

Glossary

Akazu: “Little house”; used to refer to group of individuals close to President Habyarimana

CDR: Coalition pour la Défense de la République (Coalition for the Defence of the Republic)

CRP: Le Cercle des Républicains Progressistes (Circle of Progressive Republicans)

Gukora: To work; sometimes used to refer to killing Tutsi

Gutsembatsemba: “Kill them” in the imperative form

Icyitso/lbyitso: Accomplice; RPF sympathizer/accomplice; sometimes used to refer to Tutsi

Impuzamugambi: “Those who have the same goal”; Name of youth wing of CDR

Inkotanyi: RPF soldier; sometimes used to refer to Tutsi

Inkuba: “Thunder”; Name of youth wing of MDR

Interahamwe: “Those who attack together”; Name of youth wing of MRND

Inyenzi: Cockroach; group of refugees set up in 1959 to overthrow the new regime; sympathizer of RPF; sometimes used to refer to Tutsi

Kangura: “Awaken” in the imperative form; Name of newspaper published in Kinyarwanda and French

MDR: Mouvement Démocratique Républicain (Democratic Republican Movement)

MRND: Mouvement Révolutionnaire National pour le Développement (National Revolutionary Movement for Development)

PL: Parti Libéral (Liberal Party)

PSD: Parti Social Démocrate (Social Democratic Party)

RDR: Rassemblement Républicain pour la Démocratie au Rwanda (Republican Assembly for the Democracy of Rwanda)

RPF: Rwandan Patriotic Front

RTLM: Radio Télévision Libre des Mille Collines

Rubanda nyamwinshi: Majority people, Hutu majority or the democratic majority of Rwanda

Tubatsembatsembe: “Let’s kill them”

Chapter I - Paras 5 to 389

N.B. As per the **disclaimer**, neither the ICRC nor the authors can be identified with the opinions expressed in the **Cases and Documents**. Some cases even come to solutions that clearly violate IHL. They are nevertheless worthy of discussion, if only to raise a challenge to display more humanity in armed conflicts. **Similarly, in some of the texts used in the case studies, the facts may not always be proven;** nevertheless, they have been selected because they highlight interesting IHL issues and are thus published for didactic purposes.

[Source: ICTR, *The Prosecutor v. Ferdinand Nahimana, Jean-Bosco Barayagwiza, Hassan Ngeze*; footnotes omitted; available on <http://www.ictr.org>]

Judgement of: 3 December 2003

THE PROSECUTOR

V.

FERDINAND NAHIMANA

JEAN-BOSCO BARAYAGWIZA

HASSAN NGEZE

Case No. ICTR-99-52-T

JUDGEMENT AND SENTENCE [...]

CHAPTER I

INTRODUCTION [...]

2. The Accused

1. Ferdinand Nahimana [...]. In 1992, Nahimana and others founded a comité d'initiative to set up the company known as *Radio Télévision Libre des Mille Collines*, S.A. He was a member of the party known as Mouvement Révolutionnaire National pour le Développement (MRND).
2. Jean-Bosco Barayagwiza [...] was a member of the *comité d'initiative*, which organized the founding of the company *Radio Télévision Libre des Mille Collines*, S.A. During this time, he also held the post of Director of Political Affairs in the Ministry of Foreign Affairs. [...]

3. The Indictments

1. Ferdinand Nahimana is charged [...] with seven counts: conspiracy to commit genocide, genocide, direct and public incitement to commit genocide, complicity in genocide, and crimes against humanity (persecution, extermination and murder), pursuant to Articles 2 and 3 of the Statute. [...] He stands charged mainly in relation to the radio station called *Radio Télévision Libre des Mille Collines* (RTLM).
2. Jean-Bosco Barayagwiza is charged [...] with nine counts: conspiracy to commit genocide, genocide, direct and public incitement to commit genocide, complicity in genocide, crimes against humanity [...], and two counts of serious violations of Article 3 common to the Geneva Conventions and of Additional Protocol II, pursuant to Articles 2, 3 and 4 of the Statute. [...] He stands charged mainly in relation to the radio station called RTLM and the CDR Party. [...]

CHAPTER III

FACTUAL FINDINGS [...]

4. RTLM

4.1 RTLM Broadcasts

1. Many witnesses testified that radio played a significant role in the lives of Rwandans. Prosecution Expert Witness Alison Des Forges testified that in the 1980s, the MRND government subsidized the production of radios, which were sold at a reduced price or even given away to those in the administrative structure of the party. According to Des Forges, radio was increasingly important as a source of information as well as entertainment and a focus of social life. RTLM started broadcasting in July 1993. [...]
2. [...] Francois Xavier Nsanzuwera, who in 1994 was Prosecutor in Kigali, [...] described crossing at least four roadblocks on 10 April, finding all those manning each of the roadblocks listening to RTLM. He observed this on many occasions and described radios and weapons as the two key objects that would be found at roadblocks. Witness LAG, who manned a roadblock in Cyangugu, testified that they heard about what was happening in the country and their leaders' instructions from RTLM. [...]

4.1.1 Before 6 April 1994

1. Some RTLM broadcasts focused on ethnicity in its historical context, in an apparent effort to raise

awareness of the political dynamic of Hutu-Tutsi relations. In an RTLM broadcast on 12 December 1993, for example, Barayagwiza shared his own experience as a Hutu with RTLM listeners, to illustrate the role of education and culture in the development of ethnic consciousness:

A Hutu child, ... let me take my own example, for I was born a Hutu; my father is a Hutu, my grandfather is a Hutu, my great grandfather is a Hutu and all my mother's parents are Hutus. [...] They brought me up as a Hutu, I grew up in Hutu culture. I was born before the 1959 revolution; my father did forced labor [...]. My mother used to weed in the fields of the Tutsis who were in power. My grandfather paid tribute-money. I saw all those things, and when I asked them why they go to cultivate for other people, weed for other people when our gardens were not well maintained, they would tell me: "That is how things are; we must work for the Tutsis." [...]

1. Prosecution Expert Witness Alison Des Forges described this passage as communicative of Barayagwiza's "insistence that the ethnic groups are a fundamental reality". She suggested that while there was nothing wrong with taking pride in one's ethnic origins, in the context of a time when Hutu power was being defined as an ideology in opposition to a minority group, which carried the threat of violence against that group, such statements could contribute to the heightening of ethnic tensions. [...]
2. Subsequently in the same broadcast, [...] Gaspard Gahigi, RTLM Editor-in-Chief, [...] suggested that "people want to conceal the ethnic problem so that the others do not know that they are looking for power", then giving the floor to Barayagwiza, who agreed and elaborated on the point:

Yes! Notable among them are the RPF people who are asking everybody to admit that the ethnic groups do not exist. And when one raises the issue, they say that such a person is "unpatriotic, an enemy of peace, whose aim is to divide the country into two camps. However, it looks like right from the beginning of our discussion, we have proved that the ethnic groups do exist, that the ethnic problem does exist, but that today it is being linked to ... by the way, it is not only today, this dates back a long time ago, it is associated with the quest for power.

The RPF claim that they are representing the Tutsis, but they deny that the Tutsis are in the minority. They are 9% of the population. The Hutus make up 80%! So, their conclusion is, "If we accepted that we are Tutsis and accepted the rules of democracy, and we went to the polls, the Hutus will always have the upper hand and we shall never rule." Look at what happened in Burundi: they also thought like that. Those who staged the coup d'Etat thought in the same way. Their mentality is like that of the *Inyenzi*, whose only target is power, yet they know very well that today it is unacceptable to attain power without going through the democratic process... They wonder: "How shall we go about acceding to power?" and they add: "The best way is to refute the existence of ethnic groups, so that when we are in power, nobody will say that it is a single ethnic group that is in power." That is the problem we are facing now. [...]

1. In a broadcast by Kantano Habimana and Noël Hitimana, on 23 March 1994, the RTLM journalists warned listeners of a long-term plan being executed by the RPF, and their undertaking "to fight anything related to 'Power,' that is, to fight any Hutu, any Hutu who says: 'Rwanda is mine, I am part of the majority. I decide first, not you.'" [...]

2. Chrétien notes with regard to this broadcast the emphasis on the fear to be felt by Hutu who have been subjugated by Tutsi. The Hutu seized power from the Tutsi in 1959, and the Tutsi were going to take it back. The historical political context was described entirely in ethnic terms, and the terms “Hutu” and “Tutsi” were used for political groups of people struggling for power. [...]
3. RTLM broadcasts engaged in ethnic stereotyping in economic terms as well as political terms. [...]
4. RTLM broadcasts also engaged in ethnic stereotyping in reference to physical characteristics. In an RTLM broadcast on 9 December 1993, Kantano Habimana discussed accusations that RTLM hated the Tutsi:

Not all Tutsis are wicked; some of them are wicked. Not all Hutus are good, some of them are wicked. Of the ethnic groups, there are some wicked Twas This shows that human nature remains the same among all the ethnic groups in Rwanda, among all the men in Rwanda. But what type of person got it into his head that the RTLM hates the Tutsis? What have the Tutsis done to incur our hatred? A Tutsi, (he smiles) who ... and which way are the Tutsis hated? The mere fact of seeing a Tutsi strolling about forces you to say he has a beautiful nose, that he is tall and slim, and what not. And you grudge him for that? If he has a beautiful, aquiline nose, you also have your own nose that is fat and which allows you to breathe enough air to ventilate your lungs. [...]

1. The Chamber notes, despite Habimana's effort to express even-handedness, the hostility towards and resentment of Tutsi that is conveyed in this broadcast, as well as the acknowledgement that some thought that RTLM hated the Tutsi. The denial is unconvincing. In another RTLM broadcast, on 1 January 1994, Kantano Habimana again mentioned the concern expressed by others that RTLM was promoting ethnic hatred:

[...] However, in this war, in this hard turn that Hutus and Tutsis are turning together, some colliding on others, some cheating others in order to make them fall fighting ... I have to explain and say: “This and that...The cheaters are so-and-so ...” You understand ... If Tutsis want to seize back the power by tricks ... Everybody has to say: “Mass, be vigilant ... Your property is being taken away. What you fought for in ‘59 is being taken away.” So kids, do not condemn me. I have nothing against Tutsis, or Twas, or Hutus. I am a Hutu but I have nothing against Tutsis. But in this political situation I have to explain: “Beware, Tutsis want to take things from Hutus by force or tricks.” So, there is not any connection in saying that and hating the Tutsis. When a situation prevails, it is talked of.

1. Again in this broadcast, there was no reference to *Inkotanyi* or *Inyenzi*. The opposing forces were presented as Hutu and Tutsi. The Tutsi were said to want to seize power back through force or trickery, and Habimana said, again unconvincingly, “I have nothing against Tutsis”, which was belied by everything else he said. [...]
2. That RTLM broadcasts intended to “heat up heads” is evidenced by broad-casts calling the public to arms. In an RTLM broadcast on 16 March 1994, Valerie Bemeriki conveyed the call to “rise up”:

We know the wisdom of our armed forces. They are careful. They are prudent. What we can do is to help them whole-heartedly. A short while ago, some listeners called to confirm it to me saying: ‘We shall be

behind our army and, if need be, we shall take up any weapon, spears, bows. ... Traditionally, every man has one at home, however, we shall also rise up. Our thinking is that the *Inkotanyi* must know that whatever they do, destruction of infrastructure, killing of innocent people, they will not be able to seize power in Rwanda. Let them know that it is impossible. [...]

1. Many of the RTLM broadcasts reviewed by the Chamber publicly named individuals as RPF accomplices and called on listeners to be vigilant to the security risk posed by these individuals. In an RTLM broadcast on 15 March 1994, Noël Hitimana reported:

But in Bilyogo I carried out an investigation, there are some people allied with the *Inkotanyi*, the last time, we caught Lt Eric there, I say to him that if he wants, that he comes to see where his beret is because there is even his registration, we caught him at Nyiranuma's house in Kinyambo. There are others who have become *Inkotanyi*, Marc Zuberi, good day Marc Zuberi (he laughs ironically), Marc Zuberi was a banana hauler in Kibungo. With money from the *Inkotanyi* he has just built himself a huge house there, therefore he will not be able to pretend, only several times he lies that he is *Interahamwe*; to lie that you are *Interahamwe* and when the people come to check you, they discover that you are *Inkotanyi*. This is a problem, it will be like at Ruhengeri when they (*Inkotanyi*) came down the volcanoes taking the names of the CDR as their own, the population welcomed them with joy believing that it was the CDR who had come down and they exterminated them. He also lies that he is *Interahamwe* and yet he is *Inkotanyi*, it's well-known. How does he manage when we catch his colleague *Inkotanyi* Tutsi? Let him express his grief.

Let's go to Gitega, I salute the council, let them continue to keep watch over the people because at Gitega there are many people and even *Inkotanyi*. There is even an old man who often goes to the CND, he lives very close to the people from MDR, near Mustafa, not one day passes without him going to the CND, he wears a robe, he has an eye nearly out of its socket, I do not want to say his name but the people of Gitega know him. He goes there everyday and when he comes from there he brings news to Bilyogo to his colleague's house, shall I name them? Gatarayiha Seleman's house, at the house of the man who limps "Ndayitabi".

1. The Chamber notes that the people named in this broadcast were clearly civilians. The grounds on the basis of which RTLM cast public suspicion on them were cited in the broadcast. They are vague, highly speculative, and have no apparent connection with military activity or armed insurrection.
2. In an RTLM broadcast on 14 March 1994, Gaspard Gahigi named an *Inkotanyi* and listed at the end of the broadcast the names of all his family members:

At RTLM, we have decided to remain vigilant. I urge you, people of Biryogo, who are listening to us, to remain vigilant. Be advised that a weevil has crept into your midst. Be advised that you have been infiltrated, that you must be extra vigilant in order to defend and protect yourself. You may say: "Gahigi, aren't you trying to scare us?" This is not meant to scare you. I say that people must be told the truth. That is useful, a lot better than lying to them. I would like to tell you, inhabitants of Biryogo, that one of your neighbors, named Manzi Sudi Fadi, alias Bucumi, is no longer among you. He now works as a technician for Radio Muhabura.

We have seized a letter he wrote to Ismael Hitimana, alias Safari,... heads a brigade of *Inkotanyi* there the [sic] in Biryogo area, a brigade called *Abatiganda*. He is their coordinator. It's a brigade composed of *Inkotanyi* over there in Biryogo. [...]

As you can see, the brigade does exist in the Biryogo area. You must know that the man Manzi Sudi is no longer among you, that the brigade is headed by a man named Hitimana Ismaël, co-ordinator of the Abatiganda brigade in Biryogo. The Manzi Sud also wrote: "Be strong. I think of you a great deal. Keep your faith in the war of liberation, even though there is not much time left. Greetings to Juma, and Papa Juma. Greetings also to Espérance, Clarisse, Cintré and her younger sister, ... Umutoni."

1. Chrétien noted that this broadcast was an accusation of someone by name as being an RPF accomplice and the reading of a private letter, including the names of the family members. He testified that an ICTR investigator had been able to find Manzi Sudi Fahdi in Kigali and learned that his whole family, including the children Espérance, Clarisse, Cintré and others, were killed during the genocide. [...]
2. In a broadcast on 3 April 1994, Noël Hitimana forecast an imminent RPF attack:

They want to carry out a little something during the Easter period. In fact, they're saying: "We have the dates hammered out." They have the dates, we know them too. They should be careful, we have accomplices among the RPF. ... who provide us with information. They tell us, "On the 3rd, the 4th and the 5th, something will happen in Kigali city." As from today, Easter Sunday, tomorrow, the day after tomorrow, a little something is expected to happen in Kigali city; in fact also on the 7th and 8th. You will therefore hear gunshots or grenade explosions. Nonetheless, I hope that the Rwandan armed forces are vigilant. There are *Inzirabwoba* [fearless], yes, they are divided into several units! The *Inkotanyi* who were confronted with them know who they are... As concerns the protection of Kigali, yes, indeed, we know, we know, on the 3rd, the 4th and the 5th, a little something was supposed to happen in Kigali. And in fact, they were expected to once again take a rest on the 6th in order to carry out a little something on the 7th and the 8th ... with bullets and grenades. However, they had planned a major grenade attack and were thinking: "After wrecking havoc in the city, we shall launch a large-scale attack, then ..."

1. Chrétien suggested that this broadcast gave credibility to the "reign of rumour," on the basis of the fear shared by all at the time owing to the nullification of the Arusha Accords.

Paras 390 to 433

4.1.2 After 6 April 1994

1. In the days just after 6 April 1994, Noël Hitimana broadcast that Kanyarengwe and Pastor Bizimungu had died, suggesting that they, having desired and provoked misfortune, had been struck by it and asking what had prompted them, both Hutu, to sign a blood pact with those who would exterminate "us", apparently from the context a reference to the Hutu. The broadcast then asked listeners to look for *Inyenzi*:

You the people living in Rugunga, those living over there in Kanogo, those living in Kanogo, in fact, those living in Mburabuturo, look in the woods of Mburabuturo, look carefully, see whether there are no *Inyenzis* inside. Look carefully, check, see whether there are no *Inyenzis* inside ...

1. When confronted on cross-examination with the fact that this was a false report of the death of Kanyarengwe and Bizimungu, Nahimana stated that Kanyarengwe was head of the RPF and Bizimungu its spokesperson. He said he could understand that the military might ask journalists to demoralize the opponents. "When there is war, there is war, and propaganda is part of it," he said. With regard to looking for people in the forest, Nahimana expressed the view that if the people were civilians who had gone to the forest in fear, he would not accept these words. On the other hand, if military intelligence had concluded that they were armed infiltrators of the RPF, he could understand an announcement such as the one in the broadcast.
2. RTLM broadcasts continued after 6 April to define the enemy as the Tutsi, at times explicitly. In a broadcast on 15 May 1994, for example, the RTLM Editor-in-Chief Gaspard Gahigi said:

The war we are waging, especially since its early days in 1990, was said to concern people who wanted to institute "democracy" We have said time and again that it was a lie. these days, they trumpet, they say the Tutsi are being exterminated, they are being decimated by the Hutu, and other things. I would like to tell you, dear listeners of RTLM, that the war we are waging is actually between these two ethnic groups, the Hutu and the Tutsi. [...]

1. In an RTLM broadcast on 30 May 1994, Kantano Habimana equated *Inkotanyi* with Tutsi, referring to the enemy several times first as *Inkotanyi* and then as Tutsi:

If everybody, if all the 90% of Rwandans, rise like one man and turn on the same thing called *Inkotanyi*, only on the thing called *Inkotanyi*, they will chase it away until it disappears and it will never dream of returning to Rwanda. If they continue killing themselves like this, they will disappear. Look, the day all these young people receive guns, in all the communes, everyone wants a gun, all of them are Hutu, how will the Tutsi, who make up 10% of the population, find enough young people, even if they called on the refugees, to match those who form 90% of the population.

How are the *Inkotanyi* going to carry this war through? If all the Hutu children were to stand up like one man and say we do not want any more descendents of Gatutsi in this country, what would they do? I hope they understand the advice that even foreigners are giving them. [...]

1. In an RTLM broadcast on 4 June 1994 Kantano Habimana more graphically equated *Inkotanyi* with Tutsi, describing the physical characteristics of the ethnic group as a guide to selecting targets of violence. He said:

One hundred thousand young men must be recruited rapidly. They should all stand up so that we kill the *Inkotanyi* and exterminate them, all the easier that [Tr.] the reason we will exterminate them is that they belong to one ethnic group. Look at the person's height and his physical appearance. Just look at his small

nose and then break it. Then we will go on to Kibungo, Rusumo, Ruhengeri, Byumba, everywhere. We will rest after liberating our country. [...]

1. In an RTLM broadcast of 2 July 1994, Kantano Habimana exulted in the extermination of the *Inkotanyi*:

So, where did all the *Inkotanyi* who used to telephone me go, eh? They must have been exterminated. Let us sing: "Come, let us rejoice: the *Inkotanyi* have been exterminated! Come dear friends, let us rejoice, the Good Lord is just." The Good Lord is really just, these evildoers, these terrorists, these people with suicidal tendencies will end up being exterminated. When I remember the number of corpses that I saw lying around in Nyamirambo yesterday alone; they had come to defend their Major who had just been killed. Some *Inkotanyi* also went to lock themselves up in the house of Mathias. They stayed there and could not find a way to get out, and now they are dying of hunger and some have been burnt. However, the *Inkotanyi* are so wicked that even after one of them has been burnt and looks like a charred body, he will still try to take position behind his gun and shoot in all directions and afterwards he will treat himself, I don't know with what medicine. Many of them had been burnt, but they still managed to pull on the trigger with their feet and shoot. I do not know how they are created. I do not know. When you look at them, you wonder what kind of people they are. In any case, let us simply stand firm and exterminate them, so that our children and grandchildren do not hear that word "*Inkotanyi*" ever again. [...]

1. Some RTLM broadcasts linked the war to what were perceived and portrayed as inherent ethnic traits of the Tutsi. In a broadcast on 31 May 1994, for example, Kantano Habimana said:

The contempt, the arrogance, the feeling of being unsurpassable have always been the hallmark of the Tutsis. They have always considered themselves more intelligent and sharper compared to the Hutus. It's this arrogance and contempt which have caused so much suffering to the *Inyenzi-Inkotanyi* and their fellow Tutsis, who have been decimated. And now the *Inyenzi-Inkotanyi* are also being decimated, so much so that it's difficult to understand how those crazy people reason. [...]

1. In an RTLM broadcast on 5 June 1994, Kantano Habimana described an encounter with an *Inkotanyi* child:

Some moments ago, I was late due to a small *Inkotanyi* captured in Kimisagara. It is a minor *Inkotanyi* aged 14. [...] So *Inkotanyi* who may be in Gatsata or Gisozi were using this small dirty *Inkotanyi* with big ears who would come with a jerrican pretending to go to fetch water but he was observing the guns of our soldiers, where roadblocks are set and people on roadblocks and signal this after. It is clear therefore, we have been saying this for a long time, that this *Inkotanyi*'s tactic to use a child who doesn't know their objective making him understand that they will pay him studies; that they will buy him a car and make him do for their war activities, carry ammunitions on the head for them. And give him a machine to shoot on the road any passenger while they have gone to dig out potatoes. Truly speaking it is unprecedented wickedness to use children during the war, because you know that a child doesn't know anything.

1. This broadcast linked a small child to espionage without citing any evidence that the child was doing anything other than fetching water and looking around. The subsequent association with weapons would leave listeners with the impression that any boy fetching water could be a suspect, covertly aiding the enemy. RTLM promoted the idea that accomplices were everywhere. [...]
2. Many RTLM broadcasts used the word “extermination”; others acknowledged, as several broadcasts cited above, that the reality of extermination was underway. On 9 June 1994 in an RTLM broadcast, Kantano Habimana said:

I will also tell you about Kivugiza, where I went yesterday and where [I] saw *Inkotanyi* in the Khadafi mosque; over one hundred of them had been killed. However, others arrived. When they reached the place, I went there to take a look and saw that they looked like cattle for the slaughter. I don't know whether they have already been slaughtered today or whether they will be slaughtered tonight. But in fact, whoever cast a spell on these Rwandan children (or foreigners if that is the case) went all out. They are braving the shots fired by the children of Rwanda in a suicidal manner. I feel they are going to perish if they are not careful.

1. The Chamber notes the striking indifference to these massacres evident in the broadcast, and the dehumanization of the victims. Although the text makes no reference to ethnicity, in light of the context in which Tutsi were fleeing and taking refuge in places of worship, as well as other broadcasts in which the terms *Inkotanyi* and Tutsi were equated, listeners might well have understood the reference to *Inkotanyi* as a reference to Tutsi civilians. Habimana's suggestion that a newly arrived group had already been slaughtered or was about to be slaughtered accepted, condoned and publicly presented the killing of hundreds of people in a mosque as normal.
2. In an RTLM broadcast on 31 May 1994 an unidentified speaker described the clubbing of a Tutsi child:

They have deceived the Tutsi children, promising them unattainable things. Last night, I saw a Tutsi child who had been wounded and thrown into a hole 15 meters deep. He managed to get out of the hole, after which he was finished with a club. Before he died he was interrogated. He answered that the *Inkotanyi* had promised to pay for his studies up to university. However, that may be done without risking his life and without devastating the country. We do not understand the *Inkotanyi*'s attitude. They do not have more light or heavy weapons than us. We are more numerous than them. I believe they will be wiped out if they don't withdraw.

1. The Chamber finds no indication in this broadcast that the Tutsi child was armed or dangerous. His brutal death was described dispassionately, the point of the broadcast being that the *Inkotanyi* did not seem to understand that they would be annihilated.

[...]

1. In contrast, some broadcasts explicitly called for killing of civilians. In an RTLM broadcast on 23 May 1994, Kantano Habimana said:

Let me congratulate thousands and thousands of young men I've seen this morning on the road in Kigali doing their military training to fight the *Inkotanyi* ... At all costs, all *Inkotanyi* have to be exterminated, in all

areas of our country. Whether they reach at the airport or somewhere else, but they should leave their lives on the spot. That's the way things should be ... Some (passengers) may pretext that they are refugees, others act like patients and other like sick-nurses. Watch them closely, because *Inkotanyi*'s tricks are so many... Does it mean that we have to go in refugee camps to look for people whose children joined the RPA and kill them? I think we should do it like that. We should also go in refugee camps in the neighbouring countries and kill those who sent their children within the RPA. I think it's not possible to do that. However, if the *Inkotanyi* keep on acting like that, we will ask for those whose children joined the RPA among those who will have come from exile and kill them. Because if we have to follow the principle of an eye for an eye, we'll react. It can't be otherwise.

1. The Chamber notes the call for extermination in this broadcast, and although there is some differentiation in the use of the term *Inkotanyi* from the Tutsi population, nevertheless the broadcast called for killing of those who were not *Inkotanyi*, the killing of those in refugee camps whose children joined the RPA. The broadcast also warned listeners to be vigilant at the roadblocks and to beware passengers using the "pretext" that they were refugees, in effect calling on the population to attack refugees.
2. In an RTLM broadcast on 28 May 1994, Kantano Habimana made it clear that even Hutu whose mothers were Tutsi should be killed:

Another man called Aloys, *Interahamwe* of Cyahafi, went to the market disguised in military uniform and a gun and arrested a young man called Yirirwahandi Eustache in the market. In his Identity Card it is written that he is a Hutu though he acknowledges that his mother is a Tutsi. Aloys and other *Interahamwe* of Cyahafi took Eustache aside and made him sign a paper of 150000 Frw. He is now telling me that they are going to kill him and he is going to borrow this amount of money. He is afraid of being killed by these men. If you are an *Inyenzi* you must be killed, you cannot change anything. If you are *Inkotanyi*, you cannot change anything. No one can say that he has captured an *Inyenzi* and the latter gave him money, as a price for his life. This cannot be accepted. If someone has a false identity card, if he is *Inkotanyi*, a known accomplice of RPF, don't accept anything in exchange. He must be killed.

1. From this broadcast it is clear that Yirirwahandi Eustache was perceived to be an *Inyenzi* and *Inkotanyi* because he acknowledged that his mother was a Tutsi. The chilling message of the broadcast was that any accomplice of the RPF, implicitly defined to be anyone with Tutsi blood, cannot buy his life. He must be killed. [...]
2. RTLM also broadcast lists of names of individuals. In an RTLM broadcast on 31 March 1994, for example, Mbilizi announced among the news headlines "13 students of Nyanza who form a brigade that is called Inziraguteba ["persons who are never late"] will soon be enrolled by the RPF." Shortly thereafter Mbilizi started his report of this news by saying that 13 students of Nyanza had just been enrolled by the RPF. He named five schools and then read a list of thirteen names of the people he said were in the Brigade Inziraguteba. Together with each name was broadcast the young man's post in the Brigade, his age, the name of his school, and what his RPF code name would be. The ages given ranged from 13 to 18 years old. After reading the list of names, Mbilizi said:

So, dear listeners, you have noticed that these students are very young and that can be very dangerous. We have to say that this confirms sufficiently the information that was diffused on RTLM saying that the RPF has infiltrated schools.

[...]

1. A number of broadcasts are addressed to those manning the roadblocks, in support of their activities. In a broadcast between 26 and 28 May, Kantano Habimana directly encouraged those guarding the trenches against the *Inyenzi* to take drugs:

I would like at this time to salute those young people near the slaughterhouse, the one near Kimisagara ... Yesterday I found them dancing zouk. They had even killed a small pig. I would like to tell you that ... Oh no! The thing you gave me to smoke it had a bad effect on me. I took three puffs. It is strong, very strong, but it appears to make you quite courageous. So guard the trench well so to prevent any cockroach [*Inyenzi*] passing there tomorrow. Smoke that little thing, and give them hell.[...]

Paras 444 to 485

Witness Evidence of RTLM Programming [...]

1. A number of Prosecution witnesses testified that individuals referred to in RTLM broadcasts were subsequently killed as a result of those broadcasts. Nsanzuwera, the Kigali Prosecutor at the time, characterized being named on RTLM as “a death sentence” even before 7 April. [...] One such incident, which took place on 7 or 8 April, was the killing of Desire Nshunguyinka, a friend of President Habyarimana, who was killed with his wife, his sister and his brother-in-law after RTLM broadcast the license plate of the car they were traveling in. The RTLM broadcast alerted the roadblocks in Nyamirambo and said they should be vigilant as a car with that identification would be passing through, with Inkotanyi. When the car arrived at the roadblock almost immediately after the broadcast, these four people were killed by those manning the roadblock. Nsanzuwera said that RTLM broadcasting addressed itself to those at the roadblock and that the message was very clear: to keep the radio nearby as RTLM would provide information on the movements of the enemy. Many listened to RTLM out of fear because its messages incited ethnic hatred and violence, and Nsanzuwera said the station was called “Radio Rutswitsi” by some, which means “to burn”, referring to ethnic violence. After 6 April it was even called “Radio Machete” by some.
2. Prosecution Witness FS, a businessman from Gisenyi, testified that he heard his brother’s name, among others, mentioned on RTLM on 7 April 1994, and that shortly thereafter his brother was killed, together with his wife and seven children. He testified that his brother was not the only one, but that several people were killed following radio broadcasts. [...]
3. Prosecution witnesses also described RTLM broadcasts apparently designed to manipulate the movement of Tutsis so as to facilitate their killing. An incident recounted by Nsanzuwera involved Professor Charles Kalinjabo, who was killed at a roadblock in May 1994 after RTLM broadcast an appeal to all Tutsis who were not Inkotanyi but rather patriots to join their Hutu comrades at the roadblocks. Charles Kalinjabo was among those who consequently left his hiding place and went to a

roadblock, where he was killed after RTLM then broadcast a message telling listeners not to go and search for the enemies in their houses because they were there at the roadblocks. Witness FW testified that on 11 April 1994, he heard an RTLM broadcast telling all Tutsis who had fled their homes that they should return because a search for guns was to be conducted, and that the houses of all those who were not home would be destroyed in this search. [...] Witness FW stated that most of those who returned home following this broadcast were killed. He did not go home but looked for a hiding place because he did not trust RTLM.

4. Witness FW also testified about an incident that took place at the Islamic Cultural Centre on 13 April 1994. The witness estimated that there were 300 men, 175 women and many children, all Tutsis taking refuge there. He described dire conditions and said that some Hutu youth were entering the compound and bringing food to those inside. On 12 April, he saw the RTLM broadcaster Noël Hitimana there, and heard him asking these youth why they were bringing food to the Inyenzi in the Islamic Cultural Centre. Witness FW testified that he told Hitimana that these people he was calling Inyenzi were his neighbours and asked him why he was calling them Inyenzi. Approximately one hour later, Witness FW said he heard Kantano Habimana on RTLM saying that in the Islamic Cultural Centre there were armed Inyenzi and that the Rwandan Armed Forces must be made aware of this fact. According to the witness, none of the refugees in the compound was armed; they were all defenceless. The next morning, on 13 April, the compound was attacked by soldiers and Interahamwe, who encircled and killed the refugees. From his place of hiding, Witness FW was able to see what was happening. He described the reluctance of some Interahamwe to kill people in a mosque, which led them to order everyone to come out, including elderly women and children. They were then taken to nearby houses, and almost everyone was subsequently killed. The next morning the witness found six survivors, three of whom were severely wounded and died subsequently. They told him that once the refugees had been put into the houses, grenades were thrown into the houses, and that they were the only survivors of the attack. Among those killed was Witness FW's cousin, a seven year-old girl.
5. Witness FW testified that in May he heard an RTLM broadcast, which he described as one of the "inflammatory programs". Gahigi was interviewing Justin Mugenzi who was saying that in 1959 they had sent the Tutsi away but that this time around they were not going to send them away, they were going to kill them, that the Hutu should kill all the Tutsi – the children, women and men – and if they had come back it is because they were not killed last time. The same mistake should not be made again, they should kill all the Tutsi. Witness FW said this statement made them very scared because they realised that their chances of survival were very slim and that if they were alive it would not be for too long. [...]
6. Prosecution Witness Philippe Dahinden, a Swiss journalist who followed RTLM from its beginnings, delivered a statement to the United Nations Human Rights Commission on 25 May 1994, calling for the condemnation of the role played by RTLM since the beginning of the massacres and asking that the UN demand the closing down of the radio. In his statement he noted, "Even prior to the bloody events of April 1994, RTLM was calling for hatred and violence against the Tutsis and the Hutu opponents. Belgian nationals and peacekeepers were also among the targets and victims of the 'radio que tue' [the killer radio station]." Calling RTLM "the crucial propaganda tool" for the Hutu extremists and the militia in the launching and perpetuating of the massacres, Dahinden said that beginning on 6 April 1994, RTLM had "constantly stirred up hatred and incited violence against the Tutsis and Hutu in the opposition, in other words, against those who supported the Arusha Peace Accords of August 1993".
7. Expert Witness Des Forges testified that the message she was getting from the vast majority of people she talked to at the time of the killings was "stop RTLM". She noted that potential victims listened to

RTLM as much as they could, from fear, and took it seriously, as did assailants who listened to it at the barriers, on the streets, in bars, and even at the direction of authorities. She recounted one report that a bourgmestre had said, "Listen to the radio, and take what it says as if it was coming from me". Her conclusion on the basis of the information she gathered was that RTLM had an enormous impact on the situation, encouraging the killing of Tutsis and of those who protected Tutsis. [...]

8. With regard to broadcasts after 6 April 1994, Nahimana testified that he was revolted by those which left listeners with the impression that Tutsis generally were to be killed. He distanced himself from these activities, which he characterized as "unacceptable", stating that RTLM had been taken over by extremists. He stated that RTLM did incite the population to seek out the enemy. While saying that he did not believe that RTLM "systematically called for people to be murdered", he said he was shocked to learn in detention that broadcasters were highlighting the physical features of Tutsis, whom he acknowledged might well be killed as a consequence at a roadblock. Nahimana hypothesized that had he tried to stop RTLM from broadcasting details about individuals named as Inkotanyi, he might have been himself made the subject of an RTLM broadcast endangering his life. On cross-examination, he specifically condemned several broadcasts he was questioned about, and he requested that his condemnation be taken as a global one for all such broadcasts. [...]
9. In response to questioning from the Chamber regarding the RTLM journalists, noting that the same journalists were broadcasting before and after 6 April 1994, Nahimana attributed their changed conduct to a breakdown in management, which allowed a number of radicals to control RTLM. He said during his time in detention he had become more familiar with the programming of RTLM after 6 April, and again he denounced it, particularly the broadcasts of Kantano Habimana, who he said often took drugs, after which he would broadcast unacceptable material. He noted that Habimana had lost his leg in the bombing of RTLM in April, and he said some of the anger in his programming could be understood, though not justified, by the fact that his entire family was killed by RPF forces. Kantano was a trained and good journalist, Nahimana said, recalling that he only learned in detention that the journalists were taking drugs, which had not happened before 6 April.
10. Nahimana firmly rejected the proposition that the difference between RTLM broadcasts before and after 6 April 1994 was merely a matter of degree. He said the kind of debates aired before were not possible after 6 April. He praised Gaspard Gahigi as "the cream of the cream of the cream of the print media", noting that he had trained journalists in the Great Lakes region. He agreed that mistakes were made but said mistakes happen anywhere and he deplored such mistakes, recalling that he had said that the person slighted should be given a right of reply. After 6 April, he said some journalists were like madmen, either because of drugs or because they were upset about what happened to their colleagues. He stated that he never saw any journalist on drugs and mentioned Kantano Habimana as having joined "the camp of criminals". [...]

Discussion of Evidence

[...]

1. The Chamber notes that in the RTLM broadcasts highlighted above, there is a complex interplay between ethnic and political dynamics. This interplay was not created by RTLM. It is to some degree a reflection of the history of Rwanda. The Chamber considers the broadcast by Barayagwiza on 12

December 1993, to be a classic example of an effort to raise consciousness regarding a history of discrimination against the Hutu majority by the privileged Tutsi minority. The discrimination detailed relates to the inequitable distribution of power in Rwanda, historically. As this distribution of power followed lines of ethnicity, it necessarily has an ethnic component. Barayagwiza's presentation was a personal one clearly designed to convey a political message: that the Hutu had historically been treated as second-class citizens. The Chamber notes the underlying concern running through all the RTLM broadcasts that the armed insurgency of the RPF was a threat to the progress made in Rwanda following 1959 to remedy this historical inequity. In light of the history of Rwanda, the Chamber accepts that this was a valid concern about which a need for public discussion was perceived. [...]

2. [...] Prosecution Expert Witness Alison Des Forges acknowledged several of these types of RTLM broadcasts but stated that they were very exceptional. The Chamber accepts that this was the case, both on the basis of witness testimony and on the basis of the sampling of broadcasts it has reviewed, which indicate that RTLM had a well-defined perspective for which it was widely known. RTLM was not considered, and was not in fact, an open forum for the expression of divergent points of view.
3. Many RTLM broadcasts explicitly identified the enemy as Tutsi, or equated the Inkotanyi and the Inyenzi with the Tutsi people as a whole. Some others implied this identification. Although some of the broadcasts referred to the Inkotanyi or Inyenzi as distinct from the Tutsi, the repeated identification of the enemy as being the Tutsi was effectively conveyed to listeners, as is evidenced by the testimony of witnesses. Against this backdrop, calls to the public to take up arms against the Inkotanyi or Inyenzi were interpreted as calls to take up arms against the Tutsi. Even before 6 April 1994, such calls were made on the air [...].
4. The Chamber notes that in his testimony Nahimana suggested repeatedly that whether these individuals were in fact members of the RPF, or were legitimately thought to be members of the RPF, was a critical factor in judging the broadcasts. The Chamber recognizes that in time of war, the media is often used to warn the population of enemy movements, and that it might even be used to solicit civil participation in national defense. However, a review of the RTLM broadcasts and other evidence indicates that the individuals named were not in fact members of the RPF, or that RTLM had no basis to conclude that they were, but rather targeted them solely on the basis of their ethnicity. [...]
5. Nahimana insisted, with regard to the broadcast on 14 March 1994, by Gaspard Gahigi, reading a letter written by an Inkotanyi, that the letter proved the existence of RPF brigades. If authentic, it is true that the letter was written by a self-identified member of the RPF, but RTLM broadcast the names of his children, who, according to Chrétien, were subsequently killed. Even Nahimana acknowledged finally in his testimony with regard to this broadcast that he did not like the practice of airing peoples' names, especially when it might bring about their death. The Chamber recognizes the frustration expressed by Nahimana over the lack of attention, or even bare acknowledgement, that the letter was written by an RPF member, proving the existence of RPF brigades. However, many Prosecution witnesses acknowledged in their testimony that these brigades existed, and the Chamber notes that several Prosecution witnesses such as Witness AEN and WD testified that they were themselves members of the RPF inside Rwanda at the time. In this case, the issue was not whether the author of the letter was a member of the RPF but that his children were mentioned by name in an RTLM broadcast. Nahimana conceded in his testimony that this was bad practice.
6. Among the Tutsi individuals mentioned specifically by name in RTLM broadcasts prior to 6 April 1994 are a number that were subsequently killed. [...]
7. After 6 April 1994, the fury and intensity of RTLM broadcasting increased, particularly with regard to

calls on the population to take action against the enemy. RTLM continued to define the Inkotanyi and the Inyenzi as the Tutsi in the same manner as prior to 6 April. This does not mean that all RTLM broadcasts made this equation but many did and the overall impression conveyed to listeners was clearly, as evidenced by witness testimony, that the definition of the enemy encompassed the Tutsi civilian population. Nahimana again asserted in the context of a particular broadcast just after 6 April that the question of whether the enemy whom listeners were told to seek out was in fact the RPF was a critical factor in judging the broadcasts. The Chamber notes that this particular broadcast called on the public to look carefully for Inyenzi in the woods of Mburabuturo. In the context of other broadcasts that explicitly equated the Inyenzi with the Tutsi population, and without any reference in this broadcast to the Inyenzi carrying arms or in some way being clearly identified as combatants, the Chamber finds that a call such as this might well have been taken by listeners as a call to seek out Tutsi refugees who had fled to the forest. The 23 May 1994 RTLM broadcast by Kantano Habimana suggested that Inkotanyi were pretending to be refugees, directing listeners that even if these people reached the airport, presumably to flee, “they should leave their lives on the spot”. Habimana’s 5 June 1994 RTLM broadcast called attention to a young boy fetching water as an enemy suspect, without any indication as to why he would have been suspect. In the 15 May 1994 broadcast, Gaspard Gahigi, the RTLM Editor-in-Chief, told his audience “the war we are waging is actually between these two ethnic groups, the Hutu and the Tutsi.” In the 29 May 1994 RTLM broadcast, a resident described checking identity papers to differentiate between the Hutu and the Inkotanyi accomplices, and in the 4 June 1994 RTLM broadcast, Kantano Habimana advised listeners to identify the enemy by his height and physical appearance. “Just look at his small nose and then break it”, he said on air.

8. Many of the individuals specifically named in RTLM broadcasts after 6 April 1994 were subsequently killed. [...]
9. The Chamber has considered the extent to which RTLM broadcasts calling on listeners to take action against the Tutsi enemy represented a pattern of programming. While a few of the broadcasts highlighted asked listeners not to kill indiscriminately and made an apparent effort to differentiate the enemy from all Tutsi people, most of these broadcasts were made in the context of concern about the perception of the international community and the consequent need to conceal evidence of killing, which is explicitly referred to in almost all of them. The extensive witness testimony on RTLM programming confirms the sense conveyed by the totality of RTLM broadcasts available to the Chamber, that these few broadcasts represented isolated deviations from a well-established pattern in which RTLM actively promoted the killing of the enemy, explicitly or implicitly defined to be the Tutsi population.
10. The Chamber has also considered the progression of RTLM programming over time – the amplification of ethnic hostility and the acceleration of calls for violence against the Tutsi population. In light of the evidence discussed above, the Chamber finds this progression to be a continuum that began with the creation of RTLM radio to discuss issues of ethnicity and gradually turned into a seemingly non-stop call for the extermination of the Tutsi. Certain events, such as the assassination of President Ndadaye in Burundi in October 1993, had an impact by all accounts on the programming of RTLM, and there is no question that the events of 6 April 1994 marked a sharp and immediate impact on RTLM programming. These were not turning points, however. Rather they were moments of intensification, broadcast by the same journalists and following the same patterns of programming previously established but dramatically raising the level of danger and destruction.

Paras 486 to 619

Factual Findings

1. The Chamber finds that RTLM broadcasts engaged in ethnic stereotyping in a manner that promoted contempt and hatred for the Tutsi population. RTLM broadcasts called on listeners to seek out and take up arms against the enemy. The enemy was identified as the RPF, the *Inkotanyi*, the *Inyenzi*, and their accomplices, all of whom were effectively equated with the Tutsi ethnic group by the broadcasts. After 6 April 1994, the virulence and the intensity of RTLM broadcasts propagating ethnic hatred and calling for violence increased. These broadcasts called explicitly for the extermination of the Tutsi ethnic group.
2. Both before and after 6 April 1994, RTLM broadcast the names of Tutsi individuals and their families, as well as Hutu political opponents. In some cases, these people were subsequently killed, and the Chamber finds that to varying degrees their deaths were causally linked to the broadcast of their names. RTLM also broadcast messages encouraging Tutsi civilians to come out of hiding and to return home or to go to the roadblocks, where they were subsequently killed in accordance with the direction of subsequent RTLM broadcasts tracking their movement.
3. Radio was the medium of mass communication with the broadest reach in Rwanda. Many people owned radios and listened to RTLM – at home, in bars, on the streets, and at the roadblocks. The Chamber finds that RTLM broadcasts exploited the history of Tutsi privilege and Hutu disadvantage, and the fear of armed insurrection, to mobilize the population, whipping them into a frenzy of hatred and violence that was directed largely against the Tutsi ethnic group. The *Interahamwe* and other militia listened to RTLM and acted on the information that was broadcast by RTLM. RTLM actively encouraged them to kill, relentlessly sending the message that the Tutsi were the enemy and had to be eliminated once and for all.

4.2 Ownership and Control of RTLM [...]

Discussion of Evidence on Control of RTLM After 6 April 1994

1. The Chamber notes that the corporate and management structure of RTLM did not change after 6 April 1994. [...]

Factual Findings

1. The Chamber finds that RTLM was owned largely by members of the MRND party, with Juvenal Habyarimana, President of the Republic, as the largest shareholder and with a number of significant shareholders from the Rwandan Armed Forces. CDR leadership was represented in the top management of RTLM through Barayagwiza as a founding member of the Steering Committee and Stanislas Simbizi, who was subsequently added to the Steering Committee of RTLM.
2. The Chamber finds that Nahimana and Barayagwiza, through their respective roles on the Steering Committee of RTLM, which functioned as a board of directors, effectively controlled the management of RTLM from the time of its creation through 6 April 1994. Nahimana was, and was seen as, the founder and director of the company, and Barayagwiza was, and was seen as, his second in command. Nahimana and Barayagwiza represented RTLM externally in an official capacity. Internally, they

controlled the financial operations of the company and held supervisory responsibility for all activities of RTLM, taking remedial action when they considered it necessary to do so. Nahimana also played an active role in determining the content of RTLM broadcasts, writing editorials and giving journalists texts to read.

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

4.3 Notice of Violations [...]

Factual Findings

1. Concern over RTLM broadcasting was first formally expressed in a letter of 25 October 1993 from the Minister of Information to RTLM. This concern grew, leading to a meeting on 26 November 1993, convened by the Minister and attended by Nahimana and Barayagwiza, together with Félicien Kabuga. At this meeting, Nahimana and Barayagwiza were put on notice of a growing concern, expressed previously in a letter to RTLM from the Minister, that RTLM was violating Article 5, paragraph 2 of its agreement with the government, that it was promoting ethnic division and opposition to the Arusha Accords and that it was reporting news in a manner that did not meet the standards of journalism. Nahimana and Barayagwiza both acknowledged that mistakes had been made by RTLM journalists. Various undertakings were made at the meeting, relating to the program broadcasts of RTLM. Nahimana was referred to as “the Director” of RTLM, and Barayagwiza was referred to as “a founding member” of RTLM. They were both part of a management team representing RTLM at the meeting, together with Félicien Kabuga, and they both actively participated in the meeting, indicating their own understanding, as well as the perception conveyed to the Ministry, that they were effectively in control of and responsible for RTLM programming.
2. A second meeting was held on 10 February 1994, in which reference was made to the undertakings of the prior meeting, and concern was expressed by the Minister that RTLM programming continued to promote ethnic division, in violation of the agreement between RTLM and the government. The speech made publicly and televised is strong and clear, and the response from RTLM, delivered by Kabuga, is equally strong and clear in indicating that RTLM would maintain course and defend its programming, in defiance of the Ministry of Information. RTLM broad-casting, in which the Minister was mentioned, as was his letter to RTLM, publicly derided his efforts to raise these concerns and his inability to stop RTLM. By Witness GO’s account, Barayagwiza threatened the Ministry. By Nsanzuwera’s account, the Minister was well aware of such threats. Nevertheless, he told Witness GO to continue his work, and the Minister pressed forward with a case against RTLM he was preparing for the Council of Ministers shortly before he and his family were killed on 7 April 1994.
3. It is evident from the letter of 26 October 1993, the meeting of 26 November 1993 and the meeting of 10 February 1994, that concerns over RTLM broadcasting of ethnic hatred and false propaganda were clearly and repeatedly communicated to RTLM, that RTLM was represented in discussions with the government over these concerns by its senior management. Nahimana and Barayagwiza participated in both meetings. Each acknowledged mistakes that had been made by journalists and undertook to

correct them, and each also defended the programming of RTLM without any suggestion that they were not entirely responsible for the programming of RTLM. [...]

Chapter IV - Paras 944 to 1015

CHAPTER IV

LEGAL FINDINGS

1. Introduction

1. A United Nations General Assembly Resolution adopted in 1946 declares that freedom of information, a fundamental human right, “requires as an indispensable element the willingness and capacity to employ its privileges without abuse. It requires as a basic discipline the moral obligation to see the facts without prejudice and to spread knowledge without malicious intent”.
2. This case raises important principles concerning the role of the media, which have not been addressed at the level of international criminal justice since Nuremberg. The power of the media to create and destroy fundamental human values comes with great responsibility. Those who control such media are accountable for its consequences.

2. Genocide

1. Count 2 of the Indictments charge the Accused with genocide pursuant to Article 2(3)(a) of the Statute, in that they are responsible for the killing and causing of serious bodily or mental harm to members of the Tutsi population with the intent to destroy, in whole or in part, an ethnic or racial group as such.
2. Article 2(3) of the Statute defines genocide as any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:
 - a. Killing members of the group;
 - b. Causing serious bodily or mental harm to members of the group;
 - c. Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
 - d. Imposing measures intended to prevent births within the group;
 - e. Forcibly transferring children of the group to another group.
3. The Trial Chamber in *Akayesu* interpreted “as such” to mean that the act must be committed against an individual because the individual was a member of a specific group and specifically because he belonged to this group, so that the victim is the group itself, not merely the individual. The individual is the personification of the group. The Chamber considers that acts committed against Hutu opponents were committed on account of their support of the Tutsi ethnic group and in furtherance of the intent to destroy the Tutsi ethnic group.

RTLM

1. The Chamber found, as set forth in paragraph 486, that RTLM broadcasts engaged in ethnic stereotyping in a manner that promoted contempt and hatred for the Tutsi population and called on listeners to seek out and take up arms against the enemy. The enemy was defined to be the Tutsi ethnic

group. These broadcasts called explicitly for the extermination of the Tutsi ethnic group. In 1994, both before and after 6 April, RTLM broadcast the names of Tutsi individuals and their families, as well as Hutu political opponents who supported the Tutsi ethnic group. In some cases these persons were subsequently killed. A specific causal connection between the RTLM broadcasts and the killing of these individuals – either by publicly naming them or by manipulating their movements and directing that they, as a group, be killed – has been established (see paragraph 487). [...]

Causation

1. The nature of media is such that causation of killing and other acts of genocide will necessarily be effected by an immediately proximate cause in addition to the communication itself. In the Chamber's view, this does not diminish the causation to be attributed to the media, or the criminal accountability of those responsible for the communication.
2. The Defence contends that the downing of the President's plane and the death of President Habyarimana precipitated the killing of innocent Tutsi civilians. The Chamber accepts that this moment in time served as a trigger for the events that followed. That is evident. But if the downing of the plane was the trigger, then RTLM [...] w[as] the bullets in the gun. The trigger had such a deadly impact because the gun was loaded. The Chamber therefore considers the killing of Tutsi civilians can be said to have resulted, at least in part, from the message of ethnic targeting for death that was clearly and effectively disseminated through RTLM [...], before and after 6 April 1994.

[...]

Genocidal Intent

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

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

1. The RTLM broadcast on 4 June 1994 is another compelling illustration of genocidal intent:

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

1. Even before 6 April 1994, RTLM was equating the Tutsi with the enemy, as evidenced by its broadcast of 6 January 1994, with Kantano Habimana asking, "Why should I hate the Tutsi? Why should I hate the *Inkotanyi*?" [...]
2. [...] Demonizing the Tutsi as having inherently evil qualities, equating the ethnic group with "the enemy" and portraying its women as seductive enemy agents, the media called for the extermination of the Tutsi

ethnic group as a response to the political threat that they associated with Tutsi ethnicity. [...]

3. The editorial policies as evidenced by [...] the broadcasts of RTLM constitute, in the Chamber's view, conclusive evidence of genocidal intent. Individually, each of the Accused made statements that further evidence his genocidal intent. [...]
4. Based on the evidence set forth above, the Chamber finds beyond a reasonable doubt that Ferdinand Nahimana, Jean-Bosco Barayagwiza and Hassan Ngeze acted with intent to destroy, in whole or in part, the Tutsi ethnic group. The Chamber considers that the association of the Tutsi ethnic group with a political agenda, effectively merging ethnic and political identity, does not negate the genocidal animus that motivated the Accused. To the contrary, the identification of Tutsi individuals as enemies of the state associated with political opposition, simply by virtue of their Tutsi ethnicity, underscores the fact that their membership in the ethnic group, as such, was the sole basis on which they were targeted. [...]

3. Direct and Public Incitement to Commit Genocide

Jurisprudence

1. The Tribunal first considered the elements of the crime of direct and public incitement to commit genocide in the case of *Akayesu*, noting that at the time the Convention on Genocide was adopted, this crime was included "in particular, because of its critical role in the planning of a genocide". The *Akayesu* judgement cited the explanatory remarks of the delegate from the USSR, who described this role as essential, stating, "It was impossible that hundreds of thousands of people should commit so many crimes unless they had been incited to do so." He asked "how in these circumstances, the inciters and organizers of the crime should be allowed to escape punishment, when they were the ones really responsible for the atrocities committed."
2. The present case squarely addresses the role of the media in the genocide that took place in Rwanda in 1994 and the related legal question of what constitutes individual criminal responsibility for direct and public incitement to commit genocide. Unlike *Akayesu* and others found by the Tribunal to have engaged in incitement through their own speech, the Accused in this case used the print and radio media systematically, not only for their own words but for the words of many others, for the collective communication of ideas and for the mobilization of the population on a grand scale. In considering the role of mass media, the Chamber must consider not only the contents of particular broadcasts and articles, but also the broader application of these principles to media programming, as well as the responsibilities inherent in ownership and institutional control over the media. [...]

ICTR Jurisprudence

1. The ICTR jurisprudence provides the only direct precedent for the interpretation of "direct and public incitement to genocide". In *Akayesu*, the Tribunal reviewed the meaning of each term constituting "direct and public incitement". With regard to "incitement", the Tribunal observed that in both common law and civil law systems, "incitement", or "provocation" as it is called under civil law, is defined as encouragement or provocation to commit an offence. The Tribunal cited the International Law Commission as having characterized "public" incitement as "a call for criminal action to a number of individuals in a public place or to members of the general public at large by such means as the mass media, for example, radio or television". While acknowledging the implication that "direct" incitement

would be “more than mere vague or indirect suggestion”, the Tribunal nevertheless recognized the need to interpret the term “direct” in the context of Rwandan culture and language, noting as follows:

... [T]he Chamber is of the opinion that the direct element of incitement should be viewed in the light of its cultural and linguistic content. Indeed, a particular speech may be perceived as ‘direct’ in one country, and not so in another, depending on the audience. The Chamber further recalls that incitement may be direct, and nonetheless implicit... .

The Chamber will therefore consider on a case-by-case basis whether, in light of the culture of Rwanda and the specific circumstances of the instant case, acts of incitement can be viewed as direct or not, by focusing mainly on the issue of whether the persons for whom the message was intended immediately grasped the implication thereof.

1. In *Akayesu*, the Tribunal defined the *mens rea* of the crime as follows: The *mens rea* required for the crime of direct and public incitement to commit genocide lies in the intent to directly prompt or provoke another to commit genocide. It implies a desire on the part of the perpetrator to create by his actions a particular state of mind necessary to commit such a crime in the minds of the person(s) he is so engaging. That is to say that the person who is inciting to commit genocide must have himself the specific intent to commit genocide, namely, to destroy, in whole or in part, a national, ethnical, racial or religious group, as such.
2. The *Akayesu* judgement also considered whether the crime of direct and public incitement to commit genocide can be punished even where such incitement was unsuccessful and concluded that the crime should be considered as an inchoate offence under common law, or an *infraction formelle* under civil law, i.e. punishable as such. The Tribunal highlighted the fact that “such acts are in themselves particularly dangerous because of the high risk they carry for society, even if they fail to produce results” and held that “genocide clearly falls within the category of crimes so serious that direct and public incitement to commit such a crime must be punished as such, even where such incitement failed to produce the result expected by the perpetrator”.
3. In determining more precisely the contours of the crime of direct and public incitement to commit genocide, the Trial Chamber notes the factual findings of the Tribunal in *Akayesu* that the crowd addressed by the accused, who urged them to unite and eliminate the enemy, the accomplices of the *Inkotanyi*, understood his call as a call to kill the Tutsi, that the accused was aware that what he said would be so understood, and that there was a causal relationship between his words and subsequent widespread massacres of Tutsi in the community.
4. In *Akayesu*, the Tribunal considered in its legal findings on the charge of direct and public incitement to genocide that “there was a causal relationship between the Defendant’s speech to [the] crowd and the ensuing widespread massacres of Tutsis in the community”. The Chamber notes that this causal relationship is not requisite to a finding of incitement. It is the potential of the communication to cause genocide that makes it incitement. As set forth in the Legal Findings on Genocide, when this potential is realized, a crime of genocide as well as incitement to genocide has occurred.

Paras 1025 to 1080

Charges Against the Accused [...]

1. The Accused have also cited in their defence the need for vigilance against the enemy, the enemy being defined as armed and dangerous RPF forces who attacked the Hutu population and were fighting to destroy democracy and reconquer power in Rwanda. The Chamber accepts that the media has a role to play in the protection of democracy and where necessary the mobilization of civil defence for the protection of a nation and its people. What distinguishes [...] RTLM from an initiative to this end is the consistent identification made [...] the radio broadcasts of the enemy as the Tutsi population. [...] [L]isteners were not directed against individuals who were clearly defined to be armed and dangerous. Instead, Tutsi civilians and in fact the Tutsi population as a whole were targeted as the threat. [...]
2. With regard to causation, the Chamber recalls that incitement is a crime regardless of whether it has the effect it intends to have. In determining whether communications represent an intent to cause genocide and thereby constitute incitement, the Chamber considers it significant that in fact genocide occurred. That the media intended to have this effect is evidenced in part by the fact that it did have this effect. [...]

RTLM

1. RTLM broadcasting was a drumbeat, calling on listeners to take action against the enemy and enemy accomplices, equated with the Tutsi population. The phrase “heating up heads” captures the process of incitement systematically engaged in by RTLM, which after 6 April 1994 was also known as “Radio Machete”. The nature of radio transmission made RTLM particularly dangerous and harmful, as did the breadth of its reach. Unlike print media, radio is immediately present and active. The power of the human voice, heard by the Chamber when the broadcast tapes were played in Kinyarwanda, adds a quality and dimension beyond words to the message conveyed. In this setting, radio heightened the sense of fear, the sense of danger and the sense of urgency giving rise to the need for action by listeners. The denigration of Tutsi ethnicity was augmented by the visceral scorn coming out of the airwaves – the ridiculing laugh and the nasty sneer. These elements greatly amplified the impact of RTLM broadcasts.
2. In particular, the Chamber notes the broadcast of 4 June 1994, by Kantano Habimana, as illustrative of the incitement engaged in by RTLM. Calling on listeners to exterminate the *Inkotanyi*, who would be known by height and physical appearance, Habimana told his followers, “Just look at his small nose and then break it”. The identification of the enemy by his nose and the longing to break it vividly symbolize the intent to destroy the Tutsi ethnic group.
3. The Chamber has found beyond a reasonable doubt that Ferdinand Nahimana acted with genocidal intent, as set forth in paragraph 969. It has found beyond a reasonable doubt that Nahimana was responsible for RTLM programming pursuant to Article 6(1) and established a basis for his responsibility under Article 6(3) of the Statute [...]. Accordingly, the Chamber finds Ferdinand Nahimana guilty of direct and public incitement to genocide under Article 2(3)(c), pursuant to Article 6(1) and Article 6(3) of the Statute.
4. The Chamber has found beyond a reasonable doubt that Jean-Bosco Barayagwiza acted with genocidal intent, as set forth in paragraph 969. It has found beyond a reasonable doubt that Barayagwiza was responsible for RTLM programming pursuant to Article 6(3) of the Statute of the Tribunal [...]. Accordingly, the Chamber finds Jean-Bosco Barayagwiza guilty of direct and public incitement to

genocide under Article 2(3)(c), pursuant to Article 6(3) of its Statute. [...]

4. Conspiracy to Commit Genocide

1. Count 1 of the Indictments charge the Accused with conspiracy to commit genocide pursuant to Article 2(3)(b) of the Statute, in that they conspired with each other, and others, to kill and cause 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. [...]
2. The requisite intent for the crime of conspiracy to commit genocide is the same intent required for the crime of genocide. That the three Accused had this intent has been found beyond a reasonable doubt and is set forth in paragraph 969. [...]
3. The Chamber considers that conspiracy to commit genocide can be inferred from coordinated actions by individuals who have a common purpose and are acting within a unified framework. A coalition, even an informal coalition, can constitute such a framework so long as those acting within the coalition are aware of its existence, their participation in it, and its role in furtherance of their common purpose.
4. The Chamber further considers that conspiracy to commit genocide can be comprised of individuals acting in an institutional capacity as well as or even independently of their personal links with each other. Institutional coordination can form the basis of a conspiracy among those individuals who control the institutions that are engaged in coordinated action. The Chamber considers the act of coordination to be the central element that distinguishes conspiracy from “conscious parallelism”, the concept put forward by the Defence to explain the evidence in this case. [...]

5. Complicity in Genocide

1. Count 4 of the Nahimana Indictment, Count 3 of the Barayagwiza Indictment and Count 3 of the Ngeze Indictment charge the Accused with complicity in genocide, in that they are complicit in the killing and causing of 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. The Chamber considers that the crime of complicity in genocide and the crime of genocide are mutually exclusive, as one cannot be guilty as a principal perpetrator and as an accomplice with respect to the same offence. In light of the finding in relation to the count of genocide, the Chamber finds the Accused not guilty of the count of complicity in genocide.

6. Crimes Against Humanity (Extermination)

1. Count 6 of the Nahimana Indictment, Count 5 of the Barayagwiza Indictment and Count 7 of the Ngeze Indictment charge the Accused with extermination pursuant to Article 3(b) of the Statute of the Tribunal, in that they are responsible for the extermination of the Tutsi, as part of a widespread or systematic attack against a civilian population on political, racial or ethnic grounds.
2. The Chamber notes that some RTLM broadcasts [...] preceded the widespread and systematic attack that occurred following the assassination of President Habyarimana on 6 April 1994 [...]. [T]he Chamber has found that systematic attacks against the Tutsi population also took place prior to 6 April 1994. The Chamber considers that the broadcasting of RTLM [...] prior to the attack that commenced on 6 April 1994 formed an integral part of this widespread and systematic attack, as well as the preceding systematic attacks against the Tutsi population. [...]

3. [...] The Chamber agrees that in order to be guilty of the crime of extermination, the Accused must have been involved in killings of civilians on a large scale but considers that the distinction is not entirely related to numbers. The distinction between extermination and murder is a conceptual one that relates to the victims of the crime and the manner in which they were targeted.
4. [...] RTLM instigated killings on a large-scale. The nature of media, particularly radio, is such that the impact of the communication has a broad reach, which greatly magnifies the harm that it causes. [...]

7. Crimes Against Humanity (Persecution)

1. Count 5 of the Nahimana Indictment and Count 7 of the Barayagwiza and Ngeze Indictments charge the Accused with crimes against humanity (persecution) on political or racial grounds pursuant to Article 3(h) of the Statute, in that they are responsible for persecution on political or racial grounds, as part of a widespread or systematic attack against a civilian population, on political, ethnic or racial grounds. [...]
2. Unlike the other acts of crimes against humanity enumerated in the Statute of the Tribunal, the crime of persecution specifically requires a finding of discriminatory intent on racial, religious or political grounds. The Chamber notes that this requirement has been broadly interpreted by the International Criminal Tribunal for the Former Yugoslavia (ICTY) to include discriminatory acts against all those who do not belong to a particular group, i.e. non-Serbs. As the evidence indicates, in Rwanda the targets of attack were the Tutsi ethnic group and the so-called “moderate” Hutu political opponents who supported the Tutsi ethnic group. The Chamber considers that the group against which discriminatory attacks were perpetrated can be defined by its political component as well as its ethnic component. [...] RTLM [...], as has been shown by the evidence, essentially merged political and ethnic identity, defining their political target on the basis of ethnicity and political positions relating to ethnicity. In these circumstances, the Chamber considers that the discriminatory intent of the Accused falls within the scope of the crime against humanity of persecution on political grounds of an ethnic character. [...]
3. Unlike the crime of incitement, which is defined in terms of intent, the crime of persecution is defined also in terms of impact. It is not a provocation to cause harm. It is itself the harm. Accordingly, there need not be a call to action in communications that constitute persecution. For the same reason, there need be no link between persecution and acts of violence. [...]
4. The Chamber notes that freedom of expression and freedom from discrimination are not incompatible principles of law. Hate speech is not protected speech under international law. In fact, governments have an obligation under the International Covenant on Civil and Political Rights to prohibit any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence. Similarly, the Convention on the Elimination of all Forms of Racial Discrimination requires the prohibition of propaganda activities that promote and incite racial discrimination.
5. A great number of countries around the world, including Rwanda, have domestic laws that ban advocacy of discriminatory hate, in recognition of the danger it represents and the harm it causes. [...]
6. The Chamber considers, in light of well-established principles of international and domestic law, and the jurisprudence [...], that hate speech that expresses ethnic and other forms of discrimination violates the norm of customary international law prohibiting discrimination. Within this norm of customary law, the prohibition of advocacy of discrimination and incitement to violence is increasingly important as the power of the media to harm is increasingly acknowledged.
7. The Chamber has reviewed the broadcasts of RTLM [...] in its Legal Findings on Direct and Public Incitement to Genocide (see paragraphs 1019-1037). Having established that all communications

constituting direct and public incitement to genocide were made with genocidal intent, the Chamber notes that the lesser intent requirement of persecution, the intent to discriminate, has been met with regard to these communications. Having also found that these communications were part of a widespread or systematic attack, the Chamber finds that these expressions of ethnic hatred constitute the crime against humanity of persecution, as well as the crime of direct and public incitement to genocide.

8. The Chamber notes that persecution is broader than direct and public incitement, including advocacy of ethnic hatred in other forms. [...]
9. The Chamber notes that Tutsi women, in particular, were targeted for persecution. The portrayal of the Tutsi woman as a femme fatale, and the message that Tutsi women were seductive agents of the enemy was conveyed repeatedly by RTLM (). The Ten Commandments, broadcast on RTLM [...], vilified and endangered Tutsi women, as evidenced by Witness AHI's testimony that a Tutsi woman was killed by CDR members who spared her husband's life and told him "Do not worry, we are going to find another wife, a Hutu for you". By defining the Tutsi woman as an enemy in this way, RTLM [...] articulated a framework that made the sexual attack of Tutsi women a foreseeable consequence of the role attributed to them.
10. The Chamber notes that persecution when it takes the form of killings is a lesser included offence of extermination. [...]

Discussion

1.
 - a. Would you qualify the situation in Rwanda from 6 April 1994 on as an armed conflict? Which were the parties to the conflict? (GC I-IV, Arts 2 and 3; P II, Art. 1)
 - b. Do the killings of Tutsi civilians by members of militias or even by other Hutu civilians constitute acts of war? Can a genocide be committed in times of peace? What about a crime against humanity? Is war not a necessary condition for the commission of those crimes? How do you reconcile the definition of a crime against humanity, which has to be committed "as part of a widespread or systematic attack", with the fact that this crime can be committed in times of peace? Are these crimes violations of international humanitarian law (IHL)? (GC I, Arts 12(2) and 50; GC II, Arts 12(2) and 51; GC III, Arts 13 and 130; GC IV, Arts 32 and 147; P I, Art. 85(2))
2. What are the differences between genocide and grave breaches of IHL? What are the differences between crimes against humanity and genocide? More specifically, between the crime of persecution and genocide? Is it possible that a crime qualified as genocide does not constitute a crime of persecution? When does a crime of persecution not constitute genocide? [See also ICTY, *The Prosecutor v. Tadic* [Part B. and Part C.]; ICTR, *The Prosecutor v. Jean-Paul Akayesu* [Part A., paras 492-523]]
3. How can someone be condemned for having committed genocide while not having committed murders himself?
4. What do you think of the influence of the media in the commission of such crimes? What is the role of the media in time of war? What are the limits to the contents of their broadcasts in terms of international law? If one of the media is used as a means to incite the commission of crimes, as was the case during the genocide in Rwanda, would it become, under IHL, a legitimate military target? And if it is used to broadcast propaganda information or appeals for mobilization of the population against the enemy? (P I, Art. 52)

