompting that it was Bikindi’s songs that incited the Interahamwe to kill.¹⁵⁰ This leaves the Chamber with doubt as to the credibility of Witness BHI’s testimony. 80. The Chamber concludes that the fact that Witnesses ALQ and BHI corroborate each other in some respects is not enough to overcome the strong reservations it has

regarding their credibility. In light of the evidence before it, the Chamber concludes that the Prosecution has failed to prove that Bikindi conducted MRND membership drives at the end of 1993 and beginning of 1994.

141 Witness ALQ positively answered the question about whether he was an Interahamwe (T. 13 October 2006,

p. 18). However, when confronted with his prior testimony in the Bagosora et al. case that he denied ever being an Interahamwe, the witness stated, “You know, it is very difficult to acknowledge that one had been an Interahamwe. As a matter of fact, what I did was to transport the Interahamwe, but I was not an Interahamwe, as such” (T. 16 October 2006, p. 30). See also Exhibit D28/2, Transcript in The Prosecutor v. Bagosora et al. case, dated 30 June 2003, p. 5 (closed session) and Exhibit D28/3, Transcript in the The Prosecutor v. Bagosora et al. case, dated 1 July 2003, pp. 66-67. 142 Witness ALQ first testified that he personally saw Bikindi in Nyundo “with [his] very own eyes” (T. 16 October 2006, p. 23). However, when confronted with contradictory testimony he made before the Bagosora et al. Trial Chamber (Exhibit D28/4, Transcript in The Prosecutor v. Bagosora et al. case, dated 17 October 2005, p. 24 (closed session)), the witness testified that he had never been there (T. 16 October 2006, pp. 23, 24, 28). 143 See *infra* para. 101. 144 Witness ALQ, T. 16 October 2006, pp. 23-25. 145 Witness ALQ, T. 16 October 2006, p. 30. The Chamber notes that the witness explained that he testified in some eight to nine cases before the Tribunal. 146 Witness BHI, T. 12 October 2006, p. 40; T. 13 October 2006, p. 21. 147 Witness BHI, T. 13 October 2006, p. 11. 148 Exhibit D24/1, Witness BHI’s written statement dated 3 and 7 March 2001. 149 Witness BHI, 13 October 2006, pp. 12-13. 150 Witness BHI, T. 13 October 2006, pp. 4, 21-22, 29. Judgement 2 December 2008 19

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3.5. Performing at MRND and CDR Political Gatherings 81. The Prosecution alleges that Bikindi regularly performed his musical compositions at large MRND and CDR party functions in various stadiums in Rwanda, including Ruhengeri, Cyasemakamba, Nyamirambo, Cyangugu, Umuganda, Rubona in Bicumbi commune, Ruyenzi in Gitarama commune, in late 1992 and 1993, and in the Kigali and Gisenyi préfectures at the beginning of 1994.¹⁵¹ Before turning to its analysis of the evidence on the matter, the Chamber recalls that it has excluded certain portions of witnesses’ evidence of rallies Bikindi is alleged to have attended in a previous decision which, accordingly, have been disregarded.¹⁵² 82. The Defence does not dispute that Bikindi attended rallies of a political nature in his capacity as a musician and as the manager of a musical group.¹⁵³ Witnesses TIER, KMS, CQK, and JCH, all members of the Irindiro ballet, testified that the ballet performed at MRND rallies attended by important MRND political figures.¹⁵⁴ Witnesses DUC, TIER, CQK, KMS and JCH testified that this was not an exclusive arrangement, explaining that the Irindiro and Bikindi performed for other political parties including the PSD, the Parerwa Party, and the MDR.¹⁵⁵ Bikindi denied that the Irindiro was at the service of the MRND.¹⁵⁶ While the

Irindiro ballet performed primarily for the MRND, other political parties occasionally solicited its services. In light of the evidence adduced, the Chamber considers that it is clear that the ballet was not exclusively an organ for the MRND to utilise.⁸³ The Chamber also notes that there is reliable evidence that Bikindi composed a song for the MRND which was occasionally performed by the Irindiro ballet at MRND gatherings.¹⁵⁷ 84. When Exhibit P47, a transcript of an RTLM broadcast of a rally in which Karemera praised Bikindi, was shown to the Accused, he admitted he had attended the rally, but stated that he had not heard Karemera's speech as he was in the changing rooms waiting to be informed that in the next few minutes the Irindiro troupe would perform.¹⁵⁸ The Chamber finds that this rally occurred in Nyamirambo Stadium in the first two weeks of 1994 given the content of the speeches made.¹⁵⁹ The Chamber notes that there was no evidence of which songs Bikindi performed.

151 Indictment, paras. 13 and 32. 152 Decision on Exclusion of Evidence. In this Decision, the Chamber excluded the following evidence: Prosecution Witness BHB's evidence related to a meeting in Ngororero in 1993 (para 24); Witnesses BKW and BUY's evidence in relation to a meeting in Kabaya (paras. 28, 30); Witnesses BKW and BUY's evidence on a meeting in Butare (para. 34). 153 Defence Closing Brief, para. 214. 154 Witness TIER, T. 16 October 2007, p. 35; Witness KMS, T. 1 October 2007, pp. 13, 17-19; Witness CQK, T. 10 October 2007, p. 52; Witness JCH, T. 9 October 2007, pp. 17-18, 28; Witness DUC, T. 27 September 2007, p. 50 and T. 28 September 2007, pp. 2, 4, 9. 155 Witness TIER, T. 16 October 2007, p. 21; Witness CQK, T. 10 October 2007, p. 52; Witness KMS, T. 1 October 2007, pp. 13-16, 38; Witness DUC, T. 27 September 2007, p. 52; Witness JCH, T. 9 October 2007, pp. 18, 43-44. 156 Bikindi, T. 2 November 2007, p. 11. 157 Witness KMS, T. 1 October 2007, p. 37; Witness JCH, T. 9 October 2007, p. 17; Exhibit P4, Transcript of RTLM Broadcast of 3-4 January 1994, p. 12. 158 Bikindi, T. 2 November 2007, pp. 45-49. 159 In Exhibit P47, the Chamber notes that in the introduction to the broadcast, Noel Hitimana, RTLM journalist, stated that the speeches were delivered at the Nyamirambo regional stadium. The Chamber further notes a few indications in the transcript that the rally occurred sometime between 1 January and 15 January 1994. Firstly, on page 4, the same RTLM journalist, Noel Hitimana, stated that he heard the speakers who took the floor at the stadium saying "Happy New Year!" Secondly, on page 6, Karemera speaks of a letter which was dated Judgement 2 December 2008 20

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85. Based on the evidence of Defence Witnesses WUH and HZTX, the Chamber finds that Bikindi also performed at an MRND meeting at a football field in Musya cellule, Vumwe secteur, Kigarama commune, Kibungo préfecture in 1993,¹⁶⁰ and at an MRND rally in Ruhengeri in 1992.¹⁶¹ Bikindi and Irindiro ballet's performances at MRND rallies are also substantiated by video footage showing them performing at Amaharo Stadium at an MRND rally in 1992.¹⁶² 86. As discussed in the preliminary section, the Chamber will not rely on Witness BKW's evidence in the absence of reliable corroboration, and therefore rejects his

uncorroborated evidence that Bikindi performed at a CDR rally in Gisenyi in 1993.¹⁶³ Similarly, due to the reservations the Chamber has about Witness ALQ's credibility,¹⁶⁴ the Chamber will not rely on his uncorroborated evidence that Bikindi was present at a meeting in Gikongoro in 1992/1993.¹⁶⁵ Further, the fact that Witnesses ALQ and BKW corroborated each other as to Bikindi's participation at an MRND rally held in a stadium in Cyasamakamba, Kibungo, in 1993,¹⁶⁶ is not sufficient in the Chamber's opinion to overcome the doubt the Chamber has as to the veracity of their testimony, especially in light of Defence Witness AJH's testimony that Bikindi did not attend that meeting.¹⁶⁷ The Chamber will not rely on their evidence to find that Bikindi attended a rally in Cyasamakamba in 1993. 87. Although the Prosecution has not proven that Bikindi performed in all the locations mentioned in the Indictment, the Chamber finds that it has proven that Bikindi performed with his troupe at MRND rallies, in particular at MRND rallies in Ruhengeri and at the Amaharo Stadium in 1992, and at a football field in Kibungo préfecture and in the Nyamirambo Stadium in 1993. The Chamber further finds that Bikindi performed at an MRND rally in January 1994 in Nyamirambo Stadium. There was no reliable evidence, however, that Bikindi performed at any other rally in Rwanda in 1994. Bikindi's participation in political gatherings as a prelude to or a motivating factor in anti-Tutsi violence will be addressed in a subsequent section. While the Irindiro was not exclusively performing for the MRND, the Chamber considers that the evidence establishes that the ballet was regularly hired by the MRND which demonstrates a certain closeness between the ballet and the political party.

"9 December last year in 1993". In this respect, the Chamber notes that, although Defence Witness DUC testified that there were no Irindiro performances in 1994, he also stated that he attended no rallies during 1994 as he had a problem with his foot (T. 28 September 2007, p. 4). Therefore, the Chamber views his categorical statement with skepticism as he was likely not performing with the ballet given his foot injury, and would likely not have been aware of every performance that year. 160 Witness WUH, T. 2 October 2007, pp. 62-66. The witness testified that there were many folklore groups at the rally including Bikindi and the Irindiro ballet. 161 Witness HZTX, T. 25 September 2007, pp. 69, 72. 162 Exhibit P31, Video of Bikindi and the Irindiro ballet performing at an MRND rally at Amahoro Stadium, which Bikindi identified from a still photograph (Exhibit P79) taken from the video as occurring in 1992 (T. 2 November 2007, pp. 15-20). 163 Witness BKW, T. 17 October 2006, pp. 3-4; T. 18 October 2006, p. 5. 164 See supra para. 78 and infra paras. 101 and 376. 165 Witness ALQ, T. 16 October 2006, pp. 5-6, 18, 25. 166 Witness ALQ, T. 16 October 2006, pp. 6-8, 14, 19, 25; Witness BKW, T. 17 October 2006, p. 22 and T. 18 October 2006, p. 5. 167 Witness AJH, T. 2 October 2007, pp. 47-53. The witness testified that he lived approximately some 150 meters away from the Cyasamakamba stadium and that he did not know of any other rallies there in 1993. Judgement 2 December 2008 21

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3.6. Conclusion 88. In light of the above, the Chamber finds that the Prosecution has not proven that Bikindi collaborated with those alleged to militarise and indoctrinate the MRND youth wing, the Interahamwe, with anti-Tutsi ideology and to disseminate anti-Tutsi propaganda. Specifically, the Chamber finds no evidence that Bikindi collaborated with President Habyarimana in any way. The only specific collaboration proven between Minister Callixte Nzabonimana and Bikindi was some routine assistance with European visas. The Chamber notes that some evidence was adduced of possible collaboration between Bikindi and national leaders of the MRND, in that he was seen at political gatherings for the MRND, took the floor at two MRND meetings in 1993 and was praised by national MRND leader Karemera, but considers that this evidence does not establish that Bikindi agreed or collaborated with them for the purposes alleged by the Prosecution. The Prosecution also failed to prove that Bikindi conducted membership drives for the MRND, or that he collaborated with the CDR party.

4. RELATIONSHIP WITH INTERAHAMWE 4.1. Association with Interahamwe Leading Figures 89. The Prosecution alleges that Bikindi agreed or collaborated with national Interahamwe leader Robert Kajuga, among others, to militarise Interahamwe militias, indoctrinate them with anti-Tutsi ideology and disseminate anti-Tutsi propaganda and, more generally, alleges that Bikindi was closely associated with Interahamwe leading figures.¹⁶⁸ 90. Prosecution Witness ALQ is the sole witness who testified seeing Bikindi in the presence of Robert Kajuga, national chairman of the Interahamwe.¹⁶⁹ Given its concerns about the reliability of his testimony discussed in other sections,¹⁷⁰ the Chamber declines to rely on Witness ALQ in the absence of reliable corroboration. 91. The Chamber notes the evidence of Bikindi making a speech at an MRND meeting in Nyamirambo on 7 November 1993, followed by a speech by Robert Kajuga.¹⁷¹ While this shows that Bikindi certainly knew Kajuga, it does not prove that he was closely associated to him. The Chamber finds that this is insufficient to demonstrate that Bikindi agreed or collaborated with Kajuga for the purposes described by the Prosecution. 92. The Chamber does not accept Witness BKW's uncorroborated evidence that Bikindi usually met with Hassan Gitoki, alleged vice-chairman of the Interahamwe at the préfectoral level, or that Bikindi spoke with him about rallying young people to fight the Inyenzi, and carried out attacks in his company.¹⁷² Further, while Bikindi admitted that he knew Bernard

¹⁶⁸ Indictment, paras. 3 and 30. ¹⁶⁹ Witness ALQ, T. 13 October 2006, pp. 34-37; T. 16 October 2006, pp. 2, 5. ¹⁷⁰ See *supra* paras. 78 and *infra* paras. 101 and 376. ¹⁷¹ Exhibit P30(E), Transcript of 7 November 1993 MRND Meeting in Nyamirambo, pp. 1-2. ¹⁷² Witness BKW, T. 17 October 2006, pp. 16-19, 33. The Chamber notes that the witness also referred to Hassan Gitoki as an MRND vice-chairman (T. 17 October 2006, p. 11). Defence Witness HZTX referred to Hassan Gitoki as the MRND chairman in Gisenyi (T. 25 September 2007, pp. 84, 85 and T. 26 September 2006,

- p. 2). The Chamber further notes that Hassan Gitoki is listed as Head of the Interahamwe in Gisenyi in Exhibit D127, Report by Massamba Ndiaye, “Histoire des Interahamwe”, Annex 2 “Liste des chefs des Interahamwe par préfecture”, p. 31. As to Witness BKW’s credibility, see supra para. 34. Judgement 2 December 2008 22

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Munyagishari,¹⁷³ an Interahamwe leader in Gisenyi, with whom he was allegedly seen on different occasions,¹⁷⁴ the Prosecution failed to establish the nature of their relationship. 93. In the absence of further evidence, the Chamber finds that the Prosecution failed to establish that Bikindi agreed or collaborated with Interahamwe leaders to militarise Interahamwe militias, indoctrinate them with anti-Tutsi ideology and disseminate anti-Tutsi propaganda or was closely associated with Interahamwe leading figures.¹⁷⁵ 4.2. Participation in Recruitment and Military Training of Interahamwe 94. The Prosecution also alleges that Bikindi participated in the recruitment and military training of Interahamwe militias as part of a plan to mobilise civilian militias to destroy the Tutsi.¹⁷⁶ In particular, the Prosecution contends that Bikindi participated in the recruitment and military training of Interahamwe in Mutara in late 1993 and, on several occasions, in Kigali-ville in January 1994 with French Soldiers at Club Jali.¹⁷⁷ 95. The Chamber first notes that the Prosecution has not adduced evidence in support of its allegation that Bikindi participated in the military training of Interahamwe at Club Jali, in Kigali-ville, in January 1994. 96. Prosecution Witness BKW testified that Bikindi participated in the military training of a selected group of Interahamwe by French soldiers in Gabiro, Mutara region, around 1992-1993.¹⁷⁸ 97. Prosecution Witness ALQ testified to being hired by Robert Kajuga and Bikindi many times in 1992 to provide transport for the Interahamwe.¹⁷⁹ He explained that Bikindi tried to identify Interahamwe for military training and that Bikindi transported them to the training locations. The witness stated that training took place at different locations, and that he drove them, for example, to Kanombe or Gatenga in Kigali town.¹⁸⁰ The witness further declared that Bikindi provided equipment, materials and money for the military training, but that he never actually saw Bikindi at any training location.¹⁸¹ 98. The existence of a military training centre in Gabiro, Mutara region, was confirmed by Defence Witness Jean Berchmans Hakorimana, a former Rwandan military member,¹⁸² who explained that he had received training there from the French.¹⁸³ However, he stated that the Gabiro training centre was reserved uniquely for the military and that no Interahamwe were trained there.¹⁸⁴

¹⁷³ Bikindi, 1 November 2007, p. 20. ¹⁷⁴ Witness BUY, T. 19 February 2007, p. 28; Witness AEY, T. 12 October 2006, p. 31. ¹⁷⁵ The Chamber has not considered Witness BUY’s testimony on Bikindi’s participation at a meeting held in Butare relied upon by the Prosecution in its Closing Brief as a result of its decision to exclude this part of Witness BUY’s evidence: Decision on Exclusion of Evidence, para. 34. ¹⁷⁶ Indictment, paras. 16, 20 and 43. ¹⁷⁷ Indictment, paras. 7, 8 and 30(b). The Chamber considers the reference to Club “Jaly” in the Indictment and the Prosecution Pre-Trial Brief to be a spelling mistake. ¹⁷⁸ Witness BKW, T. 17 October 2006, pp. 6-7; T. 18 October

2006, pp. 6-7. Witness BKW's testimony is unclear as to the year the training took place. At T. 17 October 2006, p. 6, he specified "between 1992 and 1993", at T. 18 October 2006, p. 6, he mentioned "beginning the end of 1991 up until 1992". 179 Witness ALQ, T. 13 October 2006, pp. 33, 37; T. 16 October 2006, pp. 8, 16, 21. 180 Witness ALQ, T. 16 October 2006, pp. 3-4. 181 Witness ALQ, T. 16 October 2006, pp. 4-5. 182 Jean Berchmans Hakorimana, T. 11 October 2007, p. 6; Exhibit D79, Jean Berchmans Hakorimana's Personal Information Sheet. 183 Jean Berchmans Hakorimana, T. 11 October 2007, pp. 16, 19. 184 Jean Berchmans Hakorimana, T. 11 October 2007, p. 6. Judgement 2 December 2008 23

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99. Witness BKW testified that he never went to Gabiro. When asked how he knew of the military training of Interahamwe that took place at Gabiro, he first explained that some of his Interahamwe neighbours took part in the training, and that one could see at rallies how members of Irindiro who were also Interahamwe were trained by the way they performed on stage. He further stated that the military training took place in secret and that nobody talked about it openly.¹⁸⁵ It is only upon the insistence of the Prosecution Counsel that Witness BKW testified that he overheard Bikindi say to one of his neighbours, Hassan Gitoki, that Bikindi received French military training in Gabiro.¹⁸⁶ The witness was also unclear as to Bikindi's exact role in the military training: he testified that Bikindi provided military training to young people in Gabiro,¹⁸⁷ and that he overheard that Bikindi had received military training from the French.¹⁸⁸ 100. The Chamber therefore has some doubts about Witness BKW's testimony on Bikindi's involvement in military training. Considering the witness's questionable credibility,¹⁸⁹ the Chamber does not accept Witness BKW's uncorroborated hearsay evidence as proving Bikindi's involvement in military training in Gabiro, Mutara region. 101. In the Chamber's view, Witness ALQ's testimony is not a sufficient basis either to conclude that Bikindi participated in military training or recruited Interahamwe. As pointed out above, Witness ALQ first testified that Bikindi transported the Interahamwe to the location for training, yet later testified as to never seeing him at the training location. In a statement of June 2000, the witness declared to Tribunal investigators that he did not know whether Bikindi was involved in the training of Interahamwe in Kanombe.¹⁹⁰ The witness's inconsistency on such an important matter raises questions about the reliability of his testimony. In the absence of any corroboration, the Chamber considers it cannot rely on this part of Witness ALQ's testimony. 102. Further, the Chamber considers Prosecution Witness AJS's evidence that in 1993 armed Interahamwe and members of the Irindiro troupe would assemble close to his house and Bikindi's house and board buses to be transported to Bugesera where there was a forest in which military training took place¹⁹¹ to be wholly inconclusive as to Bikindi's role in such military training. 103. The Chamber concludes that the Prosecution has not proven that Bikindi participated in recruitment and military training of Interahamwe. 4.3. Authority over the Interahamwe 104. The Prosecution does not argue that Bikindi was an executive member of the

Interahamwe movement but that he had some control over them.¹⁹² 105. Prosecution witnesses testified that they saw Bikindi with Interahamwe,¹⁹³ among them members of his own ballet.¹⁹⁴ Witness BGH testified that she saw Bikindi wearing the

185 Witness BKW, T. 17 October 2006, pp. 14-17; T. 18 October 2006, pp. 6-7. 186 Witness BKW, T. 17 October 2006, pp. 17-19; T. 19 October 2006, p. 14. 187 Witness BKW, T. 17 October 2006, pp. 6, 14-15; T. 18 October 2006, p. 6. 188 Witness BKW, T. 17 October 2006, p. 19; T. 19 October 2006, p. 14. 189 See supra para. 34. 190 Exhibit D26/1, Witness ALQ's written statement dated 27 June 2000 (under seal), p. 4. See also Witness ALQ, T. 16 October 2006, p. 26. 191 Witness AJS, T. 29 September 2006, pp. 9-10, 12-13, relied upon by the Prosecution in its Closing Brief, paras. 281 and 298. 192 Prosecution Closing Brief, para. 274. Judgement 2 December 2008 24

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Interahamwe attire.¹⁹⁵ There is also evidence of Bikindi making a speech at Nyamirambo Stadium on 7 November 1993, praising the MRND and the Interahamwe and singing "We, the Interahamwe, have won! We have Won!"¹⁹⁶ Further, witnesses testified that Bikindi was accompanied by Interahamwe bodyguards on various occasions.¹⁹⁷ 106. Bikindi declared that he had never been an Interahamwe, confirmed by Defence Witnesses CQR, JCH and Angeline Mukabanana.¹⁹⁸ Bikindi further denied having any influence or authority over the Interahamwe.¹⁹⁹ Other Defence witnesses testified that they never saw Bikindi in the company of Interahamwe.²⁰⁰ 107. The Chamber considers that whether Bikindi was actually an Interahamwe or not is of little importance in the circumstances of the case. What matters is that while he did not hold any official position within the youth movement, the evidence establishes that in Rwanda in 1994, Bikindi was held in very high esteem by the Interahamwe and considered to be an important figure and a man of authority in the movement. This was in part due to his popularity as a talented artist, but also because he was perceived to be an important and influential MRND member and was familiar with important MRND figures.²⁰¹ Bikindi's influence over the Interahamwe is exemplified by his ability to have the belongings of his neighbour Claudine, which had been stolen by Interahamwe, given back to her.²⁰² The Chamber considers that Bikindi and the Defence witnesses who testified to the contrary do not raise a doubt in this respect. 108. However, due to the reservations the Chamber has on the credibility of the witnesses who testified to that effect, the Chamber does not find that there is reliable evidence that Bikindi was accompanied by Interahamwe bodyguards on various occasions.²⁰³

193 Witness BGH, T. 2 October 2006, p. 38; Witness AKJ, T. 20 September 2006, p. 50; Witness BHB, 20 September 2006, pp. 23, 27, 29; Witness AKK, T. 22 September 2006, pp. 4-6. 194 See supra para. 47. 195 Witness BGH, T. 2 October 2006, p. 39. 196 Exhibit P30(E), Transcript of 7 November 1993 MRND meeting in Nyamirambo, p. 2 (emphasis added). See supra note 112. 197 Witness AEY, T. 12 October 2006, p. 4; Witness AHP, T. 19 October 2006, p. 19; Witness AJZ, T. 25 September 2006, p. 43; Witness BHI, T. 13 October 2006, pp. 2-3; Witness BUY, T. 19 February 2007,

- p. 20. 198 Bikindi, T. 1 November 2007, p. 17; Witness CQR, T. 9 October 2007, p. 64; Witness JCH, T. 9 October 2007, p. 31; Angeline Mukabanana, T. 2 October 2007, p. 18. 199 Bikindi, T. 5 November 2007, p. 32. 200 Witness CQK, T. 10 October 2007, p. 54; Nelson Muhirwa, T. 10 October 2007, p. 26; Apolline Uwimana, T. 8 October 2007, p. 25; Witness DZS, T. 24 September 2007, p. 15. 201 Witness AJS, T. 29 September 2006, pp. 11-12; Witness AJY, T. 27 September 2006, pp. 32, 34-37 and T. 28 September 2006, p. 4; Witness AJZ, T. 26 September 2006, p. 9; Witness AEY, T. 12 October 2006, pp. 4, 12, 32-33; Witness BHI, 13 October 2006, pp. 5, 17-18; Witness BKW, T. 16 October 2006, p. 44, T. 17 October 2006, pp. 6, 17, 22, 33 and T. 18 October 2006, p. 15; Witness AHP, 19 October 2006, p. 17; Witness BUY, T. 19 February 2007, pp. 14 and 28; Exhibit P30(E), Transcript of 7 November 1993 MRND meeting in Nyamirambo, p. 1. The Chamber considers that the fact that Bikindi's name does not appear in the document prepared by Massamba Ndiaye entitled "Histoire des Interahamwe" (admitted as Exhibit D127) does not preclude the Chamber's conclusion. 202 Witness AQH, T. 3 October 2007, pp. 16-17; Apolline Uwimana, T. 8 October 2007, pp. 38-39; Bikindi, T. 2 November 2007, pp. 24-25 and T. 5 November 2007, pp. 31-32. 203 The Chamber refers to its findings on the credibility of these witnesses at paras. 153-155 (Witness AEY), 306-308 and 318 (Witness AHP), 127-132 and 329 (Witness AJZ), 79 and 354-355 (Witness BHI), 163-167 and 296 (Witness BUY). Because the witnesses testified to different occasions where they saw Bikindi accompanied by Interahamwe bodyguards (or escorted by Interahamwe), the Chamber does not consider that they corroborate each other. Judgement 2 December 2008 25

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109. The Chamber also dismisses the Prosecution's allegation that Interahamwe guarded Bikindi's bar in Gatenga secteur, Kigali.²⁰⁴ The bar referred to was actually the bar of Bikindi's wife, Apolline Uwimana.²⁰⁵ While Prosecution Witness AJS testified that the main clients were Interahamwe,²⁰⁶ which was denied by Bikindi and Defence witnesses, including Apolline Uwimana,²⁰⁷ no evidence was adduced by the Prosecution indicating that the bar was guarded by Interahamwe. 110. The Chamber will, if necessary, discuss the exact nature of Bikindi's influence over the Interahamwe and the legal contours of their relationship in the section of the Judgement addressing Bikindi's criminal responsibility under Articles 6(1) and 6(3) of the Statute. 4.4. Conclusion 111. In light of the above, the Chamber finds that the Prosecution has failed to prove beyond reasonable doubt that Bikindi agreed or collaborated with national Interahamwe leaders to militarise Interahamwe militias, indoctrinate them with anti-Tutsi ideology and disseminate anti-Tutsi propaganda or that he was closely associated with Interahamwe leading figures. The Chamber finds that the Prosecution has also failed to prove that Bikindi participated in the recruitment and military training of Interahamwe militias as part of a plan to mobilise civilian militias to destroy the Tutsi. However, it finds that Bikindi was considered to be an important figure and a man of authority in the youth movement.

5. RELATIONSHIP WITH RTLM AND RADIO RWANDA 5.1. Background to RTLM 112. The Prosecution alleges that the Radio Télévision Libre des Mille collines (“RTLM”) was created as a vehicle for anti-Tutsi propaganda, with a media programming objective of sensitising and inciting the listening public to target and commit violent acts against Tutsi, extolling Hutu solidarity, and targeting the Tutsi as accomplices of the enemy.²⁰⁸ 113. The Prosecution did not adduce evidence in support of its allegation that RTLM was created as a vehicle for anti-Tutsi propaganda. It limited itself to introducing the founding document of RTLM, which stated in its preamble that RTLM’s purpose was to facilitate the circulation of diverse ideas and objective news reporting and listed as its mandate a number of goals such as collecting and disseminating information, educating, encouraging pluralist democracy or organising cultural events.²⁰⁹ 114. However, upon reading of the transcripts of RTLM broadcasts admitted into evidence, the Chamber finds that RTLM clearly and effectively disseminated anti-Tutsi propaganda as early as the end of 1993. Listeners were asked to be vigilant against Inkotanyi and Inyenzi,²¹⁰

204 Indictment, para. 30(j). 205 Witness AJS, T. 29 September 2006, pp. 10, 19-20; Witness QUTI, T. 27 September 2007, p. 28; Angeline Mukabanana, T. 1 October 2007, pp. 71-73; Witness AQH, T. 3 October 2007, p. 3; Apolline Uwimana, T. 8 October 2007, pp. 15-16, 38; Bikindi, T. 2 November 2007, pp. 24-25. 206 Witness AJS, T. 29 September 2006, pp. 10-11. 207 Apolline Uwimana, T. 8 October 2007, pp. 16-17, 38; Witness AQH, T. 3 October 2007, p. 5; Angeline Mukabanana, T. 1 October 2007, pp. 71-73. See also Bikindi, T. 2 November 2007, p. 25. 208 Indictment, paras. 9 and 10. 209 Exhibit P41(F), Statuts de la RTLM, pp. 1-2. The Chamber notes that this purpose is not in dispute: Defence Statement of Matters not in Dispute, p. 1. 210 Including Exhibit P5, Transcript of RTLM Broadcast of 29 October 1993, p. 10 (“Many soldiers, in the company of Inyenzi, Inyenzi who are Rwandan refugees, because they are the ones who come to show the Judgement 2 December 2008 26

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and Hutu to unite against the “Tutsi threat”.²¹¹ A reading of the RTLM transcripts reveals assimilation between the Inkotanyi – designation used for the “enemy”, the Rwandan Patriotic Front (RPF) – and, on some occasions, the Tutsi ethnic group. It also reveals that the derogatory term “Inyenzi”, meaning cockroach, was used for the assailants and, more generally, the Tutsi ethnic group. From April to June 1994, RTLM journalists called on listeners to seek out and take up arms against Inkotanyi and Inyenzi, the RPF, and its “accomplices”, the Tutsi ethnic group.²¹² The Chamber also accepts the reliable evidence of Witness BHJ, who testified that journalists on RTLM would explain the need to search for and locate the Inkotanyi and their accomplices, even broadcasting locations where “Inyenzi” could be found.²¹³ 115. Although the Chamber is unable to find that RTLM was created for the purpose of anti-Tutsi propaganda, the Chamber finds, on the basis of the transcripts of RTLM broadcasts surveyed from the years 1993 and 1994, that RTLM was a vehicle for anti-Tutsi propaganda as early as the end of 1993.

soldiers the houses of their Hutu neighbours, and tell them which ones to kill..."); Exhibit P25(F), Transcript of RTLM Broadcast of 29-30 November 1993, pp. 12, 23, 24; Exhibit P16, Transcript of RTLM Broadcast of 21 February 1994, p. 5; Exhibit P16, Transcript of RTLM Broadcast of 21 March 1994, pp. 17, 18; Exhibit P26(F), Transcript of RTLM Broadcast of 13 April 1994, p. 3; Exhibit P10, Transcript of RTLM Broadcast of 14 April 1994, p. K0111155; Exhibit P11, Transcript of RTLM Broadcast of 15 April 1994, p. K0198355 ("in these bad times, we should rather be vigilant...because the enemy is always infiltrating"); Exhibit P20(F), Transcript of RTLM Broadcast of 15 May 1994, p. 10 ("qu'ils ne se laissent pas courtiser par les Inkotanyi qui les invitent à demander pardon. En effet, aucun Interahamwe, aucun Hutu, ne peut demander pardon à ces voyous de Tutsis."); Exhibit P3, Transcript of RTLM Broadcast of 17 May 1994, p. 19 ("when they [Bene Sebahinzi] have realised that their common enemy is called the Inkotanyi, the Inyenzi-Inkotanyi, together with their accomplices and armies, then there will be no more Inkotanyi in this country"); Exhibit P22(F), Transcript of RTLM Broadcast of 10 June 1994, p. 20. 211 For example, see Exhibit P25(F), Transcript of RTLM Broadcast of 29-30 November 1993, pp. 8-9; Exhibit P8(F), Transcript of RTLM Broadcast of 3 March 1994, pp. 13 ("On constate alors que le FPR s'attache opiniâtement au facteur ethnique pour privilégier les Tutsis et accaparer tout le pouvoir avec ce groupe ethnique"), p. 15 ("Les gens devraient [...] plutôt prendre des mesures appropriées pour que le pouvoir n'échappe pas au peuple majoritaire au profit des Tutsis. Nous ne sommes pas contre le partage du pouvoir mais je ne pense pas que les Hutus peuvent accepter que les Tutsis accaparent ce pouvoir, et être à nouveau soumis au régime du fouet et des corvées."); Exhibit P17(F), Transcript of RTLM Broadcast of 22 March 1994,

- p. 16; Exhibit P27(F), Transcript of RTLM Broadcast of 3-4 April 1994, p. K0198766 ("Ce sont les Tutsi qui nous attirent les problèmes."); Exhibit P14(F), Transcript of RTLM Broadcast of 14 April 1994, p. 6 ("Imaginez-vous que ces Tutsis qui ne sont que 15% de la population croient qu'ils peuvent chasser du pouvoir 85% de la population!"); Exhibit P21(F), Transcript of RTLM Broadcast of 28 May 1994, p. 6; Exhibit P22(F), Transcript of RTLM Broadcast of 10 June 1994, p. 32 ("nous savons que les Inyenzi tendent toujours des pièges aux Hutus pour les diviser et parvenir à prendre le pouvoir à leur insu. Cela n'aura pas lieu parce que ces ruses ont été découvertes."). See also Exhibit P23(F), Transcript of RTLM Broadcast of 28 December 1993, p. 22 ("Je voudrais demander à la RTLM de cesser de diffuser des émissions visant à semer la discorde parmi les frères."). 212 Including Exhibit P6(F), Transcript of RTLM Broadcast of 16 April 1994, pp. 5-6, 8; Exhibit P20(F), Transcript of RTLM Broadcast of 15 May 1994, p. 20 ("Que le gouvernement nous cherche du matériel pour exterminer les Inkotanyi. Nous les vaincrons coûte que coûte, il n'y a aucun doute."); Exhibit P19(F), Transcript of RTLM Broadcast of 18 May 1994, pp. 17-18; Exhibit P21(F), Transcript of RTLM Broadcast of 28 May 1994, p. 4 ("Nous allons bientôt avoir de munitions et vous écraser. Vous regretterez alors pourquoi vous êtes venus. Vous dites que vous allez exterminer tous les Hutus. [...] Si un Tutsi tue un Hutu...tous les Tutsis, estimés à environ un million, seront exterminés et il restera six millions de Hutus. Je me demande le groupe ethnique qui sera alors exterminé", pp. 32-33; Exhibit P22(F), Transcript of RTLM Broadcast of 10 June 1994, p. 27. 213 Witness BHJ, T. 10 October 2006, pp. 26, 27; T. 11 October 2006, p. 41. Judgement 2

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5.2. Collaboration with RTLM and Radio Rwanda 116. The Prosecution alleges that Bikindi collaborated with various officials to launch RTLM.²¹⁴ It further alleges that Bikindi made his songs available to RTLM for broadcast in late 1993,²¹⁵ and that under Rwandan legislation governing author's rights, Bikindi had a right to forbid or enjoin public broadcasts of his compositions.²¹⁶ 117. The Prosecution introduced documentary evidence establishing that Bikindi was involved in launching RTLM, together with 49 other individuals.²¹⁷ Bikindi also testified that he was a minor shareholder, only holding a share of 5,000 Rwandan Francs, and insisted that this gave him no authority over programming whatsoever.²¹⁸ He explained that his motivation for becoming a shareholder in RTLM was in order to secure advertising for himself and his friend Andr 219 é Sebanani.

118. The Prosecution concedes that it did not produce evidence to show that Bikindi made his songs available to RTLM for broadcast in late 1993 but alleges that "it is implied."²²⁰ The Chamber notes that Bikindi was not questioned about this allegation.²²¹ He nonetheless testified that the government owned radio station, Radio Rwanda, asked for his authorisation to use Twasezereye. He explained that he signed a form, and Radio Rwanda became "almost like an owner" of the song, and that he only received his requested copyright protection of the song in 1994.²²² Witness JCH testified that there was no link between Bikindi and the playing of his songs on the radio, as most songs were recorded on tapes which were easily accessible.²²³ The Chamber fails to see how the Prosecution's allegation may necessarily be inferred. 119. Transcripts of RTLM broadcasts admitted into evidence only reveal that Bikindi was interviewed twice by RTLM journalist Gaspard Gahigi to discuss Rwandan politics, in December 1993 and January 1994. During both interviews, Bikindi supported President Habyarimana and vigorously criticised Faustin Twagiramungu, who was designated the Prime Minister of Rwanda by the Arusha Accords of 4 August 1993.²²⁴ However, nothing in these interviews shows that Bikindi had any kind of authority over the radio programming or over RTLM in general.²²⁵ Witness BHH's testimony that Bikindi sometimes made comments

214 Indictment, para. 9. The officials named in the Indictment were Ferdinand Nahimana, Jean-Bosco Barayagwiza, Félicien Kabuga, André Ntagerura, Juvénal Habyarimana, Georges Rutaganda, Callixte Nzabonimana, Joseph Serugendo and Joseph Nzirorera. 215 Indictment, para. 13. 216 Indictment, para. 41. 217 Exhibit P41(F), Statuts de la RTLM, p. 11, No. 33. 218 Bikindi, T. 31 October 2007, p. 64. The Chamber was unable to find Bikindi's name among the names of RTLM shareholders listed in Exhibit P42(F), Situation du compte RTLM au 25 août 1993 et Liste des actionnaires. 219 Bikindi, T. 31 October 2007, pp. 63, 64. 220 Closing Arguments, T. 26 May 2008, p. 11. 221 The Defence alluded to this allegation, asking Bikindi "Once your songs are in the possession of a radio station, do you have any control over those songs once they are in the

possession of the radio station?” Bikindi responded “Not at all. I take part neither in the choice nor in the broadcast of any of my songs” (T. 31 October 2007, p. 62).²²² Bikindi, T. 31 October 2007, p. 62. ²²³ Witness JCH, T. 9 October 2007, p. 54. ²²⁴ Exhibit P2(F), Transcript of RTLM Broadcast of 31 December 1993, pp. 2-5; Exhibit P4(F), Transcript of RTLM Broadcast of 3-4 January 1994, pp. 7-12. Bikindi denied that he made political statements in radio interviews, insisting he was only asking for peace between the three Rwandan ethnic groups (T. 5 November 2007, p. 9). A reading of the transcripts of the interviews contradicts Bikindi’s assertion. ²²⁵ The Chamber notes that on 2 April 1994, RTLM journalist Kantano mentioned that Bikindi had come to the RTLM to tell him that he was in danger of death, which he could not understand because, as a singer, he had not Judgement 2 December 2008 28

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on the radio about party ideology, and on the political activities of his party is equally inconclusive in this respect.²²⁶ Although Bikindi testified that, as a shareholder, he had “far easier access to the radio”, he denied having any control over it.²²⁷ 120. With respect to Bikindi’s alleged right to forbid the broadcasts, the Chamber notes that the Rwandan legislation referred to by the Prosecution is not properly before the Chamber, as it was only appended to its Closing Brief and its admission into evidence was denied by the Chamber.²²⁸ In relation thereto, the Prosecution argues that Bikindi’s failure to protest against the manner RTLM used his artistic work shows that he and journalists from RTLM were acting pursuant to the common purpose of inciting hatred and violence against the RPF and the civilian Tutsi population.²²⁹ The Chamber considers that this is not the only reasonable inference that may be drawn from Bikindi’s silence. The fact that he consented to or approved of the manner in which his music was used does not establish that he specifically agreed with RTLM for that purpose. 121. The Prosecution further alleges that Bikindi recorded his compositions at the studios of Radio Rwanda with assistance from Joseph Serugendo.²³⁰ The Chamber accepts Bikindi’s testimony that he recorded Twasezereye, Nanga Abahutu and Bene Sebahinzi in 1993 at Audiotex, a private studio owned by either a Mr. Munyemana or André Sebanani.²³¹ Defence witnesses who were members of his Irindiro ballet, corroborated this,²³² and one stated that no recording was ever made at the studios of Radio Rwanda.²³³ While Bikindi testified that he had a relationship with a civil servant by the name of André Sebanani at Radio Rwanda, it was a relationship based on a shared business interest in advertising.²³⁴ 5.3. Conclusion 122. On the basis of the transcripts of RTLM broadcasts from 1993 and 1994, the Chamber finds beyond reasonable doubt that RTLM was a vehicle for anti-Tutsi propaganda as of at least the end of 1993. However, the Prosecution did not establish that RTLM was created for such a purpose. Similarly, the Prosecution failed to prove that Bikindi recorded his compositions at Radio Rwanda studios, that he made his songs available to RTLM for broadcast in late 1993, or that under Rwandan legislation, he had a right to forbid or enjoin public broadcasts of his compositions. The Chamber finds that Bikindi’s involvement in launching RTLM with 49 other individuals, and his minor shareholding in RTLM which gave him no control over programming, and his interviews on RTLM, are insufficient proof of a close

association with any of the officials named in the Indictment.²³⁵ The Chamber further done harm to anyone (Exhibit P48, Transcript of RTLM Broadcast of 2 April 1994, p. K0147062). The Chamber finds this incident inconclusive as to Bikindi's position or authority over the RTLM.²²⁶ Witness BHH, T. 20 February 2007, p. 16. ²²⁷ Bikindi, T. 31 October 2007, p. 64. ²²⁸ Prosecution Closing Brief, para. 936, footnote 695 and Annex 4. See Decision on Requests for Judicial Notice Pursuant to Rule 94 of the Rules, 27 May 2008. ²²⁹ Closing Arguments, T. 26 May 2008, p. 16. ²³⁰ Indictment, para. 13. ²³¹ Bikindi, T. 31 October 2007, pp. 31-32, 59. The Chamber notes that Cyprien Ngendahimana testified that André Sebanani owned Audiotex (T. 17 October 2007, p. 12). ²³² Witness TIER, T. 16 October 2007, p. 20; Witness KMS, T. 1 October 2007, p. 34. Specifically, Witness KMS testified that the recording was conducted "at Munyemana's", at a studio "located closed to a shop called Audiotex". ²³³ Witness KMS, T. 1 October 2007, p. 35. ²³⁴ Bikindi, T. 31 October 2007, pp. 32, 63, 64. ²³⁵ The officials named in paragraph 9 of the Indictment were Ferdinand Nahimana, Jean-Bosco Barayagwiza, Félicien Kabuga, André Ntagerura, Juvénal Habyarimana, Georges Rutaganda, Callixte Nzabonimana, Joseph Judgement 2 December 2008 29

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finds that there is no evidence of Bikindi's control or influence over the programming of RTLM or Radio Rwanda or over the two radio stations in general.

6. PARTICIPATION IN POLITICAL GATHERINGS ¹²³. The Prosecution alleges that Bikindi participated in the anti-Tutsi campaign by attending public gatherings between 1990 and 1994 where he addressed the audience and performed his musical compositions extolling Hutu solidarity and encouraging anti-Tutsi violence. The Prosecution also alleges that Bikindi made specific exhortations to "work" at public gatherings, a coded reference advocating the extermination of Tutsi.²³⁶ 6.1. Participation in Public Gatherings as a Prelude to or Motivating Factor in Anti-Tutsi Violence ¹²⁴. The Prosecution specifically alleges that from 1990 to 1994, Bikindi addressed public gatherings and performed musical compositions extolling Hutu solidarity and characterising Tutsi as enslavers of Hutu.²³⁷ The Prosecution further alleges that Bikindi's animations at MRND meetings and rallies in late 1993, early 1994 and June 1994 were often a prelude to or a motivating factor in anti-Tutsi violence against individuals and property in the vicinity of the public gatherings, both leading up to the meetings and immediately thereafter.²³⁸ After considering the two specific meetings alleged, one in Umuganda Stadium, Gisenyi, in June 1994,²³⁹ and another at a football ground in Kivumu secteur, Nyamyumba commune, Gisenyi préfecture in 1993,²⁴⁰ the Chamber will consider other meetings and rallies that were not specifically alleged in the Indictment but on which evidence was led. 6.1.1 MRND Meeting in Umuganda Stadium in Gisenyi, mid-late June 1994 ¹²⁵. The Prosecution alleges that in mid-late June 1994, Bikindi addressed an MRND meeting at Umuganda Stadium in Gisenyi where he publicly stated that "Hutus should know who the enemy is, and that the enemy is the Tutsi" and that

“Hutus should hunt and search for the Tutsis and kill them.” Following the meeting, the Prosecution alleges, there was an intensive search for Tutsi, as a result of which Tutsi were killed, including Ancilla and her daughter.²⁴¹ 126. Prosecution Witness AJZ, a Hutu from Rugerero, Rubavu commune, is the only witness to place Bikindi at an MRND rally in Umuganda Stadium around this time. Witness AJZ testified that he saw Bikindi address an MRND rally at Umuganda Stadium for approximately five minutes, having gone there to meet a friend who owed him money.²⁴² He

Serugendo and Joseph Nzirodera. The Chamber also notes that four of these men were mentioned on page 2 of the Indictment as “persons responsible for media programming and operations”.²³⁶ Indictment, paras. 23, 33, 34, 35, 36, 48. ²³⁷ Indictment, para. 48. See also *ibid.*, paras. 13 and 32, referring specifically to gatherings in Ruhengeri, Cyasamakamba, Nyamirambo, Umuganda, Cyangugu, Rubona, Bicumbi commune and in Ruyenzi, Gitarama commune. ²³⁸ Indictment, para. 33. ²³⁹ Indictment, paras. 23 and 33. ²⁴⁰ Indictment, para. 33. ²⁴¹ Indictment, paras. 23 and 33. ²⁴² Witness AJZ, T. 27 September 2006, p. 11. The Chamber notes that the Prosecution alleged this event as a “meeting”, but the witness testified it was a “rally”. Based on the specificity of the allegation, regarding the time, place and events alleged, as well as a possible translation confusion between meeting and rally, the Chamber is not convinced this discrepancy is an issue. Judgement 2 December 2008 30

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testified that Bikindi, préfet Zilimwabagabo, Major Kabera and a man nicknamed “Gisimba” were at the rally. According to Witness AJZ, there were Interahamwe, people wearing MRND uniforms and caps and others in military uniforms and some people carrying firearms. He testified that Bikindi addressed the crowd, saying that Tutsi should be looked for and eliminated because they were the enemies of Rwanda.²⁴³ While this witness also gave evidence regarding the search for and killing of Ancilla,²⁴⁴ he did not testify as to any causal link between the two events as pleaded in the Indictment. 127. Due to significant discrepancies in his evidence, the Chamber questions Witness AJZ’s overall credibility. The Chamber first notes the witness’s confusion as to dates. He initially testified, in line with his previous written statements, that the Umuganda rally was held in June 1994.²⁴⁵ However, under cross-examination, he stated that it occurred later, around 20 July.²⁴⁶ This testimony contradicts his previous written statements, in which he indicated that he was in exile from 10 to 20 July in one and 10 to 30 July in the other.²⁴⁷ The witnesses’ confusion was even more striking in respect of the date of Ancilla’s death.²⁴⁸ When challenged about this confusion AJZ stated that he no longer remembered the dates and that all he knew for sure was that Ancilla died in July, on approximately 20 July before he went into exile around 25 July.²⁴⁹ Although the Chamber accepts that so many years after an event it is understandable that a witness may be confused as to the exact dates, it is of the opinion that Witness AJZ’s confusion is so extensive that the lapse of time cannot entirely excuse it. 128. Further, the witness contradicted himself in respect of the dates he manned the roadblock at

Rugerero referred to by the Prosecution as part of a different allegation.²⁵⁰ He testified that he had begun manning the roadblock approximately two weeks before Bikindi passed through it towards the end of June 1994.²⁵¹ Under cross-examination, the witness was presented with one of his previous statements to Tribunal investigators in which he stated that “[a]round 20 April 1994, whilst I was under guard duty with seven other

243 Witness AJZ, T. 26 September 2006, p. 11. 244 Witness AJZ, T. 26 September 2006, pp. 10-14.

245 Witness AJZ responds to the question from the Prosecution: “At any point in June of 1994, were you aware of any MRND meeting at Umuganda Stadium in Gisenyi?” in the affirmative stating “Yes, there was a rally which was held in that place” (Witness AJZ, T. 26 September 2006, p. 10); Exhibit D6, Witness AJZ’s written statement dated 9 and 11 May 2001 (under seal), p. 4;

Exhibit D8, Witness AJZ’s will-say statement dated 23 September 2006 (under seal), para. 12. 246

Witness AJZ, T. 27 September 2006, p. 11. 247 Exhibit D6, Witness AJZ’s written statement dated 9

and 11 May 2001 (under seal), p. 2; Exhibit D8, Witness AJZ’s will-say statement dated 23

September 2006 (under seal), p. 2. 248 Specifically, in cross examination, the witness testified that

Ancilla died one week and three days before they fled to Zaire, at the end of July (T. 26 September

2006, p. 24). However, in re-examination, the Witness testified that she died a few days before he

fled to Zaire. When then immediately asked by the Prosecution to clarify how many days before

his exile Ancilla died, he repeated his initial testimony that it was a week and three days. In

response to a question from the Prosecution that accordingly Ancilla’s death would have been

around the beginning of July, based on the fact that the witness had testified that he went into

exile on 10 July, the witness disagreed and said it would have been the middle of the month

around 15 or 17 July. He then testified that he could not clearly remember the date he had given

to the Tribunal investigators regarding when he fled into exile (between 10-30 July 1994 in Exhibit

D6, Witness AJZ’s written statement dated 9 and 11 May 2001 (under seal), p. 2; 10-20 July 1994 in

Exhibit D7, Witness AJZ’s written statement dated 17 May 2001 (under seal),

p. 2) as he made the statements a long time ago. He could only provide approximations and all he knew was that he left for Zaire in July (T. 27 September 2006, pp. 17-18). 249 Witness AJZ, T. 27 September 2006, p. 18. 250 See *infra* para. 329. 251 Witness AJZ, T. 25 September 2006, pp. 42, 44. Judgement 2 December 2008 31

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Interahamwe at the roadblock in our secteur Rugerero”.²⁵² The witness confirmed his statement that he had manned the roadblock in both April and June.²⁵³ 129. Of particular concern to the Chamber is also Witness AJZ’s contradiction regarding the timing of Bikindi’s speech on the events of 1959. The witness first testified that Bikindi referred to 1959 as a means to encourage Interahamwe at the Ruregero roadblock to kill Tutsi in Nyamyumba,²⁵⁴ an incident which allegedly occurred “well before the incident concerning Ancilla”.²⁵⁵ This is in conformity with what the witness had declared when interviewed on 9 and 11 May 2001.²⁵⁶ However, in his will-say statement prepared three days before his testimony, the witness had declared “It was [when

Ancilla was killed that Bikindi] mentioned the Tutsi had fled in 1959 [...]. In my statement I appear to suggest these remarks were before the raid on Nyamyumba, but this is not so.”²⁵⁷ When confronted with this inconsistency, Witness AJZ confirmed that he told the Prosecution that Bikindi’s statement about 1959 was made before the raid on Nyamyumba.²⁵⁸ He then testified that the remarks about 1959 were made on the way to Nyamyumba and after the death of Ancilla.²⁵⁹ 130. Other aspects of Witness AJZ’s testimony are also troubling. For example, although the witness declared he was a member of the PL (Parti Libéral), he testified that he had never attended any meeting and was incapable of saying what the initials PL stood for or naming the party’s president or vice-president.²⁶⁰ To Tribunal investigators, he said that he was a member of the PL from 1992,²⁶¹ yet he testified that he joined this party in 1993.²⁶² Confronted with this inconsistency, the witness said that he could not remember very well.²⁶³ Further, Witness AJZ testified that on the Sunday following Habyarimana’s death he prayed at home and that was all he did that day. However, he then agreed that he had made a statement to Tribunal investigators that on 10 April 1994, the Sunday immediately after Habyarimana’s death, he had gone to the communal office to deliver a letter. He then testified that the communal office was not open on Sundays.²⁶⁴ The witness was also confused as to whether he knew the make of the car Bikindi and the Interahamwe used to travel to Nyamyumba.²⁶⁵ The Chamber is also not convinced by the witness’s explanation as to why he has not yet testified about Ancilla’s death before the Gacaca courts, which was that he will speak there “when the time comes.”²⁶⁶

²⁵² Exhibit D7, Witness AJZ’s written statement dated 17 May 2001 (under seal), p. 3. ²⁵³ Witness AJZ, T. 26 September 2006, p. 37; T. 27 September 2006, p. 22. ²⁵⁴ Witness AJZ, T. 26 September 2006, pp. 7, 14. ²⁵⁵ Witness AJZ, T. 26 September 2006, p. 7. ²⁵⁶ Exhibit D6, Witness AJZ’s written statement dated 9 and 11 May 2001 (under seal), pp. 3-4. ²⁵⁷ Exhibit D8, Witness AJZ’s will-say statement dated 23 September 2006 (under seal), para. 13. ²⁵⁸ Witness AJZ, T. 26 September 2006, p. 17. ²⁵⁹ Witness AJZ, T. 27 September 2006, pp. 18-19. ²⁶⁰ Witness AJZ, T. 26 September 2006, pp. 22-23. ²⁶¹ Exhibit D6, Witness AJZ’s written statement dated 9 and 11 May 2001 (under seal), p. 2; Exhibit D7, Witness AJZ’s written statement dated 17 May 2001 (under seal), p. 3. ²⁶² Witness AJZ, T. 26 September 2006, p. 22. ²⁶³ Witness AJZ, T. 26 September 2006, pp. 22-23. ²⁶⁴ Witness AJZ, T. 26 September 2006, p. 37, with reference to Exhibit D7, Witness AJZ’s written statement dated 17 May 2001 (under seal), p. 3. ²⁶⁵ When asked whether he knew what the make of the car that Bikindi had with him at the roadblock in Rugerero, witness AJZ said that he did not know the various makes of vehicles, he knew it was red, but couldn’t tell what kind of vehicle it was or its make (T. 26 September 2006, p. 33). He then testified in response to a question about who was driving the other vehicle he thought was there that “I did not know the people driving those vehicles, be it the yellow Nissan vehicle or the red vehicle” (T. 26 September 2006, p. 33). ²⁶⁶ Witness AJZ, T. 26 September 2006, pp. 25, 31. The Chamber notes that that the witness testified that he knew that investigations were still ongoing with respect to the death of Ancilla. Judgement 2 December 2008 32

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131. While the Chamber believes that some of these inconsistencies may be explained by the witness's obvious desire to distance himself from the crimes committed in 1994,²⁶⁷ it remains that most of the unexplained inconsistencies discussed above are significant enough to affect the witness's credibility. 132. In view of Witness AJZ's questionable credibility, the Chamber declines to accept his testimony without corroboration. As a result, the Chamber finds it unnecessary to discuss Bikindi's categorical denials of ever going to Umuganda Stadium in 1994,²⁶⁸ or of ever having delivered a political speech to the population,²⁶⁹ Defence Witness Charles Zilimwabagabo's evidence that Bikindi did not attend the only meeting that was held at Umuganda Stadium on 16 June 1994,²⁷⁰ or Witness RH's evidence that there was no meeting held there in June 1994.²⁷¹ 133. The Chamber concludes that the Prosecution has not proven its allegation that in mid- late June 1994, Bikindi addressed an MRND meeting at Umuganda Stadium in Gisenyi, as a result of which Tutsi were killed. 6.1.2 Meeting in Kivumu, 1993 134. The Prosecution alleges that in 1993, Bikindi performed at a football ground in Kivumu secteur, Nyamyumba commune, Gisenyi préfecture.²⁷² 135. Prosecution Witness AKJ testified that he saw Bikindi for the first time at an MRND political rally held at a football field in Kivumu secteur, Nyamyumba commune, Gisenyi préfecture, around 15 May 1993. Bikindi was accompanied by the former bourgmestre of Nyamyumba commune, Faustin Bagango, and Wellars Banzi, all three of whom spoke at the rally. The witness said that only Hutu attended the rally.²⁷³ According to Witness AKJ, Bikindi addressed the crowd saying "[y]ou know this well: you must exterminate or get rid of these serpents which are among you." He explained that "serpents" was a reference to the Tutsi who must be killed. Witness AKJ testified that Bikindi was very clear about who the enemy of the Hutu was. He said: You must not be mistaken, "[y]our enemies are the Tutsis; your enemies are the Tutsis."²⁷⁴ When the rally ended, a cassette of Bikindi's music was played through an amplifier fixed on a car. The songs included Twasezereye and everyone danced for about 15 minutes before going home.²⁷⁵ When asked if Bikindi's address and music provoked any reaction in the crowd, the witness responded that as they were already used to his music, it did not mean anything new to them.²⁷⁶ The witness testified that no one

²⁶⁷ The Chamber notes in this respect the witness's fierce denial of ever being an Interahamwe although he manned a roadblock (T. 27 September 2006, p. 20) and his statement that nobody was killed at the roadblock while he was on duty (T. 25 September 2006, p. 44; Exhibit D8, Witness AJY's Will-Say Statement, dated 23 September 2006 (under seal), para. 3. ²⁶⁸ Bikindi, T. 1 November 2007, pp. 9-10. ²⁶⁹ Bikindi, T. 1 November 2007, pp. 9-10. ²⁷⁰ Charles Zilimwabagabo, T. 22 October 2007, pp. 11-12. ²⁷¹ Witness RH, T. 25 October 2007, p. 40; T. 26 October 2007, pp. 2-3. ²⁷² Indictment, para. 33. ²⁷³ Witness AKJ, T. 20 September 2006, pp. 47-48; T. 21 September 2006, pp. 2, 17-19, 24. ²⁷⁴ Witness AKJ, T. 20 September 2006, p. 48; T. 21 September, p. 23. ²⁷⁵ Witness AKJ, T. 20 September 2006, pp. 48-50; T. 21 September, pp. 20-21. The Chamber notes that

the witness testified that the songs also included Nanga Abahutu and Bene Sebahinzi, but that according to Bikindi's testimony, this would not be possible as these songs were only recorded in studio months later in August 1993. The Chamber is of the view, however, that this confusion as to which songs were broadcast does not harm the witness' overall credibility on this incident. 276 Witness AKJ, T. 21 September 2006, p. 2. Judgement 2 December 2008 33

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was killed at this rally, but that the members of the Interahamwe who were present later killed people during the genocide.²⁷⁷ 136. In its assessment of this witness's credibility, the Chamber recalls that during the cross-examination much confusion was created regarding the date of the rally. However, the Chamber attributes this solely to the method of questioning used by Defence Counsel,²⁷⁸ and accordingly does not consider that this witness's credibility was harmed by this. The Chamber found no reason to doubt the reliability of this eye witness, or his credibility which was consistent throughout his testimony. 137. Prosecution Witness AKK also testified that he saw Bikindi at a rally organised by the MRND and CDR in Kivumu, formerly Nyamyumba commune, in 1993.²⁷⁹ In his statement to Tribunal investigators, the witness stated that it was held at the football ground.²⁸⁰ Local MRND officials, Interahamwe leaders, a Colonel, probably Colonel Gahimano, and Bikindi were present. AKK testified that when these individuals arrived he was still at the venue of the rally but then moved about 500 metres away. However, as megaphones were used, he said he could hear everything.²⁸¹ Bikindi began by greeting MRND and CDR members who were present. He asked them "to pool forces or to be united as descendants of Sebahinzi, and that the enemy was the Tutsi whom they had to fight with the last bit of energy. He went on to say that Tutsi had come from Ethiopia – or, from Abyssinia and that consequently the way back for them was well known; that is, the way back to their home, that is, river Nyabarongo." According to Witness AKK, Bikindi meant that the Tutsi was a snake and if a Hutu were to be found with a Tutsi, the Hutu should do everything possible to kill the Tutsi and "to kill a snake you strike a snake on the head".²⁸² The witness also testified that Bikindi did not sing live, but his music was played on cassette.²⁸³ 138. The Defence challenges the credibility of Witness AKK in two regards. Firstly, it questions how he could have heard what was taking place as he was 500 metres away.²⁸⁴ However, the Chamber is satisfied with the witness's explanation that he could hear as megaphones were used. Secondly, it argues that the speech about sending the Tutsi back to Ethiopia is usually attributed to Léon Mugesera alone and that it had caused a sensation. If Bikindi had also used that speech, it contends that one would have expected an equally strong reaction but points out that none was recorded.²⁸⁵ The Chamber finds that this argument is too speculative to affect how the Chamber views this witness's credibility.

139. The Chamber has observed a discrepancy between the witness's prior statement to Tribunal investigators and his testimony in relation to whether Bikindi specifically advocated killing Tutsi. It was put to the witness that contrary to his testimony that Bikindi openly talked about killing, in his witness statement he said simply that Bikindi stated it was

277 Witness AKJ, T. 21 September 2006, p. 20. 278 Witness AKJ, T. 21 September 2006, pp. 17-19. As the Presiding Judge expressed to Defence Counsel, “You have achieved, Mr. Momo, to have us all confused. We don't know whether you are speaking about ‘93, or ‘94; whether it was May ‘93 or May ‘94, or June ‘93 or June ‘94. We are lost; Prosecution’s lost; the witness is lost, so with this line of cross-examination you are not discrediting the witness, but confusing all of us” (T. 21 September 2006, p. 18) and “Counsel this has been a very misleading cross-examination” (T. 21 September 2006, p. 19). 279 Witness AKK, T. 22 September 2006, pp. 3-4, 7. 280 Exhibit D5, Witness AKK’s written statement of 5 and 8 May 2001 (under seal), p. 3. 281 Witness AKK, T. 22 September 2006, pp. 3-4, 7. 282 Witness AKK, T. 22 September 2006, p. 4. 283 Witness AKK, T. 22 September 2006, p. 6. 284 Defence Closing Brief, para. 103. 285 Defence Closing Brief, para. 103. Judgement 2 December 2008 34

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necessary “to send [the Tutsi] back”.²⁸⁶ However, the Chamber is satisfied with Witness AKK’s clarification that Bikindi went on to explain what he meant when he said that those people should be sent back home, and that in Kinyarwanda, the message could be understood. The witness stated that if a person was thrown into the river Nyabarongo, that person would drown and the body would be carried to a certain destination. The witness added that people had been thrown into the river and into Lake Kivu. ²⁸⁷ 140. The Chamber recalls Bikindi’s denial of ever having delivered a political speech to the population.²⁸⁸ He further testified that at the rallies he attended he only sang songs.²⁸⁹ However, given Bikindi’s self-interest to distance himself from the Prosecution’s accusations and in light of the Prosecution evidence, the Chamber will not accord much weight to his denial. The Chamber also considered the evidence of ballet members Defence Witnesses KMS, DUC and JCH that Bikindi did not give any political speeches at the political rallies they attended.²⁹⁰ Witness KMS testified further that he never heard anyone asking Tutsi to hate Hutu or Hutu to hate Tutsi at any of the rallies he attended.²⁹¹ Given that it is not alleged that the Irindiro troupe was present at the meeting in Kivumu, their testimonies do not assist the Chamber in its assessment. Similarly, Witness JCH’s testimony that he never heard Bikindi deliver a speech, be it on radio or at a public assembly,²⁹² is not a sufficient basis of knowledge for the Chamber to make any finding regarding Bikindi’s activity at the meeting. 141. The Chamber considers that while there are factual differences in the testimony of these two witnesses, as Witness AKJ specified that it is an MRND rally and Witness AKK said it was an MRND/CDR rally, and both witnesses did not mention the same attendees, their testimonies corroborate each other sufficiently for the Chamber to conclude that both witnesses are testifying about the same rally. The Chamber accepts their reliable accounts as establishing beyond reasonable doubt that Bikindi, along with dignitaries, attended an MRND political rally at a football field in Kivumu in 1993. Based on their evidence, the Chamber further finds beyond reasonable doubt that Bikindi addressed the audience advocating that they must kill the Tutsi, who he referred to as serpents, and that his music was played on cassette. 142. However, the Chamber finds that it has not been established that anti-Tutsi violence occurred in the vicinity of

the rally either immediately before or after it. Although Witness AKK testified that upon verification it was noticed that people had been thrown into the river, into pits and into Lake Kivu, he gave no indication of when this occurred and whether it was as a consequence of the rally. Moreover, Witness AKJ specifically stated that no one was killed at the rally.

286 Exhibit D5, Witness AKK's written statement of 5 and 8 May 2001 (under seal), p. 3 ("You know that the minority population are the Tutsis. We have to work quickly and send them back through the river Nyabarongo to Ethiopia from where they came from.") 287 T. 22 September 2006, pp. 5-6 and Exhibit D5, p. 3. The Chamber has also observed slight differences between the witness's prior statement and his testimony in court regarding whether Wellars Banzi was also present and where he exactly moved away to. The Chamber finds that these differences, which were not raised by the Defence, only reflect differences in the level of detail and do not affect the witness's credibility. 288 Bikindi, T. 1 November 2007, pp. 9-10. 289 Bikindi, T. 1 November 2007, p. 42 290 Witness DUC, T. 27. September 2007, pp. 50, 53; Witness KMS, T. 1 October 2007, pp. 6, 18; Witness JCH, T. 9 October 2007, pp. 16, 32. 291 Witness KMS, T. 1 October 2007, p. 45. 292 Witness JCH, T. 9 October 2007, p. 32. Judgement 2 December 2008 35

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6.1.3 Other Political Gatherings 143. Before turning to its assessment of the evidence adduced on the other political gatherings which Bikindi allegedly attended,²⁹³ the Chamber recalls that it has excluded certain portions of witness' testimonies relating to Bikindi's attendance at specific meetings. Accordingly, these portions have been disregarded.²⁹⁴ 6.1.3.1 CDR Meeting at MRND Palais in Kigali, early 1994 144. Prosecution Witness AKE, a football player in 1994,²⁹⁵ testified that Bikindi attended a CDR meeting at the MRND Palais in Kigali in January 1994. The witness was not present at the meeting for long as he was in a hurry changing into his football attire prior to playing at the Amaharo Stadium. 145. Witness AKE admitted he did not hear everything, but testified that he heard Bikindi speak while passing close by him on his way to the toilet. He testified that Bikindi addressed the rally "saying that [the members] should be careful because the enemy had infiltrated among them." Witness AKE understood that the enemy Bikindi was referring to was the Tutsi and his message was that Hutu should take revenge and kill the Tutsi.²⁹⁶ He knew it was Bikindi speaking as all those with him and those at that meeting told him so ²⁹⁷.

¹⁴⁶. The Defence challenged the witness's credibility based on his assertion that his football team used the MRND Palais as a changing location rather than the Amahoro Stadium. The Defence pointed out that the match was held at Amahoro Stadium, which had perfectly well equipped changing facilities, including showers, and was located three to four kilometres away from the MRND Palais.²⁹⁸ The witness explained that he played for the Mukura team, based in Butare, and that when the team arrived in Kigali, they first visited a restaurant, and then went to the MRND Palais to change, in order to arrive at the stadium later already wearing their sports attire.²⁹⁹ He stated there was a garden at that location where teams

usually met, changed, spent time getting ready, and left for the football pitch 30 minutes before the game. The witness stated that the teams ordinarily arrived at the field already dressed in their sports attire.³⁰⁰ The Chamber finds this arrangement puzzling. ¹⁴⁷. The Chamber observes a contradiction in the witness's evidence regarding the date of the rally. Witness AKE first stated that he thought the rally occurred in January 1994, but speculated that Bikindi had spoken of enemy infiltration because of the death of Katumba, an important figure of the CDR party,³⁰¹ which he believed occurred sometime in February.³⁰² When later challenged by the Defence, who suggested that Katumba died in March, the witness replied that he had always said that he could not be specific in respect of dates and that what he mentioned was an approximation. The Chamber is mindful of the stress that the

²⁹³ Indictment, paras. 13, 32, 33. ²⁹⁴ Decision on Exclusion of Evidence, paras. 24, 28, 30 and 34. In this Decision, the Chamber excluded the following evidence: Prosecution Witness BHB's evidence relating to a meeting in Ngororero in 1993; Witnesses BKW and BUY's evidence in relation to a meeting in Kabaya; Witnesses BKW and BUY's evidence on a meeting in Butare. ²⁹⁵ Exhibit P62, Witness AKE's Personal Information Sheet (under seal). ²⁹⁶ Witness AKE, T. 5 October 2006, pp. 36-37; T. 9 October 2006, p. 7. ²⁹⁷ Witness AKE, T. 5 October 2006, pp. 35-37. ²⁹⁸ Witness AKE, T. 9 October 2006, pp. 5-6. See also Defence Closing Brief, para. 181. ²⁹⁹ Witness AKE, T. 9 October 2006, pp. 5-6. ³⁰⁰ Witness AKE, T. 9 October 2006, pp. 6-7. ³⁰¹ Witness AKE, T. 5 October 2006, pp. 34, 36; T. 9 October 2006, p. 5. ³⁰² Witness AKE, T. 5 October 2006, pp. 35-36. Judgement 2 December 2008 36

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witness must have been under in 1994, and the time that has elapsed since then, but has difficulty explaining his inability to remember the month the meeting took place in spite of the fact that he dated it with Katumba's death. ¹⁴⁸. The Chamber is also concerned by the witness's testimony on what Bikindi allegedly stated at the meeting. The witness initially stated that Bikindi "was saying that [the members] should be careful because the enemy had infiltrated among them", yet only a few questions later, when asked what Bikindi said, he replied "But I have always told you, he said that the Hutu should take revenge and kill the Tutsis. That's all I heard him say."³⁰³ The Chamber notes that this significant discrepancy between his recounting of Bikindi's speeches was not explained. ¹⁴⁹. Given these concerns, the Chamber considers that it cannot rely on the uncorroborated testimony of this one witness to make a factual finding beyond reasonable doubt. It therefore finds that the Prosecution has not proven beyond reasonable doubt that Bikindi made anti- Tutsi utterances at a CDR rally in the MRND Palais, Kigali in early 1994. 6.1.3.2 Demonstration in Kigali, early 1994 ¹⁵⁰. Witness AHP testified to Bikindi's presence at a demonstration in Kigali in early 1994 that took place following the death of Martin Bucyana.³⁰⁴ The witness asserted that at that demonstration, Bikindi and other members of the MRND were chasing, or hunting down, members of opposition parties because those other parties were close

to the RPF and opposed to the MRND.³⁰⁵ He stated that those who were caught were beaten up, and that Bikindi, as well as two members of the ballet, Serumveri and Kizito, were all carrying firearms.³⁰⁶ 151. Given the Chamber's concerns regarding the credibility of Witness AHP,³⁰⁷ the Chamber will not rely on his uncorroborated evidence that Bikindi attended a demonstration in Kigali in early 1994 during which violence was committed. 6.1.3.3 Rally in Cyasemakamba, 1994 152. In its Closing Brief, the Prosecution points to the evidence of Prosecution Witness AEY in support of its allegation that Bikindi attended a rally in Cyasemakamba in 1994 at which his songs were played.³⁰⁸ 153. The Chamber notes significant inconsistencies between Witness AEY's testimony and his previous statement to Tribunal investigators in respect of this incident. Although Witness AEY, a Hutu driver in 1994,³⁰⁹ testified that he attended the rally for four hours,³¹⁰ in his previous statement he stated that he did not attend the rally but simply transported people to it and then immediately returned to Kigali.³¹¹ To explain this contradiction, the witness testified that they went to attend the rally but then returned to Kigali to collect more people as there

303 Witness AKE, T. 5 October 2006, pp. 36, 37. 304 Witness AHP, T. 19 October 2006, p. 23. The Prosecution alleges that it "is within public knowledge that Bucyana died in February of 1994" (Closing Arguments, T. 26 May 2008, p. 13). See Prosecution Closing Brief, para. 1042. 305 Witness AHP, T. 19 October 2006, pp. 23-24. 306 Witness AHP, T. 19 October 2006, p. 24. 307 See *infra* paras. 306-308, 318. 308 Prosecution Closing Brief, para. 1040. 309 Exhibit P65, Witness AEY's Personal Information Sheet (under seal). 310 Witness AEY, T. 12 October 2006, p. 15. 311 Exhibit D22, Witness AEY's witness statement of 11 October 2005 (under seal), p. 4. Judgement 2 December 2008 37

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were not enough at the rally. When they reached the venue of the rally it was finished.³¹² The Chamber is not convinced by his explanation. 154. Moreover, in his testimony, the witness stated that what happened at Cyasemakamba was too horrible to talk about. He then proceeded to explain that following the rally, the Interahamwe, including himself, were furious and, under Bikindi's leadership, killed many people to avenge Gatabazi's death.³¹³ In stark contrast, the witness did not mention any deaths taking place following the rally in his prior statement.³¹⁴ This discrepancy appears to the Chamber to be more than a mere oversight, particularly in light of the alleged scale of the killing that took place. 155. It is the Chamber's opinion that these inconsistencies are so serious as to call the credibility of this witness in relation to this incident into question. In the absence of reliable corroboration, the Chamber does not accept Witness AEY's evidence that Bikindi attended a rally in Cyasemakamba in 1994 where his songs were played. 6.1.3.4 Rally in Nyamirambo Stadium in Kigali, early 1994 156. The Chamber recalls that in the previous section on Collaboration with MRND, it found that a rally occurred in Nyamirambo Stadium, Kigali, in the first two weeks of 1994.³¹⁵ The Chamber recalls that on the basis of the documentary evidence adduced,³¹⁶ it found that Bikindi was praised at that rally

while preparing to perform for those assembled. However, there is no evidence of which songs Bikindi performed, nor that he addressed the audience with a speech. 6.1.3.5 MRND Rally in Nyamirambo Stadium in Kigali, 7 November 1993 157. The Prosecution entered into evidence both a video and a transcript of Bikindi speaking at an MRND rally in 1993.³¹⁷ The preliminary script identifying the content of the video as an MRND meeting in Kigali on 7 November 1993,³¹⁸ and a reading of the accompanying transcript, showed that immediately following an address from President Habyarimana, Bikindi spoke to the audience, praising the victory of the MRND, punctuated with some singing that it was no longer a secret that the Interahamwe had won.³¹⁹ Immediately after Bikindi's animation, Joseph Nzirorera spoke, followed by Bonaventure Habimana, Édouard Karemera and Robert Kajuga.³²⁰ 158. Based on this documentary evidence, the Chamber finds that Bikindi addressed an MRND meeting at a stadium in Kigali on 7 November 1993, praising the success of both the MRND and the Interahamwe. While his address shows adherence to the MRND policy and certainly constitutes propaganda for the MRND and the Interahamwe, the Chamber considers that it cannot be characterised as anti-Tutsi propaganda. Further, the Chamber notes that there is no evidence that Bikindi's animation at that meeting was a prelude to or a motivating factor to anti-Tutsi violence.

312 Witness AEY, T. 12 October 2006, pp. 15-16. 313 Witness AEY, T. 12 October 2006, pp. 10-11. 314 Exhibit D22, Witness AEY's witness statement of 11 October 2005 (under seal). 315 See supra para. 84. 316 Exhibit P47, Transcript of RTLM Broadcast of 16 January 1994. 317 Exhibit P30(E), Transcript of 7 November 1993 MRND Meeting in Nyamirambo. See supra note 112. 318 Exhibit P30, video of 7 November 1993 MRND Meeting in Nyamirambo, script appears within the first 45 seconds of the video. 319 Exhibit P30(E), pp. 1-2. 320 Exhibit P30(E), pp. 2, 5, 7, 11. Judgement 2 December 2008 38

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6.1.3.6 Rally in Rubavu, 1993 159. Prosecution Witness AJY, a Hutu driver from Gisenyi,³²¹ testified that he attended three MRND meetings at which Bikindi was present, including one at Rubavu commune in May 1993 at which Bikindi spoke at length, saying "Rwandan citizens rise up. Let us all arise and fight the enemy, the Tutsi. Let us fight the enemy, the snake".³²² The witness added that Bikindi said other things he could now remember but which may not be in his statement. He added that Bikindi had stated that "if perchance there were any Tutsis at the meeting, they should denounce themselves and be expelled from the meeting".³²³ 160. The Chamber views the testimony of Witness AJY with caution given the witness's criminal past.³²⁴ Discrepancies between the witness's testimony and his prior statement to Tribunal investigators leaves the Chamber with some doubts as to his credibility. In 2001, the witness declared to Tribunal investigators that he first saw Bikindi in 1981 at Rwerere commune where he was staying and that he used to play football at the playground which was near Bikindi's house.³²⁵ However, in court, the witness testified that he lived in Rubavu, a commune approximately eight kilometres by road from Rwerere.³²⁶ When confronted with the fact that Bikindi was abroad

from 1980 to 1982 and that he could not have actually seen him in 1981, the witness only stated that he believed 1981 was only an approximation and that he knew Bikindi from the 1980s.³²⁷ Given the specificity of the witness's prior statement, the Chamber is not convinced by his explanation. Additionally the Chamber notes its concern that the witness was using a crib sheet containing names and lyrics of songs while giving testimony, which may suggest that he wanted to ensure he named certain individuals and recited certain lyrics.³²⁸

161. Although the Chamber did not find any inconsistencies in the evidence of this eye witness on the rally held at Rubavu commune in 1993, the Chamber hesitates to rely on his testimony without corroboration. Accordingly, the Chamber does not accept his evidence as establishing that Bikindi attended and addressed this rally calling on Rwandans to fight the Tutsi enemy. 6.1.3.7 MRND Meeting at MRND Palais in Gisenyi, 1993 162. Prosecution Witness BUY testified that Bikindi attended an MRND meeting at 7:30 a.m. on 3 March 1993 at the MRND Palais, Gisenyi, at which leaders of the CDR and MRND parties, as well as members of the Interahamwe and Impuzamugambi were present.³²⁹ Witness BUY testified that Bikindi held the meeting and played a very important role in it. He stated that Bikindi said that the purpose of the meeting was to give the members instructions and prepare them for the rallies that would be held in Ngoma and Butare. Bikindi told them about the evil nature of Tutsi and briefly described the enemy, i.e. any Tutsi who would oppose them, and urged them to fight against such enemies with the utmost energy.

321 Exhibit P58, Witness AEY's Personal Information Sheet (under seal). 322 Witness AJY, T. 27 September 2006, pp. 30, 31, 37; T. 28 September 2006, p. 5: the other two meetings were held at Cyanzarwe on an unknown date and at Umuganda stadium in 1994 after the death of Gatabazi. 323 Witness AJY, T. 27 September 2006, p. 30. 324 Witness AJY, T. 28 September 2006, pp. 13-17, 22. 325 Exhibit D16/1, Witness AJY's written statement dated 17 April and 4 May 2001 (under seal), p. 3. 326 Witness AJY, T. 28 September 2006, pp. 11, 12. 327 Witness AJY, T. 28 September 2006, p. 13. As to Bikindi's absence from Rwanda at this period, see also Exhibit D9(F), Attestation de l'Institut Panafricain pour le Développement. 328 Witness AJY, T. 27 September 2006, pp. 27-28; Exhibit D13, Notes of Prosecution Witness AJY. 329 Witness BUY, T. 19 February 2007, pp. 11-12, 41. Judgement 2 December 2008 39

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The witness added that at the end of the meeting they were given grenades and bayonets, and that Bikindi played a role in the distribution of these weapons.³³⁰ 163. The Chamber has viewed Witness BUY's evidence with caution as he is a former Interahamwe convicted of genocide and currently serving a life sentence.³³¹ At the time of his testimony he was waiting to see if he would be afforded any penal relief for changing his original innocent plea to guilty.³³² 164. The Chamber has serious doubts about Witness BUY's credibility given the inconsistencies between his testimony and prior written statements. In his statement to Tribunal investigators in 2001, he said that he had been in the Rwandan army in early 1994, having been recruited in 1993 and

provided details as to his activities within the army.³³³ However, in his 2006 statement, he admitted he had been detained in Gisenyi Prison for a period ending in February 1994.³³⁴ The witness later testified that he worked at Gisenyi Prison as a driver's aide during the genocide,³³⁵ and denied ever having said he was a registered soldier, insisting that he had stated that he was part of a militia group, the Interahamwe.³³⁶ 165. Witness BUY queried the authenticity of his written statement from 2001.³³⁷ While he recognised his signature (although he could not read the content as it was in French), he stated that the Court should not rely on it as it mistakenly recorded the group to which he belonged and that he was based in a military camp.³³⁸ When asked how he could have undergone military training and at the same time been a driver's aide at Gisenyi Prison, he said that he was not based at the military camp in Gisenyi, but went there to train for a couple of hours each day and then would go home and be free to carry out other activities.³³⁹ The Chamber is not convinced by the witness's explanation which contradicts his prior statements as to his activity at the time. 166. Moreover, as the Defence pointed out, this witness had also previously given a statement to the Rwandan Courts that he was employed as a guard at Warrant Officer Bizimana's compound during the genocide in 1994 and did not leave his residence.³⁴⁰ In court he denied that he had been a watchman and attempted to explain the discrepancy by saying that Warrant Officer Bizimana had lent his home to him which was why he said he was a watchman.³⁴¹ 167. The Chamber is of the view that these discrepancies, taken together, render the witness's evidence doubtful. In the absence of corroboration, the Chamber does not find that Witness BUY's evidence supports the Prosecution's allegation.

330 Witness BUY, T. 19 February 2007, pp. 13-14, 28. 331 Witness BUY, T. 19 February 2007, pp. 5, 7, 31 (closed session). 332 Witness BUY, T. 19 February 2007, p. 5 (closed session). 333 Exhibit D37, Witness BUY's written statement dated 6, 8 and 9 June 2001 (under seal and French). 334 Exhibit D39, Witness BUY's written statement dated 24 October 2006 (under seal and French). 335 Witness BUY, T. 19 February 2007, p. 20. 336 Witness BUY, T. 19 February 2007, pp. 34-36. 337 Witness BUY, T. 19 February 2007, p. 34. 338 Witness BUY, T. 19 February 2007, pp. 34-35. 339 Witness BUY, T. 19 February 2007, pp. 37, 50. 340 Exhibit D38, Witness BUY's Deposition to the Ministry of Justice, Rwanda, dated 4 February 2000 (under seal); Witness BUY, T. 19 February 2007, p. 45. 341 Witness BUY, T. 19 February 2007, p. 45. Judgement 2 December 2008 40

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6.1.3.8 Rally in Ruhengeri, 1992 168. Prosecution Witness BKW testified that, in May or June 1992, he attended an MRND rally in Ruhengeri where Bikindi, President Habyarimana, Wellars Banzi and Casimir Bizimungu were present.³⁴² Bikindi was allegedly wearing the MRND uniform and a T-shirt bearing the effigy of President Habyarimana in a kitenge costume and was asked to introduce his Interahamwe.³⁴³ According to the witness, Wellars Banzi talked about how cruel the Tutsi were and then Bikindi and his troupe performed.³⁴⁴ The witness stated that Bikindi demonstrated how acrobatic the Interahamwe were, showing that they had received such good training that they could not be tracked down and caught, if one were running after them.³⁴⁵ He

testified that, after the rally, “so much cruelty was exerted” on the Tutsi: Tutsi of Ruhengeri were persecuted, especially Ababogwe of Ruhengeri.³⁴⁶ 169. Prosecution Witness ALQ testified that he was hired to take Interahamwe to the MRND rally in Ruhengeri.³⁴⁷ The witness did not testify about what, if anything, Bikindi did at the rally. 170. Defence witness HZTX testified that Bikindi attended an MRND meeting at Ruhengeri in 1992 in the capacity of a musician.³⁴⁸ He said that Bikindi did not deliver any speeches at the meeting, which were all made by the politicians. Bikindi had been invited as an artist to provide entertainment for the meeting with his dance group and attended solely to perform with his group.³⁴⁹ Similarly, ballet members Witnesses KMS, DUC and JCH testified that Bikindi did not give any political speeches at the political rallies they attended.³⁵⁰ 171. Although Witnesses ALQ and HZTX corroborate Witness BKW’s testimony as to the presence of Bikindi at an MRND meeting in Ruhengeri in 1992, Witness BKW’s evidence remains uncorroborated regarding Bikindi’s activities there or the persecutions which took place afterwards. Recalling its reservations about Witness BKW’s credibility, the Chamber does not consider that the Prosecution has proven that Bikindi attended this rally in a capacity other than a musician, or that the meeting was followed by violence perpetrated against Tutsi. 6.1.3.9 Rally at Umuganda Stadium in Gisenyi, 1992 172. Prosecution Witness BUY testified that Bikindi was present at an MRND meeting at Umuganda Stadium in Gisenyi in 1992. He stated that he attended the meeting as an Interahamwe, as Interahamwe had been invited to this rally to receive instructions from their leaders.³⁵¹ According to the witness, there were approximately 3000 participants at the meeting including Charles Zilimwabagabo (Préfet of Gisenyi), Bernard Munyagashari (leader of the Interahamwe in Gisenyi préfecture), and CDR leader Hassan Ngeze.³⁵²

342 Witness BKW, T. 17 October 2006, pp. 2, 15, 22; T. 18 October 2006, pp. 3, 5. 343 Witness BKW, T. 17 October 2006, p. 22. 344 Witness BKW, T. 17 October 2006, p. 15. 345 Witness BKW, T. 17 October 2006, p. 23. 346 Witness BKW, T. 17 October 2006, pp. 22-23. 347 Witness ALQ, T. 16 October 2006, pp. 3, 5, 8. 348 Witness HZTX, T. 25 September 2007, pp. 69, 72. 349 Witness HZTX, T. 25 September 2007, p. 72. 350 Witness DUC, T. 27. September 2007, pp. 53, 56; Witness KMS, T. 1. October 2007, p. 18; Witness JCH, T. 9 October 2007, p. 32. 351 Witness BUY, T. 19 February 2007, pp. 8-9. 352 Witness BUY, T. 19 February 2007, pp. 8-9, 11, 30. Judgement 2 December 2008 41

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173. The witness testified that after the leaders of the Interahamwe had spoken to the crowd, Bikindi took the floor and addressed the gathering regarding the nature of the Tutsi who he said were wicked. The witness stated that Bikindi added that “the Tutsi was an accomplice of the Inkotanyi” and that they should be vigilant as the Tutsi were infiltrating the area, disguised as farmers or domestic workers, and that they should prevent such infiltrations.³⁵³ 174. Although Prosecution Witness AKK testified that he saw Bikindi performing his songs at Umuganda Stadium in 1992,³⁵⁴ the Chamber is not convinced that

the event Witness AKK was referring to was the same political event that Witness BUY testified about, as he did not describe it as a rally, in contrast to the Kivumu rally which he referred to repeatedly as “the rally”.³⁵⁵ 175. Although he did not attend, Prosecution Witness BHJ testified that he knew of an MRND rally which took place at Umuganda Stadium in Gisenyi before the war where Juvénal Habyarimana was the guest of honour.³⁵⁶ In the Chamber’s opinion, the lack of specificity regarding the date of the rally together with the lack of a positive identification of Bikindi prevents the Chamber from concluding that it is the same rally that Witness BUY testified about. 176. The Chamber recalls its findings above at paragraphs 163 to 167 seriously questioning the reliability of witness BUY’s evidence in general. In the absence of corroboration, the Chamber does not find that Witness BUY’s testimony on this 1992 meeting proves or supports the Prosecution’s allegation. 6.2. Bikindi’s Specific Exhortations to “Work” 177. The Prosecution alleges that Bikindi publicly addressed party adherents with exhortations to “work”, a coded reference advocating the extermination of Tutsi, at an MRND rally at Umuganda Stadium in February 1994 and at a CDR meeting in March 1994.³⁵⁷ 6.2.1 MRND Rally at Umuganda Stadium in Gisenyi, February 1994 178. The Prosecution alleges that in February 1994, shortly after the assassinations of Martin Bucyana and Félicien Gatabazi, Bikindi addressed an MRND meeting at Umuganda Stadium and told the population to take their clubs, machetes and other weapons and look for the Inyenzi and kill them.³⁵⁸ 179. Prosecution Witness AJY testified that he attended an MRND meeting in 1994 at Umuganda stadium after the deaths of Gatabazi and Bucyana, who were killed between 1993 and 1994, at which Bikindi was present. He testified that he could not be more specific as it happened a long time ago.³⁵⁹ Questioned on the fact that he had previously declared to Tribunal investigators that the meeting took place in 1994, the witness acknowledged that the

353 Witness BUY, T. 19 February 2007, pp. 11, 30. 354 Witness AKK, T. 22 September 2006, pp. 3, 6. 355 Witness AKK, T. 22 September 2006, p. 7 (“the first time I saw Bikindi was at the Umuganda stadium in

1992. The second time I saw him was at the rally.”). 356 Witness BHJ, T. 10 October 2006, p. 11. 357 Indictment, paras. 34, 35 and 36. 358 Indictment, paras. 34 and 35. 359 Witness AJY, T. 28 September 2006, p. 37. Judgement 2 December 2008 42

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meeting was between 1993 and 1994 and repeated that he could not be specific as it was a long time ago. Immediately after, he repeated that the rally was in 1994.³⁶⁰ 180. Bikindi categorically denied ever going to Umuganda Stadium in 1994.³⁶¹ Defence Witness JTX placed Bikindi at a rally at Umuganda Stadium in 1994 prior to the genocide, but did not give any specificity regarding the date of the meeting or any detail regarding what happened at the meeting.³⁶² 181. The Chamber notes the confusion in Witness AJY’s testimony regarding the date of this rally. More significantly, neither Witnesses AJY nor JTX gave any evidence regarding the content of this

rally except to say that Bikindi was present. Accordingly, the Chamber finds that the Prosecution has failed to adduce any evidence regarding the alleged criminal acts of Bikindi at this meeting.

6.2.2 CDR Meeting, March 1994 182. The Prosecution alleges that in March 1994 Bikindi addressed a CDR meeting and encouraged those in attendance to work and kill those opposed to the CDR and MRND.³⁶³ As the Prosecution did not adduce any evidence of this meeting, the Chamber dismisses the allegation without considering it any further.

6.3. Conclusion 183. The Chamber has concluded above that Bikindi performed at MRND and CDR political gatherings. As to the specific allegation that Bikindi performed musical compositions extolling Hutu solidarity and that his participation at political gatherings was a prelude to or a motivating factor in anti-Tutsi violence, the Chamber finds that the Prosecution has proven beyond reasonable doubt that Bikindi attended a political meeting in a football field in Kivumu in Rwanda in 1993 at which he encouraged anti-Tutsi violence through speech and at which his music was played on cassette. The Prosecution has not proven, however, that this meeting led to anti-Tutsi violence immediately thereafter. The Chamber also finds that, whereas the Prosecution has proven that Bikindi addressed an MRND meeting in Nyamirambo on 7 November 1993 praising the success of both the MRND and the Interahamwe, it failed to prove that Bikindi's address constituted anti-Tutsi propaganda or was a prelude to or a motivating factor in anti-Tutsi violence. Similarly, although the Prosecution has proven that Bikindi was praised at a rally at Nyamirambo Stadium in early 1994 while preparing to perform for those assembled, there was no evidence as to which songs Bikindi performed or that he addressed the audience with a speech. Accordingly, the Chamber finds that the Prosecution has failed to prove that Bikindi's actions at that meeting in early 1994 constituted anti-Tutsi propaganda or were a motivating factor in anti-Tutsi violence.

184. The Prosecution has also failed to prove that Bikindi attended an MRND meeting at Umuganda Stadium in June 1994, or that Bikindi publicly addressed MRND and CDR adherents with exhortations to work, a coded reference advocating the extermination of the Tutsi, at an MRND meeting at Umuganda Stadium in February 1994 or a CDR meeting in March 1994.

360 Witness AJY, T. 2 October 2006, p. 2. The Chamber notes that the transcript mistakenly refers to this as the testimony of Witness AJS. 361 Bikindi, T. 1 November 2007, pp. 9-10. 362 Witness JTX, T. 25 September 2007, p. 33. 363 Indictment, paras. 34 and 36. Judgement 2 December 2008 43

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185. Given its conclusions above, the Chamber has not found it necessary to address the issue of whether the meetings that allegedly took place in 1994 not specifically alleged in the Indictment could have formed the basis for a conviction.
7. SONGS 186. Bikindi is alleged to have participated in the genocide by composing songs extolling Hutu solidarity and encouraging ethnic hatred and the attacking and killing of Tutsi, which were then deployed in a propaganda campaign to target the Tutsi as the enemy and to sensitise and incite the listening public to target and commit acts of violence against

the Tutsi. 7.1. Meaning and Interpretation of the Songs 187. The Prosecution alleges that from 1990 to 1994, Bikindi composed and recorded musical compositions manipulating the politics and history of Rwanda to promote Hutu solidarity, extolling such solidarity, characterising Tutsi as Hutu enslavers, enemies or enemy accomplices by blaming the enemy for the problems of Rwanda, by continuously making references to the 1959 Revolution and its gains by the rubanda ngamwinshi and by supporting the Bahutu Ten Commandments, and inciting ethnic hatred and people to attack and kill Tutsi. The Prosecution refers to three specific musical compositions in the Indictment: Twasezereye (“We Said Good Bye to the Feudal Regime”), Nanga Abahutu (“I Hate These Hutu”) and Bene Sebahinzi (“The Sons of the Father of the Cultivators”). The Prosecution specifically alleges that Twasezereye was a public call for Hutu solidarity in opposition to the Arusha Accords, and that Nanga Abahutu and Bene Sebahinzi encouraged Hutu solidarity against a common foe.³⁶⁴ 7.1.1 Preliminary Matters 7.1.1.1 Titles 188. There is a dispute over the titles of the three songs referred to in the Indictment. Prosecution expert witnesses in linguistics Jean de Dieu Karangwa and Gamaliel Mbonimana (“Prosecution Experts”) selected the titles Twasezereye ingoma ya cyami (“We Said Goodbye to the Monarchy”), Nanga Abahutu (“I Hate the Hutu”) and Bene Sebahinzi (“Descendants of the Father of Farmers”) based on the frequency of these words in the songs, although they admitted that the words appearing most often in Twasezereye ya cyami were Mukumyabiri N’itanu (“25 Years of Independence”).³⁶⁵ The Chamber notes that the Prosecution adopted two of these titles in the Indictment and Pre-Trial Brief, shortening the third from Twasezereye ingoma ya cyami to Twasezereye.³⁶⁶ 189. Both Bikindi and the Defence expert witness in linguistics, Eugène Shimamungu (“Defence Expert”),³⁶⁷ explained that Twasezereye ingoma ya cyami was called simply

364 Indictment, paras. 10, 14, 16, 31, 40, 41 and 48. 365 Prosecution Expert Karangwa, T. 15 February 2007, p. 39. Jean de Dieu Karangwa (“Prosecution Expert Karangwa”) was qualified as an expert in linguistics by the Chamber on 13 February 2007 (T. 13 February 2007, p. 6) and Gamaliel Mbonimana (“Prosecution Expert Mbonimana”) on 16 February 2007 (T. 16 February 2007, p. 31). Their co-authored expert report was admitted as Exhibit P73. 366 Indictment, para 40; Prosecution Pre-Trial Brief, para. 52. 367 Eugène Shimamungu was qualified as an expert in Kinyarwanda language, lexicography and terminography on 23 October 2007 (T. 23 October 2007, p. 53) His expert report was admitted as Exhibit D117(F). Judgement 2 December 2008 44

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Twasezereye (“We Said Goodbye”),³⁶⁸ and insisted that Nanga Abahutu was called Akabyutso (“The Awakening”)³⁶⁹ and that Bene Sebahinzi was called Intabaza (“The Alert”).³⁷⁰ Two former members of the ballet testified they did not recognise Nanga Abahutu and Bene Sebahinzi as the titles of songs by Simon Bikindi.³⁷¹ Twasezereye was referred to as Dusezereye ingoma ya cyami (“We Say Goodbye to the Monarchy”) by Radio Rwanda,³⁷² and Ibuka itanu ni icyenda

(“Remember ‘59”) by a Prosecution witness.³⁷³ 190. The Chamber is of the view that in the determination of the meanings of the songs, the titles are less important than the texts themselves. The Chamber notes that both titles preferred by the Prosecution and Defence appear as lyrics in the songs. The only relevance of the titles, in the Chamber’s view, would be to infer the author’s intent of the overall meaning of the song,³⁷⁴ and the Chamber will take this into consideration at that stage. In the Judgement, for the sake of symmetry with the Indictment, the Chamber will refer to the three songs by the titles selected by the Prosecution. 7.1.1.2

Translations 191. The Chamber notes the numerous translations of Bikindi’s three alleged songs. The Chamber has considered the translations of the Prosecution Experts,³⁷⁵ the Defence Expert,³⁷⁶ of Bikindi himself,³⁷⁷ and of the Tribunal Language Service Section.³⁷⁸ The Chamber has also considered the translation of Nanga Abahutu in a transcription of an RTLM broadcast.³⁷⁹ 192. The Chamber notes some discrepancies between the translations: words³⁸⁰ and 381 382 metaphors were translated differently, small errors were found in some, and some

368 Exhibit D117(F), Defence Expert Report, p. 26; Bikindi, T. 31 October 2007, pp. 15, 44. 369 Exhibit D117(F), Defence Expert Report, pp. 26, 51; Bikindi, T. 2 November 2007, p. 41; Exhibit P52(F), Analysis and translation of “Intabaza” by Simon Bikindi, p. KA022674. 370 Exhibit D117(F), Defence Expert Report, pp. 26, 65; Bikindi, T. 2 November 2007, p. 41; Exhibit P52(F), Analysis and translation of “Intabaza” by Simon Bikindi, p. KA022674. 371 Nanga Abahutu: Witness DUC, T. 27 September 2007, p. 61; Witness TIER, T. 16 October 2007, pp. 36, 37; Bene Sebahinzi: Witness DUC, T. 27 September 2007, p. 61. 372 See Exhibits P74 and P98, Translation by Prosecution Expert Karangwa (same document entered twice); Prosecution Expert Karangwa, T. 13 February 2007, p. 10. 373 Witness AJY, T. 27 September 2006, p. 29. 374 The Chamber notes that the Defence Expert raised this point, that the title reflects what the author intended as the main idea of the song (Exhibit D117(F), Defence Expert Report, p. 25; T. 23 October 2007, p. 55). 375 Exhibit P73, Prosecution Experts Report. 376 Exhibit D117(F), Defence Expert Report. The Chamber notes that the Defence Expert received a copy of Bikindi’s lyrics from the Defence which he then compared with his translation from listening to the CD (T. 23 October 2007, p. 54). 377 Exhibit P52(F), Analysis and translation of “Intabaza” by Simon Bikindi. 378 Exhibit D33, Translation of Twasezereye [We Bade Farewell to the Monarchy]; Exhibit D35, Translation of Akabyutso (“The Awakening”) and Intabaza (“Alert”). 379 Exhibit P5, Transcript of RTLM Broadcast of 29 October 1993. 380 For example, in translations of Nanga Abahutu, “idiot” in Exhibit D35, was “deaf” in Exhibit P73; “stimulate heroes” in D35, was “arouse victory” in P73. Some of these discrepancies may be explained in that according to Prosecution Expert Karangwa, he and his co-author provided certain words instead of leaving that part of the analysis blank, but admitted that perhaps it would have been better to write ‘inaudible’ rather than guess at the word (T. 14 February 2007, p. 26). 381 For example, in translations of Bene Sebahinzi, the same Kinyarwanda metaphor was translated to “He dreamt of cows with hearts covered with wart” in Exhibit D35, and to “He dreamt that cows were eating cooked sorghum on the covers of baskets” in Exhibit P73. 382 Regarding Twasezereye, Prosecution Expert Karangwa admitted he had made a typographical error with respect to the word “ingiri”, but insisted this did not change the main message of the song (T. 14 February 2007,

p. 27 and T. 15 February 2007, pp. 52- 53). Judgement 2 December 2008 45

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versions had extra verses.³⁸³ The Chamber considered all of the translations in its analysis, and found little difference when considering the overall message, as words and passages must be considered within the framework of the rest of the lyrics.³⁸⁴ As the Chamber pointed out during the trial, a sentence taken out of context could have a very different meaning than when considered in the context of the rest of the song in which it is situated, and in the context of Rwanda during the time the song was composed, recorded and disseminated.³⁸⁵ In this respect, the Chamber acknowledges that, as for any translation, the translation into French or English of the songs may not be able to convey some very subtle nuance that existed in Kinyarwanda.³⁸⁶ In the circumstances, the Chamber has therefore paid particular attention to the interpretations given by listeners who testified in court. 7.1.1.3 Dates Composed 193. In the Indictment, the Prosecution alleges that Twasezereye was composed in 1987.³⁸⁷ Bikindi testified that Twasezereye was composed in 1986, first recorded in January 1987 during a competition to commemorate the 25th anniversary of Rwandan independence, and later recorded in a studio in 1993 as part of an album.³⁸⁸ 194. Although the Prosecution does not state when Bikindi composed the other two songs alleged in the Indictment, Bikindi stated that he composed Nanga Abahutu sometime between March and May of 1993, and completed Bene Sebahinzi about a month and a half later.³⁸⁹ He stated that he entered the studio in June 1993, and had recorded these two songs by the end of August 1993 as part of an album titled Mbwirabumva.³⁹⁰ 7.1.1.4 Score and Background Music 195. The Chamber notes that several witnesses highlighted the background music of the songs, for example, the accompanying sitar,³⁹¹ the mixed Rwandan-Congolese rhythm³⁹² and the accompanying traditional dance.³⁹³ Many witnesses spoke positively of his music, describing it as captivating,³⁹⁴ catchy,³⁹⁵ having good rhythm³⁹⁶ and melody,³⁹⁷ and making listeners want to dance.³⁹⁸

³⁸³ For example, the translation of Twasezereye in Exhibit D33 had three verses not included in Exhibit P73 (the last two verses on page 1, and the first on page 2). ³⁸⁴ See, for example, Bikindi, T. 31 October 2007, p. 39; Prosecution Expert Karangwa, T. 15 February 2007,

p. 26; Prosecution Expert Mbonimana, T. 16 February 2007, pp. 30-31. ³⁸⁵ T. 15 February 2007, p. 21. ³⁸⁶ See Exhibit P52, Analysis and translation of “Intabaza” by Simon Bikindi, p. KA022674. ³⁸⁷ Indictment, para. 40. ³⁸⁸ Bikindi, T. 31 October 2007, p. 15. See also Exhibit D117(F), Defence Expert Report, p. 30. ³⁸⁹ Bikindi, T. 31 October 2007, pp. 32, 33. The Chamber also notes that Bikindi definitively admits that he is the author of these two songs on T. 2 November 2007, p. 41. ³⁹⁰ Bikindi, T. 31 October 2007, pp. 50-51. “Mbwirabumva” has been written many different ways in the transcripts of these proceedings, but was spelt “Mbwirabumva” in Exhibit P52, Analysis and translation of “Intabaza” by Simon Bikindi, p. KA022674, in Exhibit D124, Indilimbo za Bikindi Simon (Les chansons de Simon Bikindi), p. 60 and in both Experts Reports. ³⁹¹ Witness AEY, T. 12 October 2006, p. 29; Prosecution

Expert Karangwa, T. 13 February 2007, p. 27. 392 Prosecution Expert Karangwa, T. 13 February 2007, p. 42. 393 Cyprien Ngendahimana, T. 17 October 2007, p. 13. 394 Witness BHH, T. 20 February 2007, pp. 11, 22; Prosecution Expert Karangwa, T. 13 February 2007, p. 42. 395 Witness BGH, T. 4 October 2006, p. 15. 396 Witness AJY, T. 27 September 2006, p. 29; Prosecution Expert Karangwa, T. 13 February 2007, p. 15. 397 Witness BHH, T. 20 February 2007, pp. 11, 22. 398 Prosecution Expert Karangwa, T. 13 February 2007, pp. 11, 15. See also Exhibit P72, Excerpts from Rwanda, Les médias du génocide, Jean-Pierre Chrétien (dir.), pp. 341-342. Judgement 2 December 2008 46

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196. While the Chamber does not doubt Bikindi is a talented and popular musician, the Chamber is less interested in the score than the lyrics of his compositions. While the Defence argued that the principal purpose of a song is usually entertainment based on melody and rhythm, and need not even have a message,³⁹⁹ the Chamber finds that, if anything, emphasising the popularity of the songs may have the effect of assisting the Prosecution's case regarding their impact. 7.1.1.5 Poetic Language 197. Prosecution Expert Karangwa testified that Bikindi's songs were couched in poetic language, referring to the realm of the spoken and unspoken in Kinyarwanda.⁴⁰⁰ Regarding Bene Sebahinzi, for example, the Prosecution Experts stated that Bikindi used the ibisigo language liberally, effectively using poetry to convey things not easily understood.⁴⁰¹ The Chamber notes that the Defence Expert appeared to disagree, stating, "[t]he text is clear. It is not poetic. It is prose indicating what the author's intent is."⁴⁰² 198. However, numerous witnesses corroborated the Prosecution Experts' analysis, testifying that Bikindi's lyrics were "indirect",⁴⁰³ poetic,⁴⁰⁴ and filled with "metaphors",⁴⁰⁵ "imagery",⁴⁰⁶ and "allusions".⁴⁰⁷ Witnesses testified that the language used was a "sophisticated",⁴⁰⁸ "complicated"⁴⁰⁹ and literary high form of Kinyarwanda.⁴¹⁰ Witness AEY stated that foreigners would not be able to understand their meaning, as even Rwandans sometimes have difficulty understanding what Bikindi is saying.⁴¹¹ Witness BGH testified that if one did not have a mastery of the language they might not understand certain words.⁴¹² 199. Four witnesses testified, however, that even though Bikindi used indirect language, his message was clear to them. When asked if he knew of a song of Bikindi's which says that Tutsi were to be exterminated, Witness AKJ answered that he did not hear such an express message, as metaphors were used.⁴¹³ Witness BHI stated that even if the word "Tutsi" did not appear in the lyrics of those songs, through the imagery and the metaphors, one could understand just as well, as the Hutu were the majority and the Tutsi the minority.⁴¹⁴ Witness BGH testified that although the songs were "composed in quite a sophisticated type of Kinyarwanda ... [that] everybody knows very well what they – the message transmitted by

399 Defence Closing Brief, para. 282; Exhibit D117(F), Defence Expert Report, p. 5. 400 Prosecution Expert Karangwa, T. 13 February 2007, pp. 11, 37. 401 Exhibit P73, Prosecution Experts Report, p. 17. 402 Defence Expert Shimamungu, T. 24 October 2007, p. 26. 403 Witness BKW, T. 18 October 2006, p. 11. 404 Cyprien Ngendahimana, T. 17 October 2007, pp. 13, 14. 405 Witness AKJ, T. 21 September 2006, p. 21; Witness BGH, T. 4 October 2006, pp. 9, 15; Witness BHI, T. 13 October 2006, p. 30. 406 Witness AEY, T. 12 October 2006, p. 26 and T. 13 October 2006, pp. 29-30; Witness BHJ, T. 10 October 2006, p. 12; Witness AKJ, T. 20 September 2006, p. 49; Witness AHP, T. 20 October 2006, p. 8. 407 Witness AEY, T. 12 October 2006, p. 8; Witness BGH, T. 4 October 2006, pp. 6, 15, 16. 408 Witness AJZ, T. 27 September 2006, p. 6; Witness BGH, T. 4 October 2006, p. 15; Witness BHJ, T. 10 October 2006, p. 31. 409 Witness AEY, T. 12 October 2006, pp. 7, 9, 26. 410 Witness BGH, T. 4 October 2006, p. 15; Witness BHJ, T. 10 October 2006, p. 12. 411 Witness AEY, T. 12 October 2006, pp. 7, 26. 412 Witness BGH, T. 4 October 2006, p. 6. 413 Witness AKJ, T. 21 September 2006, p. 21. 414 Witness BHI, T. 13 October 2006, p. 30. Judgement 2 December 2008 47

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those songs is.”⁴¹⁵ Witness BHH stated that even with “stylistic nuances” and references to “Rwandan legend”, the “essential message was properly understood.”⁴¹⁶ 7.1.1.6 Other Songs 200. Bikindi stated that the Prosecution only chose three songs out of dozens he composed, and that all his songs should be considered to represent his overall intention at the time.⁴¹⁷ 201. However, the evidence adduced by the Defence on Bikindi’s other songs is not necessarily favourable to Bikindi’s case. While there was evidence that Bikindi composed wedding songs,⁴¹⁸ and a song to celebrate Christmas and the New Year,⁴¹⁹ he also composed a series of eight “war songs” from 1991.⁴²⁰ Bikindi stated he created an album titled Imbarirwakunesha in 1991 and/or 1992, encouraging “our” soldiers in the battlefield to fight the RPF.⁴²¹ A number of witnesses testified to knowledge of these songs,⁴²² including one that incited a witness and other Interahamwe to kill.⁴²³ Another witness testified that Bikindi composed and sang a song welcoming the French into Rwanda at the end of June 1994.⁴²⁴ 202. Two witnesses also mentioned a song which praised the MRND⁴²⁵ called MRND ishyaka rya banyarwanda,⁴²⁶ the refrain of which was: “MRND. Yes, MRND, the party of Rwandans. MRND, militating in favour of democracy. MRND, a party in favour of peace and development of the masses. We will all join MRND.”⁴²⁷ Witness WUH testified that although he could not recall the titles of the songs sung by Bikindi’s Irindiro ballet, he knew they were a form of propaganda for the 428 party.

203. Bikindi stated that he composed Amahoro in the fall of 1993. Sung into the trial record, this song was essentially a repetition of the word “peace”.⁴²⁹ The Chamber will be

⁴¹⁵ Witness BGH, T. 4 October 2006, p. 15. ⁴¹⁶ Witness BHH, T. 20 February 2007, p. 11. ⁴¹⁷ Bikindi, T. 31 October 2007, pp. 57, 58. ⁴¹⁸ Bikindi, T. 2 November 2007, p. 10; Witness JCH, T. 9 October 2007, pp. 36, 55; Cyprien Ngendahimana, T. 17 October 2007, p. 14; Witness BHH, T. 20 February 2007, p. 25; Witness BHJ, T. 11 October 2006, p. 40. See also Exhibit D599B), Leaflet of

the Irindiro ballet; Exhibit D117(F), Defence Expert Report, Annex 1, pp. 68-69; and Exhibit D124, Indilimbo za Bikindi Simon (Les chansons de Simon Bikindi). 419 Cyprien Ngendahimana, T. 17 October 2007, p. 14. 420 Defence Expert Shimamungu, T. 24 October 2007, p. 44; Exhibit D117(F), Defence Expert Report, pp. 68-69. 421 Bikindi, T. 31 October 2007, pp. 54-55; Exhibit D117(F), Defence Expert Report, Annex 1, pp. 68-69; and Exhibit D124, Indilimbo za Bikindi Simon (Les chansons de Simon Bikindi). 422 Witness JCH testified that Imparikwakunesha, Imparirwashema, Ibishashi, and Amashahi (an instrumental version of Ibishahi) were songs recorded to boost the morale of the soldiers (T. 9 October 2007, pp. 33-34.) Witness KMS also mentioned songs composed and sung which praised government soldiers (T. 1 October 2007, p. 37), and Witness BHH mentioned some “war songs” as well (Witness BHH, T. 20 February 2007, p. 8). 423 Witness AEY testified that he also remembered a song intended for the Rwandan army, and that after listening to it, he and others perpetrated killings because the song explained how wicked the Tutsi were, and AEY and the other Interahamwe had understood the danger involved and they “had to do what [they] had to do” (T. 12 October 2006, p. 9). 424 Witness BHJ testified that Bikindi therefore composed a song which said: “Long live the French, long live the Rwandans.” The witness testified that Bikindi taught the song to all the inhabitants of his town, around the end of June, when the French arrived (T. 11 October 2006, pp. 40-41). 425 Witness KMS, T. 1 October 2007, p. 37; Witness JCH, T. 9 October 2007, p. 17. 426 Witness KMS, T. 1 October 2007, p. 37. 427 Witness JCH, T. 9 October 2007, p. 17. 428 Witness WUH, T. 2 October 2007, pp. 70, 71. 429 Bikindi, T. 31 October 2007, pp. 34, 35, 36. The Chamber notes that Bikindi’s first wife testified about this song as well: Apolline Uwimana, T. 8 October 2007, p. 32. See also Exhibit D117(F), Defence Expert Report, Annex 1, p. 69. Judgement 2 December 2008 48

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discussing how peace and democracy were interpreted in 1993 and 1994 in Rwanda in the conclusion to this section. 204. Bikindi also composed Mbwirabumva (“Word to the Wise”) in the fall of 1993.⁴³⁰ In this song, Bikindi asks his audience, “Did you understand me earlier”, and he is answered, “yes”.⁴³¹ The Chamber notes that Mbwirabumva was included in an album, titled Mbwirabumva, with Nanga Abahutu (“I Hate the Hutu”) followed by Mbwirabumva on side A, and Bene Sebahinzi (“Descendants of the Father of Farmers”) followed by Mbwirabumva again on side B.⁴³² The Chamber is of the view that this song merely reinforces the messages of the preceding songs. The Chamber also notes that a number of witnesses testified that this song referred to the historical Tutsi domination of Hutu.⁴³³ However, the Chamber will not consider these allegations in great detail, as the song was not specifically pleaded in the Indictment. Moreover, this song appears to mirror the lyrics of the other three songs specifically alleged. 205. Lastly, Bikindi’s four songs, Les mendiants de la paix (“Beggars of Peace”), Merci (“Thank You”), A Better World and Les enfants de la guerre (“Children of War”),⁴³⁴ were all composed in exile or after 1994,⁴³⁵ and cannot really enlighten the Chamber as to Bikindi’s intention at the time he

allegedly committed the crimes he is charged with. The Chamber notes that intentions can change, especially in exile after genocide. 7.1.2 Twasezereye, Nanga Abahutu, and Bene Sebahinzi 206. The following section examines the interpretation of the three specific songs alleged in the Indictment, Twasezereye, Nanga Abahutu, and Bene Sebahinzi. After summarising the evidence adduced on each song in the following three sub-sections, the Chamber will state its conclusions at the end of this section. 207. Regarding the themes of these three songs, Prosecution Expert Karangwa testified that the message of the songs was to appeal to Hutu to subscribe to stereotypes and caricatures of the past regarding relations between the Hutu and Tutsi ethnic groups.⁴³⁶ Prosecution witnesses highlighted the central theme as one of division.⁴³⁷ 208. In contrast, the Defence Expert gave his opinion that the themes of the songs were not about ethnic hatred, but instead related to democracy and republic.⁴³⁸ Bikindi stated his songs taught harmony,⁴³⁹ and were meant to return his country to peace.⁴⁴⁰ Witness JCH testified that the three songs alleged were about peace and democracy.⁴⁴¹ Bikindi's second wife

⁴³⁰ Bikindi, T. 31 October 2007, p. 34. ⁴³¹ Bikindi, T. 31 October 2007, p. 34. ⁴³² Bikindi, T. 31 October 2007, pp. 50, 51. ⁴³³ Witness AHP, T. 19 October 2006, pp. 26-27; T. 20 October 2006, pp. 8, 9; Witness BKW, T. 18 October 2006, pp. 12-13; Witness AEY, T. 12 October 2006, p. 25; Witness BHI, T. 13 October 2006, pp. 3, 4, 29-30. ⁴³⁴ Exhibit D. 125, Lyrics of A Better World and Les enfants de la guerre. Performed in trial by Bikindi: T. 1 November 2007, pp. 35-36. ⁴³⁵ Bikindi, T. 1 November 2007, pp. 33-34. See also Exhibit D117(F), Defence Expert Report, Annex 1, p. 69. ⁴³⁶ Exhibit P73, Prosecution Experts Report, p. 23. ⁴³⁷ Witness AJY, T. 28 September 2006, p. 29; Witness AJZ, T. 25 September 2006, p. 48; Witness AKJ, T. 20 September 2006, p. 49, this was in relation specifically to Nanga Abahutu and Bene Sebahinzi. ⁴³⁸ Defence Expert Shimamungu, T. 25 October 2007, p. 4; Exhibit D117(F), Defence Expert Report, p. 29. ⁴³⁹ Bikindi, T. 6 November 2007, p. 2. ⁴⁴⁰ Bikindi, T. 5 November 2007, p. 10. ⁴⁴¹ Witness JCH, T. 9 October 2007, p. 45.

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testified that all of her husband's songs were aimed at promoting peace.⁴⁴² Antoine Nyetera testified that the songs reflected the past.⁴⁴³ 7.1.2.1 Twasezereye 209. The Prosecution Experts interpreted Twasezereye to be a rallying call for unity among Hutu by reminding them of a past of subservience to the Tutsi. They stated that the central theme is the praise of the benefits of independence for the Rwandan people, and mentioned it was composed for the commemoration of the 25th anniversary of national independence.⁴⁴⁴ They also noted that the first verse of the refrain, and his chosen title, Twasezereye ingoma ya cyami, translates to "We bade farewell to the monarchy".⁴⁴⁵ Bikindi is not saying goodbye to the colonial regime, but to the monarchy or feudal regime, which Prosecution Expert Karangwa testified were associated with Tutsi domination.⁴⁴⁶ The Prosecution Expert noted that the song devotes one line to practices chiefly ascribed to colonialism, namely the whip and hard labour, but dwells at length for two or three stanzas on the ills and injustices of the Tutsi dominated feudal system.⁴⁴⁷ He states that such

disproportionate treatment suggests that the excesses of the Tutsi regime are more abhorrent to Rwandans and Hutu in particular than colonisation.⁴⁴⁸ Given that the country was faced with an external Tutsi threat, the theme of the feudo-monarchical scarecrow served to unify the Hutu.⁴⁴⁹ 210. The Prosecution Experts also noted that the lyrics include reference to the 1959 Revolution which led to Rwandan independence by referring to two important figures in the Revolution, Kayinbanda and Mbonyumutwa, as a way to rally all Hutu.⁴⁵⁰ By making reference to Habyarimana in the song, he is elevated to the rank of a hero of independence.⁴⁵¹ 211. Prosecution Expert Mbonimana asserted that referring to the Hutu genitals adorning the Kalinga drum, an emblem of the Tutsi, and stating that the Tutsi were at the doors of the country, ready to do what they did in the past, was an invitation to hate and kill.⁴⁵² The Prosecution Experts asserted that it was obvious that listening to Twasezereye, part of the Hutu population believed that if the Inkotanyi prevailed the monarchy would return, and that therefore the Hutu had to strike first.⁴⁵³ The Prosecution Experts stated that the message of this song was clear and understood by Rwandans, and would incite hatred.⁴⁵⁴

442 Angeline Mukabanana, T. 2 October 2007, p. 23. 443 Antoine Nyetera, T. 5 October 2007, p. 30. 444 Exhibit P73, Prosecution Experts Report, p. 11. 445 Exhibit P73, Prosecution Experts Report, p. 20. 446 Prosecution Expert Karangwa, T. 13 February 2007, p. 15 and T. 14 February 2007, p. 13; Exhibit P73, Prosecution Experts Report, p. 10. 447 Exhibit P73, Prosecution Experts Report, pp. 10, 19. See also Prosecution Expert Karangwa T. 15 February 2007, p. 45. 448 Exhibit P73, Prosecution Experts Report, p. 10. 449 Exhibit P73, Prosecution Experts Report, pp. 11-12. 450 Prosecution Expert Karangwa, T. 13 February 2007, pp. 15, 18, 25-26. 451 Prosecution Expert Karangwa, T. 13 February 2007, p. 18. 452 Prosecution Expert Mbonimana, T. 16 February 2007, p. 26. 453 Exhibit P73, Prosecution Experts Report, p. 23. 454 Prosecution Expert Karangwa, T. 13 February 2007, p. 21; Exhibit P73, Prosecution Experts Report, p. 22. Judgement 2 December 2008

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212. In addition, the Prosecution adduced some documentary evidence of transcripts of RTLM broadcasts that commented on the interpretation of Twasezereye. On 21 March 1994, an unidentified speaker on RTLM played Twasezereye, and followed up by stating: Consequently, the people are being asked to be vigilant, the enemy is still the same, brandishing the same spear; his plan to shed blood remains the same [...]. This requires a proper identification of the enemy, for he keeps disguising himself. Nevertheless, he is still the same. I would therefore like to dedicate this new song to the Rwandan Armed Forces [and to] all Rwandans committed to peace and democracy. Here is the music.⁴⁵⁵ 213. Although a number of Prosecution witnesses testified that this song was about independence,⁴⁵⁶ and referred to bidding farewell to the colonial system,⁴⁵⁷ many more asserted that the song was about the monarchy.⁴⁵⁸ Witnesses gave evidence that the monarchy in Rwanda was associated with the Tutsi.⁴⁵⁹ Numerous witnesses gave evidence

on the historical practices associated with this period and detailed in the song, namely forced labour, being whipped or flogged, giving gifts to the King and being “under the yoke”.⁴⁶⁰ One witness stated that this song was about ethnic discrimination and sowed seeds of discord between the Hutu and the Tutsi,⁴⁶¹ another stated that the message of the song was hatred between the Hutu and Tutsi.⁴⁶² A number of witnesses testified that the song warned against the restoration of a Tutsi monarchy.⁴⁶³ 214. In contrast, the Defence Expert interpreted Twasezereye as a celebration of independence for all Rwandans. The Defence Expert postulated that Bikindi chose the shorter title of the song, Twasezereye, to relate not only to the monarchy but to the feudal and colonial regimes as well. The Defence Expert asserted that the feudal period was not dominated by all Tutsi, but by two Tutsi clans, and that there were also Hutu kings during this period. He also asserted that Habyarimana, Kayibanda and Mbonyumutwa were not symbols of Hutu solidarity, but the main players in the independence movement. He therefore disputed that the feudal/monarchical period is associated with Tutsi, testifying that when laypeople hear these terms, they think of exploitation generally. In his opinion, Twasezereye could not incite hatred.⁴⁶⁴

455 Exhibit P16, Transcript of RTLM Broadcast of 21 March 1994, pp. 17, 18. 456 Witness BHI, T. 13 October 2006, p. 4; BHH, T. 20 February 2007, p. 8. 457 Witness AJZ, T. 25 September 2006, p. 46; Witness AEY, T. 12 October 2006, pp. 5-6; Witness BGH, T. 2 October 2006, p. 32; Witness ALP, T. 18 September 2006, p. 36; T. 19 September 2006, p. 22. 458 Witness AJZ, T. 25 September 2006, p. 46; Witness AEY, T. 12 October 2006, pp. 5-6; Witness AKJ, T. 20 September 2006, p. 49; Witness BHI, T. 13 October 2006, p. 4; Witness BGH, T. 2 October 2006, p. 32; Witness BHH, T. 20 February 2007, p. 8; Witness ALP, T. 19 September 2006, pp. 31-32; Witness AJY, T. 27 September 2006, p. 29. 459 Witness AKJ, T. 20 September 2006, p. 49; Witness AEY, T. 12 October 2006, p. 27; Witness BGH, T. 2 October 2006, p. 32; Witness BHH, T. 20 February 2007, p. 8; Witness ALP, T. 18 September 2006, p. 36. A few even appeared to associate the colonial period with Tutsi (Witness AJZ, T. 25 September 2006, p. 46; Witness AEY, T. 12 October 2006, pp. 5-6). 460 Witness AJY, T. 27 September 2006, pp. 26-27, 29; Witness AEY, T. 12 October 2006, pp. 26-27; Witness AKJ, T. 20 September 2006, p. 49; Witness BGH, T. 2 October 2006, p. 32; Witness BHH, T. 20 February 2007, pp. 20, 32; Witness ALP, T. 19 September 2006, pp. 25-26, 32-36; Witness AJZ, T. 25 September 2006, p. 46. 461 Witness AJZ, T. 27 September 2006, p. 6. 462 Witness AKJ, T. 20 September 2006, p. 50. 463 Witness AEY, T. 12 October 2006, pp. 5-6, 8, 26-27; Witness BHH, T. 20 February 2007, pp. 8-10, 20; Witness ALP, T. 18 September 2006, p. 36. 464 Defence Expert Shimamungu, T. 23 October 2007, p. 62, T. 24 October 2007, p. 6-8 and T. 25 October 2007, pp. 9, 10, 18. See also Exhibit D117(F), Defence Expert Report, pp. 30, 44-47. Judgement 2 December 2008 51

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215. Bikindi focused on the inspiration for Twasezereye, namely the competition to select a song for the 25th anniversary of Rwandan independence (Silver Jubilee) on 1 July 1987. He pointed out that a jury of six, including Prosecution Expert Mbonimana, had selected this

song.⁴⁶⁵ Bikindi testified that he intended the message in his song to be “never again” to three regimes: monarchical feudalism, colonialism and mass slavery.⁴⁶⁶ He pointed out that the chorus, repeated throughout the song, discusses feudalism, colonialism, democracy and independence.⁴⁶⁷ Bikindi denied that the monarchy was only associated with Tutsi.⁴⁶⁸ He stated that he referred to the white shield in this song as a symbol of peace.⁴⁶⁹ 216. Four Defence witnesses gave evidence on the meaning of this song. All four focussed on the theme of celebrating Rwanda’s independence;⁴⁷⁰ one testified that this song referred to a farewell to both the colonial and feudal-monarchical periods,⁴⁷¹ and three testified it referred only to the monarchy led by the Tutsi.⁴⁷² Two witnesses gave details of the historical practices associated with these periods, including the Ikiboko whip; one associated it with the colonial period,⁴⁷³ the other with the monarchy.⁴⁷⁴ One interpreted the song to say that these times of hardship should not happen again;⁴⁷⁵ another denied that the song warned people that if the Tutsi returned to Rwanda, those monarchical days would return ⁴⁷⁶ .

7.1.2.2 Nanga Abahutu 217. Prosecution Expert Karangwa asserted that the general message of Nanga Abahutu was unity among the Hutu, or to forget about their division and unite against the Tutsi.⁴⁷⁷ The song detailed the misfortunes that befall those who do not heed the message for unity.⁴⁷⁸ 218. Prosecution Expert Karangwa stated that the song advocates hatred of five categories of Hutu who were friends with the Tutsi: Hutu who have forsaken their Hutu identity by becoming Tutsi for employment or education advantages (the Ibyhuture); Hutu who despise other Hutu; Hutu who are greedy and live off bribes from Tutsi; Hutu who are naïve and engage in war on the side of the Tutsi without any awareness of what is really at stake; and Hutu who, when a Hutu makes a mistake, does not correct him by taking him aside, ensuring the unity of the Hutu.⁴⁷⁹

⁴⁶⁵ Bikindi, T. 31 October 2007, pp. 22-23 and T. 1 November 2007, p. 44. See also Prosecution Expert Mbonimana, T. 16 February 2007, p. 7. Although when asked about this, Prosecution Expert Mbonimana stated that he had had his reservations then, but had been outnumbered by the other five panel members. ⁴⁶⁶ Bikindi, T. 31 October 2007, pp. 22-23. ⁴⁶⁷ Bikindi, T. 31 October 2007, p. 24. ⁴⁶⁸ Bikindi, T. 31 October 2007, p. 23. ⁴⁶⁹ Bikindi, T. 31 October 2007, pp. 25-26. ⁴⁷⁰ Witness XVBR, T. 26 September 2007, pp. 41-42; Witness DUC, T. 27 September 2007, pp. 60-61; Cyprien Ngendahimana, T. 17 October 2007, p. 14; Angeline Mukabanana, T. 2 October 2007, p. 10. ⁴⁷¹ Witness XVBR, T. 26 September 2007, p. 41. ⁴⁷² Witness DUC, T. 28 September 2007, p. 7; Cyprien Ngendahimana, T. 17 October 2007, p. 22; Angeline Mukabanana, T. 2 October 2007, pp. 23, 29. ⁴⁷³ Witness XVBR stated the Ikiboko whip was associated with the colonial period (T. 26 September 2007,

p. 49). ⁴⁷⁴ Angeline Mukabanana stated that the whip was associated with monarchical period (T. 2 October 2007,

p. 23). 475 Witness DUC, T. 28 September 2007, p. 7. 476 Angeline Mukabanana, T. 2 October 2007, p. 39. 477 Prosecution Expert Karangwa, T. 13 February 2007, p. 41. 478 Exhibit P73, Prosecution Experts Report, p. 13. 479 Prosecution Expert Karangwa, T. 13 February 2007, pp. 29-32; Exhibit P73, Prosecution Experts Report,

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219. Prosecution Expert Karangwa referred to the verse “As for me, I hate the Hutu, these Hutu who do not remember, who do not remember the saying you must deal with Ruhande by killing Mpandahande”, as reminding the Hutu of the evil deeds that the Tutsi carried out against the Hutu sub-chief Mpandahande of Ruhande. The Prosecution Experts stated that referring to the assassination of historical Hutu figures imputed to Tutsi monarchs had the effect of socially stereotyping the Tutsi as the common enemy of the Hutu.⁴⁸⁰ Prosecution Expert Mbonimana stated that recurrently repeating that the Hutu were killed in Rwanda’s expansion had the effect of exacerbating hatred, and pushing people to act.⁴⁸¹ 220. Prosecution Expert Karangwa pointed out that the song title insisted upon by Bikindi, “The Awakening”, matched the title of the Hassan Ngeze’s newspaper, in that Kangura translates into “Awake”.⁴⁸² He also pointed out similarities in language between Nanga Abahutu and the Bahutu Ten Commandments published in the inflammatory newspaper Kangura, particularly Commandments 1, 4, 8, 9 and 10.⁴⁸³ 221. Prosecution Expert Karangwa testified to the significance of the use of the word “mbwirabumva” fourteen times in this song, which translates as “a word to the wise”, and strengthens the importance or significance of the message which the author wants to convey to the audience.⁴⁸⁴ He concluded that within the political context of 1992, 1993 and 1994, it was his opinion that Nanga Abahutu unambiguously encouraged killings.⁴⁸⁵ 222. The Prosecution adduced documentary evidence of transcripts of RTLM broadcasts that commented on the interpretation of Nanga Abahutu. For example, on 29 October 1993, the journalist Noël Hitimana spoke on RTLM, stating that in Nanga Abahutu, Bikindi gives a word to the wise. Noël Hitimana stated that if people had been listening, there would not be problems in Burundi, described as a historical battle of assassinations of Hutu and Tutsi leaders, with the Hutu fairing poorly.⁴⁸⁶ In early 1994, André Ntagerura was broadcast on RTLM, and during a diatribe against Prime Minister Agathe Uwilingiyimana, he stated “[f]ellow militants, someone mentioned the clear-sightedness and intelligence of Bikindi alias ‘I speak to the wise’”.⁴⁸⁷

⁴⁸⁰ Prosecution Expert Karangwa, T. 13 February 2007, p. 40; Exhibit P73, Prosecution Experts Report, p. 17. ⁴⁸¹ Prosecution Expert Mbonimana, T. 16 February 2007, pp. 26-27. ⁴⁸²

Prosecution Expert Karangwa, T. 13 February 2007, p. 35. ⁴⁸³ Prosecution Expert Karangwa, T. 13 February 2007, pp. 33-35; Exhibit P73, Prosecution Experts Report, pp. 4-16. For example, Commandment 1 of the Bahutu Ten Commandments states that every Muhutu should know that Umututsikazi (Tutsi girl or woman) is working on behalf of her Tutsi ethnic group, and that as a

result any Muhutu who marries an Umututsikazi or takes an Umututsikazi as concubine, or makes an Umututsikazi his secretary or protégée, is a traitor. Similarly in Nanga Abahutu, Bikindi declares that he hates the Ibyihutse and Hutu who have renounced their Hutu identity, and that Kangura states that every Muhutu should know that every Mututsi is dishonest in business, and the Muhutu's only concern is the supremacy of his ethnic group. Therefore, any Muhutu who makes business alliances with the Batutsi; invests his money or that of the state in the firm of an Mututsi or who does Batutsi favours in his business is a traitor. In the song Bikindi states that he hates Hutu who engage in relations with Tutsi in the context of pastoral clientelism (ubuhake). See Exhibit P53, Appeal to the Conscience of the Bahutu, Excerpts from Kangura No. 6, December 1990, listing the Ten Commandments. 484 Prosecution Expert Karangwa, T. 13 February 2007, p. 32. 485 Prosecution Expert Karangwa, T. 13 February 2007, p. 40. 486 Exhibit P5, Transcript of RTLM Broadcast of 29 October 1993, pp. 4-5. 487 Exhibit P47, Transcript of RTLM Broadcast of 16 January 1994, p. 13. Judgement 2 December 2008 53

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223. A week after the genocide began, another journalist on RTLM, Gaspard Gahigi referred to “Mbwira abumva” (an often repeated lyric from Nanga Abahutu, and also a separate song), stating that: Bikindi said: “Mbwira abumva” (I talk to those who understand) in a song that we often play here at RTLM. I think that Rwandans have understood what Shyirambere Barahinyura told them [...] that they should cooperate with the Army and the Army should give you arms so that you could confront the Inkotanyi [...]488 224. Witness BGH testified that on one occasion, she heard Valérie Bemmeri, a journalist on RTLM, say that Kanyarengwe, the Hutu chairman of the RPF, was having Hutu who were fighting alongside the RPF-Inkotanyi killed. The witness testified that she then played Bikindi's song Nanga Abahutu, to say that she hated the Hutu who were killing their Hutu brothers.489 225. Numerous Prosecution witnesses recalled categories of hated Hutu from the song.490 Witness BHJ testified that Bikindi was only addressing his song to Hutu, for if Bikindi had been talking to all Rwandans, he would have said, “I hate Rwandans who do this and that”.491 Some testified that the song called for Hutu unity.492 226. Witness BHH testified that Nanga Abahutu was the highest level of encouragement to ethnic radicalism, as it heaped guilt on the Tutsi, who were considered to be the source of the problems in the country.493 Witness AJS testified that this song encouraged Hutu to kill Tutsi, and stated the song functioned as an Intabaza, or drum, which historically when beaten, would encourage all to take up a spear or a bow and go to the front, as the country was under attack.494 Witness BHJ testified that he read the very popular Kangura newspaper, and that it carried messages that were similar to the messages in Bikindi's songs.495 227. The Defence Expert interpreted the song as describing a chaotic situation, and as calling on the majority population to stop quarrelling and killing each other, and prepare for war. He interpreted the lyrics about the hated Hutu through a lens of political regionalism within Rwanda, specifically tensions between the north and south, stating he did not see Tutsi targeted in

the song in any way, or even referred to.⁴⁹⁶

488 Exhibit P11, Transcript of RTLTM Broadcast of 15 April 1994, p. K0198354. 489 Witness BGH, T. 3 October 2006, p. 31; T. 5 October 2006, p. 4. See also Exhibit P13(F), transcript of RTLTM Broadcast of 14 June 1994, p. 5. 490 Witness AJY, T. 28 September 2006, pp. 29-32; Witness AJZ, T. 27 September 2006, p. 10; Witness AEY, T. 12 October 2006, pp. 8-9; Witness AJS, T. 29 September 2006, pp. 8, 32-35; Witness AKJ, T. 20 September 2006, p. 49 and T. 21 September 2006, p. 22; Witness BGH, T. 2 October 2006, p. 35 and T. 5 October 2006, pp. 16-17; Witness BHJ, T. 10 October, 2006, pp. 23-24, 26 and T. 11 October 2006, pp. 10, 14-16; Witness BHH, T. 20 February 2007, p. 35; Witness ALP, T. 18 September 2006, p. 39. 491 Witness BHJ, T. 10 October 2006, p. 26. 492 Witness AJS, T. 29 September 2006, pp. 32-35; Witness BGH, T. 2 October 2006, p. 35. 493 Witness BHH, T. 20 February 2007, p. 35. 494 Witness AJS, T. 29 September 2006, pp. 32-35. 495 Witness BHJ, T. 10 October 2006, pp. 32-33. 496 Defence Expert Shimamungu, T. 24 October 2007, pp. 10-13, 20. Specifically, he interpreted “Hutus [...] who exclude other Hutus”, “Stupid Hutu” and Hutu “tearing at each others throats” to be referring to those who supported regionalism, which encouraged the problems with political power sharing between the north and south. He interpreted “Hutus who think themselves superior”, “Greedy Hutu” and “Hutu who try to enrich themselves” to be politicians, and “Those who engage in battle” as Hutu who fight the RPF. Following this theme, he also interpreted “People entering into battles or wars without knowing the motive” to be referring to those who thought the RPF was going to hold elections, when they were actually seizing power by force. Judgement 2 December 2008 54

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228. Further, the Defence Expert asserted that the song condemned the behaviour of some Hutu, and did not incite the killing of Tutsi by the Rwandan population, since the song only addressed Hutu. The Defence Expert added that the Hutu Ten Commandments were not the inspiration for Nanga Abahutu, as the former was addressed to all Rwandans, and the latter only to Hutu. 497 229. Bikindi stated that he did not intend Nanga Abahutu to advocate hatred, but was more akin to smacking a small child to stop him from misbehaving, as he was a patriot and could see the trouble his country was falling into. Bikindi stated the only unity he intended the song to call for was the unity of all Rwandans, be they Hutu, Tutsi or Twa.⁴⁹⁸ When questioned about his interpretation of the word “Ibyihuture”, Bikindi referred to the close relationships he had with Tutsi, including his wife, various friends, neighbours and ballet members.⁴⁹⁹ 230. Bikindi denied knowledge of the existence of either Nanga Abapamehutu, or the Ten Commandments when he composed Nanga Abahutu and Bene Sebahinzi. He said he was not a reader of Kangura, and that neither were on his mind during composition.⁵⁰⁰ 231. Bikindi’s first wife, Apolline Uwimana testified that Bikindi’s intention in writing Nanga Abahutu was to call on people to return to peace and security and to live in peace with one another.⁵⁰¹ Bikindi’s second wife, Angeline Mukabanana testified that Nanga Abahutu should not be interpreted literally because

Bikindi himself was Hutu; that what Bikindi meant was that he hated people who were greedy, not polite and people who wanted to kill one another, or people who wanted to engage in conflicts.⁵⁰² 232. Antoine Nyetera interpreted the song as condemning a situation in which part of the population is allied with an enemy promising heaven and paradise, the enemy of yesterday and today, as demonstrated by the line in the song, “I am against Hutus who act in greed with the enemy because of promises, because of amounts of money paid.”⁵⁰³

“Washing dirty laundry within the family” was said to refer to Hutu joining together to fight an external aggressor. 497 Defence Expert Shimamungu, T. 24 October 2007, pp. 10, 19, 29-30; T. 25 October 2007, pp. 8, 31. See also Exhibit D117(F), Defence Expert Report, pp. 32, 51-52. 498 Bikindi, T. 31 October 2007, pp. 42-47, 49-50; T. 2 November 2007, pp. 41-42, He stated that what he meant with the expression “The Hutu who is bought for coin and even kills a Hutu” was the stupid cruelty of killing your own family, and suggested that a better interpretation for the word “ubuhake” was sycophancy rather than clientalism, in that people were going between political parties for money and had lost the idea of honour and individual personality. 499 Bikindi, T. 31 October 2007, p. 42. 500 Bikindi, T. 31 October 2007, p. 50; T. 2 November 2007, p. 40. 501 Apolline Uwimana, T. 8 October 2007, p. 14. 502 Angeline Mukabanana, T. 2 October 2007, p. 24. 503 Antoine Nyetera, T. 5 October 2007, p. 14. Judgement 2 December 2008 55

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7.1.2.3 Bene Sebahinzi 233. The Prosecution Experts stated that the title of the song, Bene Sebahinzi, translated to descendants of the father of farmers/cultivators, which, interpreted in context, means Hutu.⁵⁰⁴ They found that the song implicitly refers to Tutsi, in that the Tutsi was represented by the Umizimu, the evil spirit depicted in the song, which attacked from the outside, and used its craftiness to transform itself into a woman, a girl, a brother-in-law, a child, a farmer or a wolf.⁵⁰⁵ Prosecution Expert Karangwa asserted that this spirit represented the RPF, or Tutsi, in the collective memory of Rwandans.⁵⁰⁶ He explained that “snake” was a word used to describe the Tutsi at that time, as was “insoka”, a cunning animal.⁵⁰⁷ He declared that the song detailed a number of problems, and then offered the antidote, or solution, of union among the bahutu, or Hutu unity.⁵⁰⁸ 234. Prosecution Expert Karangwa reported that Bikindi’s commitment to MRND and CDR ideology appears strongly in both Nanga Abahutu and Bene Sebahinzi, with Bene Sebahinzi referencing both the CDR youth wing⁵⁰⁹ and the CDR motto.⁵¹⁰ 235. When it was suggested that Bene Sebahinzi was about peace, Prosecution Expert Karangwa stated that if Bikindi really intended peace for all Rwandans, why did he only refer to Sebahinzi, why not also Sebatutsi and Sebatwa. He further said that in Bene Sebahinzi, the references to Inyambarabishahu, a Tutsi king who wore the genital organs of defeated Hutu kings, and references to kings who have died, would remind the listener of their killers, the Tutsi.⁵¹¹ Prosecution Expert Mbonimana testified that when people are reminded that the genitals of Hutu were used to decorate the Kalinga drum, considered an emblem of the Tutsi,⁵¹² and when it is stated that the Tutsi are at the doors of the country to do what they did in the past, it is an

invitation not only to hate, but also to kill people, especially given the surrounding context of war and genocide.^{513 236} Prosecution Expert Karangwa interpreted the main message of this song to be calling on Hutu to unite to fight the RPF. He stated that the song reminds Hutu that the majority must prevail, and in a specific excerpt states that the RPF cannot win, even with weapons. In his opinion, the message of Bene Sebahinzi would clearly be understood as a warning against neighbour infiltration; that there could be no other interpretation as the words are clear.

504 Exhibit P73, Prosecution Experts Report, p. 18; Prosecution Expert Karangwa, T. 13 February 2007, pp. 42-44 and T. 15 February 2007, pp. 5-6. When asked whether the title actually referred to all Rwandan farmers, as they comprise 90 to 95% of the population, Prosecution Expert Karangwa disagreed, stating that while bahinzi does translate to mean “farmers”, the use of the preceding word “bene” (descendants) could only mean, in context, Hutu. 505 Exhibit P73, Prosecution Experts Report, pp. 18-19; Prosecution Expert Karangwa, T. 13 February 2007,

p. 48. 506 Prosecution Expert Karangwa, T. 13 February 2007, p. 48. 507 Prosecution Expert Karangwa, T. 13 February 2007, pp. 46-47. 508 Prosecution Expert Karangwa, T. 15 February 2007, p. 23. 509 Prosecution Expert Karangwa, T. 13 February 2007, pp. 13, 50 and T. 15 February 2007, pp. 46-48. Prosecution Expert Karangwa asserted that the word Impuzamugambi in the song not only referred to its literal translation (persons with the same objectives), but also referred to the militia wing of the CDR, a Hutu extremist party which advocated Hutu power. 510 Prosecution Expert Karangwa, T. 13 February 2007, p. 12: The lyric “Bene sebahinzi, Murimaso -- turimaso” translates into English as “Let us be ready, let us be vigilant”, which is also the CDR motto. 511 Prosecution Expert Karangwa, T. 13 February 2007, 45-46, 49 and T. 15 February 2007, p. 22 512 Prosecution Expert Mbonimana, T. 16 February 2007, p. 26. 513 Prosecution Expert Mbonimana, T. 16 February 2007, p. 26. Judgement 2 December 2008 56

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According to him, the message of Bene Sebahinzi incited killings within the context of the events of 1993-1994 in Rwanda.^{514 237} The Prosecution adduced documentary evidence of transcripts of RTLM broadcasts commenting on Bene Sebahinzi. In late 1993, RTLM broadcast an interview discussing the situation in Burundi and the advances of the RPF, concluding that Rwanda would be divided into two, creating a “Tutsi land”. During the broadcast, listeners were asked to be vigilant and Bene Sebahinzi was mentioned as putting Rwandans on notice to be vigilant.⁵¹⁵ On 2 March 1994, Valérie Bemeriki invited people to listen the “chansons des Hutus” while warning people of the risk of Tutsi seizing power and of Hutu again being victims of the whip and forced labour. She ended her speech by saying: Nous remercions Monsieur Simon Bikindi pour cette chanson très instructive et nous lui demandons de poursuivre son travail de composition des chansons de ce genre qui éduquent le peuple majoritaire, en vue de lui permettre de prendre des mesures susceptibles de prévenir ce genre de situation.^{516 238} On 14 April 1994, the journalist

Kantano Habimana used the language of Bikindi's song, stating on RTLM, "You, sons of Sebahinzi [...], unite and stand alert so that no enemy can intrude upon you. [...] You sons of Sebahinzi, unite and be vigilant."⁵¹⁷ 239. A month into the genocide, the interpretations were becoming more inflammatory. On 17 May 1994, the RTLM journalist Kantano Habimana stated that Bene Sebahinzi predicted the future, telling its audience that once the sons of farmers unite and realise their common enemies are the RPF and the cockroaches (Inyenzi), there will be no more Inkotanyi in Rwanda, as they will have been exterminated: Now, let us allow BIKINDI to predict the future of the Inkotanyi and to tell them the fate awaiting them once the sons of SEBAHINZI unite and fight them. It is obvious that once the Bene SEBAHINZI [...] will have stopped quarrelling among themselves, when they will have realised that their common enemy is called the Inkotanyi, the Inyenzi-Inkotanyi, together with their accomplices and armies, then there will be no more Inkotanyi in this country. When you see the way they are dying, you could think that they resurrect! They think that they resurrect, but they are mistaken. They are vanishing, gradually, as the bombs land on them, as they continue to be killed like rats. [...] They will find themselves surrounded by only SEBAHINZI's sons, angry and ready to settle scores. [...] BIKINDI will in a short while tell you what will happen in future by saying: "The day there will be reconciliation among SEBAHINZI's children, when they will no longer listen to your orders designed to confuse them, then you, the Inkotanyi, shall disappear". But it seems pointless advising those Inkotanyi. We better let them lead themselves into extermination. [P]lease listen to BIKINDI's advice to the Inkotanyi. He is warning them that they will all be wiped out, come what may, because all the sons of SEBAHINZI are closely watching whatever has to do with the Inkotanyi, fighting them and hunting them down. That is what is happening now, and the Inkotanyi are on the verge of extinction.⁵¹⁸

514 Prosecution Expert Karangwa, T. 13 February 2007, pp. 14, 53. 515 Exhibit P28, Transcript of RTLM Broadcast of 24 November 1993, p. 4. 516 Exhibit P8(F), Transcript of RTLM Broadcast of 2 March 1994, p. 15. 517 Exhibit P10, Transcript of RTLM Broadcast of 14 April 1994, pp. K011153, K011155. See also Exhibit P6, Transcript of RTLM Broadcast of 16 April 1994, pp. 8-9, where Bene Sebahinzi punctuates "restez fermes dans la lutte". 518 Exhibit P3, Transcript of RTLM Broadcast of 17 May 1994, pp. 19-20, 22. Judgement 2 December 2008 57

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240. On 3 June 1994, RTLM broadcast Bene Sebahinzi with a comment saying that the song called all sons of Sebahinzi so that, together, they defeat the Inyenzi Inkotanyi: ... à cause des complices qu'il y avait, c'était impossible de faire passer la très belle chanson qui appelait tous les enfants de SEBAHINZI (enfants des hutus) pour qu'ils puissent vaincre les Inyenzi Inkotanyi.⁵¹⁹ 241. Witness BGH testified that on one undated occasion, one or two verses of Bene Sebahinzi were played, then stopped and an announcer stated, "You, the descendants of Sebahinzi, you are the ones being talked to; be vigilant; get rid of the enemy; continue to work".⁵²⁰ 242. Witnesses testified that Bene Sebahinzi referred to the Hutu, who were

traditionally farmers,⁵²¹ and that the word “Kalinga” refers to the Kalinga drum, which was adorned with the genitals of the descendants of Sebahinzi.⁵²² Witness BGH stated that the word “Kalinga” is a very loaded word in terms of the history of Rwanda, having great significance, as it is emblematic of the monarchy.⁵²³ Many witnesses testified that by invoking this history, the song warned that the monarchy might be reintroduced.⁵²⁴ Witness BGH stated that Rwandans hearing this message would understand that that drum was going to come back to Rwanda. It was some kind of warning.⁵²⁵ 243. Witnesses BHH and BHJ testified that the reference to democratic elections in the songs related to the right of the Hutu majority to choose their leaders.⁵²⁶ 244. The Defence Expert stated that Bene Sebahinzi referred to all Rwandan farmers, irrespective of ethnicity, and interpreted the song to be calling on people to stop the conflict. He interpreted this Umuzimu spirit tearing up Rwandan society to represent the bad behaviour of all Rwandans under critical conditions, and suggested that the song was asking them to behave better.⁵²⁷ He interpreted “the enemy” to be the RPF⁵²⁸ and the solution to Rwanda’s problems to be democracy.⁵²⁹ In his view, the reference to the drum with attached genital organs in Bene Sebahinzi was an innocent celebration of the end of the feudal monarchy.⁵³⁰ He interpreted Bene Sebahinzi to be dedicated to all farming Rwandans,⁵³¹ and concluded that there was no intention in the song to incite the hatred of Tutsi.⁵³²

519 Exhibit P9(F), Transcript of RTLM Broadcast of 3 June 1994, p. K0143785. 520 Witness BGH, T. 3 October 2006, p. 28. 521 Witness AKJ, T. 20 September 2006, p. 49; Witness AEY, T. 12 October 2006, p. 29; Witness AJZ, T. 25 September 2006, pp. 46-47; Witness BKW, T. 17 October 2006 p. 27; Witness BGH, T. 2 October 2006,

p. 33; Witness BHH, T. 20 February 2007, p. 14; Witness BHJ, T. 10 October 2006, p. 12 and T. 11 October 2006, pp. 42-43; Witness ALP, T. 18 September 2006, pp. 34-35. 522 Witness AEY, T. 12 October 2006, p. 30; Witness BGH, T. 4 October 2006, p. 6; Witness BHJ, T. 10 October 2006, p. 16. 523 Witness BGH, T. 4 October 2006, p. 6. 524 Witness BKW, T. 18 October 2006, pp. 10-11; Witness BGH, T. 2 October 2006, p. 34; Witness BHJ, T. 10 October 2006, p. 16; Witness ALP, T. 18 September 2006, p. 35. 525 Witness BGH, T. 2 October 2006, p. 34. 526 Witness BHH, T. 20 February 2007, pp. 31-32; Witness BHJ, T. 11 October 2006, pp. 21-22. 527 Defence Expert Shimamungu, T. 24 October 2007, pp. 21, 22, 25; Exhibit D117(F), Defence Expert Report, pp. 32-33. 528 Defence Expert Shimamungu, T. 25 October 2007, pp. 18-19; Exhibit D117(F), Defence Expert Report, pp. 65-67. See also Bikindi, T. 2 November 2007, pp. 3, 5. 529 Defence Expert Shimamungu, T. 24 October 2007, p. 25. 530 Defence Expert Shimamungu, T. 24 October 2007, p. 29. 531 Defence Expert Shimamungu, T. 24 October 2007, p. 21. 532 Defence Expert Shimamungu, T. 24 October 2007, p. 31. Judgement 2 December 2008 58

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245. Bikindi stated that Bene Sebahinzi referred to all Rwandan farmers, as 95% of all Rwandans are farmers. He asserted that his intention was to speak to all three ethnic groups in Rwanda, stating the only unity he called for was of the three groups.⁵³³ When questioned about the comments made on RTLM by a journalist who stated that Bene Sebahinzi meant that the Hutu should stop tearing themselves apart, Bikindi insisted he was referring to all three ethnic groups.⁵³⁴ Regarding the references to the 1959 Revolution, Bikindi stated that it was not just the Hutu who benefited, but all three ethnic groups, as all three were subjected to atrocities.⁵³⁵ 246. Apolline Uwimana testified that this song had the same message as Nanga Abahutu, that of urging the population to work towards peace and understanding.⁵³⁶ Angeline Mukabanana stated that Bene Sebahinzi referred to the masses killing one another, and offered a remedy of love and understanding between the Hutu, Tutsi and Twa as the same people. After quoting the Bible: “A prophet is not accepted in his own country”, Witness Mukabanana stated that if the Rwandans had understood the message, the killings would not have been committed in 1994.⁵³⁷ Antoine Nyetera testified that Bene Sebahinzi was a song calling on the people to unite, not to be divided and not to tear each other apart.⁵³⁸ 7.1.3 Conclusion 247. The Chamber is of the view that one cannot properly interpret Bikindi’s songs without considering the cultural, historical and political context in which they were composed and disseminated. In its assessment, the Chamber has therefore taken into consideration the Rwandan poetic tradition of spoken and unspoken Kinyarwanda asserted by Prosecution Expert Karangwa,⁵³⁹ which further supports its finding that although Bikindi’s songs were filled with metaphors and imagery, their message was clearly understood.⁵⁴⁰ The fact that Rwanda has suffered from ethnic division throughout the second half of the twentieth century is not controversial. The worsening of the conflict with the RPF at the beginning of the 1990’s marked an upsurge of political and ethnic tensions in the country.⁵⁴¹ At that time in Rwanda, Tutsi were considered by many as accomplices of the so-called Inkotanyi.⁵⁴² The Chamber notes that Nanga Abahutu and Bene Sebahinzi were composed, and Twasezereye, Nanga Abahutu and Bene Sebahinzi were recorded and disseminated in this context of rising ethnic tension. 248. Although the historical references in the songs were accurate, the Chamber notes the context in which Bikindi referred to them.⁵⁴³ Reminding people what happened during the monarchy, referring to events before 1959 against a backdrop of highly politicised

⁵³³ Bikindi, T. 2 November 2007, p. 41; Exhibit P52(F), Analysis and translation of “Intabaza” by Simon Bikindi. ⁵³⁴ Bikindi, T. 5 November 2007, p. 3. ⁵³⁵ Bikindi, T. 5 November 2007, p. 8. ⁵³⁶ Apolline Uwimana, T. 8 October 2007, p. 14. ⁵³⁷ Angeline Mukabanana, T. 2 October 2007, pp. 22-23. ⁵³⁸ Antoine Nyetera, T. 5 October 2007, p. 9. ⁵³⁹ Prosecution Expert Karangwa, T. 13 February 2007, pp. 11, 37. ⁵⁴⁰ See supra paras. 197-199. ⁵⁴¹ See, for instance, Witness BHH, T. 20 February 2007, p. 38; Witness DUC, T. 28 September 2007, p. 7; Witness AJZ, T. 25 September 2006, pp. 45-46. ⁵⁴² See Exhibit P3, Transcript of RTLM broadcast of 17 May 1994, p. 19; Exhibit P5, Transcript of RTLM Broadcast of 29 October 1993, p. 10; Exhibit P10, Transcript of RTLM Broadcast of 14 April 1994, p. 1; Exhibit P16, Transcript of RTLM Broadcast of 21 March 1994, p. 5; Witness DUC, T. 28 September 2007, p. 7; Witness AJZ, T. 25 September 2006, pp. 45-46; Witness

AQH, T. 3 October 2007, p. 30. 543 Prosecution Expert Karangwa, T. 14 February 2007, p. 34. Judgement 2 December 2008 59

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propaganda and inter-ethnic relationships already fragile and precarious due to those historical realities,⁵⁴⁴ is not neutral in the Chamber's opinion. 249. While the Chamber considers it possible that two qualified experts could analyse the same text and arrive at different interpretations, given the context of historical ethnic differentiation and subjugation, and surrounding ethnic tension preceding the terrible events of 1994, the Chamber accepts the interpretation of Bikindi's songs offered by the experts called by the Prosecution that Bikindi's songs referred to relations between Hutu and Tutsi, painting Tutsi in a negative light and that Nanga Abahutu and Bene Sebahinzi in particular advocated Hutu unity against a common foe and incited ethnic hatred.⁵⁴⁵ 250. The Chamber notes that this interpretation is supported by how Bikindi's songs were interpreted by journalists on RTLM. If the songs were as innocent as portrayed by the Defence, they could not have been used in the manner they were. The Chamber heard no evidence of RTLM journalists commenting on Bikindi's other songs, such as wedding songs, because they did not fit into RTLM's agenda at the time. This interpretation is further confirmed by numerous witnesses called by the Prosecution, who all testified that their understanding of the songs was anti-Tutsi and pro-Hutu. 251. The Chamber finds that the Defence evidence does not raise a reasonable doubt about this interpretation, in that the few witnesses who testified on the meaning of the songs stated they were about peace and democracy. The Chamber is of the view that these words must be understood and interpreted in the context of the time. The Chamber heard convincing evidence that when peace was referred to in the 1990-1994 period, it meant fighting off the RPF invasion in order to return to peace. Similarly, when democracy was referred to in the same period, it meant rejecting the power sharing arrangement proposed by the Arusha Accords, which would have given the Tutsi more power than their percentage of the population would arguably merit. Broadcasts on RTLM in early 1994 stated ominously that "We shall at all cost obtain the democracy we are hoping for".⁵⁴⁶ RTLM, which, as the Chamber found, was a vehicle for anti-Tutsi propaganda,⁵⁴⁷ asked for peace and democracy in the same breath as asking its listeners to hunt and kill Inkotanyi and Inyenzi. Thus the Chamber finds that in the years leading up to the genocide, these words were loaded with meaning, fitting within a pro-Hutu ideology of Rwanda for Hutu by advocating elections in an ethnically divided country where the vast majority of the population was of one ethnicity. 252. Also, the Chamber does not believe Bikindi's assertion that the songs preached harmony. Twasezereye essentially documented a past of monarchical and colonial domination along ethnic lines, Nanga Abahutu discussed various types of people to be hated, and Bene Sebahinzi warned of the dangers of a cunning, external infiltrator. 253. Moreover, the Chamber notes how the songs inspired action. Witness BHI testified that he and other Interahamwe interpreted Bikindi's songs as a warning that the Tutsi were going to return and subjugate the Hutu once again, and thus encouraged him and other Interahamwe to kill during the genocide.⁵⁴⁸ Witness BGH testified

that she heard inhabitants of Gikongoro singing Bene Sebahinzi while they bore machetes and held their radio handsets. Members of the population knew the song by heart, and when they perpetrated those crimes, they would sing the songs, and say that they were furious and wanted to avenge the deaths of

544 See Witness BHH, T. 20 February 2007, pp. 22, 30. 545 See also Exhibit P72, Excerpts from Rwanda, *Les médias du génocide*, Jean-Pierre Chrétien (dir.), p. 344. 546 Exhibit P47, Transcript of RTLM Broadcast of 16 January 1994, p. 5 (emphasis added). 547 See *supra* para. 115. 548 Witness BHI, T. 13 October 2006, pp. 4, 29. Judgement 2 December 2008 60

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their relatives.⁵⁴⁹ Similarly, Witness AJY testified that once the message was understood and fully grasped, Rwandans arose, knowing they had been attacked by the enemy for whom they used to carry on the palanquin and for whom they had worked in the past without remuneration, woke up and looked for accomplices and Tutsi, in order to kill them.⁵⁵⁰ Witness BHH testified that he could sense the feeling of hatred inspired in the population as a result of this song.⁵⁵¹ Many witnesses testified that Bene Sebahinzi specifically called on Hutu to unite to fight the Tutsi, that it had “rallying power”, and incited people to kill and exterminate.⁵⁵² Witness AEY confirmed that what he learned from those songs amounted to nothing other than involvement in the killings or incitement to kill.⁵⁵³ Witness JCH testified that the three songs alleged served to boost the morale of the troops.⁵⁵⁴ Despite reservations on his credibility,⁵⁵⁵ the Chamber believes Witness BHI that he and the Interahamwe drank and listened to those songs, boosting their morale and they would then search for and kill Tutsi.⁵⁵⁶ Although the Defence Expert categorically stated that none of the three songs could incite hatred, he admitted that that the songs were distorted and the message badly interpreted.⁵⁵⁷ 254. In conclusion, after having considered all of the evidence, the Chamber finds beyond reasonable doubt that the Prosecution has proven that Twasezereye, Nanga Abahutu and Bene Sebahinzi manipulated the history of Rwanda to extol Hutu solidarity. It further finds that Nanga Abahutu and Bene Sebahinzi characterised Tutsi as Hutu enslavers, enemies or enemy accomplices, blamed the enemy for the problems in Rwanda, encouraged Hutu solidarity against a common foe, the Tutsi, and finally supported the spirit of the Bahutu Ten Commandments published in Kangura. Although the evidence does not establish Bikindi’s intention in composing Twasezereye in 1987 for the purpose of celebrating the Silver Jubilee of Rwandan Independence, the only reasonable inference in the Chamber’s opinion is that Bikindi composed Nanga Abahutu and Bene Sebahinzi with the specific intention to disseminate pro-Hutu ideology and anti-Tutsi propaganda, and thus to encourage ethnic hatred. 255. As will be discussed in more detail in the following section, the evidence also shows that Twasezereye, Nanga Abahutu and Bene Sebahinzi were deployed in a propaganda campaign in 1994 in Rwanda to incite people to attack and kill Tutsi. However, the Chamber does not find that there is sufficient evidence to conclude beyond reasonable doubt that Bikindi composed these songs with the specific intention to incite such attacks and killings, even if they

were used to that effect in 1994. In the same vein, the Chamber does not find that Twasezereye, a song composed before the Arusha Accords and selected for the twenty-fifth anniversary of Rwandan independence in 1987, was in itself a public call for Hutu solidarity in opposition to the Arusha Accords, even though it was later used as such.

549 Witness BGH, T. 2 October 2006, p. 37. 550 Witness AJY, T. 27 September 2006, p. 29. 551 Witness BHH, T. 20 February 2007, p. 30. 552 Witness AEY, T. 12 October 2006, p. 30; Witness BKW, T. 18 October 2006, pp. 10-11; Witness BGH, T. 2 October 2006, pp. 32-33; Witness BHJ, T. 10 October 2006, p. 12; Witness BHH, T. 20 February 2007,

p. 15. 553 Witness AEY, T. 12 October 2006, p. 9. 554 Witness JCH, T. 9 October 2007, p. 45. 555 See supra para. 79 and infra paras. 354-355, 359. 556 Witness BHI, T. 13 October 2006, p. 4. 557 Defence Expert Shimamungu, T. 25 October 2007, p. 8. Judgement 2 December 2008 61

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7.2. Deployment of the Songs 256. The Prosecution alleges generally that Bikindi's musical compositions were deployed in a propaganda campaign to target the Tutsi as the enemy and to sensitise and incite the listening public to target and commit acts of violence against the Tutsi.⁵⁵⁸ As evidence of this deployment, the Prosecution points to radio broadcasts, specifically alleging that Radio Rwanda and RTLM repeatedly broadcast Twasezereye in 1992 and 1993 and that RTLM repeatedly broadcast other compositions from Bikindi, notably Twasezereye, Nanga Abahutu and Bene Sebahinzi.⁵⁵⁹ The Prosecution alleges that between April and July 1994 in particular, RTLM broadcast Bikindi's compositions repeatedly throughout the day, and that Nanga Abahutu and Bene Sebahinzi received intense airplay.⁵⁶⁰ 257. Based primarily on consistent evidence from many factual witnesses, the Chamber finds that Bikindi's compositions, in particular Twasezereye, Nanga Abahutu and Bene Sebahinzi, were played repeatedly on RTLM and Radio Rwanda in 1992, 1993 and the first half of 1994.⁵⁶¹ The Chamber also finds that Nanga Abahutu and Bene Sebahinzi were played even more frequently during the genocide.⁵⁶² 258. Regarding the impact of the songs played on the radio, Prosecution Expert Karangwa testified that songs are more effective in a culture with an oral tradition.⁵⁶³ When expanded to radio broadcasts, he considered a song a "highly efficient tool" of propaganda, in part due to the fact that radio plays an important role in Rwanda's oral tradition.⁵⁶⁴ The Defence Expert testified that a radio broadcast throughout the entire territory would have a far more considerable impact than a public performance.⁵⁶⁵ Witness BHH testified that the African population, and the Rwandan population in particular, has the tendency to respect what is broadcast on government radio stations which stand as official sources. He added that people

⁵⁵⁸ Indictment, paras. 31, 40 and 41. ⁵⁵⁹ Indictment, paras. 40 and 41. ⁵⁶⁰ Indictment, para. 14.

⁵⁶¹ Apolline Uwimana, T. 8 October 2007, p. 40; Witness CQR, T. 10 October 2007, p. 9; Witness BKW, T. 18 October 2006, p. 9; Witness AJZ, T. 27 September 2006, p. 5; Witness BGH, T. 2 October 2006, pp. 32, 36 and T. 4 October 2006, p. 15; Witness BHH, T. 20 February 2007, pp. 10, 15, 36;

Witness BHJ, T. 11 October 2006, pp. 20, 26; Witness ALP, T. 19 September 2006, pp. 21, 23; Witness JCH, T. 9 October 2007, p. 46 (French); Bikindi, T. 31 October 2007, p. 61. See also, e.g., Exhibit P23(F), Transcript of RTLM Broadcast of 28 December 1993, p. 10; Exhibit P12(F), Transcript of RTLM Broadcast of 25 October 1993,

- p. 6; Exhibit P8(F), Transcript of RTLM Broadcast of 3 March 1994, pp. 15, 38; Exhibit P18(F), Transcript of RTLM Broadcast of 23 March 1994, pp. K0375482, K0375501-K0375502; Exhibit P14(F), Transcript of RTLM Broadcast of 14 April 1994, p. 19; Exhibit P6(F), Transcript of RTLM Broadcast of 16 April 1994, pp. 9, 14, 37; Exhibit P20(F), Transcript of RTLM Broadcast of 15 May 1994, pp. 7, 17; Exhibit P19(F), Transcript of RTLM Broadcast of 18 May 1994, p. 26; Exhibit P13(F), Transcript of RTLM Broadcast of 14 June 1994, p. K0146602; Exhibit P14(F), Transcript of RTLM Broadcast of 14 April 1994, p. 19; Exhibit P13(F), Transcript of RTLM Broadcast of 14 June 1994, p. 5. The transcripts of RTLM Broadcasts admitted into evidence also show that listeners were used to requesting Bikindi's songs: see, e.g., Exhibit P18(F), Transcript of RTLM Broadcast of 23 March 1994, pp. K0375502; Exhibit P12(F), Transcript of RTLM Broadcast of 25 October 1993, pp. 6, 16. 562 Witness BGH, T. 2 October 2006, p. 36 and T. 4 October 2006, p. 15; Witness BHH, T. 20 February 2007,
- p. 10; Witness BHJ, T. 10 October 2006, p. 26. In relation to Radio Rwanda, see also Exhibit P9(F), Transcript of RTLM Broadcast of 3 June 1994, p. K0143785 ("c'était impossible de faire passer la très belle chanson qui appelait tous les enfants de Sebahinzi (enfants des Hutus) pour qu'ils puissent vaincre les Inyenzi Inkotanyi. Ces jours si vous entendez que la radio rivale [Radio Rwanda], elle n'est plus rivale. Depuis qu'elle est devenue radio frère, elle fait passer cette chanson, elle n'est plus l'exclusivité de la RTLM"). See also Exhibit P72, Excerpts from Rwanda, Les médias du génocide, Jean-Pierre Chrétien (dir.), p. 344. 563 Prosecution Expert Karangwa, T. 14 February 2007, p. 8. 564 Prosecution Expert Karangwa, T. 14 February 2007, pp. 3, 8. 565 Defence Expert Shimamungu, T. 25 October 2007, p. 26. Judgement 2 December 2008 62

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tend to think that what is broadcast on the national radio station has a legal force or some kind of authority.⁵⁶⁶ 259. The Prosecution further alleges that RTLM's anti-Tutsi broadcasts were often punctuated by Bikindi's musical compositions.⁵⁶⁷ 260. The Prosecution adduced many transcripts of RTLM broadcasts, including broadcasts in which journalists and other speakers interpreted the message of Bikindi's songs,⁵⁶⁸ complimented Bikindi,⁵⁶⁹ repeated his lyrics "Mbwirabumva" and "Bene Sebahinzi" to reinforce their messages,⁵⁷⁰ and stated that if listeners had heeded Bikindi's message long ago, problems such as the historical ethnic difficulties in Burundi would never have arisen.⁵⁷¹ The Chamber considered the content of these broadcasts in greater detail in the preceding section on the meaning of each song. 261. Some witnesses provided general information about these broadcasted commentaries, not specific to one of the three alleged songs. For example, Witness BGH testified that they included instructions to kill the

Tutsi, and asserted there was a link between the journalists' commentary and Bikindi's songs in that the message was the same.⁵⁷² She stated that the journalists used Bikindi's songs to support their message.⁵⁷³ Witness BHH testified that journalists on RTLM started to provide interpretations of Bikindi's songs in 1993 and more frequently in 1994.⁵⁷⁴ He added that the comments of the journalists ensured the message was properly understood by members of the population, and requested that recommendations were followed.⁵⁷⁵ Witness ALP testified that Radio Rwanda and RTLM broadcast Bikindi's songs in order to boost the morale of Hutu.⁵⁷⁶ Bikindi asserted that he did not hear any commentaries inciting hatred against Tutsi accompanying his songs on the radio from January to April 1994,⁵⁷⁷ but qualified his statement that he did not listen to Radio Rwanda and RTLM much in June or July 1994 as he preferred to listen to the BBC, RFI, the Vatican Radio and a South African station.⁵⁷⁸

⁵⁶⁶ Witness BHH, T. 20 February 2007, p. 13. ⁵⁶⁷ Indictment, paras. 10 and 41. ⁵⁶⁸ For example, see Exhibit P16, Transcript of RTLM Broadcast of 21 March 1994, pp. 17, 18; Exhibit P5, Transcript of RTLM Broadcast of 29 October 1993, pp. 4 and 5, in which journalist Noël Hitimana interpreted the message of Bikindi's Nanga Abahutu; Exhibit P3, Transcript of RTLM Broadcast of 17 May 1994, pp. 19, 20, 22, in which journalist Kantano Habimana interpreted the message of Bikindi's Bene Sebahinzi; Exhibit P19(F), Transcript of RTLM Broadcast of 18 May 1994, pp. 26-27. ⁵⁶⁹ Exhibit P47, Transcript of RTLM Broadcast of 16 January 1994, p. 13; Exhibit P8(F), Transcript of RTLM Broadcast of 3 March 1994, pp. 15, 35. ⁵⁷⁰ Exhibit P8(F), Transcript of RTLM Broadcast of 3 March 1994, p. 35; Exhibit P26(F), Transcript of RTLM Broadcast of 13 April 1994, p. 3; Exhibit P10, Transcript of RTLM Broadcast of 14 April 1994, p. K0111155; Exhibit P11, Transcript of RTLM Broadcast of 15 April 1994, p. K0198354; Exhibit P6(F), Transcript of RTLM Broadcast of 16 April 1994, p. 8; Exhibit P20(F), Transcript of RTLM Broadcast of 15 May 1994,

p. 15; Exhibit P3, Transcript of RTLM Broadcast of 17 May 1994, pp. 19-20; Exhibit P21(F), Transcript of RTLM Broadcast of 18 May 1994, p. 6; Exhibit P22(F), Transcript of RTLM Broadcast of 10 June 1994, p. 33. ⁵⁷¹ Exhibit P5, Transcript of RTLM Broadcast of 29 October 1993, pp. 4, 5. ⁵⁷² Witness BGH, T. 2 October 2006, pp. 36-37. ⁵⁷³ Witness BGH, T. 2 October 2006, p. 37. ⁵⁷⁴ Witness BHH, T. 20 February 2007, p. 41. ⁵⁷⁵ Witness BHH, T. 20 February 2007, pp. 10-11. ⁵⁷⁶ Witness ALP, 18 September 2006, p. 35. ⁵⁷⁷ Bikindi, T. 31 October 2007, pp. 61-63. ⁵⁷⁸ Bikindi, T. 31 October 2007, p. 62. However the Chamber notes that when interviewed by Gaspard Gahigi for the RTLM, Bikindi declared that he was a listener of the RTLM: P2(F), Transcript of RTLM Broadcast of 31 December 1993, p. 3. Judgement 2 December 2008 63

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²⁶². Based on the transcripts of the RTLM broadcasts and the witnesses' testimony discussed above, the Chamber finds that the Prosecution has proven beyond reasonable doubt that anti-Tutsi broadcasts on RTLM were often punctuated by Bikindi's musical compositions. However, there is no evidence of Bikindi providing interpretations of his songs on the radio.

In fact, Prosecution Witness BHH testified that he did not hear Bikindi commenting on his songs on air.⁵⁷⁹ Furthermore, there is no evidence that Bikindi played any role in the broadcasting of his songs. The Chamber indeed recalls that the Prosecution failed to prove that Bikindi had any control or influence over the programming of RTLM or Radio Rwanda. In addition, the Chamber finds that there is no evidence of Bikindi performing or disseminating the alleged songs in 1994 in Rwanda.⁵⁸⁰ 263. In light of the evidence before it, the Chamber finds beyond reasonable doubt that Bikindi's alleged songs were deployed in a propaganda campaign to target the Tutsi as the enemy and to sensitise and incite the listening public to target and commit acts of violence against the Tutsi. However, there is no evidence that Bikindi played a role in the dissemination or deployment of his three songs in 1994. 7.3. Conclusion 264. The Chamber finds that Twasezereye, Nanga Abahutu and Bene Sebahinzi manipulated the history of Rwanda to extol Hutu solidarity and that Nanga Abahutu and Bene Sebahinzi were composed to disseminate anti-Tutsi propaganda and encourage ethnic hatred. In the context of rising ethnic tension in Rwanda during the early 1990s leading to the genocide, Twasezereye was later used as a vehicle for anti-Tutsi propaganda. In light of the inflammatory content of RTLM journalists' commentary accompanying the repeated broadcasting of Bikindi's songs and the testimonial evidence, the Chamber finds that Bikindi's songs were used by RTLM in a propaganda campaign to promote contempt for and hatred of the Tutsi population and incite the listening public to target and commit acts of violence against Tutsi. The Chamber concludes that in 1994 in Rwanda, Bikindi's three songs were indisputably used to fan the flames of ethnic hatred, resentment and fear of the Tutsi. Given Rwanda's oral tradition and the popularity of RTLM at the time, the Chamber finds that these broadcasts of Bikindi's songs had an amplifying effect on the genocide. Bikindi's criminal responsibility for the composition, recording and dissemination of these songs will be discussed in the Chapter on Legal Findings.

8. USE OF PUBLIC ADDRESS SYSTEM ON VEHICLE 265. The Prosecution alleges that in 1993 and in February, March and late June 1994, Bikindi used a vehicle outfitted with a public address system to broadcast his musical compositions, notably within Gisenyi town, Rwerere commune and Gisenyi préfecture.⁵⁸¹ 266. Further, the Prosecution alleges that in late June 1994 in Gisenyi préfecture Bikindi operated a vehicle outfitted with a public address system, leading a caravan of Interahamwe on the main road between Kivumu and Kayove communes, announcing "The majority population, it's you, the Hutu I am talking to. You know the minority population is the Tutsi. Exterminate quickly the remaining ones."⁵⁸²

⁵⁷⁹ Witness BHH, T. 20 February 2007, p. 16. ⁵⁸⁰ See supra paras. 84, 122 156, 183 and infra para. 281. ⁵⁸¹ Indictment, paras. 32 and 39. ⁵⁸² Indictment, para. 39. See also *ibid.*, para. 30(h).
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8.1. Road between Kivumu and Kayove, June 1994 267. Two Prosecution witnesses, AKK and AKJ, testified about the allegation that Bikindi played music and made statements from a vehicle outfitted with a public address system on the road between Kivumu and Kayove in June 1994. Witness AKK was a Hutu and former student who was unemployed and living with his parents in Kivumu during the genocide.⁵⁸³ Witness AKJ was a Hutu farmer who traded groundnuts during the genocide.⁵⁸⁴ The Chamber recalls that it accepted their evidence regarding Bikindi's presence and statements at a rally in Kivumu in 1993.

268. Witness AKK testified that he saw Bikindi in June 1994, in a vehicle, as part of a convoy heading towards Kayove. Witness AKK lived close to the road and saw buses full of Interahamwe, blowing whistles and making lots of noise with clubs and firearms. Bikindi was in a vehicle outfitted with a loudspeaker, over which songs were being broadcast with intermittent statements by Bikindi. Witness AKK stated that Bikindi was not singing that day, as cassettes of his songs were being used. Witness AKK heard Bikindi say "You sons of Sebahinzi, who are the majority, I am speaking to you, you know that the Tutsi are minority. Rise up and look everywhere possible and do not spare anybody." Witness AKK interpreted this to mean that although some Tutsi had already been killed, others were hiding and Bikindi was calling on people to do all that was necessary to eliminate the Tutsi. The witness also testified that on the way back from Kayove, Bikindi stopped at a roadblock and met with leaders of the local Interahamwe where he insisted, "you see, when you hide a snake in your house, you can expect to face the consequences." After Bikindi left the roadblock, members of the surrounding population and the Interahamwe intensified their search for Tutsi, using the assistance of dogs and going into homes to flush out those still hiding. Witness AKK stated that a number of people were subsequently killed, including Father Gatore and Kalisa.⁵⁸⁵ 269. Witness AKJ testified that he saw Bikindi towards the end of June 1994 around 1:30 p.m. or 2 p.m. in a convoy of vehicles returning from a rally in Kayove. Witness AKJ testified that Bikindi was in the front passenger seat of a vehicle outfitted with loudspeakers. Witness AKJ explained that there were three others in the car with him, Apollinaire, a serving soldier, who was driving, and two others in the back seat, Boniface, a demobilised soldier, and another person whom Witness AKJ did not know. Bikindi's car, he said, was at the front of a convoy, consisting of two ONATRACOM buses, carrying people in MRND uniforms and Interahamwe. He recognised Bikindi in an MRND uniform. Witness AKJ heard Bikindi ask over a loudspeaker "Have you killed the Tutsis here?" and whether they had killed the "snakes." He also heard Bikindi's songs being played as the vehicles moved on. Witness AKJ testified that at that time he was standing three metres from the road, and that Bikindi was in the passenger side, nearest to Witness AKJ on the road. He added that he could see the passengers clearly as the vehicle was moving so slowly that there was no dust.⁵⁸⁶

⁵⁸³ Exhibit P40, Witness AKK's Personal Information Sheet (under seal); Exhibit D5, Witness AKK's written statement dated 5 and 8 May 2001 (under seal), pp. 1, 3, 4. ⁵⁸⁴ Witness AKJ, T. 21 September 2006, p. 4; Exhibit P39, Witness AKJ's Personal Information Sheet (under seal). ⁵⁸⁵ Witness AKK, T. 22 September 2006, pp. 4-6, 8-9. ⁵⁸⁶ Witness AKJ, T. 20 September 2006, pp. 50,

51; T. 21 September 2006, pp. 16, 17, 25, 26. The Chamber notes that there was some confusion in translation between the English transcript of “megaphone” at T. 20 September 2006, p. 51, and “haut-parleurs” in the French transcript at T. 20 September 2006, p. 60 (French). Judgement 2 December 2008 65

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270. The Defence challenged Witness AKK’s credibility by pointing out alleged discrepancies between his prior statement to Tribunal investigators and his testimony. First, the Defence referred to Witness AKK’s prior statement that he used to accompany Bikindi’s cousin, Colette, and other students to see Bikindi perform at the Umuganda Stadium in 1992.⁵⁸⁷ The Chamber observes that there is no contradiction between the witness’s prior statement and his testimony in this respect; Witness AKK was consistent about seeing Bikindi for the first time at Umuganda Stadium in 1992.⁵⁸⁸ The fact that he did not specifically mention accompanying Colette to the Stadium in court does not undermine his testimony. 271. Secondly, the Defence pointed out that Witness AKK did not mention that Tutsi were being referred to as snakes in his prior statement.⁵⁸⁹ In this respect, the Chamber notes that the witness had mentioned that he saw Bikindi on his way back from Kayove in his prior statement.⁵⁹⁰ In the Chamber’s opinion, the fact that he did not specifically mention Bikindi’s statement at the roadblock in 2001 does not call into question his credibility insofar as it constitutes additional details to the witness’s main allegation, namely that Bikindi incited people to kill on his way to Kayove. 272. Thirdly, while Witness AKK’s prior statement put his sighting of Bikindi on the Kivumu-Kayove road in early June 1994 and the killing of Father Gatore at the end of June 1994,⁵⁹¹ he testified that Father Gatore was killed the day after he saw Bikindi on the Kivumu-Kayove road in June 1994.⁵⁹² Reading the witness’s prior statement as a whole, the Chamber considers that the reference to “early June 1994” may have been a translation mistake from Kinyarwanda to English during the interview since the witness recounted having heard of Father Gatore’s death “after [the Kivumu-Kayove road] incident” in a way which clearly implied that Father Gatore’s death occurred consequently. Read as such, Witness AKK’s statement is consistent with Witness AKJ’s testimony which places Bikindi’s anti-Tutsi utterances towards the end of June 1994. The Chamber observes that the witness remained consistent as to the chronology of both incidents throughout his testimony. The Chamber further finds that the doubt raised by the Defence as to when Father Gatore was actually killed does not discredit Witness AKK’s first-hand and articulate evidence on Bikindi’s exhortation to kill Tutsi on his way to Kayove.⁵⁹³ 273. Lastly, the Defence challenged Witness AKK in that although he testified about the death of Kalisa, a Tutsi who was killed at the same time as Father Gatore, this victim was not mentioned in Witness AKK’s prior statement.⁵⁹⁴ When asked about this omission, the witness explained that there would not have been enough time to provide a list of all the victims who had been killed, and proceeded to name more victims.⁵⁹⁵ The Chamber finds this explanation convincing.

274. As regards Witness AKJ, the Chamber notes a slight confusion as to the date the incident occurred, which the Chamber attributes to the manner and style of questioning by

587 Witness AKK, T. 22 September 2006, pp. 8-9 (French). 588 Witness AKK, T. 22 September 2006, pp. 8-9 (French); Exhibit D5, Witness AKK's written statement dated 5 and 8 May 2001 (under seal), p. 3. 589 Witness AKK, T. 22 September 2006, p. 9 (French). 590 Exhibit D5, Witness AKK's written statement dated 5 and 8 May 2001 (under seal), p. 4. 591 Exhibit D5, Witness AKK's written statement dated 5 and 8 May 2001 (under seal), pp. 3-4. 592 Witness AKK, T. 22 September 2006, pp. 8-9. 593 See *infra* para. 334. 594 Witness AKK, T. 22 September 2006, p. 9. 595 Witness AKK, T. 22 September 2006, p. 9. Judgement 2 December 2008 66

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Defence Counsel.⁵⁹⁶ Accordingly the Chamber does not consider this confusion to have harmed Witness AKJ's credibility. 275. The Chamber notes that while Witness AKK testified that Bikindi made statements through loudspeakers on the drive to Kayove, Witness AKJ testified on events occurring on the drive returning from Kayove. Given that the witnesses testified about different moments of the drive, they heard different comments. Witness AKK heard Bikindi say "you sons of Sebahinzi, who are the majority, I am speaking to you, you know that the Tutsi are minority. Rise up and look everywhere possible and do not spare anybody."⁵⁹⁷ Witness AKJ heard Bikindi ask "Have you killed the Tutsis here?" and whether they had killed the "snakes."⁵⁹⁸ 276. Despite the witnesses seeing Bikindi at different times on the journey between Kivumu and Kayove, the Chamber finds that their testimony corroborates each other on key points. Both witnesses put Bikindi in a vehicle with loudspeakers making anti-Tutsi utterances in a convoy of buses filled with Interahamwe on the road between Kivumu and Kayove in June 1994.⁵⁹⁹ Witness AKJ specified that the incident took place at the end of June

1994. Both witnesses were able to recognise Bikindi as they had seen him before.⁶⁰⁰ 277. The Defence Witnesses did not succeed in raising a reasonable doubt regarding the Prosecution evidence. 278. Defence Witnesses DVR, QUTI, KMS and Apolline Uwimana all testified that from when he returned to Rwanda in mid-late June 1994 until he left in exile in mid-July, Bikindi stayed with members of his family at the home of an individual called Marc in Nyundo, Gisenyi.⁶⁰¹ With the exception of Witness KMS who testified that Bikindi spent the entire day at home,⁶⁰² all testified that he spent the majority of time at Marc's house, only leaving occasionally to exercise,⁶⁰³ visit Irindiro ballet members,⁶⁰⁴ or take his injured daughter to the hospital.⁶⁰⁵ Witness DVR added that when he went out he would not go very far and would always return before 5 p.m.⁶⁰⁶ Witness QUTI testified that he would always sleep at Marc's house at night.⁶⁰⁷ Defence Witnesses TIER and CQK also testified that when he returned to Rwanda towards the end of June 1994 Bikindi stayed in Nyundo, Witness TIER specifying that it was at Marc's house.⁶⁰⁸ Witness TIER testified that he only left the house to

596 Witness AKJ, T. 21 September 2006, pp. 17-19. See supra note 278. 597 Witness AKK, T. 22 September 2006, p. 5. 598 Witness AKJ, T. 20 September 2006, p. 50. 599 Witness AKK, T. 22 September 2006, pp. 4-6, 8; Witness AKJ, T. 20 September 2006, pp. 50, 51 and T. 21 September 2006, pp. 16, 17, 25, 26. 600 Witness AKK, T. 22 September 2006, pp. 3-4; Witness AKJ, T. 20 September 2006, pp. 47, 48, 50 and T. 21 September 2006, p. 26. 601 Witness DVR, T. 26 September 2007, p. 69 and T. 27 September 2007, pp. 9, 14; Witness QUTI, T. 27 September 2007, pp. 31-32, 43-44; Apolline Uwimana, T. 8 October 2007, pp. 19-20, 39. See also Witness ALQ, T. 16 October 2006, p. 23. Witness KMS testified that Bikindi stayed at Patricie's house (T. 1. October 2007, p. 23 (French)), who Witness QUTI testified was Marc's wife (T. 27 September 2007,

p. 31). The Chamber notes that Witness QUTI refers to Patricie as Patrice, which the Chamber finds is a transcription mistake. 602 Witness KMS, T. 1 October 2007, p. 25. 603 Witness DVR, T. 27 September 2007, pp. 4-5, 14-15. 604 Witness QUTI, T. 27 September 2007, pp. 32-33; Apolline Uwimana, T. 8 October 2007, pp. 23, 25, 26, 39. See also Witness DZS who testified that Bikindi would visit [them] daily to bring them food (T. 24 September 2007, p. 10 (closed session), p. 12 (extract), and pp. 14-15). 605 Apolline Uwimana, T. 8 October 2007, pp. 23, 39. 606 Witness DVR, T. 27 September 2007, pp. 4-5, 14-15. 607 Witness DVR, T. 27 September 2007, p. 32. 608 Witness TIER, 16 October 2007, pp. 11, 33-34; Witness CQK, T. 10 October 2007, p. 57. Judgement 2 December 2008 67

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visit Irindiro ballet members which he did very often. 609 Witness CQK testified that once in Nyundo, Bikindi no longer moved about due to the prevailing atmosphere of insecurity. 610 Bikindi testified that while he did move around in June and July 1994, he did not have great liberty of movement. 611 279. The Chamber observes that each of these Defence witnesses had a close personal relationship with Bikindi. While these relationships do not invalidate their testimonies, it does suggest that they may have a motive to testify in a manner favourable to the Accused. More concretely, none of them were in a position to be able to account for Bikindi's every move during the time he was allegedly staying at Marc's house. Witness DVR went to work at the maternity health centre in Nyundo every morning and acknowledged that she could not account for Bikindi's activities while at work. 612 His first wife, Apolline Uwimana, testified that Bikindi went out alone, albeit infrequently, 613 and Witness QUTI said that she did not accompany Bikindi at all times when he left the house. Witness KMS was not living at Marc's house and did not see Bikindi on a daily basis; he would only go and visit him in the evenings when he was free. 614 Similarly, Witnesses TIER and CQK did not live in Marc's house with Bikindi. 615 Therefore, none of these witnesses was in a position to confirm authoritatively what Bikindi did when he went out. 280. Witness HZTX testified that he had not personally seen Bikindi in such a vehicle in Gisenyi. 616 This, however, does not mean that the event did not occur. Similarly, although Witness KMS, a member of the Irindiro Ballet, testified that he had not personally seen Bikindi in the Kitenge fabric of the MRND colours outside any performance

venues,⁶¹⁷ the Chamber does not think it likely that Witness KMS was always with Bikindi in June 1994. Angelina Mukabanana testified that Bikindi had only one vehicle, a beige coloured Peugeot 305, which was not fitted with any loudspeakers and was the only vehicle she knew that Bikindi owned.⁶¹⁸ However, the Chamber notes that no evidence was adduced on whether the vehicle Bikindi was seen in was his own.⁶¹⁹ Finally, the Chamber does not believe Bikindi's denial of driving around Gisenyi in such a vehicle with a public address system playing his songs in light of the convincing evidence of Witnesses AKK and AKJ.⁶²⁰ 281. For the reasons above, the Chamber finds that the Prosecution has proven beyond reasonable doubt that towards the end of June 1994, in Gisenyi préfecture, Bikindi travelled on the main road between Kivumu and Kayove in a convoy of Interahamwe and broadcast songs, including his own, using a vehicle outfitted with a public address system. When heading towards Kayove, Bikindi used the public address system to state that the majority population, the Hutu, should rise up to exterminate the minority, the Tutsi. On his way back, Bikindi used the same system to ask if people had been killing Tutsi, who were referred to as

609 Witness TIER, 16 October 2007, pp. 11, 33-35. 610 Witness CQK, T. 10 October 2007, p. 57. 611 Bikindi, T. 5 November 2007, p. 11. 612 Witness DVR, T. 27 September 2007, pp. 18-19. 613 Apolline Uwimana, T. 8 October 2007, pp. 25, 39. 614 Witness KMS, T. 1 October 2007, pp. 24-25. 615 Witness CQK, T. 10 October 2007, p. 57; Witness TIER, 16 October 2007, pp. 11, 34. 616 Witness HZTX, T. 26 September 2007, pp. 3-4. 617 Witness KMS, T. 1 October 2007, pp. 6, 23. 618 Angeline Mukabanana, T. 2 October 2007, p. 24. 619 The Chamber notes that, although the Prosecution alleges in paragraph 30(h) of the Indictment that the vehicle outfitted with a public address system was Bikindi's, it did not allege that the vehicle was his in paragraph 39 of the Indictment containing the charge related to this incident. The Chamber considers that this ambiguity is harmless in the circumstances of the case. 620 Bikindi, T. 31 October 2007, p. 64; T. 5 November 2007, p. 17. Judgement 2 December 2008 68

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snakes. Although Witness AKJ testified that Bikindi's vehicle was at the front of the convoy on the way back from Kayove, the evidence is not conclusive as to whether Bikindi led the convoy of Interahamwe. Likewise, the evidence is inconclusive as to which songs Bikindi broadcast from the vehicle. 8.2. Kigali, 1993 282. Witness BGH testified to attending three political demonstrations in 1993 organised by the MRND which Bikindi also attended. At these demonstrations were vehicles fitted with loudspeakers which drove along beside the demonstrators. She testified that the vehicles were used to broadcast Bikindi's songs, and that people would often sing along.⁶²¹ She added that she saw Bikindi at these demonstrations in Kigali aboard a Suzuki vehicle equipped with loudspeakers which were playing his songs.⁶²² 283. She also stated that when Bikindi would visit her neighbour, he would park his Suzuki vehicle outfitted with loudspeakers, which was playing songs. She stated that she found it so odd that he would drive around through a neighbourhood in a car outfitted with an amplifier playing songs

when there was no rally occurring.⁶²³ 284. The Chamber found Witness BGH a straightforward, clear and consistent witness and finds no reason to doubt her testimony regarding Bikindi's use of a public address system on a vehicle to broadcast his songs in Kigali in 1993.⁶²⁴ The Chamber nevertheless observes that the witness's evidence is inconclusive as to which songs Bikindi broadcast from his vehicle. 8.3. Conclusion 285. Based on the credible and convincing evidence of Witnesses AKK and AKJ, the Chamber finds that the Prosecution has proven beyond reasonable doubt that in late June 1994, in Gisenyi préfecture, Bikindi travelled on the main road between Kivumu and Kayove, in a vehicle outfitted with a public address system as part of a convoy of Interahamwe. The Chamber finds that Bikindi's songs were played through loudspeakers and that Bikindi made exhortations to kill Tutsi. 286. The Chamber also relies on the testimony of Witness BGH to find that the Prosecution has proven beyond reasonable doubt that in 1993, Bikindi used a public address system mounted on a vehicle to broadcast his songs in Kigali. 287. The Chamber finds, however, that the Prosecution failed to prove other instances of Bikindi using a vehicle outfitted with a public address system to broadcast his musical compositions.⁶²⁵

621 Witness BGH, T. 2 October 2006, p. 40; T. 3 October 2006, pp. 2, 3. 622 Witness BGH, T. 4 October 2006, p. 34. 623 Witness BGH, T. 4 October 2006, p. 26. 624 See the section on political gatherings for an extended analysis of credibility for Witness BGH. 625 Witness BUY testified to seeing a four-vehicle convoy on the way to Butare including Bikindi in a private vehicle with a megaphone attached broadcasting Nanga Abahutu and Twasezereye among other songs through loudspeakers (T. 19 February 2007, pp. 14, 15, 42). Given the reservations the Chamber has on Witness BUY's credibility, the Chamber would decline to rely on his testimony without reliable corroboration. The Chamber also notes that while Witness BHJ testified to seeing a vehicle outfitted with a megaphone used to broadcast Bikindi's songs before the genocide, the witness did not mention seeing Bikindi within the convoy, just members of the Irindiro troupe (T. 10 October 2006, p. 11). The Chamber refers to Witness KMS's testimony that, on some occasions, the troupe performed without Bikindi (T. 1 October 2007, p. 18). Judgement 2 December 2008 69

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9. ATTACKS AND KILLINGS 9.1. Killings at the Gisenyi Prison 288. The Prosecution alleges that in June 1994 Bikindi went to Gisenyi Prison with Hassan Ngeze, Major Kabera, Prison Director Gasirabo and more than ten bodyguards. It is alleged that the prison guard Rukara called out the names of 12 prisoners who came out of their cells and that Bikindi then asked Gasirabo why the 12 were still alive while in Kigali all Tutsi had been killed. Ngeze allegedly asked the Tutsi prisoners to raise their hands, and ten of the prisoners who were Tutsi did. It is alleged that Bikindi then read out the names of Tutsi prisoners from a list, starting with Matabaro and Kayibanda who then came forward and were hit on the back of the head with an axe by one of Bikindi's bodyguards and died. It is alleged that Bikindi's bodyguards then killed eight of the other people on the list, all Tutsi, with bayonets.⁶²⁶ 289. In support of its

allegation, the Prosecution relies on Prosecution Witnesses ALP and BUY. Witness ALP was an inmate at Gisenyi Prison at the time of the alleged murders and Witness BUY is a former Interahamwe serving a life sentence for genocide who testified he was working at the prison as a driver's aide at the time of the alleged murders.⁶²⁷ 290. Witness ALP gave evidence that Bikindi came to Gisenyi Prison between 8-18 June 1994 with several people, including Hassan Ngeze, Major Kabera, Prison Director Gasirabo, and a number of soldiers.⁶²⁸ The witness stated that 12 prisoners whose names were on a list were called by Rukara, the prison guard, to come outside the prison. He explained that he was called outside because his name was on the list. He testified that, once the group of 12 were outside the prison, Bikindi took the list from Rukara and asked all the Tutsi in the group to raise their hands. All those on the list, save for himself and Ayirwanda (both of whom survived), raised their hands. The witness testified that Bikindi asked, "How come these Tutsi are still here, whereas Tutsi have been killed everywhere else?" and subsequently began to read out names from the list. According to Witness ALP, Matabaro was the first to be called and when he moved close to Bikindi a soldier hit him on the back of the head with a small axe and he died. Bikindi called Kayibanda's name and the same thing happened to him.⁶²⁹ When Bikindi called a third name, Major Kabera said that they needed to act quickly and go to Ruhengeri and Bikindi agreed. The witness testified that the soldiers then killed the remaining Tutsi with bayonets. He stated that he then helped dump five of the bodies into the septic pit and that the remaining five were put into a Daihatsu pick-up truck to be taken to 630 Ruriba.

291. Witness BUY recalled that Bikindi came to Gisenyi Prison in mid-June 1994 with Interahamwe in a convoy with Major Kabera, préfet Charles Zilimwabagabo, Hassan Ngeze and ten Tutsi prisoners from Ruhengeri Prison.⁶³¹ The Tutsi prisoners were unloaded and kept separate from the other prisoners. The witness testified that Kabera had a list that he gave to Bikindi who passed it on to the Prison Director, Gasirabo, who then called one person forward. That person was hit with a small axe. A second person called forward was also hit with an axe. The witness said Bikindi then addressed the soldiers, "What are you waiting for

⁶²⁶ Indictment, paras. 25 and 47(c). ⁶²⁷ Witness ALP, T. 18 September 2006, p. 41; Witness BUY, T. 19 February 2007, pp. 5-6 (closed session), 20, 33. ⁶²⁸ Witness ALP, T. 18 September 2006, pp. 34, 44, 46; T. 19 September 2006, p. 39. ⁶²⁹ Witness ALP, T. 18 September 2006, pp. 46-48. ⁶³⁰ Witness ALP, T. 18 September 2006, pp. 48-49; T. 20 September 2006, p. 14. ⁶³¹ Witness BUY, T. 19 February 2007, p. 20. Judgement 2 December 2008 70

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to kill these Inyenzi? Normally, they should already have been killed."⁶³² According to the witness the soldiers then shot the Tutsi and finished them off with knives and bayonets. Five or six of the bodies were then dumped in the septic tanks and the remainder were loaded onto a

vehicle and taken to Commune rouge. The witness stated that before the vehicle left, Bikindi asked if there were any other Tutsi in the prison to kill. Gasirabo replied that there were not and Bikindi and the others then left.⁶³³ 292. The Chamber is concerned about several aspects of Witness ALP's testimony. It observes that the witness was particularly defensive when asked why he was in prison in 1994, initially refusing to answer and never confirming that it was for theft.⁶³⁴ Upon the insistence of Defence Lead Counsel, he explained that he was charged with illegally exporting a motorcycle to Zaire.⁶³⁵ When Defence Counsel put to him that he had previously told Tribunal investigators that he fled to Zaire in July 1994, Witness ALP denied ever crossing the border between Rwanda and Zaire.⁶³⁶ However, shortly thereafter, he stated that he was born in Zaire.⁶³⁷ The Chamber is not entirely convinced by his explanation that by saying he had never been to Zaire he meant that he did not flee Rwanda in 1994.⁶³⁸ In addition, the Chamber notes that the witness denied seeing Bikindi at any time other than that day at Gisenyi Prison, including in photos, pictures or video clips.⁶³⁹ However, his will- say statement taken ten days before his court appearance is evidence of the contrary.⁶⁴⁰ 293. The Chamber is also concerned by Witness ALP's apparent desire to incriminate Bikindi. For example, although RTLM was created in 1993 and Bikindi never worked there,⁶⁴¹ Witness ALP testified that Bikindi worked at RTLM in 1991 and was on its Steering Committee.⁶⁴² He insisted that Bikindi's songs were often broadcast on the radio and that they clearly encouraged the elimination of the Tutsi ethnic group, but was evasive when answering questions about when he heard the songs on the radio and was unable to remember any lyrics.⁶⁴³ With respect to his behaviour in court, the witness had to be reminded more than once by the Chamber that it was not up to him to tell the parties what they could or could not ask and was asked to answer the questions without comment.⁶⁴⁴ The Chamber is also

⁶³² Witness BUY, T. 19 February 2007, pp. 20-21. ⁶³³ Witness BUY, T. 19 February 2007, pp. 21-22. ⁶³⁴ Witness ALP, T. 18 September 2006, p. 41 ("I had been convicted of a matter which is now behind me and I do not know whether you want to revisit that issue. I think we are dealing with Bikindi's case here and not my case. [...] I have come to be a witness in the Bikindi case, so please put questions to me about Bikindi's case about which I am a witness. And I think that the ICTR does not have jurisdiction over my case"); T. 19 September 2006, p. 12 ("I would like to explain to you that I was in prison following an offence which I had committed in 1989. [...] I was convicted following the commission of that offence, but I do not believe that I'm here before the Chamber to speak of the details of that offence. I think that I'm here in order to speak about the statement which I have made [...]. Consequently, I don't think it is interesting for us to dig up these events, more so because it is not relevant to the trial at hand."). ⁶³⁵ Witness ALP, T. 19 September 2006, p. 12 ("I bought a motorcycle and I took it to the Congo, illegally"). ⁶³⁶ Witness ALP, T. 19 September 2006, p. 14, referring to Witness ALP's written statement dated 9 May 2002 (under seal). The Chamber notes that the Defence did not request that the statement be admitted into the record. ⁶³⁷ Witness ALP, T. 19 September 2006, p. 14 ("I have never been to Zaire"); T. 20 September 2006, p. 8 (closed session) ("I was born in Katanga in Zaire.") ⁶³⁸ Witness ALP, T. 20 September 2006, p. 8 (closed session). ⁶³⁹ Witness ALP, T. 19 September 2006, pp. 35-37. ⁶⁴⁰ Exhibit D1, Witness ALP's will-say statement dated 9 September 2006 (under seal), para. 5 ("I identify the man in red

as Bikindi at video 414 at 16.33 mins.”) 641 See supra Section on Collaboration with RTLM. 642 Witness ALP, T. 18 September 2006, p. 35; T. 19 September 2006, p. 11. 643 Witness ALP, T. 18 September 2006, p. 40; T. 19 September 2006, pp. 15-19, 20-22. 644 When asked his highest level of education, Witness ALP stated, “I believe that this is not a relevant question. My level of education really does not matter. Why don’t you put questions to me about my statement on the Bikindi case?” The Presiding Judge replied, “It is not for you to tell us what the parties can ask you.” Judgement 2 December 2008 71

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troubled by Witness ALP’s insistence throughout his testimony that he was not telling lies but the truth.⁶⁴⁵ 294. The Chamber also finds some aspects of Witness ALP’s testimony with respect to the incident at Gisenyi Prison problematic. In particular, as highlighted by the Defence, while the witness told Tribunal investigators in 2002 that all the bodies were buried in the septic pit, he testified that only five were buried there and the rest were taken to Ruriba.⁶⁴⁶ There was also an internal contradiction in his testimony. Initially he stated that Bikindi had asked Rukara to “hand over” the list of names but later said that he “snatched it” from him.⁶⁴⁷ The Chamber also notes the witness’s confusion as to whether the ten prisoners were killed by Bikindi’s “bodyguards” or by “soldiers”.⁶⁴⁸ 295. Taken as a whole, Witness ALP’s behaviour in court, the inconsistencies within his evidence and the degree of confusion in his testimony cast doubt on his credibility. 296. Similarly, the Chamber has reservations about the credibility of Witness BUY. In addition to the problems identified in the section above on Participation in Political Gatherings,⁶⁴⁹ the Chamber has identified inconsistencies in his evidence regarding the incident at Gisenyi Prison. In a prior statement to Tribunal investigators, Witness BUY stated that he arrived at the prison at the same time as Bikindi’s convoy, having come from a different area, and found a group of ten Tutsi prisoners already sitting in the prison courtyard.⁶⁵⁰ However, he testified that he saw the Tutsi prisoners arrive at the prison in the same convoy as Bikindi, as they were being transferred from Ruhengeri Prison.⁶⁵¹ Witness BUY did not acknowledge the contradiction but, in response to the Prosecution’s attempt to clarify the matter, he explained that he first saw the Tutsi when they were already sitting on

(T. 19 September 2006, p. 7). When the witness declared “I realise that Counsel cross-examining me is moving away from the subject, the crux of the matter that we are looking at [...]. Very well. I was convicted following the commission of that offence, but I do not believe that I’m here before the Chamber to speak of the details of that offence. I think that I’m here in order to speak about the statement which I have made and I wish to thank you on that note”, the Presiding Judge replied “Please answer the question” (T. 19 September 2006, p. 12). When asked when he first heard Bikindi’s songs, the witness stated “I do not remember the year in which that song was – was composed. The composer himself might be in a better position to know the year. [...] I notice that Mr. Bikindi’s counsel has not often understood the explanations I have provided in answer to his questions. So I would rather advise him to focus on one point and clear it. [...] I had no

particular interest in taking note of that year. But the author of that song may know the year, because it is in his best interest to do so; personally, I do not know.” The Presiding Judge replied, “Mr. Witness, we already told you once that you’re here to answer questions not to tell us what questions you want to answer, and how the questions should be put to you. So, please, refrain from making comments and answer the question.” (19 September 2006, p. 16). When asked if he had seen Bikindi after the prison incident, Witness ALP stated, “Yesterday, I provided sufficient explanation to this matter. [...] That is why I want to repeat the same answer, and I would not like counsel to repeat the questions to which I have already provided answers” to which Judge Arrey replied, “[Defence Counsel] has a duty to cross-examine you, so even if you have given the answer yesterday, you have to repeat the answer again. [...] Please, just continue to answer.” (T. 19 February, p. 34). See also Witness ALP, T. 19 September 2006, pp. 12 and 39. 645 Witness ALP, T. 18 September 2006, pp. 35, 44, 48, 51; T. 19 September 2006, pp. 13, 19, 21, 32, 33, 34. 646 Witness ALP, T. 18 September 2006, p. 49; T. 20 September 2006, p. 10, referring to Witness ALP’s written statement dated 9 May 2002. See also T. 20 September 2006, p. 13 (French), for the complete interpretation of the witness’s answers 647 Witness ALP, T. 18 September 2006, pp. 46, 48. 648 Witness ALP, T. 18 September 2006, pp. 47-49; T. 19 September 2006, p. 39; T. 20 February 2006, p. 14. 649 See *supra* paras. 163-167. 650 Exhibit D39(F), Witness BUY’s written statement dated 24 October 2006 (under seal), p. 4, referred to at T. 19 February 2007, pp. 56-57. The witness acknowledged that he signed the statement after it was translated to him in Kinyarwanda (T. 19 February 2007, pp. 58-59). 651 Witness BUY, T. 19 February 2007, pp. 20, 48, 56. Judgement 2 December 2008 72

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the ground as he did not see them being pulled from the vehicle.⁶⁵² The Chamber does not find that this clarification explains the contradiction in his evidence as to whether the Tutsi prisoners arrived at the prison with Bikindi’s convoy or were already there. The Chamber is also concerned that this witness only mentioned the incident at Gisenyi Prison to Tribunal investigators in 2006, despite having given a statement to investigators in 2000.⁶⁵³ 297. In considering the evidence of both witnesses, the Chamber notes that they corroborate each other in certain respects. However, there are also a number of significant inconsistencies between them. One of the most significant inconsistencies is whether the Tutsi prisoners were already at the prison when Bikindi arrived as testified to by Witness ALP, or if they came in his convoy. Witness ALP stated that they were called out of the general prison population because their names were on a list. Witness ALP was called because his name was the same as a Tutsi who was on the list. He stated that eight of them had been transferred from Kigali Prison but did not specify when they had been transferred.⁶⁵⁴ If Witness BUY’s version of events was accurate and the prisoners had arrived at the same time as Bikindi and they were not integrated with the general prison population, then Witness ALP would not have been called to be part of the group of 12 that were taken outside. The two witnesses also differed on which prison the Tutsi had been transferred from, with Witness ALP saying it was Kigali Prison and Witness BUY, Ruhengeri Prison.⁶⁵⁵ Witness BUY also stated

that préfet Charles Zilimwabagabo came in the convoy with Bikindi but Witness ALP did not say that he was present.⁶⁵⁶ In addition, Witness ALP testified that there was a gate at the prison entrance in contrast to Witness BUY who denied the existence of a gate, testifying that there was simply a cord that was used to block the entrance.⁶⁵⁷ 298. With regard to the killings, Witness ALP stated that Bikindi called out the names of the first two Tutsi who were killed whereas Witness BUY stated that it was Gasirabo, the Prison Director.⁶⁵⁸ Witness ALP recalled Bikindi asking, “How come these Tutsis are still here, whereas Tutsis have been killed everywhere else?” before any of the Tutsi had been killed.⁶⁵⁹ Witness BUY remembered Bikindi making a similar statement, but only after the first two Tutsi had been killed.⁶⁶⁰ The two witnesses also differed on how the remaining eight Tutsi prisoners were killed, with Witness ALP stating they were killed with bayonets and Witness BUY stating they were shot and then finished off with knives and bayonets.⁶⁶¹ Finally, the two witnesses differed on the location where the bodies that were not buried in the septic pit were taken. Witness ALP said the bodies were taken to Ruriba, while Witness BUY said they were taken to Commune rouge.⁶⁶² 299. The Defence submits that the presence of Major Kabera and Hassan Ngeze at the prison was questionable. However, the Chamber is not persuaded with its argument that Ngeze’s presence was questionable simply as he was not charged with this incident at the

652 Witness BUY, T. 19 February 2007, pp. 57, 61-62. 653 Exhibit D37, Witness BUY’s written statement dated 6, 8, 9 June 2000 (under seal); Exhibit D39(F), Witness BUY’s written statement dated 24 October 2006 (under seal). 654 Witness ALP, T. 18 September 2006, p. 46. 655 Witness ALP, T. 18 September 2006, p. 46; Witness BUY, T. 19 February 2007, p. 20. 656 Witness BUY, T. 19 February 2007, p. 20. 657 Witness BUY, T. 19 February 2007, pp. 20, 24, 47, 56; Witness ALP, T. 18 September 2006, p. 46 and T. 20 September 2006, p. 9. 658 Witness ALP, T. 18 September 2006, p. 48; Witness BUY, T. 19 February 2007, p. 21. 659 Witness ALP, T. 18 September 2006, p. 47. 660 Witness BUY recalled Bikindi saying, “What are you waiting for to kill these Inyenzi? Normally, they should already have been killed.” (T. 19 February, 2007, p. 21). 661 Witness ALP, T. 18 September 2006, pp. 48-49; Witness BUY, T. 19 February 2007, p. 21. 662 Witness ALP, T. 18 September 2006, p. 49; Witness BUY, T. 19 February 2007, pp. 21-22. Judgement 2 December 2008 73

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Tribunal.⁶⁶³ It is similarly not convinced by the argument that as Major Kabera was stationed in Byumba it is unlikely that he was at the prison.⁶⁶⁴ 300. One Defence witness testified regarding the killing of Tutsi prisoners at Gisenyi Prison. Witness ASQ1, a detainee at the prison in 1994,⁶⁶⁵ stated that 30 Tutsi prisoners were killed at the prison but that the incident occurred on 29 April 1994.⁶⁶⁶ He described an incident where 37 detainees, 30 of whom were Tutsi, had been transferred from Kigali Prison to Gisenyi Prison and shortly thereafter the prisoners heard a rumour that the Tutsi outside the prison had started killing people. In response, the Gisenyi prisoners then proceeded to kill the 30 Tutsi transfer prisoners with tree trunks the day after they

arrived.⁶⁶⁷ The witness stated that the incident in April was the only time Tutsi were killed in the prison, and that “[n]o authority – no dignitary came to that prison during [1994].”⁶⁶⁸ He testified that he was saddened when he heard that people have been saying that Bikindi came to the prison. He added that in 2000, inmates were unfairly denouncing people and implied they were doing so to have their sentences reduced.⁶⁶⁹ 301. Defence witness Charles Zilimwabagabo, then préfet of Gisenyi, testified that he never heard about the killing of Tutsi at Gisenyi Prison, he never saw Bikindi while he was préfet, he never went to the prison and he never saw Kabera in Gisenyi.⁶⁷⁰ Bikindi also denied ever going to Gisenyi Prison.⁶⁷¹ 302. The Chamber concludes that the fact that the Prosecution witnesses corroborate each other in some respects is not enough to overcome the reservations that it has regarding their credibility. Moreover, the number of inconsistencies and contradictions both in and between their evidence leaves the Chamber with some doubt as to the veracity of their accounts of the incident, notwithstanding the Defence evidence which the Chamber finds unconvincing and inconclusive. 303. Accordingly, the Chamber finds that the Prosecution has not proven beyond reasonable doubt the allegation contained in paragraphs 25 and 47(c) of the Indictment. 9.2. Killing of Gasasira 304. Although not clearly pleaded in the Indictment, the Prosecution alleges that Bikindi is responsible for the murder of a Tutsi named Stanislas Gasasira in June 1994. The Chamber found above that the Prosecution’s failure to specify the killing of Gasasira in the Indictment

⁶⁶³ Defence Closing Brief, para. 474. ⁶⁶⁴ Witness ALP, T. 20 September 2006, pp. 11-12; Defence Closing Brief, para, 474. The Chamber has examined the document referred to by the Defence and notes that it concerns the situation of officers on 1 March 1994 and, therefore, is of no assistance in determining where Major Kabera was in June of that year as the situation in Rwanda had changed so much in between those dates: Exhibit D122, Situation Officiers Armée Rwandaise, Minadef, dated 5 March 1994. ⁶⁶⁵ Witness ASQ1, T. 5 October 2007, pp. 34-35, 41-42; Exhibit D68, Witness ASQ1’s Personal Information Sheet (under seal). The witness testified returning to prison in 1996 charged with genocide and being acquitted by the Gacaca courts. ⁶⁶⁶ Witness ASQ1, T. 5 October 2007, pp. 35-36. ⁶⁶⁷ Witness ASQ1, T. 5 October 2007, pp. 35-36. ⁶⁶⁸ Witness ASQ1, T. 5 October 2007, p. 39. ⁶⁶⁹ Witness ASQ1, T. 5 October 2007, p. 40. ⁶⁷⁰ Charles Zilimwabagabo, T. 22 October 2007, pp. 6, 8, 25-26, 27-28 and 35. Though the Chamber notes that the witness also testified that as préfet of Gisenyi he was supposed to be informed of what was happening in all the communes of his préfecture but it was not the case (T. 22 October 2007, p. 20). ⁶⁷¹ Bikindi, T. 1 November 2007, p. 7. Judgement 2 December 2008 74

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did not actually prejudice Bikindi’s ability to defend himself against the charge⁶⁷² and will now proceed to make its factual findings on the allegation. 305. Witness AHP, a former Interahamwe who took part in killings in 1994 and was in prison at the time of his testimony,⁶⁷³ is the sole Prosecution witness who testified about the alleged killing of Stanislas Gasasira. He testified that in June 1994, Gasasira was arrested at a roadblock, put in a Hiace minibus that Bikindi was

driving and taken to Commune rouge. There, Bikindi ordered that Gasasira be killed and subsequently shot at him. According to the witness, Gasasira did not die and was finished off by Asiel Rusagara in Bikindi's presence.⁶⁷⁴ Witness AHP explained that he had followed the minibus from the roadblock to Commune rouge out of curiosity and got to learn the name of the victim by seeing a badge that was found when the latter was searched before being killed.⁶⁷⁵ He testified that Gasasira was a worker with the National Printing Press of Rwanda.⁶⁷⁶ 306. The Defence correctly pointed out some major inconsistencies between Witness AHP's prior statements to Tribunal investigators and his actual testimony. First, the Defence underlined that the witness had previously declared that he did not know what Bikindi did in Gisenyi in June and July 1994.⁶⁷⁷ Secondly, while the witness testified at trial that Gasasira was asked to stop at the roadblock, taken out of his vehicle and put in a minibus that Bikindi was driving,⁶⁷⁸ he had previously told Tribunal investigators that the minibus in which Gasasira was went through the roadblock without stopping, making no mention of the conditions of Gasasira's arrest at the roadblock.⁶⁷⁹ Thirdly, the Defence pointed out that, in a prior statement, Witness AHP suggested that Bikindi did not shoot Gasasira but instead left as soon as Gasasira was taken out of the minibus and Bikindi heard the gunshots of Asiel Rusagara shooting Gasasira while he was leaving with Lieutenant Eustache. In this statement, the witness specified that Gasasira died immediately.⁶⁸⁰ 307. Witness AHP did not explain these inconsistencies other than to say that all the information he gave was apparently not entirely recorded in his statements.⁶⁸¹ Nonetheless, he acknowledged signing the statements.⁶⁸² Given the nature of the inconsistencies, the

⁶⁷² See supra para. 21. ⁶⁷³ Witness AHP, T. 19 October 2006, pp. 16 and 25; Exhibit P70, Witness AHP's Personal Information Sheet (under seal). ⁶⁷⁴ Witness AHP, T. 19 October 2006, p. 21; T. 20 October 2006, p. 4. ⁶⁷⁵ Witness AHP, T. 19 October 2006, pp. 21, 40; T. 20 October 2006, pp. 3-4. ⁶⁷⁶ Witness AHP, T. 19 October 2006, p. 21. ⁶⁷⁷ Witness AHP, T. 19 October 2006, p. 34, with reference to Exhibit D29/1, Witness AHP's written statement dated 7 February and 3 March 2001 (under seal). See also Defence Closing Brief, para. 657. ⁶⁷⁸ Witness AHP, T. 19 October 2006, p. 40. ⁶⁷⁹ See Witness AHP, T. 20 October 2006, pp. 2-3, with reference to Exhibit D29/2, Witness AHP's written statement dated 18 and 19 June 2002 (under seal), which reads in relevant part: "Just as I was seated at that roadblock together with other people [...] we saw a red Toyota hiace minibus which passed through the roadblock without stopping at that roadblock. The Toyota Hiace took the road to commune rouge and myself together with other people who were at the roadblock we ran following that vehicle and we saw the vehicle stopping at commune rouge. As we arrived at where the vehicle had stopped I saw Simon Bikindi, Emmanuel Nshogozabahizi and Lieutenant Eustache coming out of that toyota hiace. I also saw one Tutsi man who was lying inside the vehicle and the three told him to come out of the vehicle." ⁶⁸⁰ See Witness AHP, T. 20 October 2006, p. 4, with reference to Exhibit D29/2, Witness AHP's written statement dated 18 and 19 June 2002 (under seal), which reads in relevant part: "As soon as Gasasira was taken out of the Toyota hiace Bikindi and Lieutenant Eustache left and went away and as they were leaving that place Asiel Rusagara shot Gasasira dead using a gun and he died immediately. Bikindi and Lieutenant Eustache heard the gunshots because they were just leaving when Gasasira was shot dead." See also Defence Closing Brief, para. 663. ⁶⁸¹ Witness AHP, T. 19 October 2006, p. 34. See

also *ibid.*, p. 38 regarding a different allegation. 682 Witness AHP, T. 19 October 2006, p. 29. Judgement 2 December 2008 75

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Chamber finds this explanation unconvincing. In addition, the Chamber notes that, in response to a question from the Defence regarding the discrepancy between his testimony and his 2002 statement about the circumstances of Gasasira's arrest at the roadblock, Witness AHP recounted a third and new version of the incident.⁶⁸³ 308. In the Chamber's view, these inconsistencies call into question the reliability and credibility of Witness AHP's testimony. The Chamber is particularly concerned with the unexplained discrepancy regarding Bikindi's alleged criminal conduct at Commune rouge. In this respect, the Chamber recalls that the allegation of which Bikindi was given notice by the Prosecution was that Gasasira was shot dead after Bikindi drove away.⁶⁸⁴ The testimony of Witness AHP does not support this allegation. 309. The evidence given by the three Defence witnesses who testified on the matter does not shed any light on the incident. Witness RH stated that he heard of a Stanislas Gasasira who died before the genocide,⁶⁸⁵ whereas Witness WQK, who was eight years old during the events, gave hearsay evidence that Kivenge killed Stanislas Gasasira at Commune rouge in June 1994 and brought the victim's identity card home.⁶⁸⁶ Dominique Munyangoga's testimony was inconclusive as to whether a Stanislas Gasasira ever worked for the National Printing Press of Rwanda.⁶⁸⁷ 310. In light of the foregoing, the Chamber finds that the Prosecution has not proven beyond reasonable doubt that Bikindi participated in the killing of Stanislas Gasasira. 9.3. Killing of Karasira 311. Although not clearly pleaded in the Indictment, the Prosecution alleges that Bikindi is responsible for the murder of a Tutsi named Karasira and seven members of his family. The Chamber found above that the Prosecution's failure to specify the killing of Karasira and his family in the Indictment did not actually prejudice Bikindi's ability to defend himself against the charge⁶⁸⁸ and will now turn to make its factual findings on the allegation. 312. Two Prosecution witnesses testified about the alleged incident: Witness BKW, a former motorcycle taxi-driver and alleged accomplice to Bikindi sentenced to death for his participation in the genocide,⁶⁸⁹ and Witness AHP, a former Interahamwe, who took part in killings.⁶⁹⁰ At the time of their testimony, both witnesses were detained at the same prison in

⁶⁸³ In his Statement dated 18 and 19 June 2002, Witness AHP declared that the Hiace minibus passed through the roadblock without stopping to go to Commune rouge (Exhibit D29/2). In court, the witness first explained that, at the roadblock, Gasasira was asked to stop and then taken out of his vehicle and put into the Hiace minibus, which was driven by Bikindi (T. 19 October 2006, p. 40 and T. 20 October 2006, p. 2). When confronted with this inconsistency, Witness AHP explained that Gasasira's vehicle went through the roadblock without stopping but that it was stopped at one point, about 50 meters from the roadblock (T. 20 October 2006, pp. 2-3). Upon the insistence of Defence Counsel about the fact that he had previously declared that it was the minibus which went through the roadblock without stopping, Witness AHP explained that

after Karasira was put in the Hiace minibus, the minibus could not stop because the “attackers were afraid that others may intervene to free that person who had been arrested” (T. 20 October 2006, p. 4). 684 See supra para. 19. 685 Witness RH, T. 25 October 2007, p. 58. 686 Witness WQK, T. 26 September 2007, pp. 19-20, 28-29, 33. 687 Dominique Munyangoga, T. 7 November 2007, pp. 5 (“[Stanislas Gasasira] was not an employee of the Rwandan printing press at the time when I was head of the printing press [from March 1986 to October 1991]. But subsequently, I don’t know.”), 8-10, 14. 688 See supra para. 21. 689 See supra para. 34. 690 See supra para. 305. Judgement 2 December 2008 76

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Gisenyi.⁶⁹¹ The Chamber recalls that it has treated Witness BKW’s evidence with great caution and has already expressed doubts as to the credibility of Witness AHP’s testimony.⁶⁹² 313. Witness BKW testified that in mid-June 1994 between 11 a.m. and 12 p.m., while repairing his motorcycle close to the roadside, he saw Bikindi with Hyacinthe Rafiki, Faziri Hakizimana, Jean-Bosco Sibomana (Conseiller of Byahi) and Hassan Ngeze going to Karasira’s house after Christiane Mukarugaba pointed it out to them. The witness explained that after they knocked on the door he suddenly saw some women. Then, Bikindi and Sibomana called the witness to ask him to bring a vehicle. Witness BKW said that, with his gun, he forced someone to bring a green Daihatsu belonging to the maïserie of Mukamira. Bikindi was wearing a military uniform and a khaki beret and was carrying a Kalashnikov and a pistol which he used on that occasion. Then they took Karasira and eight other persons, most of whom were women, in the Daihatsu to Commune rouge where they were killed with bullets by Bikindi, Sibomana, an Interahamwe named Signola and himself. According to Witness BKW, Bikindi and Sibomana were in charge of the killing group.⁶⁹³ 314. Witness AHP partly corroborated Witness BKW’s evidence. He testified that in June 1994, between 11 a.m. and 12 p.m., he was at a location known as Amadepo and saw Bikindi, Hassan Sibomana, Signora and BKW pulling eight people from a residence, taking them in a Daihatsu on which was written “maïserie”, and driving them to Commune rouge. Witness AHP said he followed them out of curiosity and witnessed the eight people being killed. According to him, Bikindi fired at someone who fell down, saying that he no longer wanted to hear any mention of Tutsi. The witness explained that he heard that the victims were members of Karasira’s family.⁶⁹⁴ Differing from Witness BKW, Witness AHP stated that Bikindi was on the road waiting for the group which had entered the residence to return,⁶⁹⁵ and that BKW went along with the Daihatsu only after the vehicle drove onto the main road and after dropping off his motorcycle and parking it at a neighbouring house.⁶⁹⁶ 315. The Defence raised several challenges to Witness BKW’s credibility with respect to this specific allegation. First, the Defence pointed out a discrepancy between Witness BKW’s testimony and his statement to Tribunal investigators of 15 February 2005 regarding whether Karasira had a kiosk. The witness explained that Karasira did not have a kiosk and that it must have been a mistranslation, which the Chamber finds plausible.⁶⁹⁷ 316. The Defence also underlined the witness’s confusion as to the number of people taken with Karasira to Commune rouge and their identity.⁶⁹⁸ During his

testimony, the witness referred to both the killing of eight people in total and to the killing of Karasira and eight others.⁶⁹⁹ Regarding their identity, he stated that Karasira was taken with eight other people, most of whom were women, but also that he was taken with a small boy and a small girl.⁷⁰⁰

⁶⁹¹ Witness BKW, T. 19 October 2006, p. 7; Exhibit D31, List of names presented to Witness BKW (under seal). ⁶⁹² See *supra* para. 34. ⁶⁹³ Witness BKW, T. 17 October 2006, pp. 31, 34-35; T. 18 October 2006, pp. 26-27. See also Witness BKW, T. 17 October 2006, pp. 37-38 (French) and T. 18 October 2006, p. 31 (French). ⁶⁹⁴ Witness AHP, T. 19 October 2006, pp. 19-20, 34-36. ⁶⁹⁵ Witness AHP, T. 19 October 2006, pp. 35-36. ⁶⁹⁶ Witness AHP, T. 19 October 2006, pp. 38-39. ⁶⁹⁷ Witness BKW, T. 18 October 2006, pp. 27-28, with reference to Exhibit D32/2, Witness BKW's written statement dated 15 February 2005 (under seal). ⁶⁹⁸ Witness BKW, T. 18 October 2006, pp. 27-32. ⁶⁹⁹ Witness BKW, T. 16 October 2006, p. 40: "I participated in killing eight people in Kabuyi"; T. 17 October 2006, p. 34: "Karasira was killed with eight other persons, most of whom were women". ⁷⁰⁰ Witness BKW, T. 17 October 2006, p. 37 (French): "nous avons embarqué ces Tutsis, Karasira, un enfant et une petite fille...un petit garçon et une petite fille." Judgement 2 December 2008 77

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During cross-examination, the witness explained that eight people were killed, including Karasira, his son Nazinda who was about 12 or 13 years old, and his daughter, and that the other five were elderly women.⁷⁰¹ He added that he supposed Karasira's wife was amongst the women who were killed because no one remained in the house.⁷⁰² The Chamber notes the witness's inconsistency as to the presence of a "small" girl. It also observes that, in his 2005 statement, the witness declared that the people taken to Commune rouge were "Karasira, his child Nazinda, a boy about 11 or 12, the wife of Karasira, and five old women. One among them was Karasira's sister."⁷⁰³ No mention was made of Karasira's daughter. ³¹⁷. Other differences between Witness BKW's testimony and some of his prior statements to Tribunal investigators or differences within his testimony, warrant close consideration. According to his 2005 statement and his testimony before the Tribunal in the Bizimungu et al. case on 2 March 2005, Witness BKW followed Bikindi and others to Commune rouge on his motorcycle,⁷⁰⁴ whereas before this Chamber, he unequivocally testified that he left for Commune rouge in the same vehicle as Bikindi.⁷⁰⁵ When this contradiction was put to him, the witness tried to explain that he was riding his motorcycle when Bikindi and the others were going to the CDR offices, before the victims were pulled out of the house.⁷⁰⁶ This feeble explanation and the witness's insistence that he is telling the truth in this trial are unsatisfying in the Chamber's opinion.⁷⁰⁷ Of concern to the Chamber is also the fact that although Witness BKW had testified that Bikindi, Sibomana and Signola left Commune rouge each going in his own direction,⁷⁰⁸ during cross-examination, he said that they came back to Karasira's house quickly, and that, from there, he left on his motorcycle.⁷⁰⁹ ³¹⁸. With respect to Witness AHP, the Chamber recalls that the witness had previously declared not knowing what Bikindi did in Gisenyi in June and July 1994.⁷¹⁰ In connection with the present event, the

Chamber notes the witness's confusion as to what he actually witnessed at Karasira's house and as to Bikindi's conduct there.⁷¹¹ The fact that he had previously suggested in his statement of 19 and 20 June 2002 that he was not present in Commune rouge when the alleged victims were killed casts additional doubt on the credibility of his testimony.⁷¹² The witness's explanation that everything he said to Tribunal investigators was not recorded in extenso does not convince the Chamber.⁷¹³

701 Witness BKW, T. 18 October 2006, pp. 28, 30. The witness also referred to a young girl who was about 18 years of age, whom one might think was Karasira's daughter (T. 18 October 2006, p. 30). 702 Witness BKW, T. 18 October 2006, p. 32. 703 Exhibit D32/2, Witness BKW's written statement dated 15 February 2005 (under seal), p. 3. 704 Exhibit D32/2, Witness BKW's written statement dated 15 February 2005 (under seal), p. 3; The Prosecutor

- v. Bizimungu et al., Case No. ICTR 99-50-T, T. 2 March 2005, p. 60, cited by the Defence at T. 18 October 2006, pp. 34-35. 705 Witness BKW, T. 17 October 2006, p. 35; T. 18 October 2006, pp. 33-34. 706 Witness BKW, T. 18 October 2006, p. 33. 707 Witness BKW, T. 18 October 2006, p. 35. 708 Witness BKW, T. 17 October 2006, p. 35. 709 Witness BKW, T. 18 October 2006, p. 33. 710 See supra, para. 306. 711 Witness AHP, T. 19 October 2006, pp. 19, 37-38. See also Exhibit D29/2, Witness AHP's written statement dated 19 and 20 June 2002 (under seal). 712 Exhibit D29/2, Witness AHP's written statement dated 19 and 20 June 2002 (under seal): "I concluded that the Tutsis who were crying inside the daihatsu had been taken to commune rouge and that they were going there to be killed because once any Tutsi was taken by conseiller Sibomana everybody knew that that person or people was/were going there to be killed and could never be seen again." 713 Witness AHP, T. 19 October 2006, p. 38. Judgement 2 December 2008 78

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- 319. Though Witnesses BKW and AHP corroborated each other on a number of issues, there are some differences in their accounts as to whether Bikindi visited the CDR offices upon arrival;⁷¹⁴ Bikindi's role when the victims were taken away;⁷¹⁵ who was present when the victims were taken away;⁷¹⁶ Witness BKW's role and whether he was having his motorcycle repaired;⁷¹⁷ and whether Bikindi carried a Kalashnikov.⁷¹⁸ Viewed in the context of the inconsistencies in each witness's account of the incident discussed above, these differences raise serious doubts as to the veracity of the evidence given by Witnesses BKW and AHP. 320. The Chamber considers that the evidence of Witnesses BKW and AHP is not sufficiently reliable or credible to ground a finding of fact beyond reasonable doubt. In the absence of any further reliable corroboration, the Chamber finds that the Prosecution has not proven beyond reasonable doubt that Bikindi is responsible for the murder of a Tutsi named Karasira and seven other Tutsi. 9.4. Incident at Rugerero Roadblock and Killings in Nyamyumba 321. The Prosecution alleges that sometime in mid-late June 1994, Bikindi announced to Interahamwe at a roadblock in Gisenyi-town that they should search for Tutsi

and kill them and that Hutu helping Tutsi to flee to Zaire should also be killed. It is alleged that after uttering these words, Bikindi led a caravan of armed Interahamwe, including Colonel Buregeya and Noël, to Nyamyumba commune and killed Tutsi residents and pillaged their belongings.⁷¹⁹ 322. Under another part of the Indictment, the Prosecution alleges that in June 1994, in Rugerero secteur, Rubavu commune, Bikindi ordered Interahamwe to kill all Tutsi in Nyamyumba, and specifically ordered the killing of Kabayiza, a Tutsi man staying in Kivumu secteur, as well as Father Thaddée Gatore and two other priests whose names are

714 Witness BKW, T. 17 October 2006, p. 31 (“I saw [Bikindi] at the CDR offices. [...] and all these people were in the CDR offices.”) and T. 18 October 2006, p. 33; Witness AHP, T. 19 October 2006, p. 19 (“I saw a vehicle arrive in which Bikindi was seated. The car came to a halt and there was another vehicle on which was written “maïserie” and he was in company of the conseiller of Byahi secteur as well as one Signora.”) and p. 35 (“Bikindi, Simon, was in a taxi which was parked along the road close to that location where the Daihatsu vehicle had passed by. So Bikindi left the taxi and entered the Daihatsu vehicle.”). 715 Witness BKW, T. 17 October 2006, p. 34 (“Then they went to [Karasira’s] house and Bikindi was in Conseiller Fazil’s (as interpreted) company [...]. The house was closed. They knocked at the door.”) and T. 18 October 2006, pp. 26-27 (“Conseiller Sibomana and Bikindi were the first to call me so that I could go and fetch a vehicle of the Daihatsu type. They asked me to do that because they had just discovered a large number of people in that house”); Witness AHP, T. 19 October 2006, p. 35 (“Bikindi, Simon, was in a taxi which was parked along the road close to that location where the Daihatsu vehicle had passed by. So Bikindi left the taxi and entered the Daihatsu vehicle. [...] Bikindi was close to the road waiting for them to come back. I did not say that Bikindi was part of the group that entered the residence. He was waiting on the road, and then took off with those people”). 716 While Witness BKW places “Signola” only at Commune rouge, Witness AHP testified that he saw one “Sinyola” or “Signora” at Karasira’s house. See Witness BKW, T. 17 October 2006, pp. 31, 34, 35; Witness AHP, T. 19 October 2006, pp. 19, 35, 38, 39. 717 Witness BKW, T. 17 October 2006, p. 34 (“I was repairing my motorcycle close to the roadside”) and T. 18 October 2006, p. 33 (“I went to have my motorcycle repaired close by Mr. Karasira’s house [...] I was repairing my motorcycle at that place”); Witness AHP, T. 19 October 2006, p. 38 (“I saw [BKW] on the motorcycle behind [the Daihatsu], carrying a gun”) and p. 39 (“Then the vehicle stopped and [BKW] dropped off his motorcycle, parked it in a neighbouring house, and then went along with the vehicle”). 718 Witness BKW, T. 17 October 2006, p. 35 (“[Bikindi] was carrying a Kalashnikov and a pistol, and on that particular occasion, he used his pistol”); Witness AHP, T. 19 October 2006, p. 20 (“Bikindi was present, he had a pistol and he was wearing a military uniform”). 719 Indictment, paras. 22, 30(d) and 47(a). Judgement 2 December 2008 79

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unknown. Bikindi allegedly told the group of Interahamwe that he himself was going with them to kill Tutsi in Nyamyumba. The Prosecution alleges that Bikindi, Colonel Buregeya, Noël and a group of Interahamwe left for Nyamyumba. Upon their return, the Prosecution contends that Noël reported to the other Interahamwe who were left behind that they had exterminated all Tutsi in Nyamyumba.⁷²⁰ 323. From its arguments at trial and the evidence it presented, the Chamber understands that the Prosecution's case is that these two allegations constitute the same incident. The Chamber recalls that the Prosecution is expected to lay down the allegations against an accused in the indictment in the most clear and comprehensive way possible so that the accused may understand the charges against him. The Chamber considers that the Prosecution failed to do so in the present instance. However, the Prosecution's confused way of pleading these allegations did not undermine the fairness of the trial in the Chamber's view. A careful review of the record reveals that the Defence – which did not raise the issue – understood the nature of the charge and was not impaired in its ability to prepare its case.⁷²¹ The Chamber will therefore proceed to examine the allegations, in support of which the Prosecution relies on Prosecution Witnesses AJZ, AJY and BKW. 324. Witness AJZ testified that at the end of June 1994, Interahamwe from Nyamyumba commune came to the roadblock he was manning in Rugerero to seek assistance from Rugerero Interahamwe to fight Tutsi resistance in Nyamyumba.⁷²² He explained that a meeting was held at the roadblock during which Bikindi encouraged the Interahamwe to provide the requested assistance by referring to the 1959 events and explaining that there was a need to exterminate Tutsi as they were attacking Rwanda.⁷²³ Subsequently, around 5 p.m., Bikindi left for Nyamyumba with Noël, Pascal and Col. Buregeya in a red vehicle, accompanied by approximately 20 armed Interahamwe and a yellow Nissan bearing the inscription 'MRND'.⁷²⁴ Witness AJZ further testified that he remained at the roadblock and did not go to Nyamyumba. He was still at the roadblock when Bikindi and the rest of the group returned at approximately 8 p.m. on the same day, in the same vehicles. The vehicles were loaded with goods that were looted from Tutsi. The witness added that some cows also looted from Nyamyumba were later brought to the roadblock.⁷²⁵ According to him, after he left, a quarrel broke out during the sharing of the loot as a result of which several Interahamwe were killed.⁷²⁶ The witness stated that Bikindi said that it was shameful, that Interahamwe should control themselves and that it was not good to appear undignified in the eyes of the people.⁷²⁷ The witness specified that although he did not go to Nyamyumba, he

⁷²⁰ Indictment, para. 47(h). ⁷²¹ The Defence cross-examined all Prosecution witnesses testifying on this allegation at length and called witnesses to testify on the incident. Cross-examinations and examinations-in-chief demonstrate the good level of preparation by the Defence, which understood paragraphs 22, 30(d), 47(a) and 47(h) of the Indictment as pleading one and the same incident: see Defence Motion for Judgment of Acquittal Pursuant to Rule 98 bis of the Rules of Procedure and Evidence, 15 March 2007, paras. 29, 40; *Requête en exclusion des éléments de preuve produits par l'Accusation pour établir des faits non contenus dans l'Acte d'accusation*, 15 March 2007, paras. 171-174; Defence Closing Brief, p. 155 and paras. 562-624. ⁷²² Witness AJZ, T. 26 September 2006, p. 7. ⁷²³ Witness AJZ, T. 26 September 2006, p. 7. See also *ibid.*, pp. 14, 17-18. ⁷²⁴ Witness AJZ, T. 26 September 2006, pp. 7, 8, 38; T. 27 September 2006, p. 3. ⁷²⁵ Witness AJZ, T.

26 September 2006, pp. 8, 38; T. 27 September 2006, pp. 2-3. 726 Witness AJZ, T. 26 September 2006, pp. 8-9; T. 27 September 2006, p. 4. 727 Witness AJZ, T. 26 September 2006, p. 9. See also *ibid.*, p. 10: “From what I got to learn, it was Pascal, Noël and Bikindi who were to have the lion’s share of the loot”. Judgement 2 December 2008 80

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heard shots being fired from there, and that the following day Interahamwe at the roadblock said that they had killed Tutsi who had initially resisted.⁷²⁸ 325. Witness AJZ’s testimony was partially corroborated by Witness AJY. Witness AJY testified that in late June 1994, the day after he first saw Bikindi, someone from Nyamyumba came to a roadblock in Rugerero to explain that Tutsi were hiding at Kivumu parish in Nyamyumba.⁷²⁹ Bikindi allegedly asked, “Who are those Tutsis who are still alive?” and told his Interahamwe at the roadblock that there were people hiding in Nyamyumba and that they should rise and go there.⁷³⁰ The witness explained that following a decision by Bikindi and Buregeya, Bikindi and Interahamwe, including Noël, Nokori, Paulin, Serumveri, Pascal and Chari, then left for Nyamyumba in two vehicles, a red Peugeot 305 and a yellow Nissan truck.⁷³¹ He testified that they said they were going there to kill Tutsi. Witness AJY remained at the roadblock. He said they carried out their mission in Nyamyumba, notably by killing Father Gatore and Kabayiza. At night, when they returned to the roadblock, Bikindi’s vehicle was loaded with looted material. Witness AJY also saw cows arriving the next morning. He further testified that two Interahamwe, Paulin and Nokori, were killed in a dispute over the booty and that Bikindi made a statement asking why Interahamwe were killing each other instead of killing Tutsi.⁷³² Witness AJY further testified that, when they came back from Nyamyumba, Bikindi and the Interahamwe informed people at the roadblock that they had killed Father Gatore from Nyundo parish.⁷³³ Bikindi, the witness said, had the identity cards of Gatore and Kabayiza⁷³⁴ and said that “[t]his should be an example, that any Hutu who will be taken unawares while hiding a Tutsi was going to be faced with the same fate as were Gatore and Kabayiza.”⁷³⁵ 326. Witness BKW also partly corroborated Witness AJZ’s evidence. He testified that towards the end of June 1994, around the 26, he heard Bikindi saying at the bar of the hotel La colombe that he was going to Nyamyumba to kill Tutsi priests in Kivumu and that, subsequently, Bikindi left for Nyamyumba accompanied by Paulin, Nokori, Serumveri and Kizito.⁷³⁶ Witness BKW explained that he did not go to Nyamyumba but that he heard Bikindi saying to Hassan Gitoki how they had gone through the Rugerero roadblock and killed people in Nyamyumba.⁷³⁷ The witness stated that Bikindi also explained that a quarrel about the property they had looted broke out at the roadblock, following which Paulin and Nokori were killed with bullets. Bikindi allegedly brought calm to the situation.⁷³⁸ Witness BKW further testified that he heard Bikindi saying to Hassan Gitoki that priests had been killed and later learnt that Fathers Gatore and Vianney had been killed and that the property of one ‘Kamwabahizi’ had been looted.⁷³⁹

728 Witness AJZ, T. 26 September 2006, p. 10. 729 Witness AJY, T. 27 September 2006, pp. 32, 36. 730 Witness AJY, T. 27 September 2006, p. 32. 731 Witness AJY, T. 27 September 2006, pp. 32-34, 37; T. 2 October 2006, pp. 5, 7. 732 Witness AJY, T. 27 September 2006, pp. 34-36; T. 2 October 2006, pp. 9, 18. 733 Witness AJY, T. 27 September 2006, pp. 34, 36; T. 2 October 2006, p. 9. 734 Witness AJY, T. 27 September 2006, p. 36; T. 28 September 2006, p. 6; T. 2 October 2006, p. 8. 735 Witness AJY, T. 27 September 2006, p. 36. 736 Witness BKW, T. 17 October 2006, pp. 31-32; T. 18 October 2006, pp. 15, 20-21, 24. 737 Witness BKW, T. 17 October 2006, pp. 32-33; T. 18 October 2006, pp. 16-17, 19, 24. See also T. 17 October 2006, p. 36 (French). 738 Witness BKW, T. 17 October 2006, p. 33; T. 18 October 2006, p. 25. 739 Witness BKW, T. 17 October 2006, pp. 32-33; T. 18 September 2006, pp. 17, 19. The Chamber notes that the name of the individual whose property was looted was spelt in four different ways in both French and English versions of the transcripts: “Kanyabahizi” and “Kanywabahizi” in the French transcripts, “Kamwabahizi” and “Colonel Bahizi” in the English transcripts. Judgement 2 December 2008 81

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327. With respect to the death of Father Gatore, Prosecution Witness AKK testified that the priest was killed in June 1994 by members of the population the day after Bikindi publicly exhorted people to kill Tutsi on the Kayove-Kivumu road.⁷⁴⁰ He testified that he was not an eye-witness to the killing, but learnt about it the same day from the killers who were boasting about it.⁷⁴¹ 328. As discussed in other sections of this Judgement, the Chamber has reservations about the credibility of Witnesses AJZ, AJY and BKW as parts of their evidence have not been accepted as sufficiently reliable or credible to support some of the Prosecution’s allegations.⁷⁴² 329. With respect to Witness AJZ’s testimony on this specific allegation, the Chamber recalls that Witness AJZ was inconsistent concerning when he started to man the roadblock and contradicted himself as to when exactly Bikindi made a remark about 1959.⁷⁴³ The Chamber further notes that the witness was confused during his testimony regarding the number of Interahamwe who allegedly accompanied Bikindi to Nyamyumba and that the information he gave in court differs from that which he gave to Tribunal investigators in 2001.⁷⁴⁴ In addition, the Chamber finds it unrealistic that from Rugerero, Witness AJZ heard shots being fired in Nyamyumba,⁷⁴⁵ given the distance between the two locations.⁷⁴⁶ The Chamber further notes that whereas he suggested in a prior statement that he was present when the quarrel over the booty took place, the witness testified at trial that he had left the location at the time.⁷⁴⁷ Of interest to the Chamber is the fact that Kizito, one of the Interahamwe the witness said was killed at the roadblock, was alive when the witness appeared before the Tribunal. 330. In addition to the inconsistencies identified in Witness AJY’s evidence discussed in the section on Participation in Political Gatherings,⁷⁴⁸ the Chamber notes that his testimony contradicted his prior statement to Tribunal investigators as to when Bikindi came back from Nyamyumba.⁷⁴⁹ The Chamber further observes that the witness had never mentioned the identity cards of Gatore and Kabayiza in his prior statements to Tribunal investigators.⁷⁵⁰

740 Witness AKK, T. 22 September 2006, pp. 5-6, 8-9. See also T. 22 September 2006, p. 6 (French). 741 Witness AKK, T. 22 September 2006, pp. 15, 24. 742 See supra and infra paras. 52, 86, 92, 100, 171, 225, 312, 315-317, 373 (Witness BKW); paras. 127-132, 328-329, 331, 335, 342-350 (Witness AJZ); paras. 160-161, 179, 181, 328, 330-331, 335, 342-350 (Witness AJY). 743 See supra paras. 128-129. 744 See Witness AJZ, T. 26 September 2006, p. 8 where the witness referred to approximately 20 Interahamwe (including Interahamwe from Nyamyumba) going to Nyamyumba with Bikindi, Noël and Pascal, and pp. 38-39 where the witness mentioned ten Interahamwe in the Nissan and Bikindi, Noël and Col. Buregeya in the red vehicle; Exhibit D6, Witness AJZ's written statement dated 9 and 11 May 2001 (under seal), p. 3, in which the witness referred to six Interahamwe accompanying Bikindi, Noël and Col. Buregeya and made no reference to Interahamwe from Nyamyumba. 745 Witness AJZ, T. 26 September 2006, p. 10. 746 See Witness AJZ, T. 26 September 2006, p. 39; Exhibit P37, Map of Gisenyi, p. 7. 747 Witness AJZ, T. 27 September 2006, p. 4, with reference to Exhibit D6, Witness AJZ's written statement dated 9 and 11 May 2005 (under seal), p. 4. 748 See supra paras. 160-161. 749 Exhibit D16/1, Witness AJY's written statement dated 17 April and 4 May 2001 (under seal), p. 4, in which the witness declared that Bikindi and the group came back the following day. The Chamber notes that this inconsistency has not been put to the witness in court. 750 Exhibit D16/1, Witness AJY's written statement dated 17 April and 4 May 2001 (under seal); Exhibit D16/2, Witness AJY's written statement dated 17 July 2001 (under seal). The Chamber notes that this inconsistency has not been put to the witness in court. The Chamber also notes that the Defence challenges the credibility of Witnesses AJY and AJZ on the basis of their statement that Bikindi was coming from Kigali (Witness AJZ, Judgement 2 December 2008 82

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331. Despite the corroboration on certain aspects, there remain inconsistencies between the Prosecution witnesses' evidence. The most significant inconsistency relates to the time of day the incident occurred. While Witness AJZ testified that Bikindi left for Nyamyumba around 5 p.m., Witness AJY thought that it was around 9 or 10 a.m. and Witness BKW around 11 a.m.⁷⁵¹ Further, Witness AJZ testified that he believed that Paulin, Kizito and Serumveri were the Interahamwe killed at the roadblock and that Pascal was the one who killed them. A few minutes later, however, the witness denied ever citing three names and was adamant he had only mentioned two names.⁷⁵² Witnesses AJY and BKW named Paulin and Nokori as the victims of the quarrel and Witness AJY testified that Nokori killed Paulin and that Nokori was also shot.⁷⁵³ Regarding the cars, Witness BKW explained clearly that Bikindi left for Nyamyumba in a Volkswagen, while Witness AJY consistently referred to a Peugeot.⁷⁵⁴ 332. Bikindi testified that he never set foot in Nyamyumba commune in 1994, although he acknowledged passing through the Rugerero roadblock that year.⁷⁵⁵ He also claimed that he never took part in a campaign to kill Tutsi.⁷⁵⁶ Witness CQK, who allegedly went to Nyamyumba with Bikindi, denied ever going to Nyamyumba, which was too insecure at the time, or to the Rugerero roadblock. The witness also stated that there were no vehicles

available at the time.⁷⁵⁷ Given their alleged implication in the crimes, the Chamber does not accord much weight to Bikindi's and CQK's evidence on the matter. The fact that Witness TIER, another alleged Interahamwe mentioned in relation to the killings at Nyamyumba, has allegedly never been charged with killings in Gisenyi is inconclusive in the Chamber's opinion.⁷⁵⁸ 333. With respect to the killing of the priests, Shadrack Bizimana, a former Rwandan judge, testified that although he could not remember the exact date he was sure that Father Thaddée Gatore, as well as Father Vénuste Nsengiyumva and Ildephonse Kabayiza were killed in April 1994. He also explained that when those deaths were discussed at Gacaca meetings, no mention was made of Bikindi.⁷⁵⁹ Witness XUV, a former Interahamwe,⁷⁶⁰ stated that he witnessed the killing of Father Gatore on 13 April 1994 and had never heard of Bikindi's involvement.⁷⁶¹ He also witnessed the killing of Father Vénuste and similarly denied that Bikindi played any role in it.⁷⁶² He also corroborated Shadrack Bizimana's

T. 26 September 2006, pp. 33, 34, 35; Witness AJY, T. 27 September 2006, pp. 34, 35, 36) on the ground that Bikindi came back to Rwanda to Gisenyi from Zaire (Defence Closing Brief, paras 527, 540; Closing Arguments, T. 26 May 2008, pp. 25-26). In this respect, the Chamber notes that during his interview to the Dutch authorities, Bikindi himself declared that he travelled from Kigali to Gisenyi through Ruhengeri in June 1994, which renders the witnesses' impression that Bikindi was fleeing from Kigali credible: see Exhibit P51, Reports of Interviews before the Dutch Immigration and Naturalisation Service, p. 13. ⁷⁵¹ Witness AJZ, T. 26 September 2006, pp. 8, 38; Witness AJY, T. 27 September 2006, p. 33 and T. 2 October 2006, p. 7; Witness BKW, T. 18 October 2006, p. 21. ⁷⁵² Witness AJZ, T. 26 September 2006, p. 9 and T. 27 September 2006, p. 4 (French). ⁷⁵³ Witness AJY, T. 27 September 2006, p. 34 and T. 2 October 2006, p. 18; Witness BKW, T. 17 October 2006,

p. 33 and T. 18 October 2006, p. 25. ⁷⁵⁴ Witness BKW, T. 18 October 2006, p. 15; Witness AJY, T. 27 September 2006, pp. 32-33, 37 and T. 2 October 2006, p. 5. ⁷⁵⁵ Bikindi, T. 1 November 2007, pp. 7 and 10. ⁷⁵⁶ Bikindi, T. 5 November 2007, p. 19. ⁷⁵⁷ Witness CQK, T. 10 October 2007, pp. 42-43, 53, 56. The Chamber notes that Witness CQK's statement regarding the unavailability of vehicles at the time is contradicted by Defence Witness DZS's testimony that Bikindi drove her in his vehicle at the end of June 1994 (T. 24 September 2007, p. 14). ⁷⁵⁸ Witness TIER, T. 16 October 2007, p. 7. ⁷⁵⁹ Shadrack Bizimana, T. 16 October 2007, pp. 50, 52-56, 58-61, 71. ⁷⁶⁰ Witness XUV, T. 8 October 2007, p.50. ⁷⁶¹ Witness XUV, T. 8 October 2007, pp. 56-58. ⁷⁶² Witness XUV, T. 8 October 2007, pp. 54-56. Judgement 2 December 2008
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evidence that Kabayiza was killed in April 1994 close to Ndayazi's house after hitting Gaspard with his machete.⁷⁶³ Witness XUV further testified that he had not been present when Kabayiza was killed but that he had not heard of Bikindi's involvement in his death.⁷⁶⁴ Although the Chamber

considers the Report of Massacres at Nyundo in Period April 1994 – admitted as Exhibit D111 – of limited probative value because of the reservations it has about its authenticity and chain of custody, it notes that the report mentions April 1994 as the date of Thaddée Gatore’s death.⁷⁶⁵ 334. The Chamber is mindful that there are inconsistencies between the testimonies of Witness XUV and Shadrack Bizimana,⁷⁶⁶ and that the latter testified as to what he was told or what he heard at Gacaca proceedings. However, having considered the evidence in its totality, the Chamber finds that the Defence evidence on Father Gatore and Kabayiza’s deaths raises a reasonable doubt as to whether they were actually killed in June 1994. The Chamber recalls that none of the Prosecution witnesses were eye witnesses to the deaths. While the Chamber has no reason to question the credibility of Witness AKK that Gatore died in June 1994, it considers that the doubt raised by the Defence as to when Father Gatore was killed must weigh in favour of the Accused. 335. Although Witnesses AJZ, AJY and BKW corroborate each other on certain matters regarding the incident at the Rugerero roadblock, the Chamber observes inconsistencies between their evidence and recalls the serious reservations it has on their overall credibility. Considered together with the doubt raised by the Defence concerning Father Gatore and Kabayiza’s deaths it does not allow the Chamber to conclude that their evidence proves the Prosecution’s allegations beyond reasonable doubt. 336. For the foregoing reasons, the Chamber finds that the Prosecution has not proven beyond reasonable doubt the allegations set out in paragraphs 22, 30(d), 47(a) and (h) of the Indictment. 9.5. Rape and Killing of Ancilla 337. The Prosecution alleges that following a meeting held at Umuganda Stadium there was an intensive search for Tutsi, as a result of which Ancilla, a Tutsi woman, and her 4-year-old daughter were killed.⁷⁶⁷ The Prosecution contends that Noël and Pascal, two of the Interahamwe to whom Bikindi gave orders, discovered that Ancilla had been hiding in the ceiling of her home in Murara, Rubavu commune. It is alleged that Bikindi said that she was one of the people fighting Hutu and that she should be killed, and that Bikindi was present when Noël and Pascal took her away. The Prosecution alleges that Noël and Pascal killed Ancilla and her daughter, and buried them in a shallow grave.⁷⁶⁸ 338. It is also alleged that Sendegeya, another Interahamwe, boasted after the killing of Ancilla that he had always dreamt of “sleeping” with a Tutsi woman and that now “his dream had come true”. The Prosecution contends that Bikindi stood on the road by Ancilla’s house to ensure his orders were carried out. It further contends that, by ordering the Interahamwe under his effective control to commit these acts of violence and by staying on the side of the

763 Witness XUV, T. 8 October 2007, pp. 51-52; Shadrack Bizimana, T. 16 October 2007, pp. 53, 55-56, 60. 764 Witness XUV, T. 8 October 2007, pp. 51-53. 765 Exhibit D111, Report of Massacres at Nyundo in Period April 94, UNAMIR, dated 14 October 1994. Regarding the chain of custody, see Defence Investigator Froduald Serugendo, T. 18 October 2007, pp. 71-77. 766 The Chamber refers, *inter alia*, to inconsistencies regarding the individuals involved, the exact circumstances and locations of the killings. 767 Indictment, para. 23. 768 Indictment, paras. 28, 30(g), 46 and 47(f). Judgement 2 December 2008 84

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road to ensure his orders were followed, Bikindi was aware or ought to have been aware of the acts of rape and sexual violence committed against Ancilla.⁷⁶⁹ 339. As a preliminary matter, the Chamber notes that the Prosecution, in the course of its Indictment, places this incident in mid-late June 1994 after the rally at Umuganda Stadium,⁷⁷⁰ in early July 1994,⁷⁷¹ in late June 1994⁷⁷² and in early June 1994.⁷⁷³ The same confusion was reiterated in the Prosecution Pre-Trial Brief.⁷⁷⁴ During its Opening Statement, the Prosecution stated that Ancilla's murder occurred following a meeting at Umuganda Stadium in June 1994 during which Bikindi allegedly addressed the audience.⁷⁷⁵ In its Closing Brief, the Prosecution placed Ancilla's killing in late June or early July 1994.⁷⁷⁶ The Defence did not raise the issue during the trial, and although it noted the inconsistencies in the Indictment in its Closing Brief, it did not claim any prejudice.⁷⁷⁷ Nevertheless, if it were to find that the Prosecution has proven its allegation beyond reasonable doubt, the Chamber would verify that Bikindi's ability to defend himself has not been materially impaired by the Prosecution's failure to date the incident with the requisite degree of consistency and specificity before entering a finding of guilt. 340. Prosecution Witness AJZ testified that Bikindi was in the company of members of his troupe, including Noël, when an Interahamwe known as Kabulimbo came to tell them that an Inyenzi, Ancilla, a nurse, had been discovered in hiding. The Interahamwe allegedly went there, beat up her husband and then took Ancilla out from the ceiling where she was hiding to the road where Bikindi was.⁷⁷⁸ According to Witness AJZ, Bikindi said: "There is no other solution, you must go and kill her."⁷⁷⁹ Bikindi and Noël, the witness said, took Ancilla and her 4-year-old daughter to a field next to Mirasano's farm. They were killed with clubs and sharp objects.⁷⁸⁰ Witness AJZ insisted he was an eye-witness to the killing.⁷⁸¹ 341. Prosecution Witness AJY testified that he saw Kabulimbo tell Bikindi and his Interahamwe at the Rugerero roadblock that a Tutsi woman, Ancilla, had returned to her home from her hiding place. He stated that Bikindi and the Interahamwe then went to Ancilla's house, where they beat her husband and raped her before taking her outside. The witness said that in the meantime, he came down from the roadblock. He learnt about Ancilla's rape from those who had just come out of her house, in particular Sendegeya, who said that he had just realised his dream to sleep with a Tutsi woman. Witness AJY testified that, in response to her attempt to persuade the group to spare the child she was carrying on her back, Bikindi said that children of Inyenzi should not be spared. The witness stated that Ancilla and her child were subsequently killed, and that the following day he and others buried the bodies.⁷⁸²

⁷⁶⁹ Indictment, para. 29. ⁷⁷⁰ Indictment, para. 23. ⁷⁷¹ Indictment, paras. 28, 46 and 47(f). ⁷⁷² Indictment, para. 29. ⁷⁷³ Indictment, para. 30(g). ⁷⁷⁴ Prosecution Pre-Trial Brief, paras. 34, 39, 40, 41(g), 58, 59(f). ⁷⁷⁵ Opening Statement, T. 18 September 2006, pp. 4-5. ⁷⁷⁶ Prosecution Closing Brief, paras. 547, 548, 577, 826. ⁷⁷⁷ Defence Closing Brief, para. 518. ⁷⁷⁸ Witness AJZ, T. 26 September 2006, pp. 6, 12-14, 25. ⁷⁷⁹ Witness AJZ, T. 26 September 2006, p. 14. ⁷⁸⁰ Witness AJZ, T. 26 September 2006, pp. 12, 13, 25. ⁷⁸¹ Witness AJZ, T. 26 September 2006, pp. 12, 13. ⁷⁸² Witness AJY, T. 28 September 2006, pp. 3-5, 7 (French). Judgement 2 December 2008 85

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342. The Chamber recalls that it has already found Witnesses AJZ's and AJY's testimony to be doubtful.⁷⁸³ As to this incident, the Chamber cannot but emphasise Witness AJZ's major inconsistencies with respect to the date the incident occurred. The witness first testified that Ancilla died in July, shortly before he fled to Zaire, about two weeks after the Nyamyumba incident, which he placed three days to the end of June.⁷⁸⁴ Then he testified that she died one week and three days before he fled to Zaire at the end of July.⁷⁸⁵ In response to a question from the Prosecution that accordingly Ancilla's death would have been around the beginning of July, based on the fact that the witness had testified that he went into exile on 10 July, the witness disagreed and said it would have been the middle of the month around 15 or 17 July.⁷⁸⁶ When questioned by the Prosecution on this apparent confusion in the dates he had been testifying about, the witness stated that he no longer remembered the dates and that all he knew for sure was that Ancilla died in July before he went into exile that same month. He then ventured to estimate that perhaps Ancilla died on 20 July and that they went into exile on 25 July, stressing that this was only an approximation.⁷⁸⁷ In a prior statement, the witness had declared to Tribunal investigators that the killing occurred at the beginning of July 1994.⁷⁸⁸ 343. The Chamber is also concerned with Witness AJZ's confusing statement regarding the role of one Kazahoro in the incident. Although he gave the evidence summarised above as to the sequence of events, he also explained that "[t]he next day, in the morning" an Interahamwe known as Kazahoro saw Ancilla and said that the time had come for nurses to go harvest sweet potatoes and testified that "[t]hat is the time at which she was taken away and killed in Mirasano's farm".⁷⁸⁹ 344. In addition to what has already been discussed above,⁷⁹⁰ the Chamber is surprised that, despite knowing that no light had been shed on the death of Ancilla before the Gacaca courts and that investigations were still ongoing, Witness AJZ did not feel the need to provide the evidence he offered to this Tribunal in relation to Bikindi's involvement in her death. The witness's explanation that "there is still time" and that he will accuse Bikindi before Gacaca courts "when the time comes" is somewhat puzzling.⁷⁹¹ 345. There are also significant discrepancies between the accounts of the incident provided by the Prosecution witnesses. In particular, the evidence of Witnesses AJZ and AJY is contradictory as to whether Ancilla was raped before she was killed. Witness AJY testified that he learnt that Ancilla had been raped immediately afterwards from those who had just come out of her house.⁷⁹² Witness AJZ, allegedly present when Ancilla was taken out from her house, did not even allude to Ancilla's rape. The Chamber finds it difficult to accept the witnesses' discrepancy on such a significant matter. 346. While both witnesses were alleged eye-witnesses to Ancilla being brought out of her house, their testimony differed on other significant aspects. One stated that Bikindi came into the house with the rest of the group, the other testified that Bikindi was outside on the road. One stated that Ancilla attempted to save her child, the other did not. One testified that

783 See supra paras. 127-132 and 160. 784 Witness AJZ, T. 26 September 2006, pp. 6-7. 785 Witness AJZ, T. 26 September 2006, p. 24; T. 27 September 2006, p. 17. 786 Witness AJZ, T. 27 September 2006, p. 17. 787 Witness AJZ, T. 27 September 2006, p. 18. 788 Exhibit D6, Witness AJZ's written statement dated 9 and 11 May 2001 (under seal), p. 4. 789 Witness AJZ, T. 26 September 2006, p. 13. 790 See supra paras. 127-132. 791 Witness AJZ, T. 26 September 2006, pp. 25, 31-32. 792 Witness AJY, T. 28 September 2006, p. 4. Judgement 2 December 2008 86

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Bikindi and Noël took Ancilla and her child to be killed, the other only stated that Ancilla and her child were subsequently killed.⁷⁹³ One suggested it occurred in the morning,⁷⁹⁴ the other in the evening.⁷⁹⁵ 347. In further support of its allegation, the Prosecution entered Bikindi's "personal file" from the Rugerero cellule Gacaca court into the record as Exhibit P80. This document dated 9 March 2005 is signed by seven judges and indicates that Bikindi was suspected of participating in the murder of Ancilla and her child.⁷⁹⁶ Kabulimbo is mentioned therein as one of the co-perpetrators. The Defence also adduced as Exhibit D110 an alleged attestation from members of the same Rugerero cellule Gacaca court obtained by Co-Counsel Momo, which contains a list of those who participated in Ancilla's death. Bikindi is not listed among them, but Kabulimbo is.⁷⁹⁷ The attestation is neither signed nor stamped and the Chamber questions the probative value of Co-Counsel Momo's affidavit attached therewith. 348. The Chamber observes that Exhibits P80 and D110 referred to different people as officials of the court. Whatever the authenticity and reliability of those two exhibits may be, the Chamber considers that the mere fact that the allegation brought before the Tribunal is also the subject of proceedings in Rwanda is not sufficient for a proof beyond reasonable doubt that the Accused indeed participated in the crime with which he is charged. Even considered together with the questionable evidence of Witnesses AJZ and AJY, Exhibit P80 does not prove Bikindi's responsibility in the killing of Ancilla and her daughter. 349. In assessing the Prosecution's evidence, the Chamber has also considered the evidence given by Witnesses DFA and JTX related to the killing of Ancilla, which it found to be of very limited probative value.⁷⁹⁸ 350. The Chamber has no doubt that Ancilla was killed during the genocide. However, given the serious reservations the Chamber has on the credibility of Witnesses AJY and AJZ and the divergence in their accounts of the incident, the Chamber does not find that their evidence, even considered in light of Exhibit P80, prove beyond reasonable doubt that Bikindi, Noël or anyone under Bikindi's command participated in the killing or rape of Ancilla or the killing of her daughter as alleged by the Prosecution in paragraphs 23, 28, 29, 30(g), 46 and 47(f) of the Indictment. 9.6. Killings at Camp Scout 351. The Prosecution alleges that, at the end of June 1994, Bikindi established a roadblock at Camp Scout near the Pentecostal church on the way to Commune rouge, Gisenyi, where several Tutsi were massacred. It argues that Bikindi was in charge of that roadblock and provided orders to the Interahamwe manning it. Specifically, it is alleged that Bikindi came to the roadblock several times, exercised effective control over the Interahamwe manning it,

793 See supra paras. 340, 341. 794 Witness AJZ, T. 26 September 2006, p. 13. 795 Witness AJY, T. 28 September 2006, p. 3. 796 Exhibit P80, “Accused’s Personal File”, Simon Bikindi, Gacaca Courts National Service, Rugerero cellule, Rugerero secteur, Rubavu commune, dated 9 March 2005. 797 Exhibit D110, Attestation dated 22 December 2006 with Affidavit from Co-Counsel Momo dated 30 September 2007. 798 The Chamber notes that Witness JTX’s evidence (T. 25 September 2007) suffers from many inconsistencies and that Witness DFA’s accusation of bribing against Witness AJY and others was unsubstantiated (T. 24 September 2007, pp. 55-58, 65-66). In addition, as regards the killing of Ancilla, Witness DFA only testified as to what she heard, or not heard, at Gacaca proceedings (T. 24 September 2007, pp. 60, 62, 65). In light of its conclusion on the Prosecution’s evidence, the Chamber does not find it necessary to discuss their evidence any further. Judgement 2 December 2008 87

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gave them orders to kill Tutsi and knew, or ought to have known, that several Tutsi had been killed at this roadblock as a result of his orders.⁷⁹⁹ 352. In support of this allegation, the Prosecution relies solely on Prosecution Witness BHI, a former Interahamwe who was convicted in Rwanda and sentenced to life imprisonment for his participation in the genocide.⁸⁰⁰ The Chamber has already expressed reservations about the veracity of this witness’s evidence.⁸⁰¹ In the circumstances, the Chamber considered Witness BHI’s testimony on this allegation with particular caution. 353. During cross-examination, Witness BHI stated that when Bikindi fled from Kigali to Gisenyi, he arrived in Gisenyi with many Interahamwe. The witness testified that, between June and July 1994, Bikindi set up his own roadblock with Interahamwe at Camp Scout in order to stop enemies infiltrating the camp. According to the witness, Bikindi often came to the roadblock to interact with “his own Interahamwe”. He explained that the roadblock was set up at Camp Scout because the Interahamwe who had come along with Bikindi lived there.⁸⁰² Witness BHI asserted that Interahamwe killed Tutsi at this roadblock.⁸⁰³ 354. The Chamber notes that the witness gave different accounts as to when the roadblock was manned. After first saying that the roadblock was manned night and day,⁸⁰⁴ Witness BHI declared that the roadblock – a piece of wood which was placed across the road – was only manned at night.⁸⁰⁵ 355. Witness BHI would have had good reason to know about the erection of such a roadblock, given that he allegedly lived close by and transported corpses of people killed there.⁸⁰⁶ However, the Chamber is concerned by the vagueness of his testimony as to when the roadblock was mounted⁸⁰⁷ and as to the killings which allegedly took place there.⁸⁰⁸ Together with the inconsistency within the witness’s testimony as to when the roadblock was manned, this vagueness leaves the Chamber with some doubt as to the reliability of this part of Witness BHI’s testimony. 356. Witness BHI’s evidence on the allegation is not corroborated by any other witness or documentary evidence. On the contrary, Defence witnesses HZTX, RH and FLV testified that there was never any roadblock at Camp Scout.⁸⁰⁹ The Chamber is not convinced by the

799 Indictment, paras. 26, 30(f) and 47(d). 800 Witness BHI, T. 12 October 2006, p. 40; T. 13 October 2006, pp. 18, 21-22. See also Exhibit D25(F), Prononcé du Jugement, Chambre spécialisée du Tribunal de première instance de Gisenyi, dated 25 May 2001 (under seal), pp. 90-91, 93, 94-95. The Chamber notes that the witness's name is spelt slightly differently in Exhibit D25(F). 801 See supra para. 79. 802 Witness BHI, T. 13 October 2006, pp. 17-18, 23-24. 803 Witness BHI, T. 13 October 2006, pp. 18, 24. 804 Witness BHI, T. 13 October 2006, p. 17 (“[...] it was manned by at least five Interahamwe, and sometimes at night there would be up to 10 or 15 Interahamwe manning the roadblock”), p. 23 (“It was a roadblock which was manned night and day”). 805 Witness BHI, T. 13 October 2006, p. 24 (“A moment ago I said that this roadblock was manned at night. [...] So it was a roadblock which was manned at night, and during the day, it was not there.”). 806 Witness BHI, T. 13 October 2006, p. 18. 807 See Witness BHI, T. 13 October 2006, p. 18 (“I do not remember the date. However, you have clearly understood that I gave an approximate time frame, that is between June and July, but I cannot be more specific about the dates”). 808 See Witness BHI, T. 13 October 2006, pp. 18 (“[...] whenever the Interahamwe killed somebody or killed people at the roadblock after it had been mounted [...]. Personally, I did carry or transport the dead bodies of persons who had been killed at that roadblock”), p. 24 (“When Hutus came to that roadblock, they were allowed to move on, and if it was realised that the person was a Tutsi, the person was killed.”). 809 Witness FLV, T. 24 September 2007, pp. 79, 82 and T. 25 September 2007, p. ii (extract); Witness HZTX, T. 25 September 2007, pp. 66-67; Witness RH, T. 25 October 2007, p. 48. Judgement 2 December 2008 88

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Prosecution's argument that Witnesses HZTX and RH could not have seen the roadblock because they passed the location only in the day and that the roadblock was only mounted at night. The Chamber observes that, on that issue, the witness, in line with his prior declaration to Tribunal investigators, first clearly stated that the roadblock was manned during day and night.⁸¹⁰ Although the Chamber considers portions of these witnesses' testimony with circumspection,⁸¹¹ the Chamber finds that their evidence further undermines Witness BHI's evidence. In the absence of reliable corroboration, the Chamber does not accept Witness BHI's evidence on this allegation. 357. As a result, the Chamber finds that the Prosecution has not proven beyond reasonable doubt the allegation contained in paragraphs 26, 30(f) and 47(d) of the Indictment. 9.7. Killing of Three Tutsi Women at Commune rouge 358. The Prosecution alleges that in early July 1994, Bikindi, in the company of Interahamwe to whom he gave orders, transported three Tutsi women by removing them from a compound in Gacuba cellule in Gisenyi and driving them in his car to Commune rouge where they were killed by the Interahamwe. The Prosecution further alleges that by transporting these women to Commune rouge where he knew that they would be killed as other Tutsi were being killed at the same location, the Accused planned, instigated, and aided and abetted their killings.⁸¹² 359. In support of its allegation, the Prosecution relies solely on Prosecution Witness BHI's testimony, about which the Chamber has already expressed certain reservations.⁸¹³ 360. Witness BHI testified that he saw Bikindi in June

1994 at the crossroad between the road leading to the customs and the road leading to Commune rouge with three or four Interahamwe who were ensuring his security, two of whom were Kivumbi and Djuma Kamuwe, also known as Macuho. He recounted that, at the time he saw them, they were in a white Mitsubishi driven by Bikindi together with three women that were being beaten by Bikindi's bodyguards. The three women, the witness said, were being taken to Commune rouge where Tutsi were killed. The witness concluded that they were killed there.⁸¹⁴ 361. The location known as Commune rouge in 1994 was a cemetery in Gisenyi where Tutsi were taken to be killed and where bodies of dead Tutsi were disposed of. Based on corroborative evidence, the Chamber is satisfied that Tutsi taken to Commune rouge were likely not to come back alive.⁸¹⁵

810 Witness BHI, T. 13 October 2006, pp. 17, 23; Exhibit D24/2, Witness BHI's written statement dated 14 May and 16-17 April 2002 (under seal): "At any one moment about 5 interahamwe militias manned the roadblock during the day but in the evening the number increase up to 10." 811 The Chamber refers in particular to Witness HZTX's statement that Bikindi was not in Gisenyi in June and July 1994 (T. 25 September 2007, pp. 66, 72, 86 and 87) and to the fact that Witness RH declared that he had not met anyone from the Defence team present in court before his testimony although Bikindi's Lead Counsel, Mr. O'Shea, told the court that he had met the witness the night before the testimony in the safe house (T. 25 October 2007, pp. 66, 73 and T. 26 October 2007, p. 20). The Chamber is also mindful that Witness FLV only testified to what he had heard, or not heard, during Gacaca proceedings. 812 Indictment, paras. 27 and 47(e). 813 See supra paras. 79, 353-355. 814 Witness BHI, T. 12 October 2006, pp. 40-41; T. 13 October 2006, pp. 3, 20-22 (French). 815 Witness AEY, T. 12 October 2006, p. 11; Witness BHI, T. 12 October 2006, p. 41 and T. 13 October 2006, pp. 3, 21; Witness BKW, T. 17 October 2006, p. 35 and T. 18 October 2006, p. 31; Witness AHP, T. 19 October 2006, p. 21; Witness HZTX, T. 25 September 2007, pp. 65-67; Witness ASQ1, T. 5 October 2007, p. 36; Charles Zilimwabagabo, T. 22 October 2007, p. 24; Witness RH, T. 25 October 2007, pp. 41, 42, 43, 47 and T. 26 October 2007, p. 6. Judgement 2 December 2008 89

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362. However, the Chamber notes that Witness BHI did not give evidence as to whether the three women were actually taken to Commune rouge. His assertion is merely based on his observation from the sidewalk of the crossroad next to the Pentecostal church where he saw Bikindi's vehicle stop.⁸¹⁶ As duly pointed out by the Defence, from the Pentecostal Church, there were other possible destinations than Commune rouge.⁸¹⁷ The witness's assertion that the women were killed is not substantiated in any way. 363. In the Chamber's view, Witness BHI's evidence does not establish that Bikindi drove three Tutsi women to Commune rouge where they were killed. The Chamber also observes that nothing in the witness's testimony supports the allegation set out in the Indictment that the three women were removed from a compound in Gacuba cellule in Gisenyi. Further, whereas the Prosecution alleges that the incident took place in early July 1994, the witness recounted the

alleged incident in response to the Prosecution's inquiry as to who Bikindi was with when he saw him in June 1994 in Gisenyi.⁸¹⁸ 364. Accordingly, the Chamber finds that the Prosecution has not proven beyond reasonable doubt the allegation contained in paragraphs 27 and 47(e) of the Indictment. 9.8. Sexual Violence against Tutsi Women in Rubavu 365. Under paragraph 29 of the Indictment, the Prosecution alleges that Bikindi is responsible for the acts of sexual violence committed by Interahamwe against Tutsi women in the course of the execution of his orders to kill all Tutsi in Rubavu area. 366. The Chamber observes that, save for the specific incident concerning Ancilla discussed above, the Prosecution failed to adduce evidence in support of its allegation. Accordingly, the Chamber dismisses this allegation without discussing it any further.

10. EXILE IN ZAIRE 367. The Prosecution alleges that Bikindi continued to demonstrate his anti-Tutsi stance while in exile in Zaire between July 1994 and early 1995 by composing and performing anti-Tutsi songs and by collaborating with ex-FAR military leaders and former MRND-aligned government officials to continue the anti-Tutsi campaign as a means to regain power.⁸¹⁹ The Prosecution argues that this suggests Bikindi's continuous adherence to the policy of genocide against the Tutsi population.⁸²⁰ 368. The Chamber finds that Bikindi went into exile in Zaire (now Democratic Republic of the Congo) on 14 July 1994.⁸²¹ He eventually established himself in the Mugunga refugee camp with his family, members of the Irindiro ballet and a few other people.⁸²² There,

⁸¹⁶ Witness BHI, T. 13 October 2006, p. 22 (French). ⁸¹⁷ Defence Closing Brief, para. 639. The Chamber bases its conclusion on the observation it made during the site visit that took place from 14 to 18 April 2008. ⁸¹⁸ Witness BHI, T. 13 October 2006, pp. 2-3. ⁸¹⁹ Indictment, para. 17. ⁸²⁰ Prosecution Closing Brief, para. 991. ⁸²¹ Bikindi, T. 5 November 2007, pp. 16, 35-36; Exhibit P51, Reports of Interviews before the Dutch Immigration and Naturalisation Service, p. K02028836. ⁸²² Witness ALQ, T. 16 October 2006, p. 11; Witness AHP, T. 19 October 2006, p. 28; Witness BUY, T. 19 February 2007, p. 26; Witness BHI, T. 13 October 2006, p. 15; Witness DZS, T. 24 September 2007, pp. 18, 22; Witness HZTX, T. 25 September 2007, pp. 69, 77, 79, 88; Witness QUTI, T. 27 September 2007, pp. 27, 34, 44; Witness KMS, T. 1 October 2007, pp. 29-30; Witness DQR, T. 1 October 2007, pp. 53-54, pp. 59-60; Apolline Uwimana, T. 8 October 2007, pp. 28, 30; Witness JCH, T. 9 October 2007, p. 36; Witness CQR, T. 9 Judgement 2 December 2008 90

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Bikindi worked for an NGO and performed with his troupe in a hall that had been built in the camp.⁸²³ Attendance at concerts was subject to a fee.⁸²⁴ 369. In support of its allegation that Bikindi continued to participate in the anti-Tutsi campaign in Zaire, the Prosecution relies on Prosecution Witnesses ALQ, AHP, and BUY. Witness ALQ testified that, while in exile, he saw Bikindi at Abdu Selemani's house, Selemani being the alleged treasurer of the Interahamwe.⁸²⁵ The witness also explained that when Bikindi arrived in Goma with military officers he used to collaborate with in Rwanda, they started collecting money to purchase weapons to attack Rwanda

and created a militia designed to kill people in Rwanda from Zaire.⁸²⁶ The witness stated that, while in the camp, Bikindi composed a new song entitled *Rwigere Urumpe*, in which Bikindi was addressing Tutsi occupying Rwanda to whom he was saying that this situation would last only a while as Rwanda would be handed back to the Hutu.⁸²⁷ The witness also explained that the money raised from Bikindi's performances was used to purchase weapons with a view to returning to Rwanda to kill people and that he is the one who personally transported the weapons from Goma to the refugee camp.⁸²⁸ Witness AHP testified that the proceeds of the hall's inaugural concert organised on 9 January 1995 were supposed to be given to the RDR (Republican Rally for Democracy in Rwanda) for the purchase of weapons so that Rwanda could be attacked.⁸²⁹ Witness BUY testified that, while in Mugunga camp, he saw Bikindi in the company of Captain Bizumuremyi at the location where they were undergoing military training. Witness BUY said that they encouraged them to continue the training in order to be able to launch an attack and free Rwanda.⁸³⁰ 370. The Chamber has also considered Witness BKW's evidence that, on his way to exile, Bikindi was accompanied by members of the interim government and high ranking officers including General Augustin Bizimungu, Anatole Nsengiyumva, Major Kabera, Major Juvénal Bahufite, Joseph Nzirorera, Édouard Karemera and Hassan Ngeze,⁸³¹ as well as Witness BHI's evidence that, in the camp, Bikindi changed the theme of his songs and was now singing about returning to Rwanda.⁸³² 371. Defence Witnesses described a different picture of Bikindi's activities while in the Mugunga camp. Witness DZS and Apolline Uwimana testified that they never saw him interacting with Interahamwe or politicians there,⁸³³ and Witnesses QUTI, HZTX, Jean Berchmans Hakorimana and Nelson Muhirwa testified that they never heard about

October 2007, pp. 62, 64, 66, 68; Nelson Muhirwa, T. 10 October 2007, pp. 32-33; Bikindi, T. 1 November 2007, p. 21. ⁸²³ Witness ALQ, T. 16 October 2006, p. 12; Witness AHP, T. 19 October 2006, p. 28; Witness BHJ, T. 10 October 2006, p. 11 and T. 11 October 2006, p. 4; Witness DZS, T. 24 September 2007, pp. 18, 20; Witness HZTX, T. 25 September 2007, pp. 69, 77; Witness JCH, 9 October 2007, p. 37; Witness KMS, T. 1 October 2007, p. 32; Witness DQR, T. 1 October 2007, p. 61; Apolline Uwimana, T. 8 October 2007, p. 30; Witness CQR, T. 9 October 2007, p. 63. ⁸²⁴ Witness ALQ, T. 16 October 2006, p. 13; Witness AHP, T. 19 October 2006, p. 28; Witness DZS, T. 24 September 2007, p. 20; Witness KMS, T. 1 October 2007, p. 34; Witness BUY, T. 19 February 2007,

p. 26. ⁸²⁵ Witness ALQ, T. 16 October 2006, pp. 11, 26. ⁸²⁶ Witness ALQ, T. 16 October 2006, p. 12 (French). ⁸²⁷ Witness ALQ, T. 16 October 2006, p. 12. ⁸²⁸ Witness ALQ, T. 16 October 2006, pp. 11, 13, 25. ⁸²⁹ Witness AHP, T. 19 October 2006, p. 28. ⁸³⁰ Witness BUY, T. 19 February 2007, p. 26. ⁸³¹ Witness BKW, T. 17 October 2006, p. 36. ⁸³² Witness BHI, T. 13 October 2006, pp. 15-16. ⁸³³ Witness DZS, T. 24 September 2007, p. 21; Apolline Uwimana, T. 8 October 2007, p. 31. Judgement 2 December 2008 91

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Bikindi's involvement in military training.⁸³⁴ Several Defence Witnesses also specified that, while in the camp, Bikindi lived and worked with Tutsi.⁸³⁵ 372. As to the performances given by Bikindi and his troupe in the camp, Witness KMS testified that they were the same as before and that the troupe carried on singing the songs sung beforehand.⁸³⁶ Witnesses KMS, CQR and Apolline Uwimana testified that the concerts performed depicted traditional weddings and Rwandan culture.⁸³⁷ Prosecution Witness BHJ likewise testified that he attended a concert in the refugee camp at which Bikindi talked about traditional wedding ceremonies.⁸³⁸ Witnesses DZS, KMS and Apolline Uwimana also testified to the fact that the money raised during the performances was shared within the troupe to meet everyone's needs and that a certain amount was kept aside to buy equipment for upcoming performances.⁸³⁹ 373. Given the Chamber's reservations about the reliability of their evidence on allegations discussed above, the Chamber has assessed the testimony of Witnesses ALQ, AHP, BKW and BUY on Bikindi's activities while in exile with particular caution.⁸⁴⁰ The Chamber was also mindful that most of the Defence witnesses providing evidence on Bikindi's stay in Mugunga camp have, or had, a close relationship with Bikindi. 374. The Chamber considers that Witness BKW's uncorroborated evidence about Bikindi's alleged presence with leading political or military figures on his way to exile is inconclusive as to a possible collaboration with them to continue the anti-Tutsi campaign. Likewise, while testifying to seeing Bikindi at Abdu Selemani's house, Witness ALQ did not provide any details as to the nature of their relationship or the content of the discussion they may have had when meeting. Nor are the Defence witnesses' assertions that they did not hear about Bikindi's involvement with politicians or in military training sufficient to make any findings concerning Bikindi's activities at the relevant time. 375. Considering the doubts it already expressed as to the credibility of Witness ALQ, the Chamber does not accept his uncorroborated evidence that Bikindi created a militia to kill people in Rwanda or composed the song Rwigere Urumpe. Similarly, in the absence of reliable corroboration, the Chamber does not accept Witness BUY's testimony that Bikindi encouraged him and others to continue their military training. 376. The Chamber observes that the Prosecution did not specifically allege that the money collected at Bikindi's concerts in exile was used to purchase weapons. Notwithstanding this, although Witness AHP corroborated Witness ALQ's testimony on this allegation, the Chamber's doubts as to the credibility of both witnesses are so serious that it declines to rely on their evidence without further reliable corroboration. Moreover, the Chamber was particularly concerned with the zealous manner in which Witness ALQ told the court about

834 Witness QUTI, T. 27 September 2007, p. 34; Witness HZTX, T. 25 September 2007, p. 79; Jean Berchmans Hakorimana, T. 11 October 2007, pp. 9-10. 835 Witness DZS, T. 24 September 2007, p. 20; Witness KMS, T. 1 October 2007, pp. 30-33; Apolline Uwimana, T. 8 October 2007, p. 30; Witness CQR, T. 9 October 2007, pp. 66, 68; Witness JCH, T. 9 October 2007, pp. 36-37. 836 Witness KMS, T. 1 October 2007, p. 33. 837 Witness KMS, T. 1 October 2007, pp. 32-33; Witness CQR, T. 9 October 2007, p. 63 and T. 10 October 2007, p. 12; Apolline Uwimana, T. 8 October 2007, p. 31. 838 Witness BHJ, T. 10 October 2006, p. 11; T. 11 October 2006, p. 4. 839 Witness DZS, T. 24 September 2007, pp. 19-20; Apolline Uwimana, T. 8 October 2007, p. 31; Witness KMS, T. 1 October 2007, p. 34. 840 See supra paras. 79, 352 and 354-356 (Witness BHI), para. 34 (Witness BKW), paras. 78 and

101 (Witness ALQ), paras. 306-308 and 318 (Witness AHP), paras. 163-167 and 296 (Witness BUY).
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this activity, introducing it with the words “The wickedness and criminal mind of Bikindi did not only end in Rwanda.”⁸⁴¹ 377. The Chamber finds that the Prosecution has not proven beyond reasonable doubt the allegation contained in paragraph 17 of the Indictment related to Bikindi’s activities or stance while in exile in Zaire.

⁸⁴¹ Witness ALQ, T. 16 October 2006, p. 11

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CHAPTER III: FREEDOM OF EXPRESSION BEFORE THE TRIBUNAL 378. Simon Bikindi has been charged with offences based upon acts of expression, namely musical compositions, musical disseminations using a vehicle outfitted with a public address system, as well as musical performances and speeches given both in person and broadcast over the radio.⁸⁴² In this chapter, the Chamber will consider the customary international law on freedom of expression and the restrictions on this right before discussing how the law as discussed relates to the charges against Bikindi, specifically whether certain forms of expression are criminalised under the Statute.

1. FREEDOM OF EXPRESSION, THE RIGHT AND ITS LIMITS 379. There is a right to freedom of expression under customary international law. This is demonstrated by numerous international instruments which incorporate the right to freedom of expression, the widespread integration of such protections into domestic legal systems and the dispositions of numerous international, regional, and domestic courts that have interpreted such a right. Notably, all of the following international and regional instruments contain provisions protecting freedom of expression: the Universal Declaration of Human Rights (“UDHR”);⁸⁴³ the International Covenant on Civil and Political Rights (“ICCPR”);⁸⁴⁴ the International Convention on the Elimination of All Forms of Racial Discrimination (“CERD”);⁸⁴⁵ the European Convention for the Protection of Human Rights and Fundamental Freedoms (“ECHR”);⁸⁴⁶ the American Convention on Human Rights (“ACHR”);⁸⁴⁷ and the African Charter on Human and Peoples’ Rights (“ACHPR”).⁸⁴⁸ These provisions have been widely incorporated into numerous domestic legal systems, and there exists widespread domestic jurisprudence supporting the right to freedom of expression.⁸⁴⁹ 380. However, this right is not absolute. It is restricted by the very same conventions and international instruments that provide for it. For example, the UDHR states that everyone should be free from

incitement to discrimination.⁸⁵⁰ Similarly, the ICCPR prohibits war propaganda, as well as the advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility, or violence,⁸⁵¹ and the CERD aims to outlaw all forms of expression that explicitly lead to discrimination.⁸⁵² Each of the regional conventions mentioned above also restrict the freedom of expression: the ECHR recognises that there are “duties and responsibilities” that accompany the freedom of expression and thus limit its

842 Indictment, paras. 31-41, 48. 843 Universal Declaration of Human Rights, A/RES/217, 10 December 1948, second paragraph of the Preamble and Article 19. While not binding, this Declaration is considered evidence of customary international law. 844 International Covenant on Civil and Political Rights, 16 December 1966, 999 U.N.T.S. 171, Article 19. 845 International Convention on the Elimination of All Forms of Racial Discrimination, G.A. res 2106 (XX), Annex, 20 U.N. GAOR Supp. (No.14), U.N. Doc A/6014 (1966), 660 U.N.T.S. 195, Article 5. See also United Nations Declaration on the Elimination of All Forms of Racial Discrimination, G.A. res. 1904 (XVIII), 20 November 1963, Article 9. 846 Convention for the Protection of Human Rights and Fundamental Freedoms, 4 November 1950, 213 U.N.T.S. 222, 312 ETS 5, as amended by Protocol No. 11 of 11 May 1994, Article 10(1). 847 American Convention on Human Rights, 22 November 1969, 1144 U.N.T.S. 123, Article 13(1). 848 African Charter on Human and Peoples’ Rights, 27 June 1981, OAU Doc. CAB/LEG/67/3 rev. 5; 1520 U.N.T.S. 217, Article 9. 849 The Chamber finds it unnecessary for the purposes of this Judgement to exhaustively recite the jurisprudence based upon these provisions to support the fairly uncontroversial principle described herein. 850 UDHR, Article 7. 851 ICCPR, Article 20. 852 CERD, Article 4. Judgement 2 December 2008 94

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application;⁸⁵³ the ACHR allows for legal liability regarding acts that harm the rights or reputations of others, or that threaten the protection of national security, public order, or public health or morals and considers as offences punishable by law any propaganda for war and advocacy of national, racial or religious hatred that constitute incitements to lawless violence;⁸⁵⁴ and the ACHPR restricts the right to that which is “within the law”.⁸⁵⁵ The Chamber notes that the restrictions on this right have been interpreted in the jurisprudence of the various adjudicating bodies created from the international⁸⁵⁶ and regional instruments above.⁸⁵⁷ The Chamber also notes that a large number of countries have banned the advocacy of discriminatory hate in their domestic legislations.⁸⁵⁸

381. Prohibited expression can take different forms including incitement to hatred alone, to discrimination, or to violence. Given the varied approaches cited above, for the purposes of this Judgement the Chamber will use “hate speech” as an umbrella term for these forms of expression. 382. Hate speech is not criminalised per se under the Statute of the Tribunal, and the Chamber recognises the importance of protecting the right to freedom of expression. Protecting free expression is widely considered to allow for open debate on societal values, encourage artistic and scholarly endeavours, and lead to freedom of

conscience and self-fulfilment. Due to such benefits, freedom of expression is widely considered to be the very foundation of successful democracies. In fact, a failure to protect expression may allow repressive regimes to flourish.⁸⁵⁹ 383. Nevertheless, the Chamber is of the opinion that there is a discernable hierarchy of expression, one which requires the Chamber to treat different forms of expression differently. Whereas most forms of expression clearly remain within the limits of the legality, others are unequivocally of a criminal nature and should be sanctioned as such. 384. The Chamber considers that international definitions of expression and speech are broad enough to include artistic expression such as songs. Expression has been defined as the

853 ECHR, Article 10(2). 854 ACHR, Articles 13(2) and (5). 855 ACHPR, Article 9(2). See also Articles 27(2), 28. 856 See, for example, the following jurisprudence from the Human Rights Committee on Articles 19 and 20(2) of the ICCPR: *Ross v. Canada*, Communication No. 736/1997, UN Doc. CCPR/C/70/D/736/1997 (2000), Views of 18 October 2000; *J.R.T. and the W.G. Party v. Canada*, Communication No. 104/1981, UN Doc. CCPR/C/OP/2 at 25 (1984), Decision on admissibility of 6 April 1983; *Faurisson v. France*, Communication No. 550/1993, UN Doc. CCPR/C/58/D/550/1993 (1996), Views of 8 November 1996. See also the following jurisprudence from the Committee on the Elimination of Racial Discrimination on Article 14 of the CERD: *Hagan v. Australia*, Communication No. 26/2002, CERD/C/62/D/26/2002 (2003); *L.K. v. The Netherlands*, Communication No. 4/1991, CERD/C/42/D/4/1991 (1993). 857 See, for example, the following jurisprudence from the European Court of Human Rights on Article 10 of the ECHR: *Arslan v. Turkey*, Application No. 23462/94, Judgement of 8 July 1999; *Süreş and Özdemir v. Turkey*, Application No 23927/94, 24277/94. Judgement of 8 July 1999; *Incal v. Turkey*, Application No. 22678/93, Judgement of 9 June 1998; *Zana v. Turkey*, Application No. 19854/91, Judgement of 25 November 1997; *Jersild v. Denmark*, Application No. 15890/89, Judgement of 22 August 1994. See also the following jurisprudence from the Inter-American Court on Article 13 of the ACHR: *Olmedo Bustos et al. case*, Judgement of 5 February 2001, Inter-Am. Ct. H.R. (Ser. C.) No. 73 (2001). See also the following from the African Commission on Human and Peoples' Rights on Article 9(2): *Amnesty International v. Zambia*, Communication No. 212/98 (1999); *Constitutional Rights Project and Civil Liberties Organization v. Nigeria*, Communication No. 102/93 (1998). 858 See *Nahimana et al.*, Judgement (TC), para. 1075, citing legislation banning hate speech from Germany, Vietnam, Russia, Finland, Ireland, Ukraine, Iceland, Monaco, Slovenia and China. 859 Cf. *Nahimana et al.*, Judgement (AC), Partly Dissenting Opinion of Judge Meron, para. 10: "overly permissive interpretations of incitement can and do lead to the criminalization of political dissent." Judgement 2 December 2008 95

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freedom to “impart information and ideas”,⁸⁶⁰ “either orally, in writing or in print, in the form of art, or through any other media of his choice”;⁸⁶¹ and “express and disseminate his opinions”.⁸⁶² The speech prohibited has been defined broadly as “propaganda”,⁸⁶³ “advocacy of [...] hatred”,⁸⁶⁴ and the “dissemination of ideas”.⁸⁶⁵ The Chamber therefore considers that the words accompanying a score of music are comparable from a legal perspective to the words used in a speech.

2. **CRIMINALISATION UNDER THE STATUTE 385.** The Prosecution alleges that Bikindi’s music and speeches constitute a gross and blatant violation of international norms on incitement to discrimination and violence.⁸⁶⁶ The Chamber, however, is not concerned with the violation of general international legal principles, but whether an accused has committed the crimes with which he has been charged, and over which the Tribunal has jurisdiction. 386. The Chamber will therefore consider whether and how hate speech can constitute the crimes of direct and public incitement to commit genocide and persecution as a crime against humanity. The Chamber notes that under certain circumstances, a song or speech could be considered participation in a crime such as genocide or murder through aiding or abetting, inciting or even ordering the crime or evidence of conspiracy to commit genocide. However, the Chamber will not address this issue here, as this section is concerned with whether hate speech can constitute the *actus reus* of a crime in itself. 2.1. Hate Speech and Direct and Public Incitement to Commit Genocide 387. In order to be considered direct and public incitement to commit genocide, a speech must be a public and direct appeal to commit an act referred to in Article 2(2) of the Statute; it must be more than a vague or indirect suggestion.⁸⁶⁷ To determine whether a speech rises to the level of direct and public incitement to commit genocide, context is the principal consideration,⁸⁶⁸ specifically: the cultural and linguistic content; the political and community affiliation of the author; its audience; and how the message was understood by its intended audience, i.e. whether the members of the audience to whom the message was directed understood its implication.⁸⁶⁹ A direct appeal to genocide may be implicit; it need not explicitly call for extermination, but could nonetheless constitute direct and public incitement to commit genocide in a particular context.⁸⁷⁰

⁸⁶⁰ UDHR, Article 19; ICCPR, Article 19(2); ECHR, Article 10(1); ACHR, Article 13(1). ⁸⁶¹ ICCPR, Article 19(2); ACHR, Article 13(1). ⁸⁶² ACHPR, Article 9(2). ⁸⁶³ CERD, Article 4. ⁸⁶⁴ ICCPR, Article 20(2); ACHR, Article 13(5). ⁸⁶⁵ CERD, Article 4(a). ⁸⁶⁶ See Prosecution Closing Brief, paras. 240, 246. ⁸⁶⁷ Nahimana et al., Judgement (AC), para. 692, affirming Kajelijeli, Judgement (TC), para. 852, and Akayesu, Judgement (TC), para. 557. See also Report of the International Law Commission on the work of its Forty-Eight Session to the General Assembly, 51 UN ORGA, Supp. No. 10, UN Doc. A/51/10 (1996), Draft Code of Crimes Against the Peace and Security of Mankind, Article 2(3)(f), p. 26: “The element of direct incitement requires specifically urging another individual to take immediate criminal action rather than merely making a vague or indirect suggestion.” ⁸⁶⁸ Nahimana et al., Judgement (AC), paras. 701, 715. ⁸⁶⁹ Nahimana et al., Judgement (AC), paras. 700, 711, and 713; Niyitegeka, Judgement (TC), para. 431; Akayesu, Judgement, (TC), paras. 557-558. ⁸⁷⁰ Nahimana et al., Judgement (AC), para. 703. Judgement 2

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388. While most direct and public incitements to commit genocide would be preceded or accompanied by hate speech, only the former, which actually calls for genocide, is punishable under Article 2(3)(c) of the Statute.⁸⁷¹ The travaux préparatoires of the Genocide Convention supports this conclusion as the Genocide Convention was only intended to criminalise direct appeals to commit acts of genocide and not all forms of ⁸⁷² incitement to possibility that songs may constitute direct and public incitement to commit genocide.⁸⁷³ 2.2. Hate Speech and Persecution as a Crime against Humanity for genocide may, in certain contexts, constitute intention to discriminate on one of the may in certain circumstances constitute a violation of fundamental rights, namely a violation

hatred.

389. Depending on the nature of the message conveyed and the circumstances, the Chamber does not exclude the p 390. In contrast to the crime of direct and public incitement to commit genocide above, hate speech that does not directly call persecution as a crime against humanity. 391. The crime of persecution consists of an act or omission that discriminates in fact and that denies or infringes upon a fundamental right laid down in international customary or treaty law, and was carried out deliberately with the in listed grounds, specifically race, religion or politics.⁸⁷⁴ 392. Underlying acts of persecution need not be considered crimes in international law.⁸⁷⁵ For example, harassment, humiliation, psychological abuse,⁸⁷⁶ as well as denial of the rights of employment, freedom of movement, proper judicial process, and proper medical care have been recognised as underlying acts of persecution.⁸⁷⁷ It follows that it is not necessary to find that certain hate speech was in and of itself a crime under international law in order to regard such a speech as an underlying act of persecution. The Chamber is satisfied that hate speech

⁸⁷¹ Nahimana et al., Judgement (AC), para. 692. ⁸⁷² See Travaux préparatoires of the Genocide Convention, UN ORGA, 6th Committee, 3rd Session, 86th meeting, UN Doc. A/C.6/3/CR. 86, 28 October 1948, pp. 244-248, and UN ORGA, 6th Committee, 3rd Session, 87th meeting, UN Doc. A/C.6/3/CR. 87, 29 October 1948, pp. 248-254. ⁸⁷³ The Chamber notes that the language used in the Tribunal's jurisprudence on direct and public incitement to commit genocide, referring to a "direct appeal" and a "message" is broad enough to include song within incitement. The Chamber also notes the convictions in the Nahimana et al. trial for direct and public incitement to commit genocide were based on different media of speech, namely radio (RTL M programming) and print (Kangura newspaper). The Chamber emphasises the inclusive wording of Article 2(3)(f) of the Draft Code of Crimes Against the Peace and Security of Mankind according to which public incitement is characterised by a call for criminal action to a number of individuals in a public place or to members of the general public at large: Report of the International Law Commission

to the General Assembly, 51 U.N. ORGA Supp. (No. 10), at 26, U.N. Doc. A/51/10 (1996). Lastly, the Chamber observes that in paragraph 283 of its Closing Brief, the Defence recognised that a song could incite killing if the composer's requisite intention to do so was clearly evident in the song. 874 Nahimana et al., Judgement (AC), para. 985, citing Krnojelac, Judgement (AC), para. 185 (citing with approval Krnojelac, Judgement (TC), para. 431); Simić, Judgement (AC), para. 177; Stakić, Judgement (AC), para. 327-328; Kvočka et al., Judgement (AC), para. 320. 875 The Chamber notes that although two judgements from the ICTY Appeals Chamber have stated that the underlying act of persecution must be considered a crime at international law (Blaškić, Judgement (AC), para. 139; Kordić and Čerkez, Judgement (AC), para. 103), this is inconsistent with more recent case law of the ICTR and ICTY Appeals Chambers (Nahimana et al., Judgement (AC), para. 985; Brđanin, Judgement (AC), para. 296; Kvočka et al., Judgement (AC), para. 323). 876 Kvočka et al., Judgement (AC), para. 325. 877 Brđanin, Judgement (AC), paras. 295-297. Judgement 2 December 2008 97

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of the right to respect for dignity when that speech incites to hate and discrimination,⁸⁷⁸ or a violation of the right to security when it incites to violence.⁸⁷⁹ 393. The Appeals Chamber recently recalled that the underlying acts of persecution, whether considered in isolation or in conjunction with other acts, must be of equal gravity to the crimes listed under Article 3 of the Statute.⁸⁸⁰ It also held that hate speeches may be considered of equal gravity to the crimes listed under Article 3 of the Statute if they occur as part of a larger campaign of persecution.⁸⁸¹ In its determination, the Appeals Chamber considered the cumulative effect of all the underlying acts of the crime of persecution, namely the cumulative effect of the hate speeches and the direct calls to commit genocide broadcast in the context of a campaign of anti-Tutsi violence.⁸⁸² 394. The question remains as to whether hate speech occurring in isolation could be considered to be of equal gravity to the other crimes listed under Article 3.⁸⁸³ In such a scenario, the hate speech would occur without any other underlying acts of persecution, and as such, would be the only act discriminating against the group. However, given that a widespread or systematic attack against a civilian population on national, political, ethnic, racial or religious grounds would have to be established in order to support a conviction for persecution under the Tribunal's Statute, the Chamber considers that the same facts that would lead it to find the existence of such an attack could also support a finding of many other underlying acts of persecution, as both must be committed on discriminatory grounds.⁸⁸⁴ 395. Finally, depending on the message conveyed and the context, the Chamber does not exclude the possibility that songs may constitute persecution as a crime against humanity.⁸⁸⁵

⁸⁷⁸ Nahimana et al., Judgement (AC), para. 986, citing the UDHR, the Preamble of which expressly refers to the recognition of dignity inherent to all human beings, while the Articles set out its various aspects. See also Kvočka et al., Judgement (AC), paras. 323-325, in which the Appeals Chamber found that violations to human dignity (harassment, humiliation, and

psychological abuse) could, if sufficiently serious, constitute acts of persecution. 879 Nahimana et al., Judgement (AC), para. 986, citing Article 3 of the UDHR (“Everyone has the right to life, liberty and security of the person”). 880 Nahimana et al., Judgement (AC), paras. 985, 987. See also Brđanin, Judgement (AC), para. 296; Simić, Judgement (AC), para. 177; Kvočka et al., Judgement (AC), para. 321. 881 See Nahimana et al., Judgement (AC), paras. 985, 987. 882 Nahimana et al., Judgement (AC), para. 987. 883 The Chamber notes that the Appeals Chamber alluded to this issue in Nahimana et al., Judgement (AC), para. 987: “The Appeals Chamber is of the view that it is not necessary to decide here whether, in themselves, mere hate speeches not inciting violence against the members of a group are of a level of gravity equivalent to that for other crimes against humanity.” 884 While the Chamber acknowledges a conceivable scenario in which the victims of the widespread or systematic attack differed based on discriminatory grounds from those targeted in the act of persecution (if the widespread or systematic attack were committed on national grounds, this would differ from the three grounds on which persecution may be committed, namely political, racial or religious grounds), the Chamber deems it unnecessary to discuss such a scenario in great detail given the circumstances of the cases of which the Tribunal is seised. 885 The Chamber notes the definition of persecution is broad enough to include music, as the actus reus of persecution is merely defined as an act or omission which discriminates in fact and which denies or infringes upon a fundamental right. See also the Nahimana, et al., Judgement (TC), paragraph 1081 in which Ferdinand Nahimana was convicted of persecution based on the programming of the radio station, RTLM, under Articles 6(1) and 6(3) (only Article 6(3) liability affirmed by the Appeals Chamber). Judgement 2 December 2008 98

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3. CONCLUSION 396. The Chamber appreciates the precarious nature of restricting speech and discouraging political opinion through the criminalisation of certain kinds of expression. Although the Statute does not criminalise acts of expression per se, the inclusion of expressive acts within the underlying elements of the crimes under the jurisdiction of the Tribunal comes close to having such an effect. However, the Chamber is of the opinion that there is a discernable hierarchy of expression, one which requires the Chamber to treat different forms of expression differently. In fact, because of the serious nature of the crimes involved – persecution as a crime against humanity and direct and public incitement to commit genocide – it would be injudicious for the Chamber to treat the seeds of such grievous acts in the same fashion as any other act of expression, especially when accompanying a recognisable campaign of ongoing persecution or genocide. 397. While there is murky ground between some forms of expression, at some point, in the words of Judge Shahabuddeen, “[n]o margin of delicate appreciation is involved.”⁸⁸⁶ There are cases that are made up of simple criminality, in which the perpetrators know what they are doing and why they are doing it.⁸⁸⁷ These are the cases that will be punished under the Statute, no less.

886 Nahimana et al., Judgement (AC), Partly Dissenting Opinion of Judge Shahabuddeen, para. 73. 887 Nahimana et al., Judgement (AC), Partly Dissenting Opinion of Judge Shahabuddeen, para. 73. Judgement 2 December 2008 99

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CHAPTER IV: LEGAL FINDINGS

1. PRELIMINARY MATTER: JOINT CRIMINAL ENTERPRISE 398. Although not specifically pleaded in the Indictment, the Prosecution alleges in its Pre-Trial Brief that Bikindi is criminally responsible pursuant to Article 6(1) based upon his alleged participation in a joint criminal enterprise to eliminate Tutsi.⁸⁸⁸ The Chamber emphasises that when it intends to rely on joint criminal enterprise responsibility, the Prosecution must specifically plead this mode of liability in the indictment.⁸⁸⁹ Although joint criminal enterprise is a means of “committing”, it is insufficient for the Prosecution to merely make broad reference to Article 6(1) of the Statute,⁸⁹⁰ as the Prosecution does in the Indictment. The Chamber finds the Indictment defective in this respect. 399. Nonetheless, the Chamber notes that the Prosecution did provide some notice to the Defence before the commencement of the trial that this specific mode of liability was being alleged. In its Pre-Trial Brief,⁸⁹¹ the Prosecution clearly specified that its theory was that Bikindi participated in a joint criminal enterprise to destroy the Tutsi.⁸⁹² It clearly and consistently indicated the identity of the participants,⁸⁹³ the nature of Bikindi’s participation in the enterprise⁸⁹⁴ and the period over which the enterprise was said to have existed.⁸⁹⁵ 400. As to the category of joint criminal enterprise alleged, the Prosecution stated that it intended to rely on all categories of joint criminal enterprise.⁸⁹⁶ In this respect, the Chamber recalls that cumulative charging is allowed under the Statute on the basis that “prior to the presentation of all of the evidence, it is not possible to determine to a certainty which of the charges brought against an accused will be proven.”⁸⁹⁷ In the present case, the Chamber considers that the Prosecution was clearly in a position to determine with more specificity which category of joint criminal enterprise it would rely on; the Prosecution cannot reasonably argue that it intends to rely on the second category of joint criminal enterprise in a case where it does not even allege the existence of a system of ill-treatment. The Chamber is of the view that by pleading all three categories of joint criminal enterprise, the Prosecution

⁸⁸⁸ Prosecution Pre-Trial Brief, paras. 65-68, 117-126. See also Closing Arguments, T. 26 May 2008, pp. 4, 37. ⁸⁸⁹ Simić, Judgement (AC), para. 22; Ntagerura et al., Judgement (AC), para. 24; Kvočka et al., Judgement (AC), para. 42. ⁸⁹⁰ Simić, Judgement (AC), para. 22; Simba, Judgement (TC), para. 389; Ntagerura et al., Judgement (AC), para. 24; Kvočka et al., Judgement (AC), para. 42. ⁸⁹¹ The Chamber notes that notice of the allegation of participation in a joint criminal enterprise was already given by the Prosecution in its preliminary Pre-Trial Brief filed on 17 July 2006: The Prosecutor v. Simon Bikindi, Case No. ICTR-2001-72-I, The Prosecutor’s Preliminary Pre-Trial Brief Pursuant to Article 73bis (B)(i) of the Rules of Procedure and Evidence, paras. 65-67. ⁸⁹²

Prosecution Pre-Trial Brief, paras. 65-68, 117-126. See also *ibid.*, paras. 244, 250. 893 Prosecution Pre-Trial Brief, paras. 118, 120. 894 The Prosecution made clear that Bikindi's participation in the joint criminal enterprise encompasses the specific criminal acts pleaded in the Indictment: Prosecution Pre-Trial Brief, paras. 69-71, 118, 119, 122-126. See the argument by the Defence regarding the nature of Bikindi's participation in the joint criminal enterprise: Closing Arguments, T. 26 May 2008, para. 41, l. 23-25: "we submit that the submissions that [the Prosecution] has made today about acquiescence do not match the nature of the joint criminal enterprise as set out in the Indictment. In our submission, if an accused is going to be found guilty of a joint criminal enterprise by omission, then it is fair and proper that the indictment explain that. This indictment does not." In this respect, the Chamber notes that, in its Pre-Trial Brief, the Prosecution did not plead Bikindi's participation through omission proper but only through affirmative acts or tacit encouragement (Prosecution Pre-Trial Brief, paras. 69, 126). 895 Prosecution Pre-Trial Brief, para.118. 896 Prosecution Pre-Trial Brief, para.104. See also *ibid.*, para. 66. 897 Simba, Judgement (AC), para. 276, referring to Kupreskić et al., Judgement (AC), paras 385-386. See also Ntagerura et al., Judgement (AC), para. 158. Judgement 2 December 2008 100

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failed to properly inform Bikindi as to which form of joint criminal enterprise was being alleged.⁸⁹⁸ 401. The Chamber considers it unnecessary to discuss whether the Prosecution's failure to properly plead joint criminal enterprise actually materially impaired Bikindi's ability to prepare his defence, as it considers that the Prosecution has failed to establish the existence of the joint criminal enterprise alleged. 402. Although it has found that Bikindi was close to MRND leaders and was considered as an important figure in the Interahamwe movement, the Chamber has concluded that the Prosecution failed to prove that he collaborated or agreed with government figures or MRND, CDR or Interahamwe leaders to disseminate anti-Tutsi propaganda. The Chamber further finds that there is no basis in the evidence for a finding beyond reasonable doubt that Bikindi shared a common plan with the individuals identified by the Prosecution in the Indictment and the Prosecution Pre-Trial Brief to destroy or eliminate the Tutsi ethnic group. There is no evidence in the record of any specific meeting, rally or conversation where the plan or design to destroy the Tutsi would have been formed or discussed. The Chamber has found above that Bikindi addressed the crowd at a meeting in Kivumu in 1993 advocating that Tutsi be killed. However, nothing in the evidence suggests that Bikindi collaborated or agreed with others to do so. While it would be reasonable to infer that Bikindi had discussed his speech with the organisers – which may imply that they had agreed to incite people to commit genocide – it is not the only reasonable inference that can be drawn from the circumstances of the case. For instance, it could also be reasonable to consider that Bikindi made a spontaneous and unplanned statement during his performance. The Chamber also notes that even if it were to find that Bikindi's exhortation at the Kivumu meeting in 1993 evidenced the existence of a joint criminal enterprise, it would not prove beyond reasonable doubt that such an

enterprise existed in 1994. There is neither direct nor indirect evidence that the alleged joint criminal enterprise existed in 1994. 403. At this juncture, the Chamber wishes to state the following: whereas the Prosecution is entitled to charge an accused with all modes of liability provided for in the Statute,⁸⁹⁹ the Chamber stresses that the Prosecution is expected to know its case before proceeding to trial. The Prosecution may not rely on the Chamber's authority to choose the appropriate legal characterisation of the accused's conduct, as it does in the present case,⁹⁰⁰ to justify its failure to only plead the mode(s) of liability which reflects the accused's conduct and on which it intends to adduce evidence.

2. CONSPIRACY TO COMMIT GENOCIDE (COUNT 1) 404. Under Count 1, the Prosecution charges Bikindi with conspiracy to commit genocide pursuant to Articles 2(3)(b) and 6(1) of the Statute.⁹⁰¹ 405. Conspiracy to commit genocide is defined as "an agreement between two or more persons to commit the crime of genocide".⁹⁰² The existence of such an agreement constitutes the actus reus of the crime. The agreement need not be formal.⁹⁰³ It can be proved by

⁸⁹⁸ See Simba, Judgement (AC), para. 63; Simić, Judgement (AC), para. 22; Ntagerura et al., Judgement (AC), para. 24. ⁸⁹⁹ See Nahimana et al., Judgement (AC), para. 483; Ndindabahizi, Judgement (AC), para. 122. ⁹⁰⁰ Prosecution Pre-Trial Brief, para. 75; Prosecution Closing Brief, paras. 296, 382; Closing Arguments, T. 26 May 2008, p. 38. ⁹⁰¹ Indictment, p. 2. ⁹⁰² See, e.g., Seromba, Judgement (AC), paras. 218, 221. ⁹⁰³ Nahimana et al., Judgement (AC), para. 898. Judgement 2 December 2008 101

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evidence of meetings to plan genocide, but it can also be inferred from other evidence,⁹⁰⁴ such as the conduct of the conspirators or their concerted or coordinated action.⁹⁰⁵ The individuals in the agreement must have the intent to destroy, in whole or in part, a national, ethnical, racial or religious group as such.⁹⁰⁶ As an inchoate crime, conspiracy to commit genocide is punishable even if the crime of genocide has not actually been committed.⁹⁰⁷ 406. The Chamber has found above that the Prosecution failed to prove its allegation that Bikindi agreed or collaborated with President Habyarimana, Callixte Nzabonimana, Interahamwe leaders, MRND leaders or persons responsible for media programming to militarise the MRND youth wing or indoctrinate Interahamwe militias with anti-Tutsi ideology and to disseminate anti-Tutsi propaganda. In any event, the Chamber notes that even if it had found that Bikindi had collaborated with MRND leaders to disseminate anti-Tutsi propaganda, it would not have been sufficient to prove beyond reasonable doubt that Bikindi agreed with them to commit genocide. The Chamber considers that agreeing to disseminate ethnic hatred against a protected group does not go as far as agreeing to the destruction, in whole or in part, of that group. 407. In the absence of any evidence that Bikindi agreed with any of the individuals named in the Indictment to commit genocide, the Chamber finds that the Prosecution has failed to prove beyond reasonable doubt that Bikindi conspired with others to commit genocide and, consequently, failed to establish Bikindi's

criminal responsibility under Articles 2(3)(b) and 6(1) of the Statute for conspiracy to commit genocide. The Chamber finds Bikindi not guilty on Count 1 of the Indictment.

3. GENOCIDE (COUNT 2) 408. Under Count 2, the Prosecution charges Bikindi with genocide pursuant to Articles 2(3)(a), 6(1) and 6(3) of the Statute on the basis of his responsibility for killing or causing serious bodily or mental harm to members of the Tutsi population with the intent to destroy, in whole or in part, a racial or ethnic group, as such.⁹⁰⁸ 409. A person commits the crime of genocide if he commits one of the enumerated acts in Article 2(2) of the Statute with the specific intent to destroy, in whole or in part, a national, ethnical, racial or religious group as such (“genocidal intent”).⁹⁰⁹ Even if an accused has not “committed” genocide himself, his responsibility may be established under any one of the modes of liability provided for in Articles 6(1) and 6(3) of the Statute.⁹¹⁰ The mens rea varies accordingly. For instance, the requisite knowledge for aiding and abetting genocide is knowledge of the genocidal intent of the principal perpetrator(s).⁹¹¹ Where an accused is charged with having planned, instigated, ordered or aided and abetted the commission of genocide pursuant to Article 6(1) of the Statute, the Prosecution must establish that the accused’s acts or omissions substantially contributed to the commission of acts of genocide.⁹¹²

⁹⁰⁴ See, e.g., Seromba, Judgement (AC), para. 221. ⁹⁰⁵ Nahimana et al., Judgement (AC), paras. 896, 897. ⁹⁰⁶ See, e.g., Nahimana et al., Judgement (AC), para. 896. ⁹⁰⁷ See, e.g., Nahimana et al., Judgement (AC), para. 720; 98bis Decision, para. 16. ⁹⁰⁸ Indictment, p. 6. ⁹⁰⁹ Nahimana et al., Judgement (AC), para. 492. ⁹¹⁰ See, e.g., Nahimana et al., Judgement (AC), paras. 492, 523. ⁹¹¹ See, e.g., Ntakirutimana, Judgement (AC), paras. 364, 501, 508; Krstić, Judgement (AC), para. 140. ⁹¹² Nahimana, et al., Judgement (AC), para. 492. Judgement 2 December 2008 102

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410. To establish Bikindi’s criminal responsibility for genocide, the Prosecution relies on paragraphs 1 to 30 of the Indictment. The Chamber has found above that the Prosecution failed to prove Bikindi’s participation in any of the killings or infliction of serious bodily or mental harm to members of the Tutsi ethnic group alleged under these paragraphs. 411. The Chamber has found beyond reasonable doubt that Bikindi travelled on the main road between Kivumu and Kayove in a convoy of Interahamwe and made anti-Tutsi statements using a vehicle outfitted with a public address system. These facts are set out under Count 2 in paragraph 30 of the Indictment, together with other facts designed to “demonstrate” “Simon Bikindi’s command of the Interahamwe”. Due to the way the Prosecution pleaded these facts, the Chamber considers that it unambiguously intended to rely on them to establish Bikindi’s superior responsibility over the Interahamwe, and not as independent charges of genocide. The Chamber finds that Bikindi was not charged with genocide based on these facts. In contrast, Bikindi’s criminal activity on the Kivumu-Kayove road is clearly and unequivocally charged under Count 4. The Chamber will therefore discuss whether

Bikindi incur criminal liability for his acts on the Kivumu-Kayove road under the count of direct and public incitement to commit genocide. 412. In addition, the Chamber finds that the Prosecution has failed to establish that Bikindi's alleged subordinates – Interahamwe, civilian militias or members of the Irindiro ballet – participated in the criminal acts alleged. As a result, the Chamber considers it unnecessary to discuss whether Bikindi was the de jure or de facto superior of those alleged to be his subordinates. 413. As regards to Article 6(3) liability, the Chamber emphasises that the Prosecution's allegation that Bikindi could be held criminally liable for the crimes committed by the "Hutu population"⁹¹³ lacks merit in fact and in law. Whereas the power or authority over subordinates does not necessarily arise from official or formal appointment,⁹¹⁴ the existence of a superior-subordinate relationship is required for the purposes of Article 6(3) of the Statute. The Chamber acknowledges that an accused may have sufficient influence or authority over a community to have an ability to prevent or punish outside a superior-subordinate relationship. However, this would not make him a superior in the sense of Article 6(3) of the Statute vis-à-vis any perpetrator from that community.⁹¹⁵ 414. Therefore, the Chamber finds that the Prosecution has failed to establish Bikindi's criminal responsibility under Articles 2(3)(a), 6(1) or 6(3) of the Statute for genocide. The Chamber finds Bikindi not guilty on Count 2 of the Indictment.

4. **COMPLICITY IN GENOCIDE (COUNT 3)** 415. In the alternative to genocide (Count 2), the Prosecution charges Bikindi with complicity in genocide pursuant to Articles 2(3)(e) and 6(1) of the Statute.⁹¹⁶ 416. For the same reasons as elaborated above for the count of genocide, the Chamber finds that the Prosecution failed to establish Bikindi's criminal responsibility under Articles 2(3)(e) and 6(1) of the Statute for complicity in genocide. The Chamber finds Bikindi not guilty on Count 3 of the Indictment.

⁹¹³ Prosecution Pre-Trial Brief, paras. 165, 166, 173; Prosecution Closing Brief, paras. 760, 761, 763, 768, 807. ⁹¹⁴ See, e.g., Halilović, Judgement (AC), para. 59; Gacumbitsi, Judgement (AC), paras. 143, 182. ⁹¹⁵ See Halilović, Judgement (AC), para. 59. ⁹¹⁶ Indictment, pp. 6-7. Judgement 2 December 2008 103

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5. **DIRECT AND PUBLIC INCITEMENT TO COMMIT GENOCIDE (COUNT 4)** 417. Under Count 4, the Prosecution charges Bikindi with direct and public incitement to commit genocide pursuant to Articles 2(3)(c) and 6(1) of the Statute.⁹¹⁷ 418. The Trial Chamber considers that the allegation at paragraph 7(d) of the Prosecution Pre-Trial Brief that Bikindi was charged with direct and public incitement to commit genocide under Article 6(3) of the Statute for his responsibility as a superior constitutes a new charge which, to be considered as validly made, would have required the Prosecution to seek leave to amend the Indictment.⁹¹⁸ Accordingly, the Chamber considers that Bikindi is not charged under Count 4 pursuant to Article 6(3) of the Statute. 419. A person commits the crime of direct and public incitement to commit genocide if he directly and publicly incites the commission of genocide with the

intent to directly and publicly incite others to commit genocide, which presupposes a genocidal intent.⁹¹⁹ As an inchoate crime, public and direct incitement to commit genocide is punishable even if no act of genocide has resulted therefrom.⁹²⁰ 420. In the absence of direct evidence, the genocidal intent may be inferred from relevant facts and circumstances of a case,⁹²¹ such as the overall context in which the crime occurred, the systematic targeting of the victims on account of their membership of a protected group, the exclusion of members of other groups, the scale and scope of the atrocities committed, the frequency of destructive and discriminatory acts, or the political doctrine that gave rise to the acts referred to.⁹²² 421. Based on its factual findings as to the meaning of the songs Twasezereye, Nanga Abahutu and Bene Sebahinzi, the Chamber concludes that none of these three songs constitute direct and public incitement to commit genocide per se. The Chamber also recalls that it has found above that the Prosecution failed to prove that Bikindi played any role in the dissemination or deployment of these songs in 1994. 422. The Chamber has found that the Prosecution proved beyond reasonable doubt that towards the end of June 1994, in Gisenyi préfecture, Bikindi travelled on the main road between Kivumu and Kayove as part of a convoy of Interahamwe, in a vehicle outfitted with a public address system broadcasting songs, including Bikindi's. When heading towards Kayove, Bikindi used the public address system to state that the majority population, the Hutu, should rise up to exterminate the minority, the Tutsi. On his way back, Bikindi used the same system to ask if people had been killing Tutsi, who he referred to as snakes. 423. The Chamber finds that both statements, broadcast over loudspeaker, were made publicly. The Chamber also finds that Bikindi's call on "the majority" to "rise up and look everywhere possible" and not to "spare anybody" immediately referring to the Tutsi as the minority unequivocally constitutes a direct call to destroy the Tutsi ethnic group.⁹²³ Similarly, the Chamber considers that Bikindi's address to the population on his way back from Kayove, asking "Have you killed the Tutsis here?" and whether they had killed the

917 Indictment, p. 11. 918 See Nahimana et al., Judgement (AC), para. 325; Ntagerura et al., Judgement (AC), para. 32. 919 Nahimana et al., Judgement (AC), para. 677. 920 See, e.g., Nahimana et al., Judgement (AC), paras. 678, 720. 921 See, e.g., Seromba, Judgement (AC), para. 176. 922 See, e.g., Seromba, Judgement (AC), para. 176, citing Seromba, Judgement (TC), para. 320. 923 It is not disputed in the present case that Tutsi are members of a protected group under Article 2 of the Statute. Judgement 2 December 2008 104

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"snakes" is a direct call to kill Tutsi, pejoratively referred to as snakes. In the Chamber's view, it is inconceivable that, in the context of widespread killings of the Tutsi population that prevailed in June 1994 in Rwanda, the audience to whom the message was directed, namely those standing on the road, could not have immediately understood its meaning and implication. The Chamber therefore finds that Bikindi's statements through loudspeakers on the main road between Kivumu and Kayove constitute direct and public incitement to commit cited the commission of five figure for the Interahamwe and a

guilty on Count 4 of the Indictment for direct and public incitement to commit genocide.

6. CRIME AGAINST HUMANITY - MURDER (COUNT 5) under as a crime against ttack 925

ail whether the chapeau requirements for Article 3 are met in light of its conclusions below.

genocide. 424. Based on the words he proffered and the manner he disseminated his message, the Chamber finds that Bikindi deliberately, directly and publicly in genocide with the specific intent to destroy the Tutsi ethnic group. 425. In reaching its conclusion, the Chamber has considered the evidence that Bikindi's second wife was Tutsi, and that he lived and worked with Tutsi on good terms. It has also considered the evidence that Bikindi assisted some Tutsi during the genocide while in Nyundo and supported some Tutsi while in exile in Zaire. However, the Chamber is of the view that Bikindi's direct and public address on the Kivumu-Kayove road leaves no doubt as to his genocidal intent at the time. Bikindi could not have been unaware of the targeting of Tutsi throughout Rwanda, including Gisenyi préfecture, at the time, a targeting that he had encouraged in the past by exhorting people to kill Tutsi in 1993 in Kivumu. Likewise, he could not have been unaware of the impact that his words would have on the audience, the words of a well-known and popular artist, an authoritat man perceived as an influential member of the MRND. 426. For the foregoing reasons, the Chamber finds beyond reasonable doubt that Bikindi is criminally responsible under Articles 2(3)(c) and 6(1) of the Statute as a principal perpetrator based on his exhortations to kill Tutsi on the main road between Kivumu and Kayove towards the end of June 1994. The Chamber finds Bikindi 427. Under Count 5, the Prosecution charges Bikindi with m humanity pursuant to Articles 3(a), 6(1) and 6(3) of the Statute.924 428. For an enumerated crime under Article 3 of the Statute to constitute a crime against humanity, the Prosecution must prove that there was a widespread or systematic a against a civilian population on national, political, ethnic, racial or religious grounds.

429. Murder requires proof of the following three elements: (1) the death of a victim;
- (2) that the death was the result of an act or an omission of the perpetrator; and (3) that the perpetrator, at the time of the act or omission, intended to kill the victim or, in the absence of such a specific intent, knew that death was a probable consequence of the act or omission.926 430. It is not disputed in this case that a genocide characterised by widespread killings of Tutsi civilians occurred from April to July 1994 in Rwanda.927 The Chamber considers it unnecessary to discuss in more det

924 Indictment, pp. 13-17. 925 Ntakirutimana, Judgement (AC), para. 516. 926 See Kvočka et al., Judgement (AC), para. 261. See also Mrkšić et al. Judgement (TC), para 486. 927 See, e.g., Defence Opening Statement, T. 24 September 2007, pp. 4, 5; Defence Closing Brief, paras. 3, 889, 903; Closing Arguments, T. 26 May 2008, p. 19. Judgement 2 December 2008 105

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431. To establish Bikindi's criminal responsibility for murder as a crime against humanity, the Prosecution relies on paragraphs 42 to 47 of the Indictment. The Chamber has found above that the Prosecution failed to prove Bikindi's participation in any of the murders alleged under these paragraphs. The Chamber further finds that the Prosecution has failed to establish that Bikindi's alleged subordinates participated in the criminal acts alleged. 432. Therefore, the Chamber finds that the Prosecution has failed to establish Bikindi's criminal responsibility under Articles 3(a), 6(1) or 6(3) of the Statute for murder as a crime against humanity. The Chamber finds Bikindi not guilty on Count 5 of the Indictment.
7. CRIME AGAINST HUMANITY - PERSECUTION (COUNT 6) 433. Under Count 6, the Prosecution charges Bikindi with persecution as a crime against humanity pursuant to Articles 3(h) and 6(1) of the Statute. Although the Indictment is unclear as to the exact nature of the underlying act of persecution alleged, the Chamber understands that the Prosecution charges Bikindi with aiding and abetting the persecution of Tutsi through the dissemination of his songs, in particular through airplay on RTL. 434. The Trial Chamber considers that the allegation at paragraph 244 of the Prosecution Pre-Trial Brief that Bikindi was charged with persecution pursuant to Article 6(3) of the Statute for his responsibility as a superior constitutes a new charge which, to be considered as validly made, would have required the Prosecution to seek leave to amend the Indictment.⁹²⁸ 435. The crime of persecution consists of an act or omission which discriminates in fact and which denies or infringes upon a fundamental right laid down in international customary or treaty law, and was carried out deliberately with the intention to discriminate on one of the listed grounds, specifically race, religion or politics. The underlying acts of persecution, whether considered in isolation or in conjunction with other acts,⁹²⁹ must be of equal gravity to the crimes listed under Article 3 of the Statute.⁹³⁰ For details on the criminalisation of hate speech, the Chamber refers to its analysis under Chapter III of this Judgement. 436. The Chamber has found above that the Prosecution proved beyond reasonable doubt that Bikindi's songs Nanga Abahutu and Bene Sebahinzi extolled Hutu solidarity against a common foe, characterised Tutsi as Hutu enslavers, enemies or enemy accomplices and were composed with the specific intention to disseminate pro-Hutu ideology and anti-Tutsi propaganda, and to encourage ethnic hatred. It has also found that Twasezereye, Nanga Abahutu and Bene Sebahinzi were deployed in 1994 in Rwanda in a propaganda campaign to promote contempt for and hatred of the Tutsi population and to incite the listening public to target and commit acts of violence against the Tutsi. 437. Whereas there is evidence that Bikindi composed, recorded and performed Twasezereye, Nanga Abahutu and Bene Sebahinzi before 1994, there is no evidence of him performing or disseminating them in 1994. The Chamber has found that Bikindi performed in January 1994 at an MRND meeting in Kigali and broadcast some of his songs from a vehicle outfitted with a public address system towards the end of June 1994 on the main road between Kivumu and Kayove. However, nothing in the evidence suggests that Bikindi performed or played the specific songs alleged at that meeting or through the public address system.

928 See Nahimana et al., Judgement (AC), para. 325; Ntagerura et al., Judgement (AC), para. 32.
929 See Nahimana et al., Judgement (AC), para. 987. 930 See, e.g., Nahimana et al., Judgement (AC), para. 985. Judgement 2 December 2008 106

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438. Further, the evidence does not establish that Bikindi's relationship with RTLM allowed him any influence or control over the broadcasting of his songs on the radio. While Bikindi was interviewed on RTLM in January 1994, the transcripts of the broadcast show that none of the specific songs alleged were played or discussed. His interview was limited to discussing the political situation at the time. 439. The Prosecution argues that Bikindi "acquiesced in the manner in which RTLM used his songs to promote death and destruction".⁹³¹ Mere "acquiescence" is not sufficient to entail criminal responsibility in international criminal law. In the present case, the Prosecution has failed to prove that Bikindi's alleged acquiescence amounted to tacit approval or encouragement which had a substantial effect on the perpetration of the alleged crime.⁹³² The Chamber also recalls that to hold an accused criminally responsible for his omissions, it must be proven that he failed to fulfil a legal duty to act mandated by a rule of criminal law.⁹³³ The Prosecution has failed to prove that Bikindi had a duty in law to stop the broadcast of his musical compositions. 440. The Chamber concludes that the Prosecution has failed to prove beyond reasonable doubt that Bikindi disseminated, in one way or another, or played a role in the deployment of Twasezereye, Nanga Abahutu and Bene Sebahinzi in 1994. Therefore, the Chamber finds that the Prosecution has failed to establish Bikindi's criminal responsibility under Articles 3(h) and 6(1) of the Statute for aiding and abetting persecution as a crime against humanity. The Chamber finds Bikindi not guilty on Count 6 of the Indictment.

⁹³¹ Closing Arguments, T. 26 May 2008, p. 14. See also Prosecution Closing Brief, paras. 943-944.

⁹³² For the law applicable to aiding and abetting by tacit approval or encouragement, see Orić, Judgement (AC), para. 42; Brđanin, Judgement (AC), para. 273; Kayishema and Ruzindana, Judgement (AC), paras. 201-202. For aiding and abetting in general, see Muvunyi, Judgement (AC), para. 79. ⁹³³ Nahimana et al., Judgement (AC), para. 478. On the issue, see also Orić, Judgement (AC), para. 42; Tadić, Judgement (AC), para. 188.

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CHAPTER V: VERDICT 441. For the reasons set out in this Judgement, having considered all the evidence and arguments, the Chamber finds unanimously in respect of Simon Bikindi as follows:
Count 1: NOT GUILTY of Conspiracy to Commit Genocide
Count 2: NOT GUILTY of Genocide
Count 3: NOT GUILTY of Complicity in Genocide
Count 4: GUILTY of Direct and Public

Incitement to Commit Genocide Count 5: NOT GUILTY of Murder as a Crime against Humanity
Count 6: NOT GUILTY of Persecution as a Crime against Humanity Judgement 2 December 2008
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CHAPTER VI: SENTENCE 1.

INTRODUCTION

442. Having found Simon Bikindi guilty on Count 4 of the Indictment for direct and public incitement to commit genocide, the Chamber must determine the appropriate sentence.

443. A person convicted by the Tribunal may be sentenced to imprisonment for a fixed term or for the remainder of his life.⁹³⁴ The penalty imposed should reflect the aims of retribution, deterrence and to a lesser extent rehabilitation.⁹³⁵ The Trial Chamber shall take into account the general practice regarding prison sentences in the courts of Rwanda, the gravity of the offences (the gravity of the crimes of which the accused has been convicted and the form or degree of responsibility for these crimes) and the individual circumstances of the convicted person, including aggravating and mitigating circumstances. In addition, the Trial Chamber shall ensure that any penalty imposed by a court of any State on the accused for the same act has already been served,⁹³⁶ and shall credit the accused for any time spent in detention pending his surrender to the Tribunal and during trial.⁹³⁷

2. DETERMINATION OF THE SENTENCE

444. The Prosecution submits that the appropriate penalty is life imprisonment.⁹³⁸ The Defence submits that Bikindi should be acquitted on every count.⁹³⁹

445. All crimes under the Tribunal's Statute are serious violations of international humanitarian law. Trial Chambers are vested with a broad discretion in determining the appropriate sentence due to their obligation to individualise the penalties to fit the circumstances of the convicted person and reflect the gravity of the crime.⁹⁴⁰

2.1. Gravity of the Offence

446. The Chamber has found Bikindi guilty of direct and public incitement to commit genocide based on his public exhortations to kill Tutsi in a vehicle outfitted with a public address system on the main road between Kivumu and Kayove in late June 1994. Bikindi was the principle perpetrator of this crime.

447. The Chamber has considered that under Rwandan law, genocide carries the possible penalty of life imprisonment, or life imprisonment with special provisions, depending on the nature of the accused's participation.⁹⁴¹ The Chamber has also considered the general sentencing practice at the Tribunal, paying particular attention to the Kajelijeli and Ruggiu Trial Judgements in which Juvénal Kajelijeli and Georges Ruggiu were convicted for direct and public incitement to commit genocide and sentenced for that offence to 15 and 12 years'

⁹³⁴ Rule 101(A) of the Rules. ⁹³⁵ See Nahimana et al., Judgement (AC), para. 1057; Stakić, Judgement (AC), para 402. ⁹³⁶ Articles 23(1) and 23(2) of the Statute and Rule 101(B) of the Rules. ⁹³⁷ Rule 101(C) of the Rules. ⁹³⁸ Prosecution Closing Brief, para. 1089; Closing Arguments, T. 26

May 2008, pp. 39, 40. 939 Defence Closing Brief, para. 905. 940 Seromba, Judgement (AC), para. 228. 941 Rwandan Organic Law No. 8/96, on the Organization of Prosecutions for Offences constituting Genocide or Crimes Against Humanity committed since 1 October 1990, published in the Gazette of the Republic of Rwanda, 35th year. No. 17, 1 September 1996, as amended by Organic Law No. 31/2007 of 25/07/2007 Relating to the Abolition of the Death Penalty. Judgement 2 December 2008 109

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imprisonment respectively.⁹⁴² However, the Chamber has found the comparison with those two cases of very limited assistance given the different circumstances of this case. 448. Genocide is, by definition, a crime of the most serious gravity which affects the very foundations of society and shocks the conscience of humanity. Directly and publicly inciting others to commit that crime is, in the Chamber's opinion, of similar gravity. The Chamber has taken this into account in determining the sentence. 2.2. Individual Circumstances of the Accused 449. The Chamber has wide discretion in determining what constitutes mitigating and aggravating circumstances and the weight to be accorded thereto. While aggravating circumstances need to be proven beyond reasonable doubt, mitigating circumstances need only be established on a "balance of probabilities".⁹⁴³ 2.2.1 Aggravating Circumstances 450. The Prosecution argues that the aggravating circumstances in this case include: Bikindi's position as a well-known composer and talented musician with a close association to the powers in Rwanda that mattered and the breach of this trust; his premeditation; his direct participation as a perpetrator; the violent and humiliating nature of his acts and the vulnerability of his victims; the duration of the offences and the suffering of his victims.⁹⁴⁴ The Defence made no submissions on aggravating circumstances. 451. The Chamber notes Bikindi's stature in Rwandan society as a well-known and popular artist perceived to be an influential member of the MRND and an important figure in the Interahamwe as discussed in Chapter II of the Judgement. The Chamber considers that the influence he derived from his status made it likely that others would follow his exhortations. The Chamber considers that Bikindi abused his stature by using his influence to incite genocide. The Chamber finds this to be an aggravating factor. 452. The Chamber has already taken into consideration Bikindi's form of participation in assessing the gravity of the offence. The Chamber finds that the other factors submitted by the Prosecution were not proven beyond reasonable doubt. 2.2.2 Mitigating Circumstances 453. The Defence submits that the Chamber should consider the following mitigating circumstances in the determination of Bikindi's sentence, that: Bikindi came from a family of modest means and simple existence; he is a man of exceptional talent particularly in the musical arena; he composed songs asking for peace; his position at the Ministry of Youth and Association Movements was not political; he has made an enormous contribution to Rwanda through his musical talent; he contributed to Rwanda's development by bringing commercial "dynamic publicity" to the country; and that he proposed the creation of a junior ballet to help street children in Rwanda.⁹⁴⁵ In particular, the Defence emphasises that he had a good relationship with Tutsi, a number of whom he assisted during the genocide.⁹⁴⁶

942 Kajelijeli, Judgement (TC), para. 968; Ruggiu, Judgement (TC), p. 19. 943 Simba, Judgement (AC), para. 328; Nahimana et al., Judgement (AC), para. 1038. 944 Prosecution Closing Brief, paras. 1089, 1103, 1105, 1107-1118; Closing Arguments, T. 26 May 2008, pp. 38-40. 945 Defence Closing Brief, paras. 906-922. 946 Defence Closing Brief, para. 920; Closing Arguments, T. 26 May 2008, p. 42. Judgement 2 December 2008 110

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454. The Prosecution asserts that there are no mitigating circumstances in the case, specifically pointing out that Bikindi did not voluntarily surrender, nor has he shown any remorse or acknowledged any guilt.⁹⁴⁷ 455. Exercising its discretion, the Chamber considers that Bikindi's talent and his contribution to Rwandan culture do not mitigate his guilt. To the contrary, they evidence Bikindi's stature in Rwanda in 1994, which he abused by adding his voice to the anti-Tutsi campaign. 456. Further, Bikindi's modest origins, his non-political position at the Ministry of Youth and Association Movements and his entrepreneurial "dynamic publicity" carry no weight in relation to sentencing in the Chamber's opinion. Likewise, the Chamber does not consider that Bikindi's composition of songs asking for peace are mitigating factors given that he also composed songs with the opposite intention and effect. Bikindi's proposal to create a junior ballet to help street children in Rwanda is insufficient in the Chamber's view to demonstrate Bikindi's good character and will not be accorded any weight in relation to sentencing. 457. Finally, the Chamber finds that Bikindi's good relationship with Tutsi and the assistance he provided to some Tutsi before and during the genocide does not warrant mitigation. The Chamber considers that Bikindi's good relationship with some Tutsi neighbours and Tutsi members of his ballet is not significant and shall not have any bearing on sentencing in this case. The Chamber also observes that Bikindi only provided selective assistance to Tutsi during the genocide, namely Tutsi in his circle, such as the members of his troupe. Such selective assistance is not decisive in the Chamber's view. The Chamber also notes that, while Bikindi took care of a young Tutsi orphan during his exile in Zaire, by the individual's own admission, Bikindi was not aware of her ethnicity.⁹⁴⁸ 458. The Chamber therefore concludes that there are no mitigating circumstances that should be taken into account in the determination of the sentence. 2.3. Credit for Time Served 459. Bikindi was originally arrested in Leiden, The Netherlands, on 12 June 2001, and transferred to the Tribunal by the Dutch authorities on 27 March 2002. He has been detained in custody since 12 June 2001, first in The Netherlands, and then at the United Nations Detention Facility in Arusha, Tanzania. Pursuant to Rule 101(C) of the Rules, Bikindi is therefore entitled to credit for time served as of 12 June 2001.

⁹⁴⁷ Prosecution Closing Brief, paras. 1089, 1105, 1119-1124. ⁹⁴⁸ Witness DQR, T. 1 October 2007, p. 56. Judgement 2 December 2008 111

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CONCLUSION

460. 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 Simon Bikindi for direct and public incitement to commit genocide to FIFTEEN (15) YEARS OF IMPRISONMENT 461. This sentence shall be enforced immediately and, pursuant to Rule 101(C) of the Rules, Simon Bikindi shall receive credit for the time served as of 12 June 2001.
462. In accordance with Rules 102(A) and 103 of the Rules, Bikindi shall remain in the custody of the Tribunal pending transfer to the State where he will serve his sentence.

Signed on 1 December 2008 and delivered on 2 December 2008 in Arusha, Tanzania.

Inés Mónica Weinberg de Roca Florence Rita Arrey Robert Fremr Presiding Judge Judge Judge

[Seal of the Tribunal]

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ANNEX A – PROCEDURAL HISTORY

1. PRE-TRIAL PHASE 1. On 5 July 2001, Judge Pavel Dolenc confirmed five counts and dismissed without prejudice one count of the initial indictment dated 27 June 2001,¹ and issued a Warrant of Arrest and Order for Transfer and Detention of Simon Bikindi.² 2. On 10 July 2001, Judge Pavel Dolenc issued an order of non-disclosure until the indictment had been served on the Accused, and granted a number of protective measures to Prosecution witnesses, including the use of pseudonyms and redacted witness statements.³ 3. Bikindi was arrested on 12 July 2001 in Leiden, The Netherlands, and was transferred to the United Nations Detention Facility in Arusha, Tanzania, on 27 March 2002.⁴ The Accused made his initial appearance before Judge Pavel Dolenc on 4 April 2002 and entered a plea of not guilty to all five counts of the indictment: conspiracy to commit genocide, genocide, direct and public incitement to commit genocide and murder and persecution as crimes against humanity.⁵ Mr. Wilfred Nderitu was appointed as Counsel for Bikindi on 25 November 2002.⁶ 4. On 22 September 2003, Trial Chamber III granted in part a Defence motion filed on 30 July 2003, challenging the temporal jurisdiction of the Tribunal and objecting to the form of the indictment, and in part a Prosecution motion, filed on 7 August 2003, seeking leave to file an amended indictment.⁷ In accordance with the Chamber's decision, on 22 October 2003, the Prosecution filed an amended indictment, which included the alternative count of complicity in genocide.⁸ 5. On 8 March 2004, the Accused made a further appearance before

Judge Lloyd G. Williams who rendered an oral decision denying the Defence submission that the amended indictment and the pleas in relation to it were invalid because the indictment had not been confirmed.⁹ The Accused pleaded not guilty to all six counts in the amended indictment, including the alternative count of complicity in genocide.¹⁰ 6. On 24 March 2004, Trial Chamber III denied an urgent Defence application for a stay of proceedings and accordingly a suspension of the 30 day period for filing preliminary

1 The Prosecutor v. Simon Bikindi, Case No. ICTR-2001-72-I, Confirmation of Indictment, 5 July 2001. 2 The Prosecutor v. Simon Bikindi, Case No. ICTR-2001-72-I, Warrant of Arrest and Orders for Transfer and Detention and for Search and Seizure, 5 July 2001. 3 The Prosecutor v. Simon Bikindi, Case No. ICTR-2001-72-I, Order for Non-Disclosure, 10 July 2001. 4 The Prosecutor v. Simon Bikindi, Case No. ICTR-2001-72-I, Letter of Confirmation of the takeover of Bikindi prepared by Dutch Koninklijke Marechaussee, 27 March 2002; Prosecution Closing Brief, para.5. 5 Initial Appearance, T. 4 April 2002, pp. 38-43. 6 Letter from Didier Daniel Preira, Deputy Chief, OIC Defence Counsel Management Section, ICTR, to Mr Wilfred Nderitu, 25 November 2002; See also, Statement of Availability by Wilfred N. Nderitu dated 27 November 2002. 7 The Prosecutor v. Simon Bikindi, Case No. ICTR-2001-72-I, Decision on the Defence Motion Challenging the Temporal Jurisdiction of the Tribunal and Objecting to the Form of the Indictment and on the Prosecutor's Motion Seeking Leave to File and Amended Indictment, 22 September 2003. 8 The Prosecutor v. Simon Bikindi, Case No. ICTR-2001-72-I, The Prosecutor's Submission of the Amended Indictment pursuant to the Decision of 22 September 2003, 22 October 2003. 9 Further Initial Appearance, T. 8 March 2004, pp. 2-4. 10 Further Initial Appearance, T. 8 March 2004, pp. 17-20. Judgement 2 December 2008 113

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motions, pursuant to Rule 50(C) of the Rules.¹¹ In the same Decision, Trial Chamber III ordered the Defence to file any further preliminary motions within the prescribed time limit. 7. On 11 May 2005, Trial Chamber III dismissed the Defence motion of 5 April 2004, objecting to the form of the indictment and challenging the legality of the plea based on it, entered on 8 March 2004. The chamber recalled its two previous decisions denying both motions related to the indictment and the plea, and dismissed the present motion as the issues were already *res judicata*.¹² In the same decision, the chamber ordered the Prosecution to file a second amended indictment containing the particulars ordered in its decision of 22 September 2003, and ordered the Prosecution to withdraw the two submissions of particulars filed on 22 October 2003 and 1 February 2005, because there were new allegations for which no leave to amend the indictment was granted. 8. On 15 June 2005, the Prosecution filed a second amended indictment pursuant to the Decisions of 11 May 2005 and 10 June 2005 charging Bikindi with conspiracy to commit genocide; genocide, or in the alternative, complicity in genocide; direct and public incitement to commit genocide; and murder and persecution as crimes against humanity.¹³ 9. On 11 August 2005, Bikindi made a further initial appearance before Judge Dennis Byron.¹⁴ Bikindi pleaded

not guilty to all six counts of the Indictment.¹⁵ 10. Four Status Conferences were held respectively on 11 August 2005, 12 January 2006, 18 January 2006 and 5 July 2006 at which Trial Chamber III addressed various matters in preparation for the trial, including the health of the Accused, disclosure issues, and various pending motions.¹⁶ 11. On 7 June 2006, Trial Chamber III granted in part a Prosecution motion for protective measures for witnesses filed on 12 September 2005, and issued an interim order that the Witness and Victim Support Section consult with each potential Prosecution witness seeking protective measures about the necessity of such measures.¹⁷ 12. On 17 July 2006, the Prosecution filed a Preliminary Pre-Trial Brief.¹⁸ On 16 August 2006 the Prosecution filed its Pre-Trial Brief.¹⁹ 13. On 20 July 2006, the Prosecution Expert Report was filed.²⁰ On 25 July 2006, the Defence filed a Statement of Matters Not in Dispute pursuant to Rule 73 bis (b)(ii).²¹

11 The Prosecutor v. Simon Bikindi, Case No. ICTR-2001-72-I, Decision on Defence Urgent Application for Stay of Proceedings and for Suspension of the 30-day Period Pursuant to Rule 50(C) of the Rules of Procedure and Evidence, 24 March 2004. 12 The Prosecutor v. Simon Bikindi, Case No. ICTR-2001-72-PT, Decision on the Amended Indictment and the Taking of Plea Based on the Said Indictment, 11 May 2005, p. 3. 13 The Prosecutor v. Simon Bikindi, Case No. ICTR-2001-72-I, Amended Indictment, 15 June 2005, Pursuant to Decisions of Trial Chamber III of 11 May 2005 and 10 June 2005. 14 Further Initial Appearance, 11 August 2005. 15 Status Conference, T. 11 August 2005, pp. 7-8. 16 Status Conferences: T. 11 August 2005, T. 12 January 2006, T. 18 January 2006, T. 5 July 2006. 17 The Prosecutor v. Simon Bikindi, Case No. ICTR-2001-72-PT, Decision on the Prosecutor's Motion for Protective Measures, 7 June 2006. 18 The Prosecutor v. Simon Bikindi, Case No. ICTR-2001-72-I, The Prosecutor's Preliminary Pre-Trial Brief pursuant to Article 73 bis (B)(i) of the Rules of Procedure and Evidence, 17 July 2006. 19 The Prosecutor v. Simon Bikindi, Case No. ICTR-2001-72-I, The Prosecutor's Final [sic] Trial Brief Pursuant to Article 73 bis (B)(i) of the Rules of Procedure and Evidence, 16 August 2006. 20 The Prosecutor v. Simon Bikindi, Case No. ICTR-2001-72-I, Expert Report, 20 July 2006. 21 The Prosecutor v. Simon Bikindi, Case No. ICTR-2001-72-I, Statement of Matters Not in Dispute Pursuant to Rule 73 bis (b)(ii), 25 July 2006. Judgement 2 December 2008 114

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14. On 14 September 2006, Trial Chamber III granted a Prosecution motion for the transfer of detained witnesses and protective measures for Prosecution witnesses.²² 15. In an oral decision on 18 September 2006, Trial Chamber III denied a Defence motion, filed on 2 August 2006, challenging the Prosecution's Preliminary Pre-Trial Brief. It held that the additional particulars contained in the Pre-Trial Brief, which had been filed before the Defence motion on the Preliminary Pre-Trial Brief was decided, did not constitute new charges. Instead, they were new facts that underpinned existing charges already made in the Indictment. Consequently these new facts did not amount to wholly new charges and so were held to be relevant and acceptable.²³

2. TRIAL PHASE 16. The trial commenced on 18 September 2006, before Trial Chamber III composed of Judges Inés Mónica Weinberg de Roca, Presiding, Florence Rita Arrey and Robert Fremr. In the course of 61 trial days, a total of 57 witnesses were heard and 234 exhibits admitted.

Prosecution case

17. The Prosecution conducted its case in two trial sessions: from 18 September to 20 October 2006 and from 12 February to 22 February 2007. Over the course of 32 trial days, the Prosecution called 20 witnesses, including two expert witnesses, and tendered 165 exhibits. A Status Conference was held on 4 December 2006 to discuss the scheduling of the case.²⁴ 18. On 5 February 2007, the Chamber granted a Prosecution motion for protective measures, transfer of a detained witness, and, variation of the witness list, the amended list to be filed by 9 February 2007.²⁵ 19. The Prosecution concluded its case on 22 February 2007.

Assignment of Counsel

20. On 29 March 2007, the Registrar granted the Accused's request to withdraw Mr. Wilfred Nderitu as Lead Counsel for Bikindi.²⁶ The Accused argued he had lost confidence in Lead Counsel as a result of a total breakdown in communication. The Registrar granted Bikindi's application with the reasoning that the Lead Counsel's actions and behaviour did not necessarily translate into mischief, but had nevertheless affected the necessary trust which had to exist between counsel and his client. On 9 May 2007, Mr. Andreas O'Shea was appointed as Lead Counsel.²⁷ Co-counsel did not change.

²² The Prosecutor v. Simon Bikindi, Case No. ICTR-2001-72-PT, Decision on Transfer of Detained Witnesses and Protective Measures for Prosecution Witnesses, 14 September 2006. ²³ The Prosecutor v. Simon Bikindi, Case No. ICTR-2001-72-T, Oral Decision, T. 18 September 2006, pp. 27-28 referring to The Prosecutor v. Simon Bikindi, Case No. ICTR-2001-72-T, Defence Motion Challenging the Prosecutor's Preliminary Pre-Trial Brief, 3 August 2006. (The transcript refers to the Defence Motion having been filed on 2 August 2006, whereas it was actually filed on 3 August 2006.), ²⁴ The Prosecutor v. Simon Bikindi, Case No. ICTR-2001-72-T, Status Conference, T. 4 December 2006. ²⁵ The Prosecutor v. Simon Bikindi, Case No. ICTR-2001-72-T, Decision on Motion for Protective Measures, Variation of the Witness List, and Transfer of Detained Witness BUY, 5 February 2007. ²⁶ The Prosecutor v. Simon Bikindi, Case No. ICTR-2001-72-T, Decision Withdrawing the Assignment of Mr. Wilfred N. Nderitu as Lead Counsel for the Accused Simon Bikindi, 29 March 2007, filed on 30 March 2007. ²⁷ Letter of Assignment to represent the Accused Simon Bikindi, Ref: ICTR/JUD-11-5-2-06/1379/IE, 9 May 2007. Judgement 2 December 2008 115

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Defence Case

21. On 15 May 2007, a Status Conference was held in order to set a date for the Defence case and to determine dates for filing of documents required pursuant to Rule 73 ter (B).²⁸ The Chamber noted that the Defence case was originally scheduled to commence on 11 June 2007, and that a motion for extension of time by two months to file documents and delay the start of proceedings had been filed by the Defence.²⁹ Considering the issues encountered following the change in Lead Counsel the Chamber stated that there was no possibility of resuming the trial before 20 August 2007.³⁰ Mr O'Shea also informed the Chamber that the Defence had no intention of filing a Pre-Defence Brief and the Chamber indicated it would not insist on the Defence filing one.³¹ 22. On 26 June 2007, the Chamber denied the Defence motion for a Judgement of Acquittal, which had been filed on 15 March 2007.³² 23. On 26 June 2007, the Chamber ordered that the Defence case would be heard from 24 September to 9 November 2007. It ordered the Defence to file the following by 24 July 2007: admissions by the parties and a statement of other facts not in dispute; a statement of contested matters of fact and law; its proposed witness list including the name or pseudonym of each witness, the points in the Indictment about which each witness was expected to testify, the summary of facts on which each witness was expected to testify, and the estimated duration of the length of examination of each witness.³³ 24. Also on 26 June 2007, the Chamber granted, in part, a Defence motion requesting that the Chamber exclude certain evidence led by the Prosecution, on the basis that the evidence referred to allegations not included in the Indictment. The Chamber declared inadmissible the testimony of Witness BHB in relation to the Accused's presence at an alleged meeting in Ngororero and the testimonies of Witnesses BKW and BUY in relation to the Accused's presence at alleged meetings in Kabaya and Butare.³⁴ 25. On 2 August 2007, the Chamber granted a Defence motion seeking leave to redact identifying information for certain witnesses, filed on 24 July 2007.³⁵ The Chamber ordered that protective measures for certain witnesses, granted in its Decision of 14 February 2007 be applied. It further requested the Defence to decrease the total number of witnesses to be called and to file a revised witness list by 13 August 2007. Finally, the Chamber ordered the Defence to disclose non-redacted witness statements and identifying information of all the witnesses to be called 21 days before the beginning of the Defence case. 26. On 10 August 2007, the Chamber denied a Defence motion for extension of time to file a revised witness list.³⁶

²⁸ Status Conference, T. 15 May 2007. ²⁹ Status Conference, T. 15 May 2007, p. 2. ³⁰ Status Conference, T. 15 May 2007, p. 6. ³¹ Status Conference, T. 15 May 2007, p. 9. ³² The Prosecutor v. Simon Bikindi, Case No. ICTR-2001-72-T, Decision on Defence Motion for Judgement of Acquittal, Rule 98 bis of the Rules of Procedure and Evidence, 26 June 2007. ³³ The Prosecutor v. Simon Bikindi, Case No. ICTR-2001-72-T, Scheduling Order, Rule 54 of the Rules of Procedure and Evidence, 26 June 2007. ³⁴ The Prosecutor v. Simon Bikindi, Case No. ICTR-2001-72-T, Decision on the Defence Requête en exclusion des éléments de preuve produits par l'Accusation pour établir des faits non contenus dans l'Acte d'accusation, 26 June 2007. ³⁵ The Prosecutor v. Simon Bikindi, Case No. ICTR-2001-72-T, Decision on the Defence Motion to File Proposed List of Witnesses and Statement of Agreed and Contested Matters of Facts and Law, 2 August 2007. ³⁶ The Prosecutor v.

Simon Bikindi, Case No. ICTR-2001-72-T, Decision on the Defence Motion for an Extension of Time to File Revised List, 10 August 2007. Judgement 2 December 2008 116

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27. On 5 September 2007, the Chamber denied the Defence motion to add Witnesses RH, RVH2 and RQH to its list of witnesses, and its motion for protective measures. The Chamber noted that the Defence did not observe the Chamber's Directive of 2 August 2007, for whilst it may have reduced the overall number of witnesses, it added three new witnesses.³⁷ On the same day the Chamber denied a Defence motion for the testimony of Witness DIH to be made via a video link as the Defence had not proved the inability of the witness to come to Arusha to testify.³⁸ 28. On 24 September 2007, the Chamber rendered an oral decision ordering the Defence to reduce its total number of witnesses from the 42 scheduled at that point.³⁹ 29. The Defence case commenced on 24 September 2007. In the course of 29 trial days, the Defence called 37 witnesses, including Bikindi and one expert witness. The Defence tendered 69 exhibits. 30. On 1 October 2007, the Chamber granted a Defence motion to issue subpoenas to Witnesses DUR and FIV, but denying the request in respect of Witness JIH ordering that his testimony be taken by video link.⁴⁰ On 3 October 2007 the Defence Expert Report was filed.⁴¹ 31. The Defence concluded its case on 7 November 2007. Site Visit
32. At the Status Conference held on 8 November 2007, the parties informed the Chamber that in their joint opinion a site visit was necessary. The Chamber requested that the parties file a joint itinerary by 15 November 2007.⁴² On 6 December 2007 the Chamber granted the Defence request for a site visit in Rwanda and requested the President of the Tribunal to authorise the Chamber's exercise of its function away from the seat of the Tribunal.⁴³ On 12 March 2008 the President authorised the site visit in Rwanda from 14 to 18 April 2008 in accordance with the Chamber's decision.⁴⁴
3. FURTHER PROCEEDINGS
33. The parties filed their Closing Briefs on 25 April 2008. Closing Arguments were heard on 26 May 2008. On 27 May 2008 the Chamber dismissed a Defence request for judicial notice pursuant to Rule 94 of the Rules and a Prosecution request for the admission of evidence.⁴⁵

³⁷ The Prosecutor v. Simon Bikindi, Case No. ICTR-2001-72-T, Scheduling Order and Decision on Motion for Protective Measures for Witnesses, 5 September 2007. ³⁸ The Prosecutor v. Simon Bikindi, Case No. ICTR-2001-72-T, Decision on Defence Motion for Testimony of Witness DIH via Video Link, 5 September 2007. ³⁹ Oral Decision – Order on Reducing the Total Number of Defence Witnesses, T. 24 September 2007, p. 2. ⁴⁰ The Prosecutor v. Simon Bikindi, Case No. ICTR-2001-72-T, Decision on Ex Parte and Confidential Application for Subpoenas, 1 October 2007. ⁴¹ The Prosecutor v. Simon Bikindi, Case No. ICTR-2001-72-T, Expert Report of Dr. Eugene Shimamungu, 3 October 2007. ⁴² Status Conference, T. 8 November 2007, p. 3 ⁴³ The Prosecutor v. Simon Bikindi, Case No. ICTR-2001-72-T, Decision on Defence Motion for Judicial View of the

Locus in Quo, 6 December 2007. 44 The Prosecution v. Simon Bikindi, Case No. ICTR-01-72-R4, Decision Authorizing the Site Visit in Rwanda, 12 March 2008. 45 The Prosecutor v. Simon Bikindi, Case No. ICTR-2001-72-T, Decision on Requests for Judicial Notice Pursuant to Rule 94 of the Rules, 27 May 2008. Judgement 2 December 2008 117

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ANNEX B – GLOSSARY 1. LIST OF DEFINED TERMS, ACRONYMS AND ABBREVIATIONS

According to Rule 2(B), of the Rules of Procedure and Evidence, the masculine shall include the feminine and the singular the plural, and vice-versa. ACHR American Convention on Human Rights, 22 November 1969, 1144 U.N.T.S. 123 ACHPR African Charter on Human and Peoples' Rights, 27 June 1981, OAU Doc. CAB/LEG/67/3 rev. 5; 1520 U.N.T.S. 217 CDR Coalition pour la défense de la République (Coalition for the Defence of the Republic) CERD International Convention on the Elimination of All Forms of Racial Discrimination, G.A. res 2106 (XX), Annex, 20 U.N. GAOR Supp. (No.14), U.N. Doc A/6014 (1966), 660 U.N.T.S. 195 Chamber (or Trial Chamber) Trial Chamber III of the International Criminal Tribunal for Rwanda, composed of Judges Inés Mónica Weinberg de Roca, presiding, Florence Rita Arrey and Robert Fremr Defence Closing Brief The Prosecutor v. Simon Bikindi, Case No. ICTR-2001-72-T, Defence Closing Brief, public version, 30 April 2008 ECHR Convention for the Protection of Human Rights and Fundamental Freedoms, 4 November 1950, 213 U.N.T.S. 222, 312 ETS 5, as amended by Protocol No. 11 of 11 May 1994 Genocide Convention Convention on the Prevention and Punishment of the Crime of Genocide, adopted by resolution 260 (III) A of the UN General Assembly, 9 December 1948 ICCPR International Covenant on Civil and Political Rights, 16 December 1966, 999 U.N.T.S. 171 ICTY International Criminal Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991, established by Security Council resolution 927 of 25 May 1993 Indictment The Prosecutor v. Simon Bikindi, Case No. ICTR-01-72-I, Amended Indictment Pursuant To Decisions of Trial Chamber III of 11 May 2005 and 10 June 2005, 15 June 2005 Judgement 2 December 2008 118

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MRND Mouvement révolutionnaire national pour le développement (National Revolutionary Movement for Development) Notice of Alibi The Prosecutor v. Simon Bikindi, Case No. ICTR-2001-72-PT, Notice of Defence of Alibi Pursuant to Rule 67(A)(ii)(a) of the Rules of Procedure and Evidence, 7 September 2006 ORINFOR Rwandan Office of Information Prosecution Closing Brief The Prosecutor v. Simon Bikindi, Case No. ICTR-2001-72-T, Prosecution's Final Trial Brief, 25 April 2008 Prosecution Pre-Trial Brief The Prosecutor v. Simon Bikindi, Case No. ICTR-2001-72-I, Prosecutor's Final [sic] Trial Brief Pursuant to Article 73bis(B)(i) of the Rules of Procedure and Evidence, Prosecution Pre-Trial Brief, 16 August 2006 UNAMIR United Nations Assistance Mission for Rwanda RPF Rwandan Patriotic Front RTL Radio Télévision Libre des Mille Collines

Rules Rules of Procedure and Evidence of the Tribunal, adopted pursuant to Article 14 of the Statute The Statute of the Tribunal adopted by Security Council Resolution 955 of 8 November 1994 Summaries of Anticipated Testimony of Prosecution Witnesses The Prosecutor v. Simon Bikindi, Case No. ICTR-2001-72-I, Filing of Witness Summaries and Points in the Indictment on Which each Witness Will Testify (Rule 73bis(B)(iv)(a) and (b)), 14 August 2006 T. Transcript of the Trial Chamber hearings (English Version) T. (French) Transcript of the Trial Chamber hearings (French Version) Tribunal (or ICTR) International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other such Violations Committed in the Territory of Neighboring States between 1 January 1994 and 31 December 1994, established by Security Council resolution 955 of 8 November 1994 Judgement 2 December 2008 119

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UDHR Universal Declaration of Human Rights, A/RES/217, 10 December 1948 11 July 2006 Disclosure The Prosecutor v. Simon Bikindi, Case No. ICTR-2001-72-I, Interoffice Memorandum from the Prosecution, subject: "Rule 66A(II) Disclosure", 11 July 2006 28 September 2006 Disclosure The Prosecutor v. Simon Bikindi, Case No. ICTR-2001-72-I, Interoffice Memorandum from the Prosecution, subject: "Disclosure of Redacted Witness Statements", 28 September 2005 2. JURISPRUDENCE ICTR AKAYESU

The Prosecutor v. Jean-Paul Akayesu, Case No. ICTR-96-4-T, Judgement, 2 September 1998 ("Akayesu, Judgement (TC)")

BIKINDI

The Prosecutor v. Simon Bikindi, Case No. ICTR-2001-72-T, Decision on the Defence Requête en exclusion des éléments de preuve produits par l'Accusation pour établir des faits non contenus dans l'Acte d'accusation, 26 June 2007 ("Decision on Exclusion of Evidence")

The Prosecutor v. Simon Bikindi, Case No. ICTR-2001-72-T, Decision on Requests for Judicial Notice Pursuant to Rule 94 of the Rules, 27 May 2008

GACUMBITSI

Sylvestre Gacumbitsi v. The Prosecutor, Case No. ICTR-2001-64-A, Judgement, 7 July 2006 ("Gacumbitsi, Judgement (AC)")

KAJELIJELI

The Prosecutor v. Juvénal Kajelijeli, Case No. ICTR-98-44A-T, Judgment and Sentence, 1 December 2003 ("Kajelijeli, Judgement (TC)")

KAMUHANDA

Jean De Dieu Kamuhanda v. The Prosecutor, Case No. ICTR-99-54A-A, Judgement, 19 September 2005 (“Kamuhanda, Judgement (AC)”)

KARERA

The Prosecutor v. François Karera, Case No. ICTR-01-74-T, Judgement and Sentence, 7 December 2007 (“Karera, Judgement (TC)”) KAYISHEMA AND RUZINDANA

The Prosecutor v. Clément Kayishema and Obed Ruzindana, Case No. ICTR-95-1-A, Judgement (Reasons), 1 June 2001 (“Kayishema and Ruzindana, Judgement (AC)”)

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MUVUNYI

Tharcisse Muvunyi v. The Prosecutor, Case No. ICTR-2000-55A-A, Judgement, 29 August 2008 (“Muvunyi, Judgement (AC)”)

NAHIMANA et al.

The Prosecutor v. Ferdinand Nahimana, Jean-Bosco Barayagwiza and Hassan Ngeze, Case No. ICTR-99-52-T, Judgement and Sentence, 3 December 2003 (“Nahimana et al., Judgement (TC)”)

Ferdinand Nahimana, Jean-Bosco Barayagwiza and Hassan Ngeze v. The Prosecutor, Case No. ICTR-99-52-A, Judgement, 28 November 2007 (“Nahimana et al., Judgement (AC)”)

NDINDABAHIZI

Emmanuel Ndindabahizi v. The Prosecutor, Case No. ICTR-01-71-A, Judgement, 16 January 2007 (“Ndindabahizi, Judgement (AC)”)

NIYITEGEKA

The Prosecutor v. Eliézer Niyitegeka, Case No. ICTR-96-14-T, Judgement and Sentence, 16 May 2003 (“Niyitegeka, Judgement (TC)”)

NTAGERURA et al.

The Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-99-46-A, Judgement, 7 July 2006 (“Ntagerura et al., Judgement (AC)”)

NTAKIRUTIMANA

The Prosecutor v. Élizaphan Ntakirutimana and Gérard Ntakirutimana, Case Nos. ICTR-96-10-A and ICTR-96-17-A, Judgement, 13 December 2004 (“Ntakirutimana, Judgement (AC)”) RUGGIU

The Prosecutor v. Georges Ruggiu, Case No. ICTR-97-32-I, Judgement and Sentence, 1 June 2000 (“Ruggiu, Judgement (TC)”)

SEROMBA

The Prosecutor v. Athanase Seromba, Case No. ICTR-2001-66-A, Judgement, 12 March 2008 (“Seromba, Judgement (AC)”)

SIMBA

The Prosecutor v. Aloys Simba, Case No. ICTR-01-76-T, Judgement and Sentence, 13 December 2005 (“Simba, Judgement (TC)”)

Aloys Simba v. The Prosecutor, Case No. ICTR-01-76-A, Appeal Judgement, 27 November 2007 (“Simba, Judgement (AC)”)

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ICTY BLAŠKIĆ

Prosecutor v. Tihomir Blaškić, Case No. IT-95-14-A, Judgement, 29 July 2004 (“Blaškić, Judgement (AC)”)

BRĐANIN

Prosecutor v. Radoslav Brđanin, Case No. IT-99-36-A, Judgement, 3 April 2007 (“Brđanin, Judgement (AC)”)

ČELEBIĆI

Prosecutor v. Zejnil Delalić, Zdravko Mucić (aka “Pavo”), Hazim Delić and Esad Landžo (aka “Zenga”), Case No. IT-96-21-A, Judgement, 20 February 2001 (“Čelebići, Judgement (AC)”)

HALILOVIĆ

Prosecutor v. Sefer Halilović, Case No. IT-01-48-A, Judgement, 16 October 2007 (“Halilović, Judgement (AC)”)

KORDIĆ and ČERKEZ

Prosecutor v. Dario Kordić and Mario Čerkez, Case No. IT-95-14/2-A, Judgement, 17 December 2004 (“Kordić and Čerkez, Judgement (AC)”)

KUPRESKIĆ et al.

Prosecutor v. Zoran Kupreskić, Mirjan Kupreskić, Vlatko Kupreskić, Drago Josipović, Vladimir Šantić, Case No. IT-95-16-A, Appeal Judgement, 23 October 2001 (“Kupreskić et al., Judgement (AC)”)

KRNOJELAC

Prosecutor v. Milorad Krnojelac, Case No. IT-97-25-T, Judgement, 15 March 2002 (“Krnojelac, Judgement (TC)”)

Prosecutor v. Milorad Krnojelac, Case No. IT-97-25-A, Judgement, 17 September 2003 (“Krnojelac, Judgement (AC)”)

KRSTIĆ

Prosecutor v. Radislav Krstić, Case No. IT-98-33-A, Judgement, 19 April 2004 (“Krstić, Judgement (AC)”)

KVOČKA et al.

Prosecutor v. Miroslav Kvočka, Mlado Radić, Zoran Žigić and Dragoljub Prcać, Case No. IT-98-30/1-A, Judgement, 28 February 2005 (“Kvočka et al., Judgement (AC)”)

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MRKŠIĆ et al.

Prosecutor v. Mile Mrkšić, Miroslav Radić, Veselin Šljivančanin, Case No. IT-95-13/1-T, Judgement, 27 September 2007 (“Mrkšić et al., Judgement (TC)”)

ORIĆ

Prosecutor v. Naser Orić, Case No. IT-03-68-A, Judgement, 3 July 2008 (“Orić, Judgement (AC)”)

SIMIĆ

Prosecutor v. Blagoje Simić, Case No. IT-95-9-A, Judgement, 28 November 2006 (“Simić, Judgement (AC)”)

STAKIĆ

Prosecutor v. Milomir Stakić, Case No. IT-97-24-A, Judgement, 22 March 2006 (“Stakić, Judgement (AC)”)

TADIĆ

Prosecutor v. Duško Tadić, Case No. IT-94-1-A, Judgement, 15 July 1999 (“Tadić, Judgement (AC)”) European Court of Human Rights Arslan v. Turkey, Application No. 23462/94, Judgement, 8 July 1999

Incal v. Turkey, Application No. 22678/93, Judgement, 9 June 1998

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Süreş and Özdemir v. Turkey, Application No 23927/94, 24277/94, Judgement, 8 July 1999

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Committee on the Elimination of Racial Discrimination Hagan v. Australia, Communication No. 26/2002, CERD/C/62/D/26/2002 (2003)

L.K. v. The Netherlands, Communication No. 4/1991, CERD/C/42/D/4/1991 (1993)

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