

Paris Assize Court deciding at first instance

MOTIVATION SHEET Article 365-1 of the Code of Criminal Procedure Case P.H. (now M.)

A - THE FACTS, THEIR LEGAL DEFINITION AND THE EXISTENCE OF GENOCIDE AND CRIMES AGAINST HUMANITY IN THE SUBPREFECTURE OF NYABISINDU:

I. The chronology of relevant events between 6 April and July 1994:

The Court and the jury have considered that, in the light of the discussions, the chronology of the relevant crimes that took place in Rwanda and, in particular, in the former Butare prefecture was as follows:

In 1994, the Butare prefecture had the highest proportion of Tutsis in the Rwandan population. The two ethnic groups lived together peacefully, and the opposition parties, such as the Mouvement démocratique républicain [Republican Democratic Movement] (MDR), the Parti social-démocrate [Social Democratic Party] (PSD) and the Parti libéral [Liberal Party] (PL), had achieved some success, challenging the traditional grip of the former single party of the MRND (Mouvement Révolutionnaire National pour le Développement – National Revolutionary Movement for Development). Butare was the only prefecture led by a Tutsi prefect, J-B. H.. Between 1992 and 1994, he resisted the establishment of militias favourable to the extremist movement, ‘Hutu Power’, and his action at the start of the genocide helped for a time to stem the massacres of the Tutsi population in his prefecture. In particular, he tried to prevent the executions, looting and burning of houses already under way in the Gikongoro prefecture from spreading to Butare.

The Nyabisindu sub-prefecture included the municipalities of Nyanza, Ntyazo, Rusatira and Muyira. It was one of the three Butare sub-prefectures and had been headed since 22 May 1991 by sub-prefect G.K., a Hutus affiliated to the MRND.

At the end of 1993, the assassination in Burundi of the first democratically elected President, Melchior NDADAYE, led to a massive influx of Burundian refugees, who settled in two camps in the municipalities of Muyira and Ntyazo. The presence of these refugees in the Nyabisindu sub-prefecture was a factor of politico-ethnic tensions, justifying in particular the presence of a gendarme detachment near these camps.

The municipality of Nyanza was the former royal capital of Rwanda, known as Nyabisindu at the time of the genocide. It was subdivided into 12 sectors: Nyarusange, Gacu, Rwabicuma, Mushirarungu, Rwesero, Nyanza, Kibinja, Gahondo, Busasamana, Gahanda, Runga and Cyaratsi.

On 6 April 1994, the plane bringing President Jjuvenal HABYARIMANA, the President of Burundi and several senior officials, including the chief of staff of the Rwandan Armed Forces, was shot down as it landed in Kigali. The very next day, the Prime Minister of the coalition government and her husband were assassinated, as were several coalition ministers and the President of the Supreme Court. On 9 April 1994, an interim government was established. The first massacres took place in the night of 6 to 7 April 1994. Barriers were immediately set up in the capital and throughout most of the country. Instructions were given to close the borders.

The security situation in the Nyabisindu sub-prefecture dramatically deteriorated, as well as in the Butare prefecture as a whole following the dismissal of the prefect, J-B. H., on 19 April 1994. At the same time, the highest state authorities were moving to Butare, in particular the President of the Republic, Théodore SINDIKUBWABO, and Prime Minister Jean KAMBANDA. During his trial before the International Criminal Tribunal for Rwanda (ICTR), Jean KAMBANDA admitted that, in his capacity as Prime Minister of the interim government, he had incited, aided and abetted prefects, mayors and members of the population to commit massacres and assassinations of civilians, in particular Tutsis and moderate Hutus, notably by travelling to Butare.

On 19 April 1994, on the occasion of the investiture ceremony of the new prefect of Butare, President Théodore SINDIKUBWABO gave a speech that was understood to be a clear call to the population to massacre the Tutsis. This speech played a major role in triggering the large-scale massacres that started just after, in particular in Nyanza.

The Mayor of Nyanza was J-M.G.. He tried to oppose the genocide, in particular by authorising the arrests in mid-April of people involved in the very first unrest targeting Tutsis in this municipality, including a former soldier called A.B.. However, the latter was released very quickly, probably at the instigation of the sub-prefect K., with the help of the gendarmerie. Several witnesses (O.B., C.G., E.K., F.M. and I.D.) referred to the murders of Tutsi senior officials in NYANZA on 19 April as having been a prelude to the massacres. Among these first victims, the name of R., a judicial police inspector having contributed to the arrests of the first troublemakers, is often mentioned. His body and those of other executed people were seen by the population. Mayor J-M.G. had had to flee and hide, before being arrested. P.H. is not being prosecuted for the murder of this mayor, but the corroborating statements of witnesses heard at the hearing on this subject (in particular O.M., D.K., A.K., I.D. and E.M.) state that J-M.G. was paraded in the streets of NYANZA, tied to the back of a gendarmerie car, before being publicly executed around 24 April.

From 20 to 30 April, the military, administrative and political leaders of Butare, and in particular of the Nyabisindu sub-prefecture, took action to bring the prefecture's actions into line with the programme implemented at national level. While officially claiming to be acting to 're-establish security' in the country, they helped to erect a particularly dense network of barriers to carry out murderous checks, close the borders, pillage and destroy Tutsi homes and carry out systematic attacks to exterminate the entire Tutsi population in the places where they had been able to find refuge.

The mayor of the municipality of Ntyazo, like that of Nyanza, tried to resist the implementation of the genocide. Several witnesses stated that, initially, the Hutus and Tutsis even joined forces to ensure a common defence. This situation lasted several days until the Hutus were informed in no uncertain terms that in reality only the Tutsis were being attacked and had to be killed.

The mayor of Ntyazo, N.N., was attempting to cross into Burundi with local residents. He was also captured and executed just before the attack and massacre of the refugees on Nyabubare hill.

In Ntyazo, some inhabitants, such as M.N., a medical assistant at the Nyamure health centre, asked for assistance from the authorities in order to overcome the resistance of Tutsi refugees, in particular on the hills of Nyamure and Karama. The massacres then intensified, with the use of gendarmes and assailants in the attacks on Nyamure hill and the ISAR SONGA site. These attacks claimed thousands of victims.

I The existence of a genocide in Rwanda and especially in the Nyabisindu sub-prefecture between 6 April and July 1994

The Paris Assize Court considers that the events that took place in Rwanda between 6 April and July 1994 constitute the crime of genocide as defined by Article 211-1 of the Criminal Code, i.e. deliberate attacks on the life or serious attacks against the physical or moral integrity of persons, in execution of a concerted plan aimed at the total or partial destruction of the Tutsi ethnic group as such. In that regard, it is irrelevant that the categorisation of the population of Rwanda and, in particular, the distinction between Hutus and Tutsis, was based on arbitrary grounds inherited from the social, colonial, religious and political history of Rwanda, since, because of the particular historical context of that country, the distinction between those two groups was made on the basis of criteria of ethnicity according to paternal lineage and was formalised in particular by entries to that effect on the identity cards of Rwandan citizens.

The existence of a concerted plan aimed at the total or partial destruction of the Tutsi ethnic group is clear from the historical analyses of this period, developed in particular by A.F., H.D, A.G., J.S. and E.G.. They are fully confirmed by the many testimonies of survivors and those of numerous former perpetrators who have consistently reported deliberate attacks on life and serious attacks against physical or moral integrity against all persons considered to belong to the Tutsi ethnic group, whatever their age or sex, in execution of a concerted plan aimed at the total or partial destruction of the members of this group. This finding was also shared on 28 June 1994 by the Special Rapporteur of the United Nations Commission on Human Rights for Rwanda.

Similarly, since the KAREMERA judgment of 16 June 2006, the Appeals Chamber of the International Criminal Tribunal for Rwanda considers that there is no longer any reasonable doubt as to the existence of genocide committed in Rwanda between April and July 1994 against the Tutsi population, due to the systematic nature of the killings that took place throughout the country, and the intention to exterminate a defined ethnic group, in this case the Tutsi group, since the victims were not chosen because of their personal identity or their real or supposed membership of the Rwandan Patriotic Front (RPF), but solely because they belonged to the Tutsi group. It follows that the various episodes of massacres referred to in the indictment decision must be regarded as forming part of a concerted plan for the systematic extermination of the Tutsi populations, completely excluding the juxtaposition of individual and isolated crimes committed by uncontrolled extremists.

P.H. admitted the existence of genocide committed against the Tutsis, and even to have witnessed it, but insisted that the gendarmerie as an institution were not responsible for the killings of Tutsis, and attributed the existence of such acts committed in Nyanza and in the surrounding area to militia extremists or gendarmes coming from the north of the country and beyond the control of any authority. He also claimed that there had been reciprocal murders of members of the Hutus and Tutsi communities, and accused the RPF of being responsible for numerous massacres committed before, during and after the period April-June 1994, claiming, in particular, that following the attack against President HABİYARARIMANA on 6 April 1994, the 600 soldiers of the Rwandan Patriotic Front (RPF) stationed at the Development Council under the Arusha Peace Agreement and those who had 'infiltrated' and were present in the capital had begun to massacre the population, with the country then sinking into chaos and war.

However, the existence of a concerted plan for the total or partial destruction of the Tutsi ethnic group appears undeniable in the light of the speed of the executions and the simultaneous nature of the massacres specifically targeting members of the Tutsi group, their spread throughout the territory, the mobilisation of civilian and military State resources, the closure of borders and the erection of roadblocks, the development of media propaganda calling for interethnic hatred, the distribution of weapons, the destruction and looting of Tutsi homes, the stalking and subsequent attacks on civilians hiding in schools, churches, stadiums and the hills of the Rwandan territory, and the execution of those suspected of being Tutsis or accomplices of the enemy (*ibiyitso*) and, finally, in view of the number of victims, estimated to be hundreds of thousands of people in 3 months. Such a degree of efficiency in the execution of the massacres of Tutsis makes it possible to assert that this

shocking result was achieved only because of a collective organisation that was necessarily based on a concerted plan aimed at exterminating the Tutsi ethnic group. Furthermore, it should be noted that this plan to 'liquidate' the entire Tutsi population had been in the minds of certain Rwandan senior military officials for many years, as testified by General Jean VARRET, who stated that he had had a meeting, at the end of 1990 or at the beginning of 1991, with General RWAGAFILITA, former chief of staff of the gendarmerie, during which the latter had asked him that weapons, in particular heavy weapons and ammunition, be delivered for this purpose.

This extermination plan is consistent with a historical and political process, the fruit of artificially developed racial theories and the deliberate ideological choices of an elite seeking to retain power by stirring up hatred and fear against the Tutsi minority, all against the background of war. The attack on President Juvénal HABYARIMANA's plane was a watershed moment when the emotions heightened by the death of the head of State were used to serve intense media propaganda aimed at uniting all the Hutus in the same hatred and legitimising the elimination of the Tutsis, by presenting them as enemies who should be presumed to be accomplices by nature of the armed RPF fighters. It is clear that, although the interim government set up on 9 April 1994 was composed of politicians from different parties, they joined together in the same extremist tendency, 'Hutu Power', and came to power by taking advantage of the institutional void caused by the targeted killings of opposition politicians who were moderate. In parallel with these killings, which took place just after the announcement of the death of President Juvénal HABYARIMANA, involving soldiers of the Rwandan Armed Forces particularly hostile to the Arusha Peace Agreement, killings immediately targeted Tutsi civilians, in particular in Kigali and several locations in Rwanda, before extending to the Butare prefecture.

With regard more specifically to the crimes that took place in the Nyabisindu sub-prefecture, it is established that a concerted plan for the execution of the Tutsis also existed and began to be implemented locally on the instructions of the civil and military authorities. P.H. himself also claimed, moreover, that the sub-prefect of Nyabisindu, G.K., had participated in distributions of arms to the militia and had asked his superior, Captain FX.B., to 'turn a blind eye', which, in his view, his superior had not been able to oppose. Such explanations, which tend to portray those in charge of the Nyanza gendarmerie as having been overwhelmed and powerless in the face of the implementation of the genocidal plan, are not credible, given the size of the gendarmerie forces present within the jurisdiction of this sub-prefecture, the weapons at their disposal and the involvement of a large proportion of these forces in the implementation of this plan.

The witnesses heard at the hearing consistently reported that, from 20 April 1994, the first looting accompanied by murders and the burning of Tutsi homes had been committed in the town of NYANZA and in the various municipalities of the sub-prefecture, forcing the people concerned to flee their homes because they feared for their lives. And this was at a time when the media, in particular Radio Télévision Libre des Mille Collines (RTLM), were broadcasting hate messages inciting the extermination of the Tutsis.

The Tutsi refugees tried to gather in large numbers on the hills, especially where a few former Tutsi soldiers could help them defend themselves. The survivors described having lived in poor hygienic conditions, with a lack of food that weakened them, and having had to endure repeated attacks by local militiamen armed with traditional weapons such as spears, clubs and machetes. They described how they had initially been able to repel these attacks using stones picked up by women and children, but having then had to endure exterminating attacks by forces made up of gendarmes, soldiers and municipal police, using firearms and even heavy weapons such as mortars in offensives preceding or accompanying assaults by a huge number of assailants composed of civilians and local Interahamwe.

The Court and jury were convinced that the assailants on the hills of Nyamure, Nyabubare and the ISAR (Institut des Sciences Agronomiques du Rwanda) Songa site, like those who killed Tutsis at the barriers and during patrols set up locally in the Nyabisindu sub-prefecture, intentionally killed their victims because they were Tutsis and that, moreover, these murders were preceded or accompanied in these various places by acts of particular

cruelty inflicted with the intention of seriously harming the physical or moral integrity of the victims, in particular by inflicting wounds causing them acute suffering during their agony, or even by burying them while they were still alive or, in some cases, by inflicting sexual violence on them, all of which showed a total lack of consideration for human dignity. The Court and jury have focused especially on the atrocious scenes described by the survivors and, in particular, by the civil parties who came to testify at the hearing, as well as by many of the killers themselves.

During the 3 months of killings and indiscriminate violence against men, women, children, infants and the elderly, some of these victims were trafficked, experienced terror and lived in constant fear of being killed in a horrendous manner. Those who managed to survive were forced to hide and move about constantly to avoid detection, and faced appalling survival conditions with no care or sufficient food.

The Court and jury have therefore considered that the existence of the crime of genocide by deliberate attacks on the life or serious attacks against the physical or moral integrity of the Tutsi victims was perfectly established for all the sites referred to in the referral decision within the jurisdiction of the Nyanza sub-prefecture, whether in Nyanza, at the Akazu K'amazi, Buguba, Rwesero and Mushirungu barriers, on the Nyabubare and Nyamure hills, or at the ISAR SONGA site.

II The existence of crimes against humanity resulting from a massive and systematic attack of summary executions in Rwanda and in particular in the Nyabisindu sub-prefecture between 6 April and July 1994

The Court and jury were also convinced that the events that took place in Rwanda between 6 April and July 1994 constituted crimes against humanity as provided for and punished by Article 212-1 of the Criminal Code in force at the time, in particular the massive and systematic practice of summary executions inspired by political or racial motives and organised in execution of a concerted plan against the Tutsi civilian population group. In this respect, it should be noted that although fighting may have taken place in the Nyabisindu sub-prefecture between soldiers of the Rwandan Armed Forces (FAR) and soldiers of the Rwandan Patriotic Front (RPF), in particular from the end of May 1994, there is no evidence to suggest the presence of RPF soldiers or even 'RPF infiltrators' able to claim such a status at the extermination sites, whether at the various barriers, on the Nyamure and Nyabubare hills or at the ISAR SONGA site, and that the victims were almost exclusively civilian men, women, children and elderly people, almost all of whom had no weapons, except stones, to defend themselves.

Moreover, it is also clear from the debates and testimonies of historians, researchers and survivors that systematic, massive executions or inhumane acts, inspired by political or racial motives, were committed as part of a concerted plan against the Tutsi civilian population group across Rwanda. The International Criminal Tribunal for Rwanda also made a judicial finding on the existence of crimes against humanity committed in Rwanda during the period in question and, prior to it, the commission of experts appointed by the Secretary-General of the United Nations came to the same conclusion at the end of 1994.

The existence of a concerted plan for the extermination of the Tutsi community emerges from the same elements as those set out above in relation to the implementation of the genocide: - the speed and spread destruction of elimination operations throughout the country, starting from the day after the attack on the plane of President Juvenal HABYARIMANA, - the existence of barriers throughout the territory of Rwanda, - the closure of borders, - the development of media propaganda calling for inter-ethnic hatred, - the distribution of weapons, - the destruction and looting of Tutsi homes, - massive and systematic attacks against Tutsis hiding in schools, churches, stadiums and the hills, - the considerable scale of the number of people killed, injured and traumatised victims within the space of only 3 months.

Finally, for the same reasons as set out above, the Court and jury have considered that a concerted plan for the extermination of the Tutsi community had indeed been implemented locally in the Nyabisindu sub-prefecture

and that the crimes committed constitute crimes against humanity, consisting, in particular, of a massive and systematic practice of summary executions, of abductions of people, followed by their death, tortures or inhuman acts, inspired by political or racial motives.

III The ideal combination of offences

By virtue of the principle of the ideal accumulation of offences, when the same act has infringed several different social values or when several intentions have motivated the perpetrator of a single material behaviour, several offences are likely to be considered.

In the present case, the offences of genocide and crimes against humanity have distinct constituent elements, targeting distinct protected values and different criminal intentions, a distinction established in light of the elements described above.

Indeed, the crime of genocide is intended to protect specific groups from their total or partial destruction. The other crimes against humanity are aimed at protecting a civilian population group from attacks against their physical or moral integrity, without it being necessary for the acts referred to to implement a plan whose purpose is the total or partial destruction of the latter. The crime of genocide and crimes against humanity therefore have distinct constituent elements and differ in terms of protected values. The two designations may be used in respect of those same crimes.

In the case of the crime of participation in a group formed or in a cartel established for the purpose of preparing a genocide or crime against humanity, a cumulation with those crimes presupposes their characterisation by separate material acts. Such a cumulation is therefore possible only if the factual elements which make it possible to characterise the participation of P.H. in a group formed or in an agreement established for the purpose of preparing a genocide or crime against humanity are distinct from those characterising the commission of those crimes as perpetrator or accomplice.

B - THE CRIMINAL RESPONSIBILITY OF P.H.

I Legal considerations on the concept of perpetrator, co-perpetrator or accomplice in genocide or crimes against humanity

Articles 121-4 and 121-7 of the Criminal Code define, on the one hand, the perpetrator of a crime as the person who knowingly commits the offence and, on the other hand, the accomplice of a crime as the person who knowingly, by help or assistance, has facilitated the preparation or perpetration of the crime, but also the person who, by donation, promise, threat, order, abuse of authority or power, caused an offence or gave instructions to commit the crime.

While, in principle, the perpetrator of a crime is therefore the person who, by acting knowingly, is directly the material perpetrator of the incriminated acts, the fact remains that Article 211-1 of the Criminal Code states that ‘Genocide is the act, in execution of a concerted plan for the total or partial destruction of a national, ethnic, racial or religious group, or of a group determined on the basis of any other arbitrary criterion, of committing or causing to be committed, any of the following acts against members of that group: - deliberate assault on life; - serious attack against physical or moral integrity; - submission to living conditions likely to result in the total or partial destruction of the group; - measures to prevent the birth of children; - forced transfer of children’.

In accordance with existing international standards, French criminal law therefore makes it possible to hold

criminally liable as the perpetrator of genocide not only the perpetrator, the direct material perpetrator of the acts, but also anyone who can be considered as the intellectual perpetrator for having used one or more material perpetrators as a mere tool or instrument to commit the crime. While it is necessary to establish that the principal perpetrator was motivated by genocidal intent in order to hold him criminally responsible, the material executors he manipulated may not be criminally responsible for their acts – for example because they were acting under duress – or may not themselves have been motivated by genocidal intent.

Article 212-1 of the Criminal Code, for its part, refers to other crimes against humanity as ‘the deportation, enslavement or the systematic mass practice of summary executions, abductions of persons followed by their killing, torture or inhumane acts, inspired by political, philosophical, racial or religious motives and organised in implementation of a concerted plan against a civilian population group’. The definition of these other crimes against humanity, as set out in Article 212-1 in its wording in force at the time of the crimes, does not expressly include the reference to direct commission or through others (the mention of committing or having committed). However, it should be borne in mind that the case-law makes it possible to classify the person who assists the perpetrator in their perpetration as a co-perpetrator, provided that he necessarily cooperates in their perpetration. Thus, in scenes of violence, anyone who, being present at the scene, directs or actively encourages others present to engage in the aforesaid violence may be considered to be one of the co-perpetrators and not a mere accomplice.

With regard to persons who may be held criminally liable as accomplices and not as perpetrators, it should be recalled, with regard to the element of intent, that:

a) In the case of genocide, the accomplice must have been aware that the planned offence consisted of one or more acts of genocide – in this case deliberate assaults on life and/or serious attacks against physical or moral integrity – and that this offence was or would be committed in execution of a concerted plan aimed at the total or partial destruction of a national, ethnic, racial or religious group or a group determined on the basis of any other arbitrary criterion, in this case the Tutsi group. However, it is not necessary to demonstrate that P.H., prosecuted for complicity, was personally motivated by genocidal intent or that he was personally part of the plan to exterminate the group of victims concerned;

b) With regard to the other crimes against humanity, the accomplice must have been aware that the offence in question consisted of one or more acts constituting a crime against humanity – in this case deliberate assaults on life in the form of summary executions or serious attacks against physical and moral integrity committed in application of a concerted plan against a civilian population group, in this case the Tutsi group.

As regards the material element of complicity by instruction, these instructions must have been given before or at the same time as the perpetration of the crime with a view to its execution. By their very nature, the instructions allows the Court and jury to presume that the perpetrator intended to participate in the commission of the crime. However, it does not have to be established that the instructions given had been a necessary condition without which the commission of the crime would not have taken place. It is, however, necessary to establish that the accomplice was aware that his contribution – in this case the instructions he gave – favoured the commission of the crime.

II General considerations with regard to the defence of P.H. and the assessment of the evidence

P.H. has always contested the crimes with which he is charged, right up until the hearing, alleging that the charge was based on testimonies from persons accusing him, either because they had been pressurised by the ruling power of Kigali, or because they had been manipulated by associations of civil parties, or because they were acting in bad faith and hoping to benefit therefrom, such as reductions in their sentence in the case of the convicted witnesses.

The Court and jury consider that these defence pleas cannot stand up to scrutiny. In particular, the numerous prosecution witnesses, also subject to criminal proceedings, have all been finally sentenced, including, for some, to life sentences in prison and, for others, definitively released. Moreover, on the whole, they had reiterated their testimonies, repeating in a detailed and generally consistent manner the facts that they said they had personally seen. Their statements were confirmed during the hearings, either in their presence before the Paris Assize Court, or by videoconference from Kigali with the single assistance of an interpreter, under conditions precluding any interference with their statements. Similarly, there is no tangible evidence to seriously substantiate the claim that P.H. was the victim of political persecution by the Rwandan authorities currently in power.

Furthermore, although the Court and jury have noted contradictions in some of the testimonies, these discrepancies can be explained by the time lag (29 years since the events took place), the emotional shock caused by the events, as well as by difficulties in expression or even understanding. Therefore, the testimonies collected should not be considered in isolation, but should be assessed by taking their overall coherence into account and comparing them, beyond their intrinsic value, with the timing and sequencing of events, and the location and positioning of P.H..

In order to assess the credibility of the witnesses having identified P.H., and in order to take into account any discrepancies that may arise from errors of perception and the limitations of human memory, it was investigated whether the witnesses may have known P.H. prior to the offence on an occasion that would have enabled them to recognise him. Similarly, the Court and jury have analysed the reliability of the witnesses by examining the coherence and consistency of their statements, the conditions in which they had seen P.H., any contradictions noted in their testimonies or in the identification of the latter, the possible influence of third parties, the existence of a state of major stress at the time of the facts, the effect of the time lapse between the events and the testimony of the witnesses, and the overall credibility of the witnesses. With regard to the allegations concerning the bias of certain civil parties, the interference of associations of civil parties in the gathering of evidence and, in particular, the accusation against the Collectif des parties civiles pour le Rwanda (CPCR) of resorting to false testimony, the Court and jury note that the risks of bias had been taken into account, the information gathered had been verified both during the investigation and at the hearing, and that the deliberate use of false testimony had in no way been established.

Finally, it should be stressed that, contrary to that which the defence has repeatedly argued, indirect testimony based on hearsay is not 'inadmissible'. Such testimony is subject to the sovereign discretion of the Court and jury. It cannot, in principle, be sufficient on its own to establish a conviction of the guilt of a defendant, but it is for the Court and jury to assess the probative value which may be attributed to it in the light of all the evidence presented to them, in particular where such witness statements appear to be corroborated by other elements such as material evidence or direct testimonies.

III The conduct of the person concerned after the alleged offences, the alleged alibi and the use of the nickname BIGUMA

P.H. arrived in France in 1999 and – as he himself has admitted – obtained refugee status by providing a completely false biography and false documents, in particular a false identity card in the name of P.Ha., which was allegedly issued to him while he was in the Kashusha refugee camp in the Democratic Republic of Congo by D. H., the former mayor of his home town, Rukundo, who was convicted for taking part in the genocide. According to P.H.'s own statements at the hearing, the latter fled to Rwanda with a batch of blank identity cards. More than a year earlier, his wife had herself come to France, already claiming to be the wife of the man she called P. Ha., and providing an account in support of her asylum application that was just as false as that provided by P.H..

In light of this context, the use of a false identity card in the name of P.H. presented for entry into France, and

his change of name to M. as a result of his naturalisation, do not demonstrate an approach motivated by a concern for the protection of his children, as he alleged, nor a mere lie to cover up his former membership of the Rwandan gendarmerie, for the reason that this capacity alone could have damaged his application for asylum in France, but rather a concerted plan with his wife to avoid being identified and an obvious will to conceal any connection with his past, in particular as former chief of staff of the gendarmerie group in Nyanza.

However, despite living a discreet life in Brittany, P.H. was implicated for the first time in an anonymous letter sent to his employers in 2012. He is described as a former gendarme from Nyanza who was involved in the Tutsi genocide. He lodged a complaint with the Rennes police on account of false information. Then, through an article published in the local press in June 2015, he learned that he was the subject of a complaint filed against him by the CPRC.

At the beginning of 2017, he was dismissed from his job as security agent at the University of RENNES 2 owing to his absences. After a few jobs with fixed-term contracts, he became unemployed once again in September 2017 and left France on 13 November to travel to Yaoundé, Cameroon, where his daughter lives. For this purpose, he obtained a 3-month 'humanitarian' residence visa by submitting a false certificate. He remained on Cameroonian territory beyond the duration of his initial visa and lost the cost of his return ticket. On 23 March 2018, an international arrest warrant was issued against him. He was finally arrested on 31 March 2018 at Yaoundé airport on his way to pick up his wife, J.N., who had come to join him. He was the subject of an extradition order by the Cameroonian authorities on 30 November 2018 and was handed over to France on 15 February 2019.

The director of investigations in charge of the initial investigations carried out by the OCLCH, warrant officer Emilie CAPEILLE, noted that P.H. had cancelled his telephone line in France from 20 December 2017 and had not attended an appointment in February 2018 with a Pôle Emploi (former national employment agency) advisor. She stated that his attitude led her to believe that the person concerned had tried to flee.

A search was carried out at the home of P.H. in April 2018, while he was detained in Cameroon. By the end of this search, several documents had been discovered and placed under seal. They show that P.H. had clearly tried well before his summons to prepare his defence. The documents seized, several of which were read at the hearing, in particular a document entitled 'Projet de Papa' [papa's project], which contains, inter alia, the words 'Liste officiel (sic) à trouver comme preuve' [official list (sic) to be found as evidence] and 'Mettre les choses dans l'ordre avant même de trouver les témoins' [Put things in order even before finding witnesses], support the conclusion that the alibis now relied on were, at the very least, the subject of discussions within the family circle. None of P.H.'s children were heard at the hearing, and his wife cited health problems as a reason for not testifying, making it impossible to obtain clear answers from the family as to the reasons for P.H.'s trip to Cameroon or the sincerity of his actions. It may nevertheless be accepted that his departure from Cameroon in 2017 reflects, at the very least, a desire to stay very far from France at a time when he is known to have been identified in his capacity as chief warrant officer to the Nyanza group, and likely to be worried following the CPRC's complaint.

It is in this context that P.H. denies any responsibility for the crimes of which he is accused, arguing essentially that he was not in Nyanza at the time when they were committed, as he had been transferred and was in Kigali at the Kacyiru camp where he had joined forces engaged in fighting against the RPF before becoming the escort leader responsible for protecting Colonel L.R..

It is noted, first, that the crimes which P.H. is accused of committing took place within a period which may essentially range from 20 to 30 April, or even until mid-May 1994 for the most recent ones. Moreover, the alibi invoked by P.H. does not appear to be established at all.

It should be noted that P.H. clearly gave different information in his statements, initially referring to the date of 18 April as the date of his departure for the Kacyiru camp in Kigali, then indicating that he had left either on 20 or 23 April, or even 25 April, in any case before 30 April, before subsequently stating that he would have left in the second half of April, without being able to specify the date. Similarly, he initially asserted that until his

departure the situation was perfectly calm in Nyanza and that he did not know the reasons for his transfer.

Later, he maintained that the situation had in fact spiralled out of control, as extremist gendarmes were mixing with Interahamwe militiamen to take part in the killings and were no longer obeying the orders of their superiors. He also asserted that, in reality, he himself had been threatened by extremist gendarmes accusing him of being too moderate and that his transfer had been decided to protect him. However, these different stories, together with his publicly expressed animosity towards the Tutsis, as reported by numerous witnesses, are such as to remove all credibility from his statements. Moreover, none of the gendarmerie officers, nor any of his subordinates heard as witnesses, confirmed this alibi. For example, Major C.H., head of the Butare prefecture gendarmerie group, who had been transferred to the Kacyiru camp on 19 April 1994 with around 80 of his men, stated that he had never seen P.H. in Kigali. On the other hand, he confirmed that P.H. was known for his animosity towards the Tutsis. He expressed surprise at the transfer alleged by the person concerned. He added that his superior in Nyanza, Captain B., was a man from the north of Rwanda, having links with the Akazu, an influential group close to President Juvénal HABYARIMANA, and that he had learned that the Nyanza gendarmes 'had behaved badly'.

General Augustin NDINDILYIMANA, former chief of staff of the Rwandan gendarmerie, made rather confused statements, stating on the one hand that he had heard of P.H. for the first time during his own trial before the International Criminal Tribunal for Rwanda (ICTR) and, on the other hand, asserting moreover that his transfer had taken place around mid-May and had been decided on because of his behaviour, in particular towards Tutsi gendarmes, and the lack of confidence he inspired. He confirmed that a meeting with President SINDIKUGWABO had taken place on 17 May 1994, following which it had appeared necessary to strengthen in particular his protection service and that of Colonel R..

L.R., former colonel of the Rwandan gendarmerie and former head of the external security services, heard during the investigation, had refused to appear at the hearing. However, he had sent a letter which was read and added to the proceedings, stating that he had not witnessed any of the events that had taken place in Nyabisindu in April 1994, that he was not even aware that P.H. had been assigned there, and had benefited, from mid-May 1994, from a gendarme reinforcement, including P.H., to ensure his protection. As regards the episodes in which P.H. allegedly participated in his request to evacuate moderate Tutsi or Hutu senior officials, the evidence gathered, including the hearing of C.M. at the hearing, does not make it possible to date those events with any certainty, or even to corroborate the actual participation of P.H. in those offences. In any case, one-off participation in the rescue of endangered Tutsis cannot in itself demonstrate a willingness to oppose the genocidal policy being implemented at the time, in particular when it involves the alleged execution of orders received from his superiors.

JMV.N., now MUNSI, was commander of the Kanombe airport company until May 1994, and also an 'S3' officer at the Kacyiru camp, in charge of coordinating combat operations against the RPF. During the investigation, P.H. maintained that when he arrived at the Kacyiru camp, he had introduced himself to Colonel NZAPFAKUMUNSI and to his superior, Colonel NYILIMANZI. He said that the latter gave their orders from the basement of a building where they were hiding during bombardments and where there were radios. However, this witness stated that he had no recollection of the scene described, nor did he remember seeing P.H. at the Kacyiru camp. He did not provide any evidence corroborating the alleged alibi.

C.K., who commanded a gendarmerie company at the Kacyiru camp, notably from April to early July 1994, stated that he had seen P.H. at this camp, but, according to him, he had come with Major C.H.'s detachment of gendarmes from Butare. However, as mentioned above, C.H. has consistently asserted that P.H. had not come with him and that he had not seen him in Kigali. C.K. stated that P.H. was not under his command in Kacyiru and that he did not understand how he could have been transferred on an individual basis. The testimony given by this witness appears to be isolated and contradicted by C.H.. It does not corroborate the alibi of P.H..

A.T., secretary of the company commander in Nyanza, has consistently stated that not only had P.H. shown himself 'hard' in his hatred towards the Tutsis, but especially that he had not left Nyanza before she had been

transferred to Kacyiru herself, in mid-May. Although the woman concerned was of Tutsi origin and had been subjected to unfounded accusations of abortion by P.H., her testimony nevertheless appears credible. She appears to be measured in her statements and even states that her sister was helped in her escape by Philippe HATEGEKIMNA, who was going to KIGALI in the 'second half of May'. Her credibility is also reinforced by a number of other testimonies, including those of some of her colleagues. The presence of P.H. in Nyanza until May is also apparent from the statements by D.K., P.U. and O.M..

Similarly, numerous witnesses, in particular the advisers I.D. and M.N., being ordinary residents, surviving victims (F.H., V.B., E.K. and S.M.) and former assailants (A.K., E.M., J.M. and H.M.), who gave evidence that they indisputably knew P.H. before April 1994, said that they had seen him in Nyanza or at the crime scenes until at least the end of April 1994. On the whole, their accounts appear to be consistent and coherent and make it possible to rule out the idea of a fabricated account repeated by 'prepared' witnesses as part of a plot hatched by the authorities currently in power in Rwanda against P.H. on the grounds that he was a political opponent of President KAGAME's regime.

P.H., who later became Philippe M., denied at the end of the hearing that he had been given the nickname BIGUMA and suggested that it was possible that he had been confused with other people who had also been given the nickname BIGUMA.

However, here again, although the statements made by the person concerned were particularly inconsistent, he had stated on numerous occasions that he indeed been called BIGUMA, even giving precise explanations as to the origin of this nickname, which he had been given when he was very young and which, according to him, had 'stuck with him because it was easy to remember'.

He also said that he was known in the Nyanza region as BIGUMA, in particular because he chaired the driving licence committee.

It is also apparent that he comes from the municipality of Rukundo, which is very close to Nyanza, that he has lived in that city for a long time, since he had spent several years of his studies there and that he had many relations there, in particular among the family members of his wife who lived there.

Moreover, the hearings of the many people who had personally known P.H. by the name of BIGUMA, in particular his colleagues, leave no doubt whatsoever that he was called this nickname.

A telephone tap revealed that the nickname BIGUMA was still used by his acquaintances and his wife during the investigation.

As regards the risks of any possible confusion between people, it should be noted that he is clearly the only chief warrant officer of the gendarmerie in Nyanza called BIGUMA, and that the credibility of the witnesses accusing him cannot be challenged merely because they referred to the name BIGUMA.

The alleged existence of another military instructor or inhabitant of the municipality of Rusatira involved in acts of genocide, both bearing the same nickname, does not seriously justify the finding of confusion between those persons and P.H. as chief warrant officer to the company of Nyanza.

IV The analysis of the criminal liability of P.H. in the light of each of the various acts referred to in the indictment agreement

1- The role of P.H. within the gendarmerie of Nyanza

P.H. was assigned to the Nyanza territorial brigade around April 1993. A significant part of the brigade's remit concerned judicial police duties. P.H. also stated that he was conducting investigations, and this is perfectly

consistent with the statements made by M.N., who said that he had met P.H. during an investigation into an individual who had defrauded him, and by V.B., who said that he recognised P.H. after remembering that the latter had come to a place near his home and organised a meeting as part of a murder investigation.

At the beginning of 1994, P.H. was transferred to the gendarmerie company of Nyanza as sub-officer of a unit under the authority of Captain B.I.. He described his role as that of a sub-officer of a company and stated: 'I managed the unit's staff, i.e. of the whole company, as if I were the company's HR director. I established the hours of duty, the distribution of meals, I was the secretary of the driving licence committee – it was personnel management'.

He therefore managed all the company's staff and was responsible for distributing gendarmes within the company's remit according to need, i.e. throughout the sub-prefecture, including managing a gendarme detachment in NTONGWE, where there were Burundian refugees.

The number of people in the Nyanza territorial company has been estimated at between 100 and 120 people, including a small minority of Tutsi gendarmes. All the junior gendarmes, in particular all the corporals in the company, were under his authority as company sub-officers and an integral part of the company command. The testimony of former gendarmes of the Nyanza company who were heard as witnesses shows that P.H. assisted Captain B.I., the unit commander, and his deputies, including Second-Lieutenant NTAWIRINGIRA, who was in charge of external operations. With regard to Second-Lieutenant DUSABE, the witnesses were unable to describe his exact activities, some even stating that they thought he was a Tutsi. As non-commissioned officer of the company, P.H. organised regular meetings to allocate duties to the gendarmes under his authority. He travelled to the places where these duties were to be carried out, in particular to ensure that the people concerned had the resources and supplies they needed to carry out their duties. Thus, as stated by the witness P.U., every morning, staff members knew what to do.

The company's gendarmes were equipped with automatic weapons, such as FAL (*fusils automatiques légers* – light automatic rifles) or R4 (automatic rifles). In addition, the company was equipped with a gas machine gun (*mitrailleuse à gaz* – MAG) and a 60 mm mortar, which the person concerned himself acknowledged. The weapons and ammunition were placed in an arms store, the location of which could be established when the situation had been restored. The gendarme in charge of the weapons store was Corporal J-B. N..

In a statement made before the investigating judge, and which was read at the hearing, P.H. stated that the 60 mm mortar 'is a mortar with small bombs. It is the smallest mortar. When you fire, the trajectory is a curve'. While he disputed that such a weapon could have been used by his company to fire on the population, it is clear that he was fully aware of the interest in using such a piece of equipment, stating that it was a 'support weapon for infantry' and that 'it is a weapon that can be used against an enemy who also has mortars or heavy weapons'. Likewise, he was perfectly aware of the hazardous nature of such a 60 mm mortar, since he stated: 'We know that if you fire a bomb, the shrapnel can travel up to 10 metres and kill or injure people. It is not a weapon that you can use any old way, get it out just like that.'

He stressed that this mortar could not actually have been removed from the weapons store without the authorisation of the company's command, stating that 'The storeman cannot open the store without the authorisation of the command' and 'He could not have done so without authorisation because it was too serious'. He then refused to answer when it was pointed out to him that, according to his statements, certain gendarmes were going to 'kill Tutsis without authorisation', and that it was questionable who would prevent them from taking this 60 mm mortar without any authorisation. On this point, it should be recalled that Corporal J-B.N., who was in charge of the weapons store, had been described by P.H. as having been one of the 'undisciplined'

gendarmes, along with Corporals M. and C., who had committed acts of violence and even threatened him. This makes it possible to consider that P.H.'s explanations of the crimes committed by 'undisciplined' gendarmes acting entirely outside the control of their hierarchy are not credible at all. Similarly, given the number of witnesses having seen P.H. put this equipment into the vehicle before setting off for the sites of the attacks or using it during the attacks, in particular on Nyabubare hill, it appears to be established that he had the necessary authority to use the weapons issued to the company and to give instructions for their use.

Furthermore, it is established that the company's officers, as well as P.H., as chief warrant officer, carried a gun. A.T. confirmed that she had seen P.H. himself carrying a 'small gun'. However, it should be noted that many witnesses who were present at the crime scenes mentioned that the latter was carrying or had used such a weapon, in particular during the attack on Nyamure hill.

Philippe M. stated that the gendarmerie company had a khaki Mercedes Benz lorry with a tarpaulin and a red Toyota van for use by command staff. The presence of the latter vehicle at several crime scenes, in particular the barriers or Nyamure hill, has been reported by multiple witnesses.

Similarly, a great many witnesses consistently reported that the gendarmes, including P.H., had used a white, or even 'dirty white', van with a cab and a flatbed at the rear. The description of the vehicle appears almost consistently in almost all the testimonies concerning the crimes committed on 23 April from the capture of Mayor NYAGASAZA, the capture of a group of Tutsis, the journey of the vehicle to the Nyanza gendarmerie camp, followed by the summary executions of the people captured, and then the attack on Nyabubare hill.

The cross-checking of numerous testimonies shows that P.H. had multiple vehicles at his disposal, some of which had been looted, and which were found to have been present at the scenes of the disputed crimes.

Finally, it should be stressed that it has been established that the gendarmes were dressed in a khaki uniform that could have been in plain khaki or camouflage green, and that they wore red berets. The insignia corresponding to the grades were described at the hearing, and the witnesses A.K. and E.K. were able to state that P.H. was wearing a star on his shoulder as one of the insignia on his uniform.

2- The erection of barriers and the murders that took place at these places or during patrols

It is clear from the proceedings that, following the news of the attack having caused the death of President HABYARIMANA, one of the first reactions was the installation of roadblocks to prevent the Tutsis from escaping, in particular into Burundi, the gendarmerie of Nyanza having played a decisive role in that regard within the jurisdiction of the entire sub-prefecture corresponding to its area of competence. The erection of roadblocks or barriers was a State policy and, as Prime Minister Jean KAMBANDA explained during his trial before the ICTR, these barriers were intended to identify Tutsis and moderate Hutus in order to eliminate them, so they had become killing grounds in the Butare prefecture and throughout the country. Many of the witnesses heard confirmed the strategic importance of these barriers.

With regard more specifically to the jurisdiction of the Nyanza gendarmerie, testimonies and re-enactments helped to reveal the erection of at least 13 barriers, although the list drawn up by the investigators cannot be considered exhaustive, because during the genocide they were in fact erected at every crossroads and every major crossing point. Four of them were under the responsibility of the gendarmes, the others being controlled by militiamen. The following barriers were noted:

In the city centre of Nyanza:

- the barrier near the hospital,
- the barrier in front of the TRAFIPRO shop,
- the barrier at Mukonzi,
- the barrier at Kavumu, near the Forge,
- the barrier in front of the stadium.

In the sector of Rwesero:

- the Burundian barrier near the home of G.T.,
- the barrier near the home of C.R.,
- the Rukarisituée barrier near the Royal Palace,
- the Akazu K'amazi barrier,
- the Bugaba barrier,
- the Ku Cyapa barrier near the Nyanza municipal office.

In Mushirarungu:

- the Bleu Blanc barrier.

These barriers were erected following instructions given by the authorities, in particular by Captain BI., but also by P.H., which several witnesses reported, stating that they had attended meetings during which the civilian Hutu population had been summoned and received instructions to set up barriers to 'drive away the Tutsi enemy'.

P.H. was accused by numerous witnesses for his role in the erection, as well as the control of barriers within the jurisdiction of three sectors. A.T., secretary of Captain BI., stated that she had overheard a conversation between extremist gendarmes in the camp, according to which various individuals or authorities, such as the sub-prefect Gaetan KAYITANA, had written a letter with a view to requesting Captain BI.'s authorisation to start the killings in Nyanza, since these had already begun in Kigali. She added that the deployment of gendarmes at the roadblocks had been coordinated by the chief warrant officer, P.H., known as BIGUMA, whom she described as 'relentless' and 'bad' with the Tutsis, even before the genocide.

O.M., a former gendarme and wife of Captain BI.'s driver, Corporal P.N., who is now deceased, reported that her husband had told her that he used to drive P.H. to the RWESERO barriers to see how they were being held. Even if A.T. and O.M. are not eye witnesses of P.H.'s actions, the fact remains that these statements are corroborated by numerous other witnesses.

P.R. described the chief warrant officer BIGUMA as 'one of the gendarmes who worked in close collaboration with Captain BI. He was in charge of all the barriers erected in the region and was very active.' He recognised P.H. from a photograph.

J.M. stated that he had manned the TRAFIPRO barrier, named after the shop in front of which it was erected, in the town centre of Nyanza, and said that gendarmes and soldiers regularly passed by, in particular a man called P.B., a retired army commander, but also BIGUMA, who had told them to be 'vigilant and wary because the *inyenzi* [insurgents, literally "cockroaches" were already among us'.

H.M., a doughnut seller at the small shopping centre in Bigega, stated that he had been forced to man the barrier which had been erected there on 22 April, on the orders of BIGUMA and BI., at a crossroads on the Nyanza/Butare road. He stated that clear instructions had been given by BI. and BIGUMA to kill the Tutsis.

L.N.said that he had manned the RUKARI barrier next to the Royal Palace following its erection on 22 or 23 April. He said that, on the same day, BI. and BIGUMA as well as two other gendarmes had arrived at the barrier in a gendarmerie vehicle and told them that they were there to 'kill the Tutsis, eat their cows and destroy their homes'. He stated that this had been followed by a scene of violence during which, on the orders of BI. and BIGUMA, a Tutsi called NGABONZIZA had been shot by a gendarme and then clubbed to death by the civilians present at the instructions of these gendarmes. He said that this assassination, set as an example, had incited those manning the barrier to kill all Tutsis indiscriminately, including women, the elderly, children, babies and anyone passing through or being brought to the barrier, adding: 'The beautiful women were raped. The rich were robbed'.

In 1994, L.N.lived in the town of Murambi, close to the gendarmerie company. He said that he regularly came across BIGUMA and BI., who used to come and play sport on a playing field in Rukari. He stated that BIGUMA wore a gun at thigh level, which meant that he could not have mistaken him for someone else.

Numerous other witnesses said that they had seen gendarmes coming to the barriers and that the people present at the time had told them that BIGUMA was one of these gendarmes. N.N.stated that he had guarded the Forge barrier in Kavumu, on the Butare-Kigali road, near the gendarmerie and the prison's coffee fields, and that many Tutsis had been killed there, their bodies thrown away. He stated that one day he saw gendarmes come to the barrier, including the one he described as being BIGUMA, handing over a weapon resembling a Kalashnikov automatic weapon. At the hearing, he said: 'He looks like the one I called BIGUMA'.

F.M. reported remembering BIGUMA having been at the barrier of the Bleu Blanc shopping centre in the sector of Mushirarungu.

Faced with the statements of former Prime Minister KAMBANDA, obtained during his trial before the ICTR, P.H. asserted during the investigation that he had no recollection of having been ordered to install barriers. According to him, it was Captain BI. and the sub-prefect who had taken the initiative to have them drawn up. He himself was content to look for available gendarmes to man them, not himself going out into the field. After admitting during his second interrogation that people had been killed near the barriers, he then stated that he had never witnessed any atrocities or murders at the barriers. During the investigation, he argued that the barriers were intended to make it possible to 'identify the RPF suspects'. More specifically, on the role of the gendarmes, he said: 'On Rwandan identity documents, ethnic groups were noted. If 'Tutsi' was written, they (the gendarmes) arrested them to find out if they were RPF suspects'. Then, when asked how it was possible to distinguish an RPF infiltrator from a Tutsi who was hiding and fleeing for his life, he replied: 'When you see a suspect, he is scared, you can see that he is worried about something', adding: 'It's easy to distinguish an RPF agent from an ordinary peasant. The RPF agents were dirty, they had just spent a lot of time in the open, they were tired and malnourished', finally stressing: 'An RPF agent, moreover, did not have any official documents'.

At the hearing, P.H. refused to answer questions concerning his involvement in the barriers.

However, in the light of all those facts and the consistent testimonies gathered during the discussions, it must be held that, by knowingly ensuring the availability of gendarmes at the barriers, by visiting the scene and by encouraging members of the Hutu population to stop, track down and kill Tutsis, P.H. had indeed played an active role in the establishment and control of barriers and thus contributed to a massive and systematic attack on the Tutsi population, as well as actively implementing a genocide plan for the extermination of the members

of the Tutsi ethnic group. He must therefore be regarded as the perpetrator not only of the crime of genocide, but also of the crime against humanity resulting from the executions and serious attacks against the physical and moral integrity of the Tutsis, who have been the victims of it.

P.H. was also accused of having committed separate material crimes constituting murders committed at two of them, namely the Akazu K'amazi barrier and the Buguba barrier.

3- Execution of a group of 28 Tutsis at the Akazu K'amazi barrier

Three witnesses implicated in the genocide and convicted by the Rwandan courts, A.K., J-B. M. and M.M., all consistently stated during the investigation that, during April 1994, P.H., together with Captain BI., had ordered the arrest at their home and then the execution of 28 Tutsis, who had initially been locked up in a house near the Akazu K'amazi barrier. They admitted that they had carried out the murder of these Tutsis on their orders, in the presence of other gendarmes, namely Ce. and Ha.. The place where they said they had executed them with traditional weapons was located during the investigation.

At the hearing, M.M.confirmed that he had manned the Akazu K'amazi barrier and stated that around 30 Tutsis, mainly 'old women and men', had been locked up in the Boniface house and executed. He accused the gendarmes Ce. and Ha., who were with them 'all the time' at the barrier.

However, he provided contradictory explanations at the hearing, stating that he 'no longer remembered BIGUMA'.

J-B. M. confirmed at the hearing that Tutsis had been locked up in the Boniface house, that there were mainly elderly people and no children. He stated that these were families from the local area who, according to him, had not been arrested at the barrier but in their homes. Similarly, he stated: 'We took these Tutsis up near the woods and, when we got there, we hit them with clubs, and the gendarme who was with us fired at them with a rifle. That wood was approximately 50 m from the place where those Tutsis were'.

A.K. also confirmed at the hearing that, in 1994, he had manned the Akazu K'amazi barrier, which, according to him, had been erected following instructions given by BI. and BIGUMA following a meeting. Although he stated that he had not participated in that meeting himself, he nevertheless said that he could perfectly identify BIGUMA because his neighbour, E.N., was married to the sister of the latter's wife. He maintained at the hearing that BI. and BIGUMA had ordered the execution of 28 Tutsis locked up in the Boniface house and that the gendarmes present, as well as the population, had obeyed this order and killed them all.

E.M. stated that he had also manned this barrier, and that this had been in the presence, in particular, of the gendarmes Ce. and Ha.. He accused BIGUMA of being a more senior gendarme who also came to this barrier to incite people to kill Tutsis.

When asked how many Tutsis had been killed at the barrier, he replied: 'I don't know, there were so many of them'. As for the Tutsis locked up in the Boniface house, they too were 'very numerous'.

P.H. has denied any involvement in the murders. At the hearing, he also used his right to silence by refusing to answer the questions asked on this subject. However, his presence at the Akazu K'amazi barrier and the fact that he gave instructions to kill the Tutsis arrested and held at this barrier have been established.

The Court and jury have considered that these facts were sufficient to characterise the guilt of P.H. as a perpetrator of genocide for having committed the executions of the 28 Tutsis held at the Boniface house, and as an accomplice by ordering the crime against humanity resulting in these executions, which formed part of both

the execution of a genocide plan and a systematic and massive attack against the Tutsi civilian population.

4- The Buguba barrier

This barrier was located on the road between Nyanza and Kueyapa. Several witnesses accused P.H. for his role at this barrier. Two witnesses said that he had come there on a regular basis in his vehicle, without getting out, to speak to the person in charge of the barrier. According to M.M., who had been assigned to this barrier, P.H. had given the order not to let any Tutsis through. This witness added that he had not killed any Tutsis himself, but that he had witnessed seven of them having been killed on the spot with machetes and clubs.

S.R. also named P.H. as having ordered the murder of an unidentified Tutsi group there. Finally, P.R. stated that P.H.'s role was to ensure the death of the Tutsis at this barrier.

According to A.K., this barrier had been created to stop the Tutsis who had managed to cross the barrier near Akazu K'amazi, at the request of a retired military commander. During the investigation, P.H. stated that he was not aware of the existence of this barrier. Before the Court, he exercised his right to remain silent by refusing to answer the questions put to him on this subject.

However, his statements made at the hearing appeared rather confused, both with regard to the group of Tutsis who had allegedly been killed there and the precise role played by P.H. in view of the execution of these victims. The Court and jury have found that there was insufficient evidence to convict P.H. as a perpetrator or accomplice by instruction of genocide and crimes against humanity for having given the order to kill a group of unidentified Tutsis at the Buguba barrier.

5- The crimes concerning the executions of Mayor NYAGASAZA and a group of Tutsis, including P.N., E.N. and A.M.

The numerous testimonies given during the investigation and at the hearing enabled it to be established that the Nyanza gendarmes, including P.H., went in search of Mayor NYAGASAZA on 23 April 1994, and were involved in his murder and that of P.N., E.N., A.M. and other unidentified Tutsis, which preceded the attack on Nyabubare hill.

As regards, first, the date of those crimes, a very large number of witnesses refer to the fact that they took place on 23 April and several of them even stated that it was a 'Sabbath' day, which corresponds well to the date of Saturday 23 April 1994. They include C.N., F.H., I.D., E.S., A.B., E.U., and Y.K., the latter's statements having been read at the hearing. Similarly, with regard to the vehicle in which P.H. travelled that day, most of the witnesses heard referred to the same type of vehicle, namely a white van with a cabin, which makes it possible to assess the overall consistency of all the witness statements.

A.N., called NYOTA, and S.Ma. reported that the mayor had been arrested on the bank of the Akanyaru River by the gendarmes of Nyanza while attempting to flee to Burundi. A.N., who worked as a waiter in his father's cabaret, said that BIGUMA had been part of the group of gendarmes who had arrested Mayor NYAGASAZA. S.Ma., who was in the same cabaret, said he had witnessed the abduction and had seen three gendarmes wearing red berets arrive in a white double-cabin vehicle. They had made Mayor NYAGASAZA, wearing a black tunic, climb on to this vehicle, and the gendarmes had told him to get inside. He added that the gendarmes had also made P.N., 'an old man, a former municipal policeman' 'climb up', as well as someone called E.N..

Other testimonies make it possible to recall the arrest of other Tutsis present at these places. P.M., civil party and daughter of former municipal policeman P.N., confirmed that her father had been abducted at the same time

as Mayor NYAGASAZA by gendarmes recognisable by their uniforms.

A.N. and S.Ma.corroborate the abduction of P.N. by P.H., which they had witnessed directly.

S.S., who, in April 1994, lived in the municipality of Ntiaz, confirmed having come across, in Gihama, the 'dirty white, double cabin' vehicle on which P.H. was located. He said that the driver had stopped and that P.H. had told the crowd gathered there to kill the Tutsis, while pointing at Mayor NYAGASAZA and telling them that they were going to kill him themselves. S.S. stated that he knew Mayor NYAGASAZA well and that, in the back of the vehicle, there were several gendarmes, 'a few other Tutsis' including the shopkeeper M., nicknamed SANASANA, as well as an old man called P.N., a former municipal policeman.

C.K., civil party, stated that on the same day, when he too was trying to flee to Burundi, he had been advised by one of his former Hutu pupils to change his route, as Mayor NYAGASAZA had just been arrested by the gendarmes and that the person who had given the order was BIGUMA.

M.N. stated that he had come across the vehicle carrying Mayor NYAGASAZA and other Tutsis while he was at the Gati cabaret. There too, P.H. addressed the crowd gathered there, stating that the gendarmes were taking the mayor away.

A.T., D.K. and I.D.all consistently stated that they were present at the Nyanza gendarmerie camp when the vehicle carrying the mayor arrived.

I.D. stated that he then left in the vehicle with the gendarmes, including P.H., the mayor and the group of Tutsis, and that the vehicle had stopped for the first time on P.H.'s orders so that the group of Tutsis could be executed.

He added that the vehicle had then resumed its route to the village of Gisoro, to the office of the sector of Mushirarungu, where the mayor had in turn been shot dead at the order of P.H..

C.N., E.N.and Y.K. confirmed that the latter had ordered the execution of the mayor. They named the gendarmes as the perpetrators of the murder.

E.U. confirmed the involvement of gendarmes in the commission of this crime.

C.N., whose statements were read at the hearing, confirmed that Mayor NYAGASAZA had been executed by gendarmes, but stated that the order had been given by the driver of the vehicle.

Finally, P.R.named P.H. as the person who had fired the shot.

Although these witness statements concerning both the circumstances of the abduction of Mayor NYAGASAZA and the other Tutsis and their executions have discrepancies, in particular as regards whether physical violence had been carried out during these abductions and the exact circumstances of the executions, in particular as regards the name of the person who had fired the shot that killed N.N., the fact remains that all confirm the presence of P.H., 'the gendarme chief', as being the person who led the action of his subordinates during all of these crimes.

The Court and jury have considered that these summary executions were well established, that they were motivated solely by the fact that the victims were Tutsis, and that P.H. was indeed the person who had tracked down these people, captured them, was present throughout these events, and ordered the executions of Mayor N.N., P.N., E.N. and A.M.. The execution of N.N. was a murder carried out as an example and a signal intended to make the population understand that it was now time to 'work', i.e. to participate in the elimination of the Tutsis.

The Court and jury have therefore considered that P.H. was guilty of these executions as the perpetrator of

genocide and crimes against humanity.

6- The crimes that took place on Nyabubare hill

The attack on Nyabubare hill reveals the existence of a modus operandi that will prove to be common to many massacre sites, namely:

- The grouping of Tutsi refugees on a hill or a site supposed to provide them with some safety.
- The harassment of these refugees by a Hutu population led by local leaders and carrying out attacks using traditional weapons.
- A defence against the assailants using particularly limited means, such as simple stones, but sufficiently effective to repel the assaults, in particular in Nyabubare due to the presence of a former Tutsi soldier, P.N., known as PETERO, who had a deterrent firearm.
- Then, a request for reinforcement by the local authorities to the Nyanza gendarmerie and the sending of gendarmes equipped with firearms, grenades and, especially, a mortar, enabling the refugees to be bombed, killed or dispersed. At the same time, an encircling operation common to the gendarmes and Hutu civilian assailants, which can be covered with banana leaves as distinctive signs, makes it possible to kill the survivors.

The evidence of an attack on Nyabubare hill is particularly clear from the testimonies of I.D., a key witness to the crimes of 23 April 1994.

His statements appear to be credible, given the witness's great consistency in maintaining them right up to the hearing before the Paris Assize Court. Furthermore, he has been definitively convicted. Although he was able to contribute to the gathering of information in the context of the proceedings before the Gacaca, it is in no way established that he would act with the aim of taking advantage of false accusations against P.H..

I.D., who was the adviser of the sector of Mushirarungu, explained that he had visited the gendarmerie company of Nyanza on the morning of 23 April 'because there were a lot of Tutsis who had gathered on Nyabubare hill, there was a soldier, PETERO, and he had come to seek the gendarmes' help' in order to be able to attack the Tutsis hiding on that hill. He stated that, in agreement with Captain BI., P.H. had effectively set off with gendarmes in order to be able to provide him with the reinforcements needed for this attack.

He stated that after the aforementioned executions of Mayor NYAGASAZA and the other Tutsis, the gendarme vehicle in which this had taken place had headed towards the village of Munyinya on Nyabubare hill.

He described the attack during which BIGUMA had given the order to fire on the Tutsi refugees, in particular using the 60 mm mortar, to destroy PETERO's house by throwing a grenade, and to continue the massacre of the victims by assailants from the civilian population using traditional weapons, such as clubs, machetes, pruning hooks, spears and small hoes.

The course of these crimes is described in a perfectly coherent way by former assailants, in particular:

O.B., E.U., F.M., C.N., E.S., E.N., A.K., C.G., A.B. and C.N., whose statements were read at the hearing.

They were also described by the few survivors who were able to be heard, including :

F.H., E.S., E.M., MJ.M., O.M. and F.M.

The statements concerning the use and location of a 60mm mortar were corroborated by the investigators during the re-enactments, as well as by the ballistics expertise – they all confirmed the perfect consistency of the

information gathered on this subject.

P.H. disputes any involvement in this massacre, saying that, on that date, he was preparing to leave the region, even stating that he was unaware that gendarmes could be involved in these crimes and arguing that no 60 mm mortar had served the gendarmerie of Nyanza during the time when he was carrying out his duties there. He even said that he did not know Nyabubare hill and had not heard of any massacre having taken place there.

The Court and jury have considered that the numerous, precise and consistent testimonies collected, as well as the findings made on the spot by the investigators and the ballistics expertise, make it possible to conclude that P.H. is the main perpetrator of the massacre motivated solely by a desire to exterminate the Tutsis who were on that hill.

The number of victims resulting from this attack can be estimated at several hundred, with some witnesses stating that 300 people had been killed. The culpability of P.H. as the perpetrator of genocide and crimes against humanity has therefore been maintained on this ground.

5- The crimes that took place during the Nyamure hill attacks

The witnesses heard on the crimes relating to Nyamure hill described an attack corresponding to the same *modus operandi* as that described above for Nyabubare hill. Tutsi refugees gathered in Nyamure after 20 April 1994 and were harassed from 23 April onwards. In the face of their resistance, the armed forces were called in – in this case the gendarmerie – and a major attack was planned for around 27 April.

As can be seen from the re-enactments carried out by the investigators and from the examination at the hearing of the maps from the Institut National de Géographie de Belgique (Belgium's National Institute of Geography) that were submitted to the hearing, Nyamure hill appears to be much larger than Nyabubare hill, with a wooded area and open areas that provide good visibility, in particular from the road leading up to the hill. Discrepancies in the testimonies of the exact circumstances of the attack may be explained, both by the time elapsed since the crimes had been committed and the trauma suffered, and by the configuration of the places and the positioning of the witnesses, victims or assailants during the crimes: some refugees were located at the top of the hill, others halfway up and others even lower down, and the assailants were arriving from different directions to encircle the hill.

The refugees were initially faced with very poor living conditions. V.B., explained that some refugees had fled with their cows, which made it possible to have some milk, but in insufficient quantities, and that food and water were lacking, that some refugees tried to go and find manioc in the fields nearby or draw water, but that such forays were 'suicidal' because of the attacks suffered at the hands of the civilian population. F.N. confirmed that it was particularly difficult and perilous to find anything to eat.

The statements collected indicate that Nyamure hill was surrounded jointly by Interahamwe militiamen, Hutu civilians from the local population, coordinated, supervised and directed by the gendarmes, although the identity of the person who called in the Nyanza gendarmerie services had not been established with any certainty.

However, whatever the identity of the perpetrator of this request for reinforcements, the presence of gendarmes on Nyamure hill appears to be unquestionable. On the one hand, the hill is located at a short distance from Nyanza and falls within its area of competence. Moreover, several witnesses mentioned the presence of armed men dressed in khaki and wearing red berets. Similarly, the presence of vehicles known to be gendarmerie vehicles, in particular a red Toyota van, was mentioned by several witnesses (in particular by the civil parties G.K. and V.B. and the witness J.B.M.).

JD.M., sentenced to 19 years of criminal detention, namely for the attack on Nyamure hill, stated that due to the resistance of the Tutsi refugees it was his brother, V.S., alias COMPAGNIE, an extremist Hutu, who went looking for these reinforcements.

E.M., another assailant, sentenced to life imprisonment for his part in the attack on the hill, also stated that it was a man called COMPAGNIE who had gone to fetch gendarme reinforcements in the face of resistance from the refugees.

M.N., who was in charge of the health centre at the bottom of Nyamure hill, played a key role in the implementation of the genocidal plan. In particular, he was convicted of having massacred many Tutsis on the neighbouring Karama hill and of being one of those who had called for reinforcements for the attack on Karama hill, notably through the intermediary of a former member of parliament, . He denies any direct involvement in the crimes on Nyamure hill, but says he witnessed them. However, he is charged for his involvement in this attack by several witnesses, and it appears plausible that he is seeking to play down his role. His zeal was also rewarded by his appointment as Mayor of Ntyazo by the interim government.

While M.N. stated that he had only witnessed the Nyamure hill attack from afar, he did mention that he had first come across a white double-cabin gendarme vehicle when he was in Cyegera, on the road leading to the hill, and that he had seen BIGUMA in the vehicle, as well as gendarmes carrying Kalashnikov rifles and weapons with tripods. He named the place where he had witnessed the arrival of the gendarmes, described their stationing on the site, and the conduct of the attack, noting that he had seen the gendarmes climbing to the top of the hill and had heard detonations while civilians were arriving from everywhere with weapons.

Several former assailants confirmed the existence of an attack carried out jointly with the gendarmes. E.M. stated that the gendarmes were present and that other assailants had told him that it was the chief warrant officer BIGUMA who ordered them. He stated that the latter was carrying a gun in his belt. T.N. also said that he had participated in this attack with gendarmes and soldiers, supported by Interahamwe led by M.N. and the civilian population. He also said that he had learned after the attack that the person in charge of the gendarmerie was called BIGUMA. With regard to the latter's role, he stated that: 'he had a small gun in his belt and it was he who started the killings. There was a woman who was in the process of giving birth and he shot her'. The scene describing a gendarme firing a gun at the start of the attack while a woman in labour was giving birth on the hill was also reported by the civil parties G.K., G.B. and V.B.. V.B. is the second person who credibly identifies the defendant and describes precisely his successive actions, together with M.N., for the reasons given above, and in this case confirming his role as leader of the attack.

In addition to the fact that the gendarmes were equipped with firearms, several witnesses report having seen 'very black smoke' and heard explosions, in particular M.N., JB.M. and V.B..

Furthermore, the civil party F.N. stated that at the beginning of the attack the bullet sounds had immediately started and that she had immediately seen 'pieces of human flesh' next to her.

However, in the absence of a ballistics expertise regarding the use of mortar on this site, and due to the lack of evidence on this point, the use of a 60 mm mortar does not appear to have been formally established during this attack.

However, the fact remains that the testimonies collected on the impact of the shooting and on the explosions recorded demonstrate the use of heavy weapons other than handguns or rifles, including automatic or assault weapons.

The Court and jury have also found that the weapons used by the gendarmes included not only rifles and guns

but also ‘heavy’ weapons and grenades, and that the combination of resources deployed by the latter, the Interahamwe assailants and other members of the civilian population taking part in the attack resulted in veritable carnage. Numerous witnesses spoke of thousands of deaths, with dismembered corpses abandoned to the elements. S.M., who was mayor of Ntyazo after the genocide, said he had been asked to carry out investigations. He explained that counting the dead had been very complex because many of the bodies lying on the hill had been decapitated, and that sometimes ‘the head without the trunk, other times the limbs without the trunk’ could be found. The number of deaths can be estimated at several thousand. The number of 11 000 deaths was mentioned by S.M. on the basis of the skull count, although it could not be ruled out that remains collected in the memorial might come from other hills in the vicinity of Nyamure.

Although P.H. also contests any participation in these crimes, the Court and jury have noted that he is not credible if he claims to ignore everything about these massacres, such as not knowing the very location of Nyamure hill, and not remembering M.N.. On the contrary, the precise and concordant evidence gathered is sufficient to consider that he had indeed led the gendarmes under his authority to Nyamure, that he had incited the civilian assailants to exterminate the refugees gathered there, including by promising them as a reward the right to loot the victims’ livestock and property. The Court and jury have therefore upheld his guilt as the perpetrator of genocide and crimes against humanity, which had made victims of the thousands of Tutsi refugees on Nyamure hill, who had died in atrocious circumstances.

6- The crimes which took place at the ISAR SONGA site

The Institut des Sciences Agronomiques du Rwanda, ‘ISAR SONGA’, comprised large tracts of land adjoining several hills, with enclosures and farms used for agricultural research and studies, in particular cattle rearing. On 28 April 1994, a major massacre took place at this location, claiming thousands of victims. The modus operandi described by the witnesses corresponds in all respects to that already implemented in both Nyabubare and Nyamure, but here with even greater prominence in terms of the number of victims and the means deployed to exterminate them. Several witnesses spoke of attacks on and looting of Tutsi houses near ISAR SONGA, as well as attacks on the site itself by Interahamwe in the preceding days.

P.N., head of the memorial of the victims of ISAR SONGA, consistently explained that, as from 22 April 1994, the population had been urged by an army colonel, called M.H., ‘to go and kill the Tutsis’, in particular by erecting barriers.

His testimony is as follows:

Around 14 000 Tutsis, including his family and himself, had then fled to ISAR SONGA, a public institution capable of protecting them.

On 23 April, a policeman from the municipality turned up with a megaphone to instruct the Hutu population, who were also hiding there, to return to their homes.

Several attacks had subsequently been carried out by policemen armed with rifles and civilians bearing traditional weapons.

A helicopter had flown over the hill.

On the morning of 27 April, gendarmes from Nyanza arrived in a Toyota Hilux, and on 28 April, the refugees were subjected to a major attack in which gendarmes and soldiers fired shells from Buremera hill.

P.N. stressed that 4 000 to 5 000 people had been killed in this attack, which he had heard had been led by the gendarmes BIGUMA and BIRIKUNZERA, adding that he did not know them.

Numerous witnesses or civil parties, including Th.S., Ch.M., L.P., L.Rw., S.R. and G.Mu. confirmed both the flight by a helicopter over the ISAR SONGA site the day before or shortly before the exterminating attack on

28 April, and the existence of previous attacks and the resistance of the refugees.

The use of a helicopter to locate these refugees would therefore appear to be consistent with the implementation of a large-scale operation carried out jointly by an armed force made up of gendarmes and soldiers, supported by civilians from many neighbouring localities armed with traditional weapons.

In addition to the size of the force involved, it has also been established that not only were the armed forces involved armed with individual firearms, but that heavy weapons were also used, causing considerable damage.

Th.S. described the intensive use of *'ammunition so strong that [he had] seen whole groups explode under their impact'*.

S.R.NA, who was at ISAR SONGA, talked about a 'bullet rain launched by a rifle that shot several bullets at the same time', and referred to explosions with a 'mixture of flesh belonging to cows and humans'.

A.B., in turn, spoke of his vision of 'cows having been catapulted' with the impact.

C.U., who was still a child, said she still remembered gendarmes and the sound of explosions, and bombs having been fired at ISAR SONGA.

L.Rw., who was also among the refugees, referred to 'a large rifle' which targeted 'anywhere where there were a lot of people', adding that when the shooting had begun, she had lain down on the ground and that 'dead bodies had fallen on her'.

L.P. has consistently acknowledged having participated in the attack on ISAR SONGA on 28 April 1994. He stated that he had carried boxes 'containing bombs' for the soldiers who had requested him. He said that they had fired on the refugees, that the soldiers were putting the 'bombs in a metal tube'. He said that he had always stayed close to the soldiers. Although during his preliminary hearing, he said that he could not tell the difference between the gendarmes and the soldiers, at his hearing he stated that the soldiers firing the shells were wearing red berets.

A re-enactment was carried out in October 2019, allowing GPS readings and photographs to be taken, which were shown at the hearing.

According to the ballistics report ordered, a firing distance of 800 to 1 000 metres, as reported by L.P., is entirely compatible with the capabilities of a 60 mm mortar. Such a distance is 'ideal', as it allows the mortar users to be safe from any possible retaliation, but at a distance short enough to manage rapid corrections.

The Court and jury, after hearing the descriptions of the scenes experienced by the civil parties, the statements of the witness L.P. and the conclusions of the expert P.L., were convinced of the use of a 60 mm mortar.

Moreover, the use of this type of heavy weapon is perfectly consistent with all the declarations calling into question the presence of gendarmes carrying red berets at the ISAR SONGA site, but above all with the constant declarations of A.T. and D.K..

It should be recalled that A.T., claiming that Nyanza's gendarmes were regularly leaving 'to go and kill', stated that P.H. joined them regularly, and that she had seen him take a 60 mm mortar, saying these words in front of her: 'I will go and take care of the people at ISAR'. He then left the camp with the weapon in question. She confirmed these statements during the confrontation with P.H. before the examining magistrate and at the hearing. She said that Corporal My., known as an extremist Hutu, who was escorting Captain BI., had later told her that P.H. had joined the gendarmes at ISAR, where a massacre had taken place.

D.K., himself a gendarme, testified during the investigation that on the morning of the attack he saw around 20 armed gendarmes leaving the camp in a Daihatsu vehicle: 'They had Sub-Lieutenant NT. and the chief warrant officer, BIGUMA, on either side, In the afternoon, I saw this group return from the camp with mattresses, radios

and a lot of money’, adding ‘I heard the gendarmes who were in this group say that they had just taken part in the attack on Tutsi refugees at ISAR SONGA. According to the gendarmes, they had used 60 mm mortars during the attack’. He also said that he had seen BIGUMA and Nt. load a 60 mm mortar and rifles into the vehicle leaving for ISAR SONGA. He confirmed these statements both during the confrontation with P.H. before the examining magistrate and at the hearing.

P.H. has consistently denied his involvement in these crimes, reiterating that he was no longer in Nyanza at the time. During the investigation, he maintained that he was unaware that gendarmes might have carried out attacks against the population there. He said that A.T.’s statements were not credible as they related to an existing dispute between them, and stated that D.K. was ‘making things up’.

While it is true that no witness or civil party present at the ISAR SONGA site was an eyewitness to the defendant’s physical presence there and to his immediate involvement as having himself fired shots or caused shots to be fired, or directly committed violence against the refugees, the Court and jury have nevertheless considered that the defendant was at least present in Nyanza at the time of the crimes, that he was in a position, given his position in the command hierarchy of the Nyanza gendarmerie company, to designate the gendarmes who were to take part in the attack on ISAR SONGA, to provide or allow access to all the arms and ammunition necessary for the attack, and that he was also motivated by the intention to implement the genocidal plan and the general attack to exterminate the Tutsis.

The Court and jury were convinced that the defendant must be found guilty, as the perpetrator, of the genocide of thousands of Tutsi refugees at ISAR SONGA, for having caused it to be committed by gendarmes who were under his authority, and as an accomplice to crimes against humanity against these same victims, for having given instructions for these crimes to be committed.

These are crimes of unprecedented gravity, with thousands of Tutsis exterminated at ISAR SONGA. Their agony was atrocious, and these crimes were accompanied by particularly inhumane acts. S.R.NA, for example, reported seeing not only corpses but also men who had been stripped and emasculated. In addition, many of the civil parties stated that they had witnessed, or had themselves been victims of sometimes multiple rapes in the aftermath of this attack, and that they had survived in particularly appalling conditions.

7- The crime of participation in a group or cartel with a view to committing genocide and crimes against humanity

Some witnesses referred to the holding of meetings before the start of the Tutsi massacres.

However, their statements do not appear to be sufficiently precise to characterise P.H.’s participation in a group or conspiracy to commit genocide and crimes against humanity.

In this respect, although the witness M.M. mentioned during the investigation that he had seen BIGUMA attend a meeting with Captain BI. on 14 or 15 April 1994, he stated that only Captain BI. had spoken and had given instructions for the erection of barriers to catch the Tutsis. His statements at the hearing also appeared less precise regarding this meeting, including the very presence of BIGUMA. The witness’s statements must therefore be disregarded on this point.

Similarly, H.M. told the hearing about a meeting that was said to have taken place in Bigega on 21 April 1994, in the presence of BIGUMA, Captain BI., the director of the MIRASANO dairy, the director of Electrogaz, the director of the Forge, a man called HI., a doctor at Nyanza hospital, and other senior officials known to be close to the CDR (Coalition pour la Défense de la République et de la Démocratie – Coalition for the defence of the republic and democracy). However, the witness stated that he was not present, so it is not possible to know what was discussed at the meeting or what decisions were taken.

Furthermore, although several witnesses referred to the instructions given by P.H. during his visits to the barriers,

during the arrest and execution of Mayor NYAGASAZA, or just before the attacks, in particular in Nyamure and Nyabubare, these instructions were indeed intended to incite the Hutu population present to track down and participate in the massacres of Tutsi refugees alongside the gendarmes.

These instructions constitute one of the material crimes characterising the commission of the crimes themselves, and are therefore included either in the notion of ‘causing to be committed’, which may incriminate the principal perpetrator of the crime of genocide, or in that of complicity through instructions that enabled the commission of crimes against humanity.

Therefore, these instructions cannot be regarded as constituting separate crimes characterising the crime of conspiracy or criminal association to commit these crimes.

Finally, although certain witnesses alleged that other meetings were held in May 1994, i.e. around mid-May, or even up to 22 May, there is some doubt at the end of the debates as to whether P.H. was present in Nyanza at this late stage in May.

The Court and jury have therefore acquitted P.H. of the crime of participation in a group formed or in a cartel established for the purpose of preparing for the crime of genocide and crimes against humanity.

8- The conclusions of the psychiatric and psychological assessments of the defendant with regard to his criminal liability

The Court and jury note that the psychiatric and psychological expert reports show that P.H. was and is free of any condition likely to impair or interfere with his judgement.

Dr Z. noted that the statements made by the defendant during the expert examination were similar to those of several other persons he had examined in connection with proceedings relating to the Rwandan genocide, and that the defendant did not present any mental or psychological abnormality, as his discernment was neither impaired nor abolished at the time of the crimes.

Mr O., an expert psychologist, noted that P.H. exonerated himself of any responsibility for the crimes, that he portrayed himself more as a victim than as the perpetrator, and that he spoke with little emotion or personal commitment.

The Court and jury have therefore considered that, in the absence of psychological or neuropsychological problems, the criminal liability of the defendant for the crimes for which he was found guilty cannot be exempted or mitigated. The elements of his personality will be assessed in order to decide the sentence to be imposed on him.

C - THE PENALTY

P.H. having been found guilty of crimes of genocide and crimes against humanity, it is for the Court to determine the sentence, taking into account the circumstances of the offence and the personality of the perpetrator, as well as his material, family and social situation, in accordance with the purposes and functions of sentencing set out in Article 130-1 of the Criminal Code.

The crime of genocide and the crime against humanity belong to the category of the most serious crimes in our disciplinary system, because they are organised mass crimes, because of the generalised nature of the attacks on the human being which cause an exceptional disturbance to international public order, the perennial nature of which results in particular from the impact of this type of act on the collective memory of humanity and the

physical and moral trauma suffered by the surviving victims and the heirs of the deceased victims.

In determining the appropriate sentence, the Court and jury have taken into account the extreme seriousness of the crimes to the commission of which P.H. knowingly contributed as a zealous agent of a plan to exterminate the Tutsis, as well as his denial of any share of responsibility for the atrocities suffered by the victims of this genocide and these crimes against humanity, and his lack of any expression of remorse. P. H. not only acted in contempt of his duties as a gendarme charged with protecting society, maintaining peace and social order, fighting crime and guaranteeing the safety of his fellow citizens, but through his behaviour played a decisive role in the implementation of a heinous plan of extermination which led to the death of an extremely considerable number of victims who were massacred in a particularly short space of time. He did not hesitate to use military weaponry, comprising rifles and heavy weapons such as mortars and machine guns, nor to use his authority and prestige to turn civilians into efficient executors of a destructive strategy designed to leave no survivors among the refugees he had hunted down. In addition, he must be held responsible both for the physical or moral suffering of survivors of the attacks of which he was one of the organisers and for the moral suffering of the relatives of the victims who had died in atrocious circumstances.

The Court and jury have also found that P.H. is a complex, manipulative figure, capable of adapting to achieve his ends, but remaining isolated, closed in on his lies, constantly running away from his responsibilities, incapable of any real self-examination and of taking responsibility for the enormity of the crimes he has committed, just as he is incapable of showing any truly sincere empathy for his victims.

Even if the acts committed by P.H. must be seen in the context of a genocidal plan that was instigated by the highest State authorities and in the context of a group and training phenomenon leading to the loss of all moral, social or even religious reference points, as well as a lifting of fundamental prohibitions, the Court and jury have considered that, whatever the age, health problems, or even the trauma that may have resulted from the chaotic life of the person concerned, in particular during his stay in refugee camps in the Democratic Republic of Congo, the enormity of the crimes for which he is personally responsible can only be punished by life imprisonment.

Done at the chamber of deliberations of the Paris Assize Court on 30 June 2023

La Première jurée [the first jury]

President of the Assize Court