

IN THE WESTMINSTER MAGISTRATES' COURT

BETWEEN

THE GOVERNMENT OF THE REPUBLIC OF RWANDA

Requesting State

- V -

**VINCENT BROWN (AKA VINCENT BAJINYA),
CHARLES MUNYANEZA, EMMANUEL NTEZIRYAYO, CELES-
TIN UGIRASHEBUJA AND CELESTIN MUTABARUKA**

Requested Persons

APPENDIX TO JUDGMENT

**EVIDENCE IN RELATION TO PRIMA FACIE CASE
VINCENT BROWN AND EMMANUEL NTEZIRYAYAO**

Dr Brown

1. In 2009 District Judge Anthony Evans found a prima facie case against all the RPs and this finding was accepted by the Divisional Court. I accept Alun Jones QC's argument that the evidence is not entirely the same as it was in 2007-8. The GoR has withdrawn some evidence and there is new evidence obtained since.
2. Mr Jones for Mr Brown ("VB") contends that the witnesses relied upon by the GoR have been so fundamentally undermined that the allegations are not made out and that the court therefore should not find a prima facie case against VB. Mr Jones and Mr Blom-Cooper's analysis of the evidence for and against a prima facie case is found at Appendix D to their closing submissions. This document is 175 Pages long.
3. According to Appendix D, Paragraph 35, the allegations against VB fall into five categories which are set out in my judgment. The GoR's case relies on a number of eye witnesses to the events and one documentary exhibit.
4. Mr Jones and Mr Blom-Cooper in Appendix D, Page 3, Paragraph 8 onwards submit firstly, that there is no prima facie case because the prosecution case against VB has been fabricated. Dr Brown alleges that the case against him has been fabricated by or on behalf of the GoR due to the RP's opposition to

the GoR and his perceived status as a high-ranking Hutu intellectual in 1994 closely associated with President Habyarimana's regime and a member of the "Akazu", the President's inner circle.

5. Mr Jones relies heavily on the evidence of an anonymous witness, BRO/A whose name and full details I have been given. Counsel for the GoR have not been provided with his name and details and nor were they provided with the details of BRO/B, BRO/C and BRO/D. I have given only limited weight to the full information I have been given and do not consider it has made a difference to the overall decision I have made in VB's case.
6. The statement of BRO/A in anonymised form was read to the court. BRO/A describes what he says is the way police and prosecutors gathered the prosecution witnesses together to fabricate the allegations against VB in 2006 to 2007. He was a new defence witness who had not made himself known as such in the earlier extradition proceedings. This, Mr Jones contends, is an indication that his recent evidence was not likely to be fabricated or it would have come to light in 2008 or 2009.
7. Secondly VB's team rely on the undoubted fact that there is no evidence of any mention of VB's name prior to 2006 in the various proceedings that have taken place, notwithstanding that the killings he is accused of have been litigated extensively in Gacaca and other courts.
8. Thirdly Dr Brown argues that the witnesses' evidence is inconsistent one with another and with their earlier evidence and statements in other proceedings. The witnesses have been found to have lied in other proceedings and to have given false evidence.
9. Fourthly after the earlier proceedings one of the allegations against VB, that he had been involved in the Rambura priest killings, has been withdrawn on the basis that he could not have been involved in two simultaneous killings in two distant parts of the country.
10. In terms of his first concern, in support of BRO/A's evidence, the RP relies on the evidence of Mr Marara (who has changed his name since and did not give his new name to the court). He had been the personal bodyguard of President Kagame. I consider his evidence in my judgment but his relevance to VB's case is that he reported that two Rwandan spies in the United Kingdom boasted before the first extradition proceedings that they sent information about Dr Brown to the Rwandan embassy. Dr Brown was said to be a threat to the GoR. One of the spies, a Ms Abera, told Mr Marara that she did not know of any crimes Dr Brown had committed but that it was her job to provide the embassy with names and "they could find out about their activities in the genocide".
11. In relation to BRO/A as I have said above he remained anonymous to the GoR, his evidence was read, he was therefore not able to be challenged by the GoR. The court has not been able to hear from him why his defence evidence has only just come to light. Without the benefit of hearing him give evidence

and be cross examined I could only give limited weight to his evidence. I cannot say whether his evidence may be true or not. The evidence of Mr Marara does not assist me in judging the credibility of BRO/A. Mr Marara's evidence did not suggest clearly that the GoR would implicate Dr Brown falsely in the genocide. I find the evidence of BRO/A does not fatally undermine the prosecution case against Dr Brown.

12. The way I have approached Mr Jones' lengthy submissions is not to repeat the many good points he draws out in Appendix D of his submissions but to pull out some of the important comments he makes and their effect on the credibility of the witnesses. I will deal with each witness in the same order as they appear in the prosecution case in the Request, Annex Contents Bundle 1.
13. The prosecution witness **Ms Bemeriki** at Pages 114 and 120 of the GoR bundle. She is now a prisoner serving life for her involvement in the genocide by the support she gave as a radio broadcaster on RTL. She gives evidence that Dr Brown was a close associate of President Habyarimana, was a member of the *Akazu* and went to his parties, that the RP participated in MRND meetings prior to April 1994 and then became a member of CDR when it was founded. Her evidence is supported by Janvier Mabye and Jacques Sagahutu.
14. Mr Jones points out that Ms Bemeriki's evidence is undermined not only by the fact that she gave her two statements in January and February 2007 before her own trial and at a time when she was facing the death penalty but also because of what the ICTR had said in relation to her evidence in 2003. She had given evidence in a trial of three defendants at the ICTR and in the judgment given on 3rd December 2003 (VB File 5, Page 1769 at Page 1961 and 1962, Paragraphs 550 and 551) the ICTR had said that "*in her testimony, she lied repeatedly, denying that she had made many statements, including her own broadcast, until confronted with them. Evasive to the point of squirming, her voice often reaching the feverish pitch of her broadcasts...this witness made a deplorable impression on the Chamber. For these reasons, the Chamber rejects Bemeriki's testimony in its entirety*". The GoR contends that when the ICTR said this in 2003 Bemeriki was facing the death penalty and when she made the statements in relation to these extradition proceedings it was four years later and they can be relied upon.
15. Finally Mr Jones points out that Ms Bemeriki's evidence is undermined by the evidence given by the US Lawyer Peter Robinson and the defence investigator Dick Munyeshuli. Robinson has looked at over 30,000 documents in relation to events in Rwanda between 1990-4 as well as interviewing over 300 witnesses, he also has searched the ICTR database for references to VB.
16. Munyeshuli's statement at VB File 6, Page 2138 onwards looks at each prosecution witness and what they say and sets out what he has been able to find out about the crimes alleged, he tries to identify and locate other witnesses who may have witnessed the specific events and also searches for evidence or statements given by the prosecution witnesses in other tribunals. Neither of the two men had ever heard of Dr Brown's name as an active member of MRND or the CDR or as part of the *Akazu* or in any other respect.

17. As against that evidence there is the documentary exhibit found by the GoR, the minutes of a meeting said to have been held on 15th October 1991, which shows Dr Brown was a youth member of the MRND travelling the country spreading the word about their organization and supporting MRND members in different locations.
18. In the light of the comments made by the ICTR quite apart from other evidence relied upon by the defence which on the face of it undermines her evidence I do not consider Ms Bemmeriki's evidence to be of value. She is not a reliable witness.
19. The prosecution witness **Murasandonyi**, a Tutsi in hiding in April 1994, was able, he says, to get out and about during the genocide and witnessed some of the killings. He says Dr Brown was involved in the killing of Dominique (Allegation 3 in Mr Jones' submissions) and played a leading role in the death of Leandre (Allegation 4).
20. He also gives evidence that he saw Dr Brown and some Interahamwe setting up roadblocks just above his home and produces a sketch to show where it was. The defence investigator points out that Murasandonyi is on the list of people who manned the roadblock at Rusagara's place. The witness also says Dr Brown instructed the Interahamwe to hide corpses from the Red Cross. Mr Murasandonyi said that Dr Brown used to hold CDR meetings and had a CDR flag hoisted in his compound. His evidence in relation to the flag is supported to some extent by the landlord (see below Paragraph XX).
21. The death of Dominique and Leandre featured in a trial RP 199/CSK, Murasandonyi gave evidence then but did not mention Dr Brown's involvement.
22. Mr Jones relies on a number of features which he says undermines Mr Murasandonyi's evidence. The investigator Munyeshuli points out Murasandonyi's evidence is wrong in that he says that Dr Brown moved to the area in 1990 and I accept it is clear from the landlord's statement that it was much later than that. I do not find that to be significant. Furthermore Murasandonyi says that the RP attended joint meetings of MRND and CDR which took place at Mutabazi's house in Rugenge yet in the RP 199/CSK trial Mutabazi was acquitted of the charge of participation in those meetings as the court ruled that Mutabazi was not President of CDR.
23. Mr Murasandonyi is also criticised for giving a later statement in November 2007 when he says for the first time that Dr Brown was involved in the killing of Charlotte and her baby, as well as Dominique and Leandre. Mr Murasandonyi was asked whether he had mentioned VB's involvement in this killing in the Gacaca proceedings and said no because he had been interviewed by the Parquet General and thought therefore it was not necessary to bring these things up. Dick Munyeshuli said this was not a credible explanation. Dr Brown's name would never have been left out in his evidence to the Gacaca.

24. Mr Jones makes a further point which I do not consider particularly persuasive. He says that it is not credible that Mr Murasandonyi would have been standing outside his home when there was a curfew in operation and given what was going on. But it seems that from a number of descriptions that local people have fenced yards or compounds in which their homes are located and without more we do not know what view the witness may have had.
25. **Hussein Rongorongo** is relied upon by the GoR in relation to the allegations that Dr Brown manned and supervised roadblocks at Rugenge and Kibihékane (Allegation 2 made against VB). He says that VB is responsible for the death of Leandre (Allegation 4) and was responsible for a meeting held at Anastase's place on 7th or 8th April where the participants were "sensitized" (see below) to kill Tutsis on the basis that they had killed the President. On 10th April 1994 Rongorongo says the RP came to find him and others at a roadblock and encouraged them to kill Tutsis.
26. In this context "sensitize" is an expression used repeatedly in these proceedings which means that the Hutus are encouraging and inciting others to kill Tutsis.
27. The defence say Rongorongo's evidence is undermined not only by his being a notorious Interahamwe killer but also by the fact that he only got a sentence of 15 years' imprisonment for over 60 murders. The defence rely on much material from proceedings in which Rongorongo gave evidence either as a defendant or a witness. These included Gacaca proceedings, the RP 199/CSK trial and he also gave evidence at the ICTR twice, in January 2007 and August 2008.
28. The ICTR trials focussed on the killings and events at Rugenge including the very roadblocks that the RP is said to have been involved in. Mr Jones makes the point that in none of these proceedings which considered roadblocks and killings did Rongorongo ever mention Dr Brown. Rongorongo's evidence is also disbelieved, says Mr Munyeshuli, by the court in trial RP 199/CSK in that he denied killing David and Leonard but was convicted (see VB File 6, Page 2154).
29. Mr Munyeshuli points out that Rongorongo gives two different accounts in relation to Leandre. The first is at Page 136 of the GoR bundle Annex 1, where he says that he was told by a person at the roadblock that VB had handed Leandre to the killer Kanyimu, and the second is what he says to prosecutor Siboyintore in that he himself saw VB bring and hand over Leandre to Kanyimu. I have observed throughout the witness statements whether obtained by the defence or the prosecution that it is not always clear whether a witness is observing something or repeating what he was told had happened.
30. Mr Jones contends that Rongorongo's evidence is undermined by the statement found by Mr Munyeshuli which Rongorongo had made to an investigator from ICTR in 2006. In this he says that he was given orders by the Prefet, two others named and other superiors about weapons distribution, killing people, mounting roadblocks etc. The point is made that Dr Brown was not named

but it seems to me that Rongorongo was making it clear other superiors gave the orders too and he hasn't named them all.

31. Mr Rongorongo says in these extradition proceedings that Dr Brown used to go regularly with Prefet Renzaho to meetings in the home of Ms Mukandituye but there is no mention of this in his evidence to the ICTR where he names numerous persons implicated in the killings in Rugenge from all levels of society.
32. In February 2009, post dating his pro justicia statements to the prosecution of January and December 2007 Rongorongo gives evidence again in a Gacaca trial of 27 absent defendants. Once again he mentions the roles of many others but never Dr Brown's role in relation to the killing of Charlotte and her baby (Allegation 5) (GoR bundle Annex 1, Page 131).
33. Mr Jones also relies on the prosecution witness, Rucyahana, who says, contrary to Rongorongo's evidence in relation to VB and a roadblock in Rugenge on 24th April 1994, that Dr Brown had left Rugenge on 10th or 11th April. I consider it would be unrealistic to expect witnesses to remember precise dates 20 years after the genocide.
34. Mr Jones relies on defence witnesses such as Mr Yumba, Rongorongo's brother, who says that VB came to live in the Rugenge area at the end of 1993 and he never saw him with Interahamwe or at any roadblock. His evidence is supported by another defence witness Mr Gahutu, who was VB's immediate neighbour and never saw Interahamwe in his compound or him wearing Interahamwe or military uniform or with any political party leaders from the area including Bigori for CDR or Angeline for MRND. Neither of the last two witnesses had ever heard that VB was involved in the genocide.
35. There is much evidence that could be put to Rongorongo in a thorough and careful cross examination to undermine his account of what Dr Brown did in the genocide. Rongorongo's evidence is undermined by the information obtained by the defence. Nevertheless, his evidence is not worthless although I accept when cross examined a court may wish to give very little weight to what he says.
36. **Celestin Hakizimana** is the next witness relied upon by the prosecution at Page 138 of the Annex 1 to the Extradition Request. Mr Hakizimana was a neighbour of Dr Brown's in Remera before he went to Rugenge and knew him through MRND meetings and drinking together. He says VB went to an important meeting to which he, Hakizimana, also went. This was at some time in 1993 at the stadium in Kigali where the leadership of the MRND Interahamwe and CDR were present, people such as Karamira, Nzirorera, Kabuga etc. At that event Power, a group which united all extremist Hutus, was started. He said that VB played an important protocol role at the meeting and also was master of ceremonies.
37. Hakizimana also says he was invited to the swearing-in of the members of parliament in the interim government on 4th July 2004 at Kibihekane. On the way

he passed a roadblock manned by Interahamwe led by VB and Mr Munyagishari. Both men then joined Hakizimana for a drink in a bar nearby where VB described Tutsis as cockroaches. Hakizimana and VB then went on to the swearing-in of the interim government where Hakizimana says that Nzizorera put VB in charge of collecting money.

38. Mr Hakizimana's evidence is considered in the Closing Submissions, Appendix D, Page 146. Mr Jones contends that his evidence is undermined by a number of witnesses and other features. He points to what BRO/A (VB File 8, Page 3018 to 3021) says about this witness and others providing false evidence against Dr Brown. Mr Jones points out that Mr Hakizimana's evidence is also undermined by BRO/B and BRO/C. BRO/A says that Mr Hakizimana was one of the five witnesses who provided fabricated evidence at the behest of the prosecution.
39. Munyeshuli investigated the evidence that VB was at the important meeting in the stadium. He met and interviewed various others who had been present. He met with Mr Habyarimana the then President of MRND in Kigali City in Kigali Central Prison in February 2008. Habyarimana said he was present at the meeting and did not know VB (VB File 6, Page 2159). Another defence witness, the now deceased Mr Nzizorera, who was Secretary General of MRND at the time, said in a statement that he did not know Dr Brown. He said, contrary to what Mr Hakizimana says, he (Mr Nzizorera) could prove via his passport he was not at the stadium meeting which was on 23rd October 1993 (VB File 3, Page 848).
40. Mr Karemera, a Vice President of MRND, who knew VB at ONAPO said VB had never had any role in the MRND although interestingly he said he did not doubt that he could have been helping out at President Habyarimana's parties (VB File 3 Page 852) but pointed out thousands of others would have been there and it was not surprising that Dr Brown helped out. Mr Karemera says that Dr Brown was not at Kibihékane. The ceremony had to be moved for security reasons and he (Karemera) as Interior Minister was in charge of the organisation of the ceremony. The invitees had special cards allowing them in.
41. Defence witnesses BRO/B and BRO/Cs statements were read into evidence. BRO/B, who knew Dr Brown, supports the evidence that Dr Brown was not present either at the roadblock or at the swearing-in. He says he never saw him there (VB File 8, Page 3024-6). BRO/C, a member of the Presidential guard, was present in the hall at Kibihékane and did not see Dr Brown making a speech although he did say he knew him (VB File 8, Page 3028-30).
42. Another senior member of the MRND, defence witness Mr Rutaganda, had known Dr Brown since university days; he confirmed he had never seen the RP at any MRND meetings or Presidential parties, and there was no reason for him to be invited to the latter. On the face of it he contradicts defence witness Karemera.
43. Mr Nkezebera, a senior member and office holder of the MDR Party, too says that the RP could not have held any role at the stadium meeting (VB file 3

- p894). Mr Nkezebera says at Page 893 that the meeting referred by Hakizimana was not a MRND meeting but a meeting of the MDR (who are their rivals); he says that VB who was not a member of the MDR could not have had a role. In summary, Mr Jones argues that Hakizimana's evidence is completely undermined.
44. In relation to Dr Brown's involvement with the roadblock in July 1994, this evidence is contradicted by evidence given at the ICTR where it was said in a trial that the roadblocks were removed in May 1994. Mr Jones says the evidence of Hakizimana in relation to the roadblock is untrue.
 45. The defence point out that a number of other features undermine Mr Hakizimana's evidence. His statement was taken when he was in prison awaiting trial. The description of Dr Brown as very fat with a light skin is inaccurate. Mr Rutaganda who had known Dr Brown from University says at VB File 3, Pages 858-9 that the RP was not an Interahamwe za MRND leader anywhere in the country.
 46. There is much material to form the basis for a testing cross examination of the witness but I do not find his evidence is worthless.
 47. **Janvier Mabuye** is the next witness relied upon by the GoR (GoR Annex 1, Page 145). Mabuye's evidence is considered at Appendix D Page 88 to the RPs Closing Submissions and in Munyeshuli's statement (VB File 6, Page 2160). He is a Tutsi and was a neighbour of the RP. Mabuye states that Dr Brown was a "fervent adherent of MRND-CDR" and belonged to the *Akazu*. He used to meet him in a bar and discuss politics. He says at GoR Annex 1, Page 148 that VB was in company with Mutabazi and Bigori and Interahamwe on 7th April 1994. VB appeared to be the leader of the Interahamwe. He remembers hearing him saying "*Set up roadblocks in every place where the enemy can pass by*". He says he personally saw VB deciding who was to man the roadblocks. He says that the Interahamwe were acting on VB's orders when Leandre was killed.
 48. Mr Jones points out Mabuye is now a member of the Directorate of Military Intelligence, he was named in a trial of a Rwandan in Belgium as a member of the Rwandan exterior security personnel and Mr Jones points out he had too close involvement with the witnesses produced for the Belgium trial. His involvement was questioned by the Belgian lawyers (VB File 8, Page 3124 highlighted section). He was also named elsewhere as an Officer of the Exterior Security.
 49. Counsel for VB also point out that Mabuye's evidence of political involvement contradicts what is said by defence witnesses. Munyeshuli produces a newspaper article with a list of *Akazu* members in October 1991 and VB's name is not on it. Neither is he mentioned in the same newspaper in 1993 as implicated in massacres. Unfortunately I could not find the exhibit in File 6 to check whether the date 1993 should read later. In an ICTR trial a prosecution witness who described the *Akazu* and its members did not mention VB and neither did Alison Des Forges who gave expert evidence in the same trial. I

would not necessarily expect VB to feature on lists as from what Professor Reyntjens said there was no formal membership of the group and the *Akazu* was a fluid group of people, comprising friends or relatives of the President.

50. Mr Jones says his evidence against VB is undermined by the fact that although he gave evidence in the RP 199/CSK trial about a number of the same events, he never mentioned the RP and he blamed Mr Mutabazi who was then acquitted. The argument is that his evidence was disbelieved by that court.
51. I find it difficult to work out what weight I should give this evidence without having heard this witness give evidence in court. His evidence is not worthless.
52. **Damien Ntambara** was a neighbour of Dr Brown's. He was found guilty of murder, Mr Jones points out this is a fact he does not mention in his statement. He says the RP was in charge of the Interahamwe and CDR members manning the roadblocks. As already mentioned VB's name does not feature on any list of those who manned roadblocks. He is criticised for failing to mention that he too manned the roadblocks. He says he saw someone who he was later told was VB with a machete in his hand leading some Presidential Guard and some Interahamwe coming from where Dominique lived (Allegation 3), he heard them shouting they had just killed Inyenzi. Mr Jones points out that his account is fundamentally different to Murasandonyi's and Mabuye's but also to evidence given in trial RP 199/CSK in relation to this murder.
53. Mr Ntambara goes on to describe the RP's involvement in the killing of Leandre (Allegation 4). Although VB is not named as one of those delivering machete blows he is part of the group who had hold of him at the time. The defence make the point that in trial RP 199/CSK Ntambara accused Kagenzi of the killing with others such as Muneza involved whilst in his statement in these proceedings he accused Muneza of giving him a machete blow before others did too and there is no mention of Kagenzi. His statement is not clear as to whether he is saying Dr Brown was involved in delivering the machete blows. The defence make the point that Mr Ntambara and Rongorongo give different dates for this killing. Ntambara gives a different context to the killing than Murasandonyi and Mabuye in that he says Leandre was killed after going to a roadblock to make a complaint.
54. Ntambara gave evidence in Gacaca proceedings in relation to Leandre's killing and mentions by name 19 others who were present at the killing. It is notable that VB is not amongst those listed. Ntambara is the only witness who goes on to say that VB with the Interahamwe then goes and kills two boys from Gloria's house. This is despite the fact that he is with two other prosecution witnesses.
55. **Jacques Sagahutu's** evidence is to be found in the GoR Request Annex 1 Page 166. Sagahutu is another Tutsi witness who confirms that Dr Brown as a doctor was a man of status who was not well known to ordinary citizens. He gives similar evidence to Mabuye and says he knew VB as a very important

person who belonged to the *Akazu*. I have set out above the defence evidence which appears to undermine that assertion.

56. In 1993 on two occasions he saw young people wearing CDR uniforms entering or leaving VB's home. He was frightened by this as he did not recognise the young people involved. VB was the leader of the Interahamwe in the area and meetings were held three times a week in his home. Counsel for VB point out there is no independent support for these accusations and no other prosecution witness says these meetings took place. VB is not mentioned as a leader of the Interahamwe in the RP 199/CSK hearing nor in the ICTR prosecution against Tharcisse Renzaho (VB File 4, Page 1501 onwards) nor is he listed as a leader in Gacaca records produced by Mr Brazell, VB's solicitor (see VB File 3, Page 1049 – illegible but I accept the RP is not on the list). This witness also had his evidence against Mr Mutabazi rejected by the court followed by the latter's acquittal (his evidence is briefly given in VB File 2 at Page 465).
57. The witness does not suggest VB is involved in the killing of Dominique and family as he only found out two or three days later that Dominique had been delivered to soldiers by an Interahamwe called Mazimpaka. He says, however, he did see VB moving around in the chaos as if he was supervising or evaluating the situation.
58. Mr Sagahutu in these proceedings in January 2007 says he witnessed the killing of Leandre (Allegation 4). He claims to be 10 metres away from Leandre when VB says "cockroaches must be beheaded" (GoR Annex Bundle 1 Page 169). Then the Interahamwe beheaded Leandre. He claims to be with others such as Ntambara, Murasandonyi and Mabuye yet describes a different scene.
59. He gives evidence about Leandre's killing in Gacaca proceedings against Rwabuhungu (aka Butihare) on 21st July 2009 but does not mention Leandre whose killing Butihare was accused of (Butihare was accused also of a number of other killings). During that same trial another witness gives graphic evidence of Leandre throwing his blood covered driving licence at Butihare but makes no mention of VB. Butihare was convicted of killing Leandre, Charlotte and her baby and Dominique and his family.
60. Sagahutu gives evidence against Mutabazi in the RP 199 CSK trial; he says the latter held meetings where firearms were distributed and gave instructions to kill and establish roadblocks where killings took place. He also said that Mutabazi ordered massacres. His allegations in relation to Mutabazi were rejected by the court. Mr Jones' contention is that his accusations have switched from targeting Mutabazi to targeting VB. There is certainly material which gives grounds for Mr Jones to make that point.
61. In the same trial the death of Leandre was looked at and Sagahutu accused Kagenzi of the killing. Uwihoreye said that many Interahamwe killed Leandre. She named some of those involved and gave names of other witnesses to what had happened. She does not mention Sagahutu as being a witness to what happened. Mukamuganga said that a military car arrived and Simon Pi-

erre got out and cut Leandre with a machete he got from another named Nzamurambaho. A survivor of the attack was able to say in the same trial that Simon Pierre cut Leandre although he said there were two cars that came and people he did not name in the cars said they would not waste their bullets. In the same trial RP 199/CSK Murasandonyi and Ntambara accused Kagenzi of the killing of Leandre.

62. In a Gacaca court Ngabirinze said Leandre was taken by Interahamwe including Muneza, Nzamurambaho and Sympa. Nyiramanoti said that Leandre was killed by Simon Pierre. Boniface accused Kagenzi of the killing of Leandre.
63. Mr Sagahutu also has VB as being responsible for the death of Charlotte and her baby (Allegation 5). It is not clear whether he actually saw the killing because it might be that he is recounting what he was told had happened. He says at Page 169 that Charlotte was shot by “Dr Bajinya’s Interahamwe” whilst her baby was killed by being hit on the head with a stick grenade. He went to see Charlotte’s body and found it covered with a loin cloth.
64. Sagahutu in the Gacaca proceedings against Butihare gave evidence that Charlotte died as a result of an attack led by Butihare. Again he made no mention of VB. Eleven witnesses gave evidence against Butihare including two prosecution witnesses in these proceedings: Sagahutu and Rucyahana. Whilst Butihare admitted responsibility for the murder of Charlotte and her baby, he was also convicted of all the killings said to have been committed by VB. None of those witnesses referred to VB. One witness described Butihare as the chief, another says he drove a car with Interahamwe in it as passengers with guns, a third said he it was his attack that killed Charlotte.
65. Rucyahana, the GoR witness against VB, is now serving 30 years for Charlotte’s murder which is not mentioned in his statement in these proceedings. He gave evidence against Butihare and did not mention VB although he does say that Butihare was with others. The RP 199/CSK trial looked at that killing; there were a number of witnesses including the five prosecution witnesses in this case and the RP is never mentioned.
66. Kagenzi was one of the accused of Charlotte’s killing in RP199/CSK and he said that that she was killed at the gate of Jacques’ house and she was shot within the house. Rongorongo in the same trial said he had been an eye witness to the murder and makes no mention of Dr Brown. He maintains this in his statements for the GoR in these extradition proceedings and says that Charlotte was arrested and shot by Interahamwe and names Nyiramanoti as her killer. Nyiramanoti in other proceedings said that one Fidele shot her and he names a list of people who were there including Kagenzi, Butihare and others, but not VB.
67. There are inconsistencies in the accounts given as to whether the baby was killed first or her mother. I do not give much weight to such inconsistencies bearing in mind the events took place 20 years ago.

68. **Eliere Mbaraga** gives evidence at Page ??? of Annex 1 of the GoR Bundle. He lived in Rugenge and noticed Dr Brown as an important man whom they did not know as he had recently moved in and they did not have the same status. He used to see him in the company of local leaders including the councillor. He found out the RP was a close relative of the director of ONAPO. In 1994 Mbaraga saw him in MRND-CDR colours and he was an important adherent and played a prominent role in meetings in which people were sensitized into killing Tutsis. The witness was at one particular meeting which took place soon after the President was killed; it was chaired by Mrs Nyirabagenzi and the secretary was VB. Interahamwe were made leaders of their residential quarter. Plans were made to seek out and kill Tutsis who were hiding.
69. Mbaraga says “*before that meeting Dominiko’s family... had been killed and I saw it because we were the ones to bury them*” (Allegation 3). Mr Jones makes the point that Mr Mbaraga is claiming he witnessed the killing but does not mention VB. To my mind the witness needs to explain what he meant when he says he saw it “because” they buried them. It is not clear to me he is saying he actually saw the killings.
70. Likewise the evidence that he witnessed the killing of Leandre is not clear (Allegation 4). He seems to say VB was present because nobody stayed back and the only way he puts himself at the killing is by saying “*we had all gone to see photographs of Inyenzi*” (GoR Annex Bundle 1 Page 174). If he gave evidence live, he would have to be asked whether he saw the killing or was merely told about it. He does not say either at Page 172-3 that he saw the killing of Charlotte and her baby but blames the killings on the things that were said at the meeting he was at with the RP and others.
71. The defence argue that no one else mentions this meeting and that it would be odd for VB to be the note taker bearing in mind his senior status and being part of the *Akazu*. Mr Munyeshuli points out that in the RP 199/CSK trial that meeting is not mentioned but two Interahamwe meetings were, a Mr Macumi accepted the meetings took place at his house in June and July. There was no mention of VB being at the meetings. The same investigator points out there is no mention of VB being an Interahamwe in RP 199/CSK when the judges list those in the Bwahirimba-Rugenge area. Rongorongo gave a lengthy list of Interahamwe in Rugenge and VB is not listed.
72. **Augustin Ndateze**’s statement is to be found at GoR Annex 1 Page 180. Mr Ndateze in his statement of January 2008 says Dr Brown was present at the swearing-in ceremony of Members of Parliament at Kibihekane on 4th July 1994 and made a speech congratulating the Interahamwe on their roadblocks and collected money for them. Mr Nzizorera, defence witness, who was elected President of the New Assembly, could not say whether the RP was there or not whilst Karemera could say that he was definitely not there as for security reasons the ceremony was moved and he, Karemera, was the supervisor of the organisation of the ceremony. BRO/B gives evidence in VB File 8 Page 3023 he was at or near the roadblock at Kibihekane and never saw the

RP. He described the prosecution witness Ndateze as a very simple man who would not have been allowed to be present during the swearing-in ceremony.

73. In Appendix D Pages 156 and 157 it is explained that Mr Ndateze was asked in January 2014 to repeat his allegation in relation to Mr Brown to the defence. Interestingly what he said was “We only saw them entering. We could not know what happened inside”. He had changed his account fundamentally although he still placed the RP at the meeting. Having considered Mr Munyeshuli’s evidence at VB File 6 Page 2168, it is clear that he was not inside the meeting but outside. He never says he was actually inside the hall but it is the clear implication as he describes Sindikubwabo being the first to take the oath followed by Kambanda. I accept that this is not correct as the two of them were sworn in at the Hotel Des Diplomates in Kigali on 9th April 1994.
74. In January 2014 Mr Ndateze also denied talking about the witnessing of the death of a judge at a roadblock. He suggested the prosecution statement in these proceedings may be a forgery. The defence rely on the statements provided by BRO/B, BRO/C and BRO/D who place the witness outside any meeting. On the face of it this witness’ evidence is undermined by the information obtained by the defence. It would be a matter for a court to judge the weight of his evidence in the light of all the evidence placed before it.
75. **Laurent Kayinamura** (GoR Annex 1 Page 183) gave a statement dated 29th January 2008. He was Dr Brown’s landlord and knew the RP frequented bars that the Interahamwe attended and says he was told that the RP was responsible, with two prominent members (Bigori and Mutabazi) of the CDR which was characterized by hatred for Tutsis, for flying the CDR flag towards the end of 1993 at Kiyovu-Rugenge. He does not know about VB’s involvement in the genocide and tells the prosecution that he had told the defence investigator to speak to a Mr Sagahutu (not the prosecution witness) who was a close neighbour’s of VB’s and would know better than him. There is the hearsay evidence of the CDR flag and the RP’s association with Mr Bigori and Mr Mutabazi and he says that VB frequents Interahamwe bars that are too dangerous for Mr Kayinamura to attend.
76. The significance attached by the defence to this witness is that he said in his prosecution statement of January 2008 that he could not recollect when in 1993 that he rented his house to Dr Bajinya whilst to the defence investigator he had said it was in December 1993. He denied telling the defence investigator (see Page 189 of his statement), that he had left his home in December 1993 as he had left it in December 1992 and VB had taken it on after he had had to leave.
77. The defence case is that VB moved in in December 1993 so the date the landlord gives is of some importance. If the RP moved in to the house in December 1993 this undermines what a number of key GoR witnesses, Murasandonyi, Rongorongo, Mabye, Ntambara and Sagahutu, say. The other point Alun Jones QC makes on behalf of VB is that this witness has changed his mind about which witnesses would be best placed to say what the RP did in the genocide. Mr Jones says this is a further example of prosecution manipu-

lation. In my view it is more likely to be that of a witness who is remembering different things at different times quite innocently, looking back twenty years.

78. The defence also alleges that in relation to Mr Kayinamura the GoR “*inadvertently disclosed to the defence a separate Pro Justicia statement from Kayinamura provided to the prosecutor Muhabanyi Ubald on 23 February 2006, some two years earlier, in which Kayinamura confirmed precisely what he had told Mr Munyeshuli in October 2007 namely that Dr Brown had moved in, in December 1993*”. The defence say this is significant as it shows a small but clear and instructive insight into how as they put it “*the National Public Prosecutor’s Office manipulates evidence*”.
79. I cannot tell from Kayinamura’s evidence that the NPPA manipulates evidence. What is clear from the statement of Kayinamura, is that VB must have lived in his house for more than five months. VB failed to pay rent for six months and had paid it for four months or so when the landlord went to ONAPO where VB worked to collect the rent. I do not accept that the GoR was trying to hide the witness’ earlier statement from anyone as I note that the statement of 23rd February 2006 is referred to at Page 3 (GoR Annex 1, Page 185) of the witness’ statement. The reasoning above weighing up the significance of Mr Kayinamura’s evidence is exactly what a trial court would do. It is not for this court to decide whether Mr Kayinamura is telling the truth or not.
80. The witness **Augustin Karasira** is the next witness found in GoR Annex 1 at Page 191 and Page 200. Karasira is the brother of Dominique and Mr Jones alleges that he is motivated by the wish for compensation. He mentions political meetings that no one else has heard of, says Mr Jones, and has Dr Brown leaving the Rugenge area before 15th April 1994 which is not what any other witness says. He lived about 100 metres from VB. He has no direct evidence of the killings but his evidence is that VB is implicated in his brother Dominique’s murder. He explains he had not mentioned VB before as he did not know where he was located. Munyeshuli points out this is not a credible explanation. He also says that once he heard the RP was facing justice in the United Kingdom he wrote to the Gacaca court in Ubumwe cell but Munyeshuli was unable to find the letter when he checked the available records.
81. In his prosecution statement Karasira alleges that VB was the Chairman of the extremist CDR party for Kigali City (GoR Annex Bundle 1, Page 200). Mr Jones says this must be untrue because if he was that senior there would be records of this. Furthermore Mr Karasira in the RP 199/CSK trial testified that Mutabazi was the Chairman of CDR in Kigali. In RP 199/CSK Karasira spoke about the important meeting after Bucyana’s death but made no mention then of VB attending whilst now he says VB was present. Karasira also says that Mutabazi was responsible for killing Dominique and family, but Mutabazi was acquitted in RP 199/CSK.
82. At the RP 199/CSK trial Karasira gave evidence against a woman called Kicage at whose home he says meetings took place and a flag was flown. The

court said his evidence was contradictory because on an earlier occasion he had said the flag was waved at Nyiramanote's home. In VB File 2 Page 516, the court finds that he is contradictory because before the criminal investigation Karasira had said he had not attended the meetings but in the trial he said he had. Another witness in RP 199/CSK Mr Nzamwita said that Karasira had organised all prosecution witnesses against Mutabazi, those witnesses included possibly Mabuye (VB File 2 Page 488 lower part of Page).

83. Mr Brazell defence solicitor for Dr Brown went to Rwanda in 2007 and discovered that Karasira had appeared in the Gacaca court in Rugenge sector. In the records he found a summary of what Mr Karasira was saying about his brother, Dominique. He names men who went into Dominique's house and looted it but does not explain about his death.
84. The points made by the defence undermine this witness but I do not find his evidence is worthless.
85. The final prosecution witness is **Concorde Rucyahana** who knew Dr Brown as a former neighbour and doctor from August 1993. He first met him in Anastase's bar. He makes allegations that police were coming from his home at one point in the genocide but could not say what else he did. Rucyahana says he was convicted of genocide and sentenced to 30 years' imprisonment in 2003.
86. Rucyahana was convicted in Gacaca proceedings of killing Charlotte and her baby (Allegation 5) and Leandre (Allegation 4) and participating in a number of other killings. The defence have only recently obtained the Gacaca records of his trial. There were apparently 16 prosecution witnesses. Neither he nor the other witnesses made any reference to VB. He accepted being part of the attack that killed Charlotte and her baby. Another witness in the same Gacaca trial, witness Ms Mukamutemba, said of Rucyahana that he was part of the attack that killed Charlotte and her baby (VB File 7, Page 2784). She was a neighbour of Rucyahana and by extension as he was a neighbour of VB's, a neighbour of the RP's, yet she makes no mention of VB in her evidence. Witness Musengamana gave evidence about the murder of Leandre. He named those involved he recognised, which suggests there were others he did not (VB File 7, Page 2783).
87. Ms Uwihoreye another witness in the same Gacaca case against Mr Rucyahana says of him that he was part of the attack that killed Charlotte and he used to boast that it was fair that the number of people he killed equalled the number he had saved (VB File 7, Page 2784). She was another neighbour who made no mention of Dr Brown.
88. Rucyahana then appealed his Gacaca conviction and there was a rehearing with 13 prosecution witnesses heard (VB File 7, Page 2849 to 2859). One of them Ms Mutembe said when he attacked her house and Charlotte and her baby were killed, there were many attackers (Page 2851). Another witness at the appeal, Ms Uwihoreye, said that Charlotte's death was caused by Rucyahana and she said that he used to be in company with Interahamwe and started

by killing Leandre. Witness Nyamuhenda spoke about how Rucyahana cut victims with a machete including Leandre. During the incident a car arrives and a person gets out and cuts off the head of Leandre who was not yet dead (Page 2853).

89. Alun Jones QC points out that this account is at complete variance to the accounts of the prosecution witnesses ranged against Dr Brown. Just one example is that of Rongorongo who says that Leandre was killed by a shot to the chest by another at the behest of VB. Murasandonyi says that an Interahamwe stoned Leandre to death with a rock.
90. Curiously the prosecution witness Rongorongo was a prosecution witness against Rucyahana in his appeal hearing yet although he said he had witnessed the killings of Charlotte and baby and Leandre, he did not say that Rucyahana was involved in those killings neither does he mention Dr Brown at the appeal hearing. The Gacaca appeal court convicted Rucyahana on his own admission and found that he had participated in the killing of Charlotte and baby and Leandre.
91. Rucyahana also gave evidence along with six others in the Gacaca trial of Kagenzi (VB Defence Bundle Page 617-8) and a separate Gacaca proceedings against Mutoka for the murder of Charlotte and her baby. Mutoka was also said to have tortured and killed Leandre. In neither case was the name of the RP mentioned. In the Gacaca proceedings of Rwabuhungu (Butihare) he pleaded guilty to the killing of Charlotte and said that Rucyahana had also taken part. Butihare made no mention of VB (VB Defence Bundle Page 2794). Rucyahana was one of eleven witnesses who gave evidence against Butihare in relation to the killings of Charlotte and baby, Leandre and Dominique and family. Rucyahana was asked about the death of Charlotte and said he had seen Butihare with a named Interahamwe and others. Butihare was convicted. None of these witnesses mentioned VB.
92. I found Rucyahana's evidence against VB to have been so undermined that it was worthless

Evidence of proceedings where Dr Brown was never mentioned

93. Mr Jones' strongest argument is that in the many Gacaca proceedings and other proceedings that have taken place and in records obtained there has never been mention of VB. I have dealt with some of the individual witnesses undermined in that way above. I deal with the more general points below.
94. In relation to the killings of Dominique and family and Leandre, in the defence bundle are some Gacaca records of a trial involving a defendant called Nyiromurinsi; he was convicted of participation in those killings on 21st October 2007 (VB File 2, Pages 688 and 693). There was no mention of VB.
95. Another, Rwabuhungu (aka Butihare), was convicted of a number of killings including Dominique and family, Leandre, Charlotte and her baby in a different set of Gacaca proceedings (VB File 8, Page 2791). 11 witnesses gave

evidence against Rwabuhungu in relation to all of the killings VB is now facing extradition for. They include Sagahutu and Rucyahana and none of these witnesses said Dr Brown was involved. No mention of VB is found in the admittedly fairly limited records obtained.

96. Rucyahana was convicted of the killing of not only Leandre but of Charlotte and her baby. Accounts were given by witnesses who do not mention VB. Rongorongongo who saw the killing has never mentioned that VB was either present or involved when he has previously given his evidence in relation to these events. He has however named men who he has said killed them both. He and two other prosecution witnesses, Mr Ntambara and Mr Rucyahana gave evidence in Gacaca proceedings against a number who are said to have killed Charlotte and her baby. None of them mentioned VB. Rucyahana was convicted of the murders of Charlotte and her baby and never mentioned VB in his evidence.
97. Ntambara says in these extradition proceedings that he sees a woman denouncing Charlotte to VB and “his company” who then catch her. The baby is killed by being struck by a stick grenade. According to him VB gives orders to the Interahamwe that if she does not denounce someone she should be shot. She is shot immediately. Mr Ntambara says he was watching from the compound fence trees where he was hidden. Although he says he is in the company of Mabuye, Murasandonyi, Mbaraga and another, they do not see what he sees. Another concern raised by Mr Jones is that whilst Mr Ntambara implicated VB in his statement as Charlotte’s killer, a year after his statement in the trial of a Mr Uwihoreye in January 2008 he said he did not know the names of her killers.
98. Mr Ntambara is also the only one who sees Dr Brown wearing a MRND cap with civilian clothes. Of course by then other witnesses have Dr Brown a member of the CDR party and no longer part of MRND. Mr Jones is right to be concerned about the way that Mr Ntambara is called back to give a further statement by Mr Siboyintore the prosecutor and then hedges his bets. He must have clearly been asked to explain why he had seen a MRND cap when a CDR one is more likely. Mr Ntambara says VB was wearing both type of caps, which was not a persuasive part of his evidence.
99. In particular, for the killing of Leandre, the defence relies on the different accounts given of this killing by the prosecution witnesses relied upon by the GoR which undermine the prosecution evidence. Murasandonyi explains that after Leandre had been dragged from his home by a mob and been slapped, he heard VB asking whether Leandre was still alive and telling the Interahamwe to cut Leandre into pieces. One of them picked up a rock and hit Leandre twice on the head. He died. Mr Ntambara and Rongorongongo give different dates for these events. Ntambara gives a different context to the killing in that Leandre is not dragged from his home but goes to the road block to make a complaint. His account conflicts with Mabuye’s and Murasandonyi.
100. Munyeshuli investigated Rongorongongo, Murasandonyi and Ntambara’s claims that they did not mention VB in the Gacaca hearings as they had al-

ready given evidence about him to the Parquet (the prosecuting department). He explained that there was no good reason for them not mentioning VB when they were giving evidence about crimes they now said he was involved in. The investigator makes a fair point that not only was the RP not mentioned by those witnesses in Gacaca proceedings, nor was he mentioned by other witnesses in those proceedings.

101. I accept that it is noteworthy that within days of the point being made by the defence that Rongorongo and others had never made mention of VB in the evidence they had given over the years, Rongorongo was back in a Gacaca court in relation to the looter Bihehe and according to the signed note on 25th November 2007 he volunteers that Dr Brown was inciting others to kill Tutsis in the presence of a number of residents. Then Mr Ntambara makes a similar mention of the RP at the same Gacaca trial. Mr Jones says this is an example of colluding witnesses operating at the behest of the GoR. It might also be that two witnesses who having discussed the matter together, off their own bat want to put it on record that Dr Brown was involved in inciting killings.
102. The Court of First Instance of Kigali trial known as RP 199/CSK was a trial of 57 defendants including Rongorongo accused of killings in the Rugenge area. The translated judgment is at VB Bundle 2, Page 386 and it shows at Page 514 that Rongorongo admitted a number of killings. He also gave evidence in two trials at the ICTR.
103. The killings being looked at in RP 199/CSK include all the ones that VB is accused of. The defence makes a forceful submission that Rongorongo never mentions Dr Brown in his evidence and although Rongorongo says he was prevented from mentioning his name by the judge, there is no other evidence that that happened. The defence also rely on the fact that Rongorongo made mention of many others who were not on trial and on that basis it might be inferred that he would mention VB if indeed he had been involved in the killings.
104. It makes a similar finding to the Gacaca courts that a Niyoyita and a Nzamurambaho have responsibility for the killing of Leandre whilst another witness said that Leandre had been killed by Simon Pierre.
105. The defence argue convincingly that the evidence of Murasandonyi in the extradition proceedings is irreconcilable with the evidence given by him and others in relation to the killing of Leandre at RP 199 CSK. It may well be irreconcilable on the face of it but without hearing their evidence it is difficult to judge.
106. Mabuye says in these extradition proceedings that Dr Brown encouraged one of the Interahamwe to kill Leandre by hitting his head with a stone. Mr Jones relies on the contradiction between that evidence and what Mr Mabuye said in RP 199/CSK in relation to the death of Leandre when he never mentioned VB.

107. Also in the RP 199/CSK trial a Mr Kagenzi was accused of the killing of Leandre by Ntambara and Murasandonyi, who now state it was the RP who was responsible and make no mention of Kagenzi.
108. The defence investigator also explains that in the trial of RP 199/CSK six men are accused of killing Dominique and family but at no stage is Dr Brown's name mentioned. Prosecution witnesses in these proceedings Mabuye and Karasira with one other also accused Mutabazi in the trial of being a CDR co-ordinator, of planning attacks and having ordered the killing of Dominique and family yet Mutabazi was acquitted of the killings (See trial ruling at VB File 2, Page 516). Mabuye's evidence is briefly summarised at Page 465, he says the attack on Dominique was launched from Mutabazi's home. The court explains at VB File 2, Page 466 that Mabuye and Karasira are friends and there was bad blood between the latter and Mutabazi.
109. Alun Jones QC suggested that Sagahutu, Ntambara, Murasandonyi and Mabuye are a clique of false witnesses who are giving false evidence in these proceedings just as they did in RP 199/CSK when they blamed others for the murders of Leandre and Dominique and family. They blamed Mutabazi for the killings of the latter (Allegation 3) but he was acquitted and in acquitting Mr Mutabazi RP 199/CSK must have rejected their evidence. Although VB File 2, Page 516 which gives the court's reasons does not set out in full the reasons for acquitting the defendant it is clear that Mabuye, Karasira and another gave contradictory statements about whether Mutabazi spearheaded the attack or gave instructions for it.
110. Having examined the notes of the hearing of RP 199/CSK I note that the findings of the court at VB File 2, Page 514 in the reasons given for conviction allow for the defendants to have been committing offences with others that have not been arrested/identified yet. The notes are very sparse of what the witnesses actually said. This is by no means a transcript of the trial.
111. Mr Munyeshuli points out yet another contradiction in the evidence of Mr Mabuye who on another occasion said the killing was launched from a Mr Mazimpaka's home. In any event he says the killing was carried out by soldiers.
112. The RP is not mentioned either in any of the trials and Gacaca proceedings which considered these events. Mr Jones points out in his submissions at Appendix D, Paragraph 320, that despite the evidence of Mr Mabuye and others, a list of the names of the chiefs of the roadblocks in the area which was made by the relevant Gacaca court in a notebook has no mention of VB. Mr Jones argues it would be inconceivable that if Mr Mabuye's evidence were true that nobody would have mentioned this in any proceedings either Gacaca or RP 199/CSK.
113. Mr Jones makes the point that the various trials attribute primary responsibility for the killing of Leandre to Mr Niyoyita who is said to have ordered the killing and Mr Nzamurambaho who carried out the act. .

114. Counsel for the RP make the strong point that not even the prosecution witness Rongorongo who was a leader of the Interahamwe suggested that the RP was another leader. It is clear from the notes that a number of Interahamwe killed Leandre for example. VB was not an Interahamwe but prosecution witnesses in these extradition proceedings say he lead them. There are inconsistencies in the witnesses' evidence which would need to be examined by counsel in a trial.
115. Rongorongo said the incitement to genocide took place at the home of one Angeline Mukandutiye. In the RP 199/CSK trial Rongorongo names nine individuals (not Dr Brown) who are said to be members of the association's steering committee meeting at Ms Mukandutiye's home and implicates 47 others who he says are Interahamwe but no mention is made of Dr Brown (VB File 6, Pages 2314-5).

The Rambura killing of the priests

116. Dr Brown's counsel rely on what they say must be a false account of a then member of the Interahamwe, Mr Nzanywenimana (see statement in VB File 7, Page 2516), who says that VB was present with soldiers who were killing Tutsi priests on 7th April 1994 in Rambura which is two hours from Kigali. It must be a false account, contends Mr Jones, because at the very same time VB is said by other prosecution witnesses to be in Kigali. His statement along with another witness to those events were served in the first proceedings before being withdrawn and not forming part of the present proceedings against Dr Brown. He also says he saw Dr Brown at a roadblock where Tutsis had been killed
117. Mr Jones says this witness provides support for his contention that BRO/A is correct when he says that the Parquet General corralled witnesses and told them what to say (see closing submissions Appendix D Page 166, Paragraph 547 onwards). The investigator Mr Munyeshuli who has investigated the priests' killings in relation to another accused gave evidence that Dr Brown's name had never been mentioned and there was no other killing of priests said to have taken place in Rambura other than the ones on 7th April 1994. He also gives evidence that with a curfew on and delays on the roads it would have taken the RP a day to get to Rambura from Kigali.
118. The second witness whose statement was taken on the same date, at the same prison, as Mr Nzanywenzimana's statement was taken is Mr Habarugira (see statement in VB File 7, Page 2513). Mr Habarugira is the RP's 1st cousin once removed. Mr Nzanywenzimana has Mr Habarugira cutting off the arm of one of the priests. Mr Habarugira says nothing about VB's involvement in this but gives evidence that he saw the RP when the latter came to Kabaya with the interim government but that the RP also went back and forth to Mwiyanike Sector where the RP's father was.
119. I do not consider these two witnesses are examples of the GoR corraling witnesses as they say very different things. If they had been corralled their stories might have tallied more closely. I might have expected VB's cousin to

say that VB was present during the killing of the priests. He did not. What he says is that VB was in Kigali during the genocide before moving with the interim government to Kabaya and also to Mwiyanike Sector before he fled with his cousin and others to Congo.

120. It is not for me to speculate as to why the GoR withdrew these allegations, whether it was because of the lack of detail in Mr Nzanywenzimana's statement or whether he was undermined in another way. If VB is extradited and is tried with competent representation his lawyers can exploit, if they think it would be productive, the removal of these allegations.

Exhibits

121. Finally in relation to the first allegation, Alun Jones QC attacks two exhibits produced by the GoR, one of which is said to incriminate Dr Brown and is evidence of his political affiliation. The first document shows that he was connected to the youth wing of the MRND political party in about October 1991 and the second is a letter from an unknown man in Inyange Za MRND in the spring of 1992 to an unknown person asking for finance and uniforms for members of the MRND. The significance of the second document is that handwritten on it is the following sentence: "*Bajinya also used to participate in the meetings that prepared the genocide*".

122. Mr Jones suggests that both of these documents are "*at best, of dubious origin, and more likely than not they have been doctored to include the name of Dr Bajinya*". His attack on the second is simply that the only reference to Dr Brown is a note put on that document by Mr Siboyintore in 2007. Mr Siboyintore made a statement about this dated 9th December 2013 saying he found the documents together and wrote on one of them. Essentially it was a mistake on his part. He showed the documents to a retired British police officer he was working with at the time and the officer told the Crown Prosecution Service about the document. The Crown Prosecution Service had not realised that the note on the second document had been written by Mr Siboyintore.

123. I accept there is no documentary evidence that Dr Brown was a leading member of the MRND or the CDR other than the evidence in the exhibit of October 1991. There are also the statements from the prosecution witnesses and a defence witness who confirms that it would not have been surprising for Dr Brown to be at one of President Habyarimana's parties. The RP's landlord also had heard that the RP was associated with Bigori and another via the hoisting of the CDR flag. As against that there are a number of defence witnesses who say he was not politically involved in Rwanda at the time. There is also the undoubted fact that there is no evidence that he was ever mentioned by name in any of the trials that have taken place when the facts being considered are the very same massacres and killings he is accused of in these proceedings.

124. A court might assume that it was odd that this documentary exhibit was found in the way described but that is not for this court to say. It will be a

matter for the trial court to decide. It is notable that Mr Siboyintore had the honesty and the courage to admit he had written a note on an exhibit, something that he should never have done. If he had not admitted this the court and the parties would have never known who had written the note and it may have been a significant piece of evidence against the RP.

125. A further piece of evidence I give weight to is the fact that Mr Jallow, the Chief Prosecutor of the ICTR, said in a letter dated 21st April 2008, that VB appeared on a list of suspects as of 1999. I understand that this information is undermined by the fact that the ICTR did not then transfer the investigation into him to Rwanda. The defence suggest that any educated Hutu doctor would have been presumed as being involved in the genocide and the presence of his name on the list is of no significance. I do not agree; it is of limited significance and would have more if the list was produced by Mr Jallow. His evidence of course contradicts that of Peter Robinson and Dick Munyeshuli. It would be for a court to give the appropriate weight to this evidence.

126. I gave weight too to the fact that in October 2007, Peter Robinson a respected former US Federal prosecutor and international criminal law practitioner did a search of the Office of the Prosecutor data base at the ICTR and found no reference to the RP. This database is very large and contains thousands of witness statements, reports, letters and publications collected over 12 years. He has investigated the very political meetings Dr Brown is said to have attended and found no reference to him as being present let alone having a role to play. He goes so far as to state “*with confidence that Dr Bajinya never had any significant role within the MRND party or at any of these party rallies*”. Another respected investigator was Dick Prudence Munyeshuli of whom Dr Clark said whose “*integrity I trust absolutely*”. He had conducted investigations and checked the ICTR data base material and he had not come across the name of Dr Brown in respect of events leading up to and including the genocide.

Conclusion

127. The defence have put forward the many and often very significant inconsistencies between what the witnesses have said before they have made statements in these proceedings and sometimes afterwards. The prosecution witnesses relied upon by the GoR have given evidence in Gacaca proceedings and more significantly perhaps in the Court of First Instance RP 199/CSK trial in Kigali where the killings that VB is now accused of have been extensively examined and others have been consistently blamed. At no stage has VB been mentioned in the records that have been obtained as a participant in nor as inciting the killings nor even is he mentioned as being present. I could perhaps understand that one or two of the witnesses could be so undermined but what concerns me is that none of these witnesses have ever mentioned VB before.

128. Of course, these events happened 20 years ago, they were traumatic, the murders took place in chaotic circumstances, killings were happening everywhere on a daily basis mid April 1994 and it would not be surprising if there were confusion in the minds of the witnesses about what happened. Some of

the witnesses are Tutsis and would have been extremely frightened, most probably traumatised by the killing around them, some of the witnesses are murderers who may have a reason to lie. Some of the defence witnesses were powerful leaders in the genocide. They may have reasons to lie about and protect Dr Brown. None of the prosecution witnesses have given evidence live to this court and looking at their evidence on paper it is sometime unclear whether they saw what they are speaking about or whether they were merely told about what they recount.

129. A few of the witnesses are poorly educated and sign their statements with a thumb print, they are being asked to recollect events in statements taken about 15 years after the genocide. At the same time from all the evidence it is clear that a number of killers were involved in each killing alleged against VB. Time after time the witnesses speak about unnamed others and it may well be that when asked to explain why they had not mentioned Dr Brown by name they will say he was there present but they were not concentrating on him as a defendant in trials where others were being accused. As against that I accept that on earlier occasions they have named as involved others who were not being tried.
130. I find there is no clear evidence that these witnesses have been lined up to give false evidence against VB. I think that is unlikely for the following reasons. I accept there are some oddities, and it could well be that two or three of the witnesses have been talking to each other. I accept there is evidence that VB was a member of the *Akazu* and had a highish status in 1994, there is also contradictory evidence that he was in the extremist MRND/CDR groups. The defence argues that Dr Brown is at risk of a fabricated case against him because of that and because he is an opponent of the regime. There must be many such. The evidence that he is an important opponent now is weak although as to the position in 1994 I accept it is said that he had a relatively high status and on the face of it was part of the *Akazu* but so were many others. I find no sign of a consistent story given by the witnesses. There is no feel of a directing mind that is deciding what the witnesses should say. If they had been coached and manipulated there might have been more consistency between them.
131. At the same time, this lack of mention of VB in any proceedings is the issue raised by Alun Jones QC that concerns this court the most. This court questions that not once in the records of the many proceedings that have taken place, not once has the name of Dr Brown been put forward as a possible perpetrator. Not once has he even been mentioned. Unfortunately there are no transcripts, the records are extremely short and may well be incomplete.
132. I do rely on the only documentary exhibit which suggests the RP was involved in the youth wing of the MRND before the genocide and Mr Jallow's letter which suggests he was a suspect in 1999.
133. My overall conclusion is that this is a weak case against Dr Brown, that all of the witnesses who say they saw him instigating and encouraging killings have been undermined to a lesser or greater extent but that the true weight of

the case cannot be judged without hearing the witnesses give evidence and be tested in cross examination. I find there is a prima facie case against the RP. I do not find the evidence is worthless. What I do find though is that for Dr Brown to have a fair trial he will need to have an experienced defence team including an investigator to be able to marshal a great deal of material for cross examination of the prosecution witnesses and many reluctant witnesses for his defence.

Emmanuel Nteziryayo

134. Diana Ellis QC and Miss Evans contend that the GoR has failed to show that there is evidence against EN requiring an answer. They invite the court to discharge him on the basis that the evidence produced is ‘worthless’. They rely on material which was not considered in the last proceedings when they argue the parties were concentrating their fire on the fair trial arguments.
135. Whilst in 2009 the Divisional Court concluded that in relation to the GoR’s evidence found in a large number of witness statements “*taken at face value there can be no doubt that the material in these statements was sufficient to make a case requiring an answer from each of the appellants*” (*Brown and others*, Paragraphs 124 and 125). They argue that in the light of the new material they have obtained where much of the material is exculpatory the court no longer has to take ‘at face value’ the *prima facie* statements. Some of the new material consists in previous statements made by the GoR’s witnesses which are inconsistent with the statements relied on by the prosecutor. Miss Ellis argues that the veracity of the evidence is undermined.
136. Miss Ellis’ arguments in relation to prima facie case are found in her Submissions, Appendix 3, Page 6, Paragraph 22 onwards. She and her junior have put together a number of tables which set out the evidence against and in favour of the RP. I found these tables clear and extremely helpful. The presentation of evidence for and against EN could not be faulted.
137. The GoR relies on six male and three female witnesses; of the six men, one has died (Ngezahayo) and one has disappeared (Uzabakiriho). The defence make the point that the witnesses were being held in awful prison conditions and therefore would have been susceptible to inducements to provide evidence at the behest of the GoR. Also they point out that accomplice evidence has to be approached with particular care. I accept it does. As to the three female witnesses who are genocide survivors, the defence argue that because they lost members of their families in the genocide and are members of *Ibuka* (a genocide survivors’ group which provides care and finance for survivors) their evidence is undermined and is not reliable. This in my view is a weak argument.
138. The investigations carried out by the defence show that a number of the male prosecution witnesses have given previous accounts in the context of other investigations and some have given exculpatory accounts where now they give inculpatory evidence against EN. The defence contend that it is a reasonable inference from the provision of positive evidence that it represents

the truth. I agree it is one inference but it is not the only inference. Each witness needs to be challenged in proceedings and asked about previous inconsistent statements so they can give their explanation.

139. **Ngezahayo** was in prison sentenced to death when he made his statement and although he had been told the appeal was granted, the court had not delivered judgment. His sentence was reduced in March 2008. He was a colleague *bourgmestre* at Karama and knew EN when he was appointed *bourgmestre* to Mudasomwa commune. They went to a MRND congress together where President Habyarimana announced the creation of the *Interahamwe*, the MRND youth wing. The witness explains that all *bourgmestres* were told to send Hutu youths for military training from April 1993. It was these youths who manned the roadblocks during the genocide.
140. This witness gives evidence that EN went to two meetings, one on 13th April and one on 26th April 1994. On 13th EN is said to have explained that the killings had started in his commune Mudasomwa and they discussed too the issue of the Tutsis who had sought refuge in churches etc, the question of food aid for them and how to reinforce roadblocks. The meeting decided to set up roadblocks to kill Tutsis. The witness says EN set up a tough roadblock manned by one Ngoga and Gakuru and 20 *Interahamwe*. At the second meeting of *sous-prefets* on 26th April 1994 EN reported that all Tutsis had been killed at his commune and then they had helped in killings elsewhere. He got a round of applause. There was a competition as to who first killed Tutsis and EN won when he said he had killed Tutsi EMUJECO road construction workers first.
141. At the 26th April meeting two more things happened, the first that the *bourgmestres* were to provide more Hutu young men for military training and the second that each *bourgmestre* was to go around to his commune and tell members of the population there was to be no more killing. This was a ploy to get the Tutsis out of hiding. This happened and they were killed. Finally he saw EN at a 3rd June 1994 meeting convened by the *prefet* to raise funds to buy ammunition.
142. The defence say that Mr Ngezahayo's evidence is undermined because he had given at least six other accounts in evidence to various authorities. His different accounts are set out in Tab 3, Appendix 3, Table A at Miss Ellis' (closing) Submissions at Page 33. Another *bourgmestre*, he had denied responsibility for committing any offences himself in 1997 and had said that the two meetings on 13th April and 26th April were held for essentially humanitarian purposes. The 13th April one was to arrange food for Tutsi refugees and 26th April one was when the order to stop the killings was given, although several at the meetings spoke about the killings in their areas.
143. EN was not mentioned in Mr Ngezahayo's earlier testimony in 1997 and in his two testimonies in 2001. His 5th September 1997 letter to the prosecutor is at EN Volume 3, Page 251. It is in relation to his own position and he denies various murders. There is no mention at all of the meetings of April 1994. His August 2001 statement (EN Volume 3, Page 257 onwards) was

taken in order to prosecute the *prefet* Bucyibaruta. The questions are aimed at what the *prefet* did in the meetings and elsewhere. The meetings themselves are dealt with in four or five lines.

144. The next statement of November 2001 (EN Volume 3, Pages 228-230) was taken by the ICTR also in relation to the *prefet* Bucyibaruta. It has just a few lines in relation to the meetings of 13th April and 26th April 1994 although it has a little more information than before about 26th April one, that Bucyibaruta told the *bourmestres* that the killing should now stop because all the Tutsis were dead except some female Tutsis who were married to Hutu men like Colonel Simba and the *prefet* himself. He also says that Colonel Simba ordered the *bourmestres* to organize the military training of various youth. I would not have expected Mr Ngezahayo to mention EN in either statement in the context of the prosecution of the *prefet* particularly where each meeting is dealt with in just a few lines.
145. Ngezahayo was interviewed again by the ICTR investigators in November 2003 (EN Volume 3, Page 234). The statement is taken in relation to the activities of Colonel Simba and the orders he gave to set up roadblocks to kill Tutsis. Mr Ngezahayo explained that all *bourmestres* were told to do this and he and another *bourmestre* (not EN) were summonsed to meet Simba because their roadblocks were not tough enough. The only April meeting mentioned is the one on 13th April 1994 of which it is said that the *bourmestres* asked for food to be distributed to the Tutsi refugees.
146. The same witness gave evidence at the ICTR against Colonel Simba and the trial papers are found in EN Volume 3, Pages 1 to 109. His evidence is summarized at Paragraph 38 where he says the 13th April meeting was in relation to food for Tutsi refugees. It is set down in more detail at Volume 3, Page 67, Paragraph 260. In particular the meeting of 26th April 1994 is set out in more detail. All the *bourmestres* are said to be there and the leaders of the massacres say how many were killed in their particular areas. Each leader gives the total which amounts to thousands of murders, EN is not specifically named as giving a number (Paragraph 262).
147. The ICTR make it clear that in the light of the witness' denials of involvement in the massacre at Cyanika church his evidence should be approached with caution. They find it striking that the witness makes no mention of Simba in one of his statements in relation to the events of 26th April meeting. The court's conclusion in relation to the witness is found at Paragraph 278 of the judgment where the Chamber says it has "*some reservations about the reliability of ... evidence*" and does not find beyond reasonable doubt that Simba participated in the meeting of 26th April. The recent emergence of the incriminating allegations against Simba raised too many questions.
148. The significance too of the ICTR trial of Aloys Simba is that the charges related to killings at Gikongoro and Murambi. A number of individuals were said to be killers and were named but not EN.

149. Mr Ngezahayo's next statement was dated 18th December 2006 and is found in the GoR Annex Bundle 1, Annex D, Page 279. He refers to 13th April 1994 meeting of *bourgmestres* and others and explains that as well as Tutsi refugees being discussed so is the topic of strengthening the roadblocks (Page 283). The 26th April meeting is found at Page 285 of the bundle. The *bourgmestres* and others were giving the numbers of Tutsis killed in their areas to the *prefet*. Munyaneza was rebuked for a low number and he had to explain some had escaped over the river. Simba told him to sensitize the people to launch an attack and kill the Tutsis who had escaped. This was done on 29th April 1994. This part of the meeting had never been mentioned before but then the statement of 18th December 2006 was directed towards Munyaneza's role in the genocide.
150. In the chronology of statements the next one he gives is on 17th January 2007 in relation to EN's role and his final statement is when he is interviewed by the defence in Kigali on 24th October 2013. He explained that the meeting on 13th April was attended by all 13 *bourgmestres* and was to set up roadblocks whilst the second meeting was to evaluate how many had been killed. The defence team was interested in how his statement to the GoR came about and he gave an explanation. I note that when he turned to say why he had said EN was involved, this topic was not pursued by the defence investigator.
151. When he gave his *pro justitia* statement he was under sentence of death and waiting for an appeal against his death sentence, says Diana Ellis QC. Miss Ellis may have a good argument that as this witness is dead, his evidence cannot be relied upon under Organic Law, but apart from this I noted that he was another *bourgmestre* who had been present with the other 12 *bourgmestres* at the meetings he describes. When he made his statement of January 2009 in relation to the case against EN he had pleaded guilty to genocide and been sentenced to death but he knew his appeal had been allowed (see statement at GoR Annex Bundle 1, Annex E, Page 136). There would have been a number of *bourgmestres* at these meetings (including two of the RPs) and it is arguable that he would not have mentioned before what EN is supposed to have said about the killings in his area when giving evidence in other proceedings. The ICTR said his evidence should be approached with caution and of course it should be.
152. **Singirankabo** was in prison sentenced to death and was awaiting the result of his appeal when he gave his statement of January 2007 in relation to the prosecution of EN. In his January 2007 statement, Singirankabo had said for the first time that EN told him where to take the EMUJECO employees' bodies and that EN then organized a reception in Karamage's bar for the killers including Ngoga and Nkusi. A year after he gave the statement his sentence was reduced.
153. Singirankabo had given earlier statements in which he spoke of burying dead EMUJECO employees using a digger on 7th April 1994. In neither the 1997 statement nor the 2000 statement is EN mentioned (Table A, Page 36). He was convicted, he says unjustly, of the burials at a Tribunal of First In-

stance trial. Unfortunately there is no transcript but just one page of his evidence in EN Volume 2.1, Page 24.

154. Finally he told the defence in October 2013 that he had not been told it would benefit him if he gave evidence against the *bourgmestre*. He said that they buried the EMUJECO workers at Mbuga but first they had gone to see the *bourgmestre* (EN).
155. The only evidence from GoR witness Mr **Uzabakiriho** is to be found in his statement given to the prosecution investigator Mr Siboyintore. His evidence is that EN told him and others that the enemy were the Tutsi and they ??? attacked Nyarwotsi Hill the following day. On another occasion EN came and told them to set up a roadblock to kill Tutsi and another time he told them to dump the bodies in a pit when the place was starting to stink. This is the witness who has been released from prison and his whereabouts are unknown.
156. **Gasamunyiga** is the fourth prosecution witness. He is a retired police officer and was a reservist in April 1994. His first statement is the one given to the GoR in January 2007 and his second is the interview with the defence in October 2013. In the first statement he has EN giving him a gun to ensure Hutus' security, which he took to mean killing Tutsis and then he and others attacked Nyarwotsi Hill the following day (not including EN). On 11th April he took the gun back to the commune office. He says that in June 1994 EN asked him and other reservists to go to the commune office and EN asked them to train able Hutu young men. This took place after a meeting in June which other witnesses confirmed EN went to.
157. Gasamunyiga was interviewed by the defence in October 2013 (EN Volume 2.1, Page 64), he does not say directly that he was given the gun by EN just that "*the leader*" EN "*needed our support when people were shouting. I received the gun in the evening of 9th April 1994 and returned it on 11th April 1994*". He did not know Nyarwotsi Hill. He explains that when he gave his statement to the GoR in 2007 he was there with other witnesses but they were all questioned alone and he had told the prosecutor he had got the guns for the security for the population. This witness will need to be cross examined about the change in his evidence as to whether it was him who has changed what he has said or whether it is the prosecution who recorded his evidence wrongly either mistakenly or purposefully. In any event his evidence is not worthless.
158. The fifth witness is **Kaguge**, his first statement is the one he gave to the prosecution investigator Siboyintore on 29th January 2007. In that statement he explained that he had been given a gun by EN to ensure the safety of the Hutu which meant he had to kill Tutsi. He and the last witness Gasamunyiga went to massacre Tutsis on Nyartwotsi Hill. He was given a rifle again by EN in late April early May and he accompanied EN to Nyamigina where he was going to hold a meeting. Finally he saw a group of young people in the commune office who were supposed to be trained to handle guns by reservists in June 1994.

159. In Kaguge's statement to the defence of October 2013 (EN Volume 2.1, Page 75) he explains that he confessed to his role in the killings in Buhoro on 10th April 1994. Whilst in prison he was told it would help if he admitted crimes. He was used by the authorities to tell others to confess, to tell the truth and beg pardon so that they would have their sentences reduced. He explained that when a prisoner confesses he can see his family whenever he wants and they bring food and conditions become better.
160. He was visited by a white man who was possibly helping EN and who asked questions about EN. He was asked whether EN committed genocide and he had said that in general all *bourgmestres* committed genocide. His view was that people were killed in the commune and *bourgmestres* were responsible for the communes. As EN was the *bourgmestre* and responsible for the commune that meant he was guilty. He said that he did not know of any Tutsi having been killed by EN. "*It was difficult to protect the Tutsi. He was not able to do so. There was Ngoga and others. They were very strong Interahamwe. It was not possible, he could be killed*" (Page 77). I have quoted those sentences to show that Kaguge does not appear to defend EN and his role clearly in the statement he gave to the defence. I do not find his statement has been undermined either by his statement to the defence nor by the various defence statements described below to such an extent that his evidence could be said to be worthless.
161. The next three witnesses are the female neighbours, all members of *Ibuka*. The first is **Phoebe Mukamudenge**. She gave verbal testimony before the Judicial Police in January 1997 (EN Volume 2.1, Page 97). In that first statement she is being questioned about the killings in Gasarenda. She names the killers and says she heard them boasting about killing the EMUJECO employees. She was asked who else the killers she named killed, then she was asked about a particular roadblock at Ku Murangara which she said was manned by Ngoga and others, another was manned by Gakuru. This statement is summarized in the report of the investigation on 2nd February 1997 (EN Volume 2.1, Page 102) and adds nothing much to what she said in her verbal testimony.
162. Ms Mukamudenge's next statement is the one given to the prosecution in these proceedings on 2nd February 2007 (Volume 2.1, Page 91). She said she overheard EN saying to people gathered at Nkomero Centre that others had started "working" whilst they were sitting drinking beer. She knew that by the word "working" he meant killing Tutsis. Later in May after she had been in hiding she was near a roadblock called "The Mata" hidden in a wood and saw three men being taken out of a car. They were beaten by the numerous *Interahamwe* at the roadblock and when EN arrived a few minutes later in the commune car he did not prevent them continuing to beat the three men. She later found out they were three seminarians. She said that she lost her husband and three sons in the genocide.
163. Ms Mukamudenge was interviewed by the defence in October 2013 (Volume 2.1, Page 95). She could not remember at first whether she had given

evidence before but finally remembered she had against Kaguge and Gasmunyiga. She said she was not falsely testifying against EN.

164. The second female witness is Ms **Nyirandutiye**. She was a Hutu married to a Tutsi in 1994. She was interviewed in January 1997 (EN Volume 2.1, Page 112) and gave sworn evidence to the Judicial Police that “Mayor” Nteziyayo had told the people the day after the President’s death that they should not be angered by what had happened and start shedding blood. This irritated some at the meeting who said they would kill him. This was said by Ngoga and others. They attempted to beat him up and he fled to his car.
165. Ms Nyirandutiye’s statement is given in February 2007 to the prosecution in these proceedings (EN Volume 2.1, Page 105). She explained she knew EN well as he was the *bourgmestre* of their commune and she used to see him often as “my leader”. After the crash she was sent to Nkomero to get some beer and remembers hearing EN say to a meeting of 30 people “the others have done the work, you are just idling here” and “fight the enemy”. One of the *Interahamwe* asked whether they should kill Hutus married to Tutsis and EN replied no because they are their sisters, the enemies are Tutsis. She could hear him say this clearly as everyone else stopped talking when he was speaking. She goes on to say that she and her family go into hiding.
166. She next sees EN in May 1994 when she thought he would help her as she was being hunted because of her half Tutsi baby (fathered by a Tutsi – she being a Hutu). He told her to go to a meeting he was speaking to where he told the assembled crowd to hunt for the enemy wherever he may be. She understood it to mean to hunt for the remaining Tutsis and kill them. She addresses him as “honourable *bourgmestre*” and asks whether her baby is an *Inyenzi* and whether he can ask people for mercy and not to kill her. The crowd however answered for him and said that the baby was *Inyenzi* and should die. There was a distraction and she managed to get away and hide.
167. It is of note that the statement of February 1997 is different to the sworn evidence she gave in January to the Judicial Police. ??????
168. There is then a curious unexplained document of July 2005 in which Nyirandutiye says at the CNLG that she is asking for forgiveness from Kamari and from people of Rwamuhoza. She said that “*all she said was what she had been told...*” (EN Volume 2.1, Page 115). I do not give any weight to a document the meaning of which is so unclear.
169. The defence interviewed Ms Nyirandutiye in October 2013 (EN Volume 2.1, Page 111). Nothing she said undermined her GoR evidence.
170. The last female witness to consider is Ms **Muhayimana**. The first statement available from her is the one taken in February 2007 by the prosecution in these proceedings (EN Volume 2.1, Page 116 or in GoR Annex Bundle 1). She is a Tutsi and gives evidence that she sought refuge with other Tutsis in an orphanage after she became aware of Tutsis being killed. She and the others were then escorted to Murambi where there was a semi built school. She was

with her three children. The water was cut off and they were not given any food.

171. Around 21st or 22nd April 1994 attacks were launched and the men assisted by the women, tried to defend themselves. During this battle the witness saw EN arrive in a green pickup carrying *Interahamwe*, one of whom had a bag full of grenades. She saw them clearly and noticed that he did not himself throw any grenade but was there whilst the *Interahamwe* were shooting at the Tutsi. At a point when the witness realized that many were being killed she escaped and went and hid with the child on her back. She left behind two children with her sister and saw the *Interahamwe* going in and heard shooting and screams. About 50,000 people died that day. She lost two of her children and her sister in the genocide.
172. Ms Muhayimana was interviewed by the defence in October 2013 (EN Volume 2.1, Page 121). She explained that she had given evidence at a number of Gacaca proceedings in Tare I, Tare II and in Nyamigina. She also gave evidence in the High Court in Kigali and the Court of Appeal in Gikongoro. She said she did not give evidence against EN in his trials in Tare I and Tare II. She had been questioned by employees of the court. Her understanding was that because EN was absent he could not be convicted in Gacaca. She also told the defence investigator that she held him responsible for the 50,000 who died in Murambi. She explained too that one person she had accused in Gacaca, a Mr Nyirimbibi was acquitted.
173. The final witness of the nine is **Gregory Rwakanyonza**. He gave a statement in interview form in July 2002 (EN Volume 2.1, Page 134). This was at a time he was suspected of genocide, the massacre in Murambi and other murders. He denied them and said he spent the time in the District Office in Mudasomwa. It is a very short interview and he does not mention EN. There is another page that follows dated 2nd January 1997 at Volume 2.1, Page 135, it is headed Public Prosecution Gikongoro, it is followed by questions put to Rwakanyonza on Pages 136 to 138, where he denies the killing of the three deacons at the Mata tea plantation. On 9th April 1994 he says he was accompanying the Mayor with Froduard as the driver. They escorted him to Rwarubona where the Mayor “*told the residents to go home for their own safety*”. He said when accused that he did not associate himself with the Mayor to commit crime. It was suggested to him that Ndanga had said he (Rwakanyonza) was with the Mayor on a daily basis and he explained he did not defend himself from this accusation as he was going to do it in his defence.
174. In relation to that document it is not clear to me whether the date of 1997 applies to it but the Mayor appears to be EN who is referred to as the Mayor in other documents (see for example EN Volume 2.1, Page 148).
175. In February 2007 Mr Rwakanyonza gives a statement to Mr Siboyintore for the prosecution in these proceedings (GoR Annex Bundle 1 Tab 1, Page 359). He explains that he was a commune police officer until 1996 and lived with EN as his security officer between 7th April and 17th April 1994. On 7th April 1994 EN held a meeting with all the *conseillers* of the area and asked Ndanga,

the Brigadier, to distribute guns to them. EN told the *conseillers* to set up roadblocks and kill Tutsi. On the night of 7th April 1994 many Tutsi took refuge in the commune office and were taken on 8th April to Murambi. On 9th April 1994 EN said at a meeting at Nyamigina and Buhoro that the Hutus should ensure their security themselves, meaning they had to kill Tutsis. They then went and checked up on the roadblocks. They did this on 10th April too. He drove EN to the meeting of 13th April but stayed outside and on 17th April went to the roadblock at the Mata Tea Factory where they found three religious brothers had just been killed. He was on duty in the commune on the day that the massacre at Murambi took place. He thinks EN left the area on 26th May 2015.

176. The defence have uncovered a number of Gacaca records which contain information on Mr Rwakayonza. The summaries of the information they have uncovered is to be found in their [Closing] Submissions at Tab 3, Table A, Page 47. The original documents are at Volume 5 of the EN bundles. They show that he was accused of being involved in a number of killings with EN and the gendarmes. On one occasion he was said to be one of the leaders of the genocide. He was acquitted of one of the accusations. In one detail from a Gacaca case in Tare he was acquitted of the killings in Nyamigina because he was following orders given by the mayor who was given orders by senior authorities. There is some detail of his trial when he was accused of the killing of the three deacons at the Mata Tea Plantation. In his defence he said he was with EN on 9th April when the latter told residents at Nkomero to go home for their own safety. He said he knew nothing about the death of the deacons apart from finding their car at the commune office.
177. On the face of it Rwakayonza is an important witness for the GoR but he gave a very different account to Mr Lake the defence investigator in August 2007. He was asked about the circumstances in which he gave his statement to the GoR for these proceedings. He said the Rwandan prosecution team had added to his statement as they wanted to incriminate EN. They had taken him by force from Gikongoro Prison to Kigali. He was told if he did not sign his statement he would be moved to Gisovu Prison which is too far from his home and that is the reason he signed the statement. He signed whatever they asked him to. They told him that EN held meetings for the purpose of killing Tutsis and wanted him to agree EN did this. They also wanted him to agree that EN distributed guns to be used at roadblocks whilst in fact people were “*out of their mind*” (furious?) that EN would walk around and try to prevent the genocide. He had told the Gacaca Courts how they (he and EN) tried to stop the killings. He did not believe he had been acquitted by the Gacaca Courts because he gave a statement to the prosecutor.
178. Rwakayonza said that the fifth prosecution witness against EN, Kaguge, (see Paragraph ??? above) had told him he was forced by the prosecution to talk about EN whilst Ndganga told Rwakayonza he had revealed nothing to them. He met the female witness Ms Muamugugna ??? when he was going to the prosecutor’s and said the *Ibuka* members bribe others to give false testimony. He had also been forced to give evidence in relation to people arrested abroad. He was not forced in relation to the Gacaca trials of EN. He did not

agree with the suggestion made to him that EN organised meetings to kill Tutsis. He had been interviewed by the ICTR and said people had become disobedient and wanted to kill EN.

179. As to EN's role, Rwakayonza said he had "*sensitised*" people to stop the killings. EN had given guns to Kaguge and Gasamunyiga to keep the sector safe instead they took them to another sector and used them to kill. EN had been known as a peaceful person.
180. As well as the interview of August 2007, the defence took a statement from him in October 2007. Rwakayonza repeated a number of matters he had said in August but added that the guns were distributed by the gendarmes at EN's request to protect the sectors. He had accompanied EN on 9th April to prevent Hutu turning on Tutsi. He said about the taking of his statement by the Rwandan prosecutor that they wanted to change what he had said and threatened to move him to Gisovu Prison. He did not hand out guns nor did he direct for roadblocks to be set up.
181. As a result of the statement above Rwakayonza was interviewed again on 11th April 2008 by prosecutor Mr Siboyintore. Mr Rwakayonza told him that he had told Mr Lake, the defence investigator, that his statement to the prosecution was true and he had signed the interview at the time of a second visit by Mr Lake without reading the statement.
182. Fortunately Mr Lake had recorded the interview on 31st August 2007 and this was then played to the witness on 25th April 2008. He then essentially confirmed what he had said to the prosecution in his first statement. He said he had told Mr Lake that the prosecutor had altered the statement because he could see he was working for the defence. When he had said EN and he had gone to Nyamigina and Buhoro EN did not go there to stop the killings.
183. Mr Lake who took the first statement from Rwakayonza conceded that the interpreter had failed accurately to translate every question and answer. With others the interpreter and he broke down the questions and answers to one sentence at a time so there was less room for error. I found Mr Lake to be an accurate and impressive witness and any mistakes in that first statement were of relatively little significance.
184. Finally he is interviewed again by the defence in October 2013 and repeated again what he had told Mr Lake in 2007. He explained that he had been accused of leading attacks in Nyamigina with EN but this was a lie. In the second Nyamigina Gacaca case it was said he was present when the three deacons were killed but this was not true as he was in the car with EN. He never saw EN distribute guns and EN did not tell the *conseillers* to set up roadblocks and have Tutsi killed. Once EN was chased from his home by the *Interahamwe*. He was brought by force to Kigali to make the statement to the Rwandan prosecution team and did not want to come. The statement for the prosecution is inaccurate and he did not read it.

185. This witness has contradicted himself completely on a number of occasions. It is without doubt the case that he has said one thing to the Rwandan prosecution and something completely different to the defence. It would be very difficult for any court to give any weight to what he has said but once again, it is difficult to judge without hearing his evidence (whatever the final version might be!).
186. There is much defence evidence which undermines the GoR evidence. A really helpful table, Table B, has been prepared by Miss Ellis and Miss Evans which summarises the defence evidence relevant to prima facie case. The witnesses give evidence mostly anonymously that EN was responsible for requesting the removal of roadblocks, EN was being threatened by Ngoga and Nkusi (witness C, EN Volume 4, Page 14) who were local thugs and *Intera-hamwe* manning the roadblocks. When the Tutsi were sheltering in the commune office armed militia came in to find them and EN barred the way (witness D, EN Volume 4, Page 27). Witness E admits to being present when Gakuru said they should kill EN. The same witness was manning a roadblock when EN arrived and wanted it removed on 8th April 1994 (Witness E, EN Volume 4, Page 38).
187. Witness L (EN Volume 4, Page 96) was at a roadblock which was taken down by EN, this angered those there and they turned on EN. He was approached to give evidence against EN in about 2005 and the woman wanted him to say that he had urged people to incite killings and to set up road blocks. Witness M who lives by the road to Murambi did not see EN on the day of the massacre, 21st April 1994. AC said he was well known as someone who tried to prevent killings (EN Volume 4, Page 111).
188. Witness N says that he was taken to the Rwandan prosecutor's office where he was asked if he knew whether EN had participated in killings. N told them that Ngoga had come to EN's home and threatened him and he had then left the area. They stopped asking him questions and said N had disappointed them. N believed they wanted him to tell lies. AD (EN Volume 4, Page 119) said that EN's reputation was of being good to everyone in the commune. When Ngoga tried to get EN to hand over the Tutsis sheltering in the commune office, policemen stood next to Ngoga and he went away. EN thought the Tutsi should go to Gikongoro for more protection. EN accompanied them there. "*Our mayor was not involved in the killings and did what he could to protect Tutsi*".
189. Phoibi Mukamugunga gives evidence at EN Volume 4, Page 123 that a relative of EN's told her he had been asked by EN to protect her and EN protected a relative of hers. She heard of occasions when EN tried to stop Hutu killing Tutsi. She had relatives who took refuge in the commune office. EN moved to his mother's house when he came under attack for removing roadblocks and trying to save Tutsi. She first heard his name in relation to killings in Mudasomwa during the Gacaca hearings and attended his trial in Uwinkingi. She had said then that she had not seen him kill Tutsi but she saw him in the office car. No one gave evidence that he killed Tutsi. She was summon-

sed to Kigali three times and questioned about EN and on each occasion she said he was not involved.

190. AF described EN as a good man who lost much of his authority after the genocide began. Ngoga was the really powerful man. AF was taken to the Rwandan prosecutor's office and asked about EN. AF saw Mukamugunga (see preceding Paragraph). AF said he/she knew nothing bad about him and they threatened to put AF into prison. FC says EN tried to protect all members of the community, he saw him trying to dismantle a roadblock more than once. FC says grenades were thrown at EN's residence and he had to move from the mayor's residence. FC received a list in 1997 of those responsible for the killings in Gikongoro and EN was not on the list.
191. Nkerinka an MP in November 1994 who had been given a list of names in 1994 of those involved in the genocide said he had never been given EN's name. In 1995 and 1996 he was asked to go to all the communes of Gikongoro including Mudasomwa and personally compile a list of names of those thought to be involved in the genocide. This list was added to in 2000 and 2002. EN's name was not on the list.
192. Nkerinka gave evidence in these extradition proceedings and produced a second statement to the effect that after giving evidence he was contacted by police in Germany and told there was a threat to his security. Ms Raffin of Caritas Rwanda who lived in Gikongoro and attended meetings with the prefet and Simba said she had never heard it said that EN was involved in the genocide. She knew him as he had been a student of hers.
193. BA was with EN at a market where he told people not to be involved in killings. BB knew roadblocks were controlled by Ngoga, Nkusii, Gakuru and others. BC says that EN was frightened of Ngoga and the others. Nsengi-mana was a member of Mbuga Parish Council and produces minutes of a meeting held on 8th May 1994 where the committee sends a message of peace, love, justice and tolerance. EN was one of the committee members.
194. In all Table B, so far as *prima facie* case is concerned, lists 24 defence witnesses including the investigator, Nkerinka and Rwakayonza, 17 of those are anonymous and seven give their names. I was provided with table BB which was not provided to GoR's counsel. This table contains '*the fullest information as to identity*' of the anonymous witnesses. It shows the witnesses' names and '*key details pertaining to identity*'. I have taken the information shown into account but given it limited weight when considering the question of *prima facie* case. Having considered the case against EN and considering as I do that Rwakayonza's evidence is very much undermined by his differing accounts, I still consider that there is a case to answer and I do not find the Prosecutor's case against EN is worthless.
195. Part of the evidence in defence of EN is the information obtained by the defence in relation to the Gacaca trial he faced in absentia at Tare II. This is conveniently summarised at Tab 3 to the Submissions in Table C at Page 81 onwards. Witnesses said that they did not know that EN set up a roadblock.

EN had not set up meetings of local residents aimed at killing Tutsi. EN played no role in the genocide. He tried to prevent residents from joining in. EN had not distributed guns, said by one who had received guns, who said the guns were for security and not for killing. One witness said he heard EN say they were going to kill him because he was stopping them from killing. Another said that at its peak EN said people had become insane. He had to flee from Ngoga. EN fled from the *Interahamwe*.

196. Other defence evidence relied upon by Miss Ellis is the material obtained from the National Commission for the Fight Against Genocide (“CNLG”). It is summarised in Table D (Tab 3, Appendix 3, Table D, Page 84). In his evidence of March 1996 to the Judicial Police, Ndanga, the Brigadier in Mudasomwa, said EN recommended they protect the fugitives seeking refuge in the commune office. EN was told to take people to Gikongoro. Ndanga told Lake in October 2007 that he had been asked questions in relation to the prima facie case against EN by the Rwandan prosecutor. He told them the truth and that was not what they wanted to hear so he was told to go and think again. He had the impression they wanted him to lie.
197. One witness at the killing of the three deacons said EN asked what had happened. A witness called Mulisa said that, after the death of the President, EN held a meeting and told people to be careful and to avoid killing each other. Another two, Niyongize and Hanganimana said that the Mayor of Mudasomwa realised many people were killed at a particular roadblock and ordered it to be removed before it was put back by Ngoga, himself and others. Kalimanda explained that on 9th April the Mayor tried to stop the attackers from going to Nyamigina and Buhoro but he was overpowered. EN also tried to help some people to escape. Mutegaraba gave much detail about meetings held to plan the killings. He explains that the Mayor ordered the people sheltering in the commune office to be taken to Murambi. Karamage tried to stop the vehicle and kill them. On the Sunday people told the Mayor that the roadblocks were manned by criminals so he removed them and they were angry. He held meetings in Buhoro with Tutsi and Hutu.
198. Tab 3, Appendix 3, Table E at Page 89 is the summary of the documents relating to Gacaca proceedings against EN and others associated with him. The overall position in relation to the Gacaca proceedings is that it would appear he was tried twice once in Tare I and once in Tare II. He was convicted in the Tare I trial and acquitted in the Tare II one. No prosecution witnesses came forward against EN in the Tare II case. Both verdicts were overturned in the Gacaca Court of Appeal when it was discovered that proceedings had started in the ordinary courts. After the acquittal in Tare II the judges were spoken to by the Judicial Police, their statements are summarised in Table H.
199. The documents in evidence are very sparse case files and there is not much information for example about what the witnesses said when EN was tried. EN was tried for killings at Nyamigina at Kaganza Court and had as his accomplices Rwakayongza and Gashegu. He was accused of providing identity cards on the basis of ethnicity. In the Gasarenda Court papers he was accused of motivating people to commit genocide by chairing meetings in Buhoro and

Nyamgina with Rwakayonza. At the Sector Tare Gacaca Court of Appeal on 30th October 2008 ??? they realised that EN was being tried in the ordinary courts and the Gacaca Court recommended that the first instance court finding be cancelled so that prosecution would continue in the ordinary court. In the papers relating to the trial of Mr Mukamana in Tare II in May 2005, he is accused of setting up roadblocks with his accomplices EN and another. It is recorded that no one could confirm he did the crime and he was found not guilty.

200. Table F at Tab 3, Page 91 of the Submissions summarises the Gacaca documents that were found in relation to EN. Amongst other documents is a Defendant Form for Tare II which shows he is charged with inciting genocide by holding meetings with Rwakayonza, another form shows that after hearing witnesses he is acquitted of setting up roadblocks and distributing guns. That acquittal is then annulled by the Gacaca Court of Appeal. One of the members of the Gacaca court is Mutegaraba. Another form shows that he is accused of issuing identity cards on the basis of ethnicity. In the Defendant Form for Kitabi, it is alleged he set up roadblocks. The Tare I form shows that after hearing evidence from Gakunde in relation to chairing meetings aimed at committing genocide, setting up roadblocks to commit genocide and talking people into killings he is found guilty and sentenced to life imprisonment. One of the judges is shown as Mutegaraba who was a judge who acquitted him in the Tare II trial. The Tare I verdict is appealed and overturned by the Gacaca Court of Appeal on the basis he is being prosecuted in the ordinary courts.
201. Table G, Tab 3, Page 93 is a summary of the defence evidence in relation to EN's trial in Tare I. The charges are massacre of Tutsi at Nyamigina, setting up roadblocks with police, inciting people to commit genocide and issuing identity papers on the basis of ethnicity. He is convicted but not of the same charges and not of the massacre at Nyamigina. The Chairman of the Tare I Court Mugegaraba was interviewed by the police about the trial of EN in Tare II and she said the roadblock in Tare II was put there by EN and another Mukamana and she thought the decision to free EN was gained by tribalism. She did not know how EN got the decision of the court.
202. Table H at Tab 3, Page 95, is a summary of defence interviews with officials involved in the Gacaca proceedings in Tare I and Tare II. The local people trying the case defended their decision and said it was based on evidence.

Conclusion

203. I have considered what is a great deal of evidence both for and against the charges levelled at EN. I find that the witnesses are undermined to a greater extent (in the case of Rwakayonza) or a lesser extent (the three female witnesses), I consider they have to be cross examined to determine how much weight a court should attach to their evidence. This is not a case where the evidence is worthless. The defence case is complex and nuanced, there is strong evidence, for example, that EN assisted some Tutsis and protected them from being murdered but that does not offer a complete defence to the

charges. There are numerous examples of this happening in other genocide cases. I consider EN's case will require experienced and thorough investigators and lawyers who are properly funded to undertake the work and ensure that EN's defence is properly presented and that cross examination of the prosecution witnesses occurs. In short I find there is a case for EN to meet.

Deputy Senior District Judge Emma Arbuthnot
Deputy to the Chief Magistrate
22nd December 2015

