

THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

CASE NO.: ICTR-00-56-T
CHAMBER II

THE PROSECUTOR
OF THE TRIBUNAL

v.

AUGUSTIN NDINDILYIMANA
FRANÇOIS-XAVIER NZUWONEMEYE
INNOCENT SAGAHUTU
AUGUSTIN BIZIMUNGU

MONDAY, 7 FEBRUARY 2005

0920H

CONTINUED TRIAL

Before the Judges:

Joseph Asoka de Silva, Presiding
Taghrid Hikmet
Seon Ki Park

For the Registry:

Mr. Christopher Fry
Mr. Abraham Koshopa

For the Prosecution:

Mr. Ciré Aly Bâ
Mr. Segun Jegede
Mr. Moussa Sefon
Mr. Abubacarr Tambadou

For the Accused Augustin Ndindiliyimana:

Mr. Christopher Black

For the Accused François-Xavier Nzuwonemeye:

Ms. Danielle Girard

For the Accused Innocent Sagahutu:

Mr. Fabien Segatwa

For the Accused Augustin Bizimungu:

Mr. Gilles St-Laurent
Mr. Ronnie MacDonald

Court Reporters:

Ms. Leslie Todd
Mr. Petrus Chijarira

I N D E X

WITNESS

For the Prosecution:

WITNESS ANB

Examination-in-chief by Mr. Bâ 17

EXHIBITS

Exhibit No. P. 13 18

PROCEEDINGS

1

2 MR. PRESIDENT:

3 Good morning, ladies and gentlemen.

4

5 The Registrar may open the proceedings.

6 MR. FRY:

7 Thank you, Your Honour. Trial Chamber II of the International Criminal Tribunal for Rwanda, composed
8 of Judge Asoka de Silva, presiding, Judge Hikmet and Judge Park, is now sitting in open session today,
9 Monday, the 7th of February 2005, for the continuation of the trial in the matter of the Prosecutor versus
10 Ndindiliyimana et al, Case No. ICTR-2000-56-T. Thank you, Your Honour.

11 MR. PRESIDENT:

12 Parties, please enter their appearances for the Prosecution.

13 MR. BÂ:

14 Thank you, Mr. President. Mr. President, Your Honours, the Office of the Prosecutor is represented this
15 morning by Mr. Moussa Sefon, trial attorney, Mr. Segun Jegede, trial attorney,
16 Mr. Abubacarr Tambadou, legal officer, Ms. Rekkas Faria and Anne Bodley, case manager,
17 Ms. Karen Coppens, legal intern. My name is Ciré Aly Bâ. I am senior trial attorney. Thank you.

18 MR. PRESIDENT:

19 Appearances for the Defence, please.

20 MR. ST-LAURENT:

21 Good morning, Mr. President, good morning, Your Honours. I wish you a good day. Gilles St-Laurent,
22 lead counsel for the defence of Augustin Bizimungu, with Mr. Ronnie MacDonald, co-counsel.

23 MR. SEGATWA:

24 Good morning, Mr. President, good morning, Your Honours. The Defence for Innocent Sagahutu
25 consists of Mr. Fabien Segatwa, myself, lead counsel, and I'm assisted by Mathias Sahinkuye, legal
26 assistant. Thank you.

27 MR. BLACK:

28 Good morning, Mr. President. Christopher Black for General Ndindiliyimana, with
29 Professor Claver Sindyigaya and Cathleen Chun from Montreal. And I can now advise you that as of
30 Saturday I have received word that *Mesdames* Tiphaine Dickson has been appointed my co-counsel,
31 so I think she may arrive the end of this month. And if you see me a bit less enthusiastic than before, I
32 don't feel too well today, but I may ask your indulgence at some point, but I will try and struggle through
33 the day.

34 MS. GIRARD:

35 Good morning, Mr. President, Your Honours. Danielle Girard, co-counsel, and Coralie Colson, legal
36 assistant, for the Defence of François-Xavier Nzuwonemeye.

37

1 I would like to advise the Court that I have a motion, and I wish to present it before the hearing
2 commences.

3 MR. PRESIDENT:

4 Yes, Counsel. You can do it now.

5 MS. GIRARD:

6 It is oral motion for exclusion of Witness UB. On the 24th of January 2005, Defence for Nzuwonemeye
7 received statements for Witness UB from the Prosecutor. Before this date Witness UB had never
8 mentioned, in any of his five statements that he had made to the Office of the Prosecutor investigators,
9 any events on the recce battalion events. At the same time he had never mentioned that he was aware
10 of the recce battalion's existence. François-Xavier Nzuwonemeye's Defence is requesting exclusion of
11 Witness UB on his evidence on recce battalion events, for two reasons. The first reason is the --

12 THE ENGLISH INTERPRETER:

13 I'm sorry. I didn't get that, Counsel.

14 MS. GIRARD:

15 -- of this second -- this statement which has taken the Defence by surprise.

16
17 We have to indicate that the Defence has not the same means as the Office of the Prosecutor to carry
18 out investigations in such a short space of time. So the fact that we have not been able to proceed with
19 investigations on these new facts would prevent us from ensuring a full defence. The second reason is
20 that the events mentioned in this statement by UB, the statement of the 20th of January 2005, can in no
21 way relate to any points in the charges contained in the indictment against our client, nor do they relate
22 to any paragraphs within the brief -- the pre-trial brief. UB's allegations are to the effect that an
23 armoured car from the recce battalion was sent from Camp Kigali to shell Sebera's house -- Sebera's
24 family home for a period exceeding three hours, and that they failed to remove him from the said house,
25 and that he therefore subsequently escaped. It is unreasonable for the Prosecutor to expect that
26 defence teams should fend off new and surprising allegations being made by the Prosecutor in support
27 of his case and as presented in the indictment. The indictment was amended three times, and it is
28 reasonable to expect that after more than five years of investigations since our client was arrested, that
29 the Prosecutor should have included in his indictment all allegations relating to our client. The Defence
30 (*sic*) must also inform us of charges brought as quickly as possible in a concise manner so that the
31 Accused can respond to the charges and ensure full defence of his interests. We submit that by
32 admitting -- in admitting these new elements of evidence against our Accused, that this would
33 counteract the principles of an objective and fair relation between the indictment and judgement.

34
35 We submit that the Chamber should take into account Article 89(C), that it should admit any evidence
36 that is relevant and has probative value; that the Chamber also is entitled to exclude or reject any
37 evidence that is not relevant to the case. And, therefore, the Defence submits that UB's allegations,

1 Witness UB's allegations, can in no way be related to the charges as pleaded by the Prosecutor in the
2 indictment. And we cite relevant jurisprudence based on the case of Prosecutor against -- the
3 Prosecutor versus André Ntagerura, Case 89/86 T, considering the division or opinion of
4 Judge Dolenc. Rule 47, paragraph C, provides that the (*inaudible*) shall set forth the name and the
5 particulars of the suspect in a concise statement of the facts of the case and of the crime with which the
6 suspect is charged. The phrase "a concise statement of the facts of the crime" relates to the material
7 facts, considering the elements of the crime within the subject matter jurisdiction of the Tribunal, in
8 response with the requirement in Article 20, paragraph 4, paragraph A of the statute to promptly inform
9 the Accused of the cause of the charge against him.

10
11 We submit that this Chamber should adhere to the jurisprudence adopted by another composition of
12 Chamber II in the case of Government II, where testimony by a Prosecution witness was excluded
13 insofar as he was testifying on charges that were not mentioned in the indictment, and the Chamber
14 reasoned as follows: It is observed that there are no specific acts alleged against Casimir Bizimungu in
15 relation to the events that took place in the Ruhengeri *préfecture* in any part of the indictment. When
16 questioned by the Trial Chamber, the Prosecutor was unable to show the specific acts pled in the
17 indictment in respect of Casimir Bizimungu in the Ruhengeri *préfecture*. The Trial Chamber considers
18 that it is a requirement of the law that an indictment should contain a statement of material facts setting
19 out the specific acts with which the Accused is charged in sufficient detail to enable him to prepare his
20 defence. This forms the essence of a fair trial as provided by the provision of Article 20 of the Statute.

21
22 It is also important to note the jurisprudence of the court of appeal in the *Kupreskic* trial which was cited
23 in *Niyitegeka* and *Ntakirutimana* which reasoned as follows: An indictment shall, pursuant to
24 Article 18, paragraph 4 of the statute, contain a concise statement of the facts and the crime or the
25 crime with which the Accused is charged. Similarly, Rule 47, paragraph C of the rules provides that an
26 indictment, apart from the name and particulars of the suspect, shall set forth a concise statement of
27 the facts of the case. The prosecution's obligation to set out concisely the facts of its case in the
28 indictment must be interpreted in conjunction with Article 21, paragraph 2 and 4, paragraph A and B of
29 the statute. These provisions state that in the determination of any charge against him, an accused is
30 entitled to a fair hearing, and, more particularly, to be informed of the nature and cause of the charge
31 against him and to have adequate time and facilities for the preparation of his defence.

32
33 In the jurisprudence of the Tribunal, this translated into an obligation on the part of the Prosecution to
34 state the material facts underpinning the charge in the indictment but not the evidence by which such
35 material facts are to be proven. Hence, the question of whether an indictment is pled with sufficient
36 particularity is dependent upon whether it sets out the material facts of the Prosecution case with
37 enough details to inform a defendant -- to inform the defendant clearly of the charge against him and so

1 that he may prepare his defence.
2

3 And coming back to the issue at hand, UB's allegations that an armoured vehicle from the recce
4 battalion shelled the house of one Sebera and his family towards the end of April 1994, and that this
5 family -- this man escaped subsequently, these are not facts that are being charged to my client under
6 Article 6(A) of the statute, insofar as his name is not mentioned. In addition, these allegations cannot
7 be made under Article 6(iii), because in order for him to defend himself as a superior or leader, this
8 accusation should give names of subordinates, the date and place and hierarchical link between them,
9 as recommended by the jurisprudence of this Tribunal in the *Cyangugu* case; namely, superior
10 responsibility, pursuant to Article 6, paragraph 3; then it is essential for the count to refer to the
11 paragraph describing the relationship between the accused and the alleged subordinate, the basis for
12 the alleged knowledge of the accused and the alleged failure to prevent the crime or to punish the
13 subordinate. And in the same judgement, the Chamber added that the accused must be informed not
14 only of his own alleged conduct giving rise to criminal responsibility but also of the facts and crimes of
15 his alleged subordinates or accomplice. Pleading accomplice or superior responsibility does not
16 obviate the Prosecution's obligation to particularise the underlying evidence for which it seeks to hold
17 the accused responsible.
18

19 The Defence therefore submits that the appropriate remedy to this prejudice which has been caused to
20 the Defence under these circumstances is exclusion of Witness UB's statements with relation to the
21 recce battalion. The Defence submits that Witness UB should not be authorised or allowed by this
22 Chamber to testify on new facts which were not alleged in the indictment. And we therefore request
23 this Court to adhere to the jurisprudence which was established in *Government II, Kupreskic,*
24 *Ntakirutimana* and *Casimir Bizimungu*.

25 MR. ST-LAURENT:

26 Mr. President, Gilles St-Laurent for the Defence of Bizimungu. We do support our learned friend's
27 motion, and I would like to add some things that may not please my learned friend on the other side.
28 We are still dealing with another problem. It relates to the disclosure of documents on witnesses which
29 are presented by the Prosecutor. Let me begin again, Mr. President. For the reasons expressed by my
30 learned friend and which we adhere to. But there is another problem which may threaten the
31 proceedings. I'm sorry to sound as if I'm being too fastidious, but it is in relation to disclosure of
32 material by the Office the Prosecutor with regard to the evidence of the witness. But you have to be
33 aware that we are not availed of the same resources as the Office of the Prosecutor, and as far as we
34 are concerned, the preparations for hearings of witnesses takes up all of our time and energy, and at
35 times we note that we are not given months of -- we are not given evidence in languages that
36 correspond to those of the Tribunal. And since this is an issue that is topical, we have letters and
37 correspondence of all sorts that were part of the disclosure of the Prosecution. And so it is a bit hard

1 for me to understand how he can be obliged to disclose his evidence, which is perfectly logical, since
2 the Defence must be able to give full answer and defence -- so how can they be obliged to disclose
3 evidence and the evidence not be disclosed in one of the two official languages of the Tribunal? We
4 must find a solution to this problem, Mr. President, because you are going to have all sorts of motions
5 for staying evidence, constantly requests by the Defence to have time to prepare, which is not in the
6 interests of proper administration and justice.

7
8 So I support my learned friend's motion on Mr. Bizimungu's behalf. And in the specific preparation of
9 Witness UB, documents are missing or are only available in Kinyarwanda, and we are talking about 500
10 to 600 pages that were disclosed to us.

11 MR. SEGATWA:

12 Mr. President, I had also prepared an oral motion to reject the tardy evidence disclosed by the
13 Prosecutor in respect of Witness UB. I thought I had said -- would do it just before the witness
14 appeared, but since the question has arisen now, I should also prefer to seize this opportunity to raise
15 my oral motion in that respect. The Defence -- insofar as Sagahutu's defence is concerned is that,
16 whereas we wish to ensure the defence of the Accused on the basis of the amended indictment, the
17 preliminary statement and the -- the preliminary statements already disclosed on the 12th of August,
18 12th of October, 23rd of November and witness statements before this Honourable Court, the
19 Prosecutor shows that he has not yet concluded his investigations and feels that he is entitled to
20 introduce statements without respecting the time limits imposed by the Rules and by precedent.

21
22 The trial termed *Military II* began the 24th of September 2004. On the 27th of October 2004, the
23 Prosecution filed with the Registry the list of witnesses to be called during the second session which
24 began on the 10th of January 2005. On the 27th of January 2005, the Prosecutor provided to the
25 defence an additional statement by Witness UB, and on the 31st of October he also disclosed --
26 provided another statement by Witness UB under K0338725 to 27. That was K03387825 up to 827.
27 This tardy disclosure is in violation of Article 20(4)(b) of the Statute, which provides that any person
28 against whom a charge is leveled pursuant to the present Statute shall be entitled to the following
29 minimum guarantees in full equality. It is also in violation of 66 -- Rule 66 that provides that the
30 Prosecutor provides the Defence -- the Prosecutor shall disclose to the Defence no later than 60 days
31 before the date set for trial. So that's Rule 66(A)(ii), it being understood that a trial chamber may order
32 that copies of the statement of additional prosecution witnesses be made available to the defence
33 within a prescribed time. In French it's in a lesser time limit. We discussed this in September 2004,
34 and so as not to go over it all again now, inasmuch as the Tribunal has already ruled on the 3rd of
35 November 2004 and granted the Prosecutor 35 days to disclose the witness statements before the
36 session during which the witness is to be called -- is listed to be called. Since the Prosecutor did not
37 appeal against that decision, he has formally acquiesced.

1 Might I also recall that this decision by the Court was to introduce more flexibility to Rule 66, as I read it.
2 The need to provide full answer and defence presupposes sufficient preparation, which can only be
3 ensured when the Defence has minimum adequate time to do so. Consequently, tardy disclosure by
4 the Prosecution of witness statements violates the Defence's rights as enshrined in Article 20 of the
5 statute. Hence, the Prosecutor places Innocent Sagahutu's Defence in the position of not being able to
6 provide full answer and defence.

7
8 The other grounds for my oral motion is to rejecting (*as interpreted*) a statement by UB because of lack
9 of interest. Mr. President, reading through the additional statements, Defence realised that the
10 statement taken from the witness on 15th December 2004 targets a part that Ngirumpatse might have
11 played as well as Yusuf Munyaikazi and *Préfet* Bagambiki in a massacre of Tutsis at Bisesero. Now,
12 none of the aforementioned are named in our trial. Mathieu Ngirumpatse is appearing before the
13 Tribunal in another matter, Yusuf Munyaikazi is awaiting trial, and *Préfet* Bagambiki was acquitted of the
14 charges leveled against him and is currently facing appeal by the Prosecution, an appeal from that
15 judgement, by the Prosecution. So let us not -- let us avoid any confusion. They are not being
16 prosecuted here. Innocent Sagahutu's Defence does not see the opportunist (*as interpreted*) of those
17 statements in this trial and asks the Honourable Chamber to reject them as regards redress. It is
18 understood that the tardy communication of Prosecution witness's statements gives the Defence
19 serious problems of preparation, and as my distinguished good friend has said, we have less means
20 than the Prosecution. So we ask the Bench for redress as provided under Article 5 of the -- Rule 5 of
21 the Rules of Procedure and Evidence, which provides that Judges take adequate measures to grant
22 relief where necessary. And this remedy, we feel, would be to reject the statements introduced by on
23 the Prosecution on the 25th and 31st of January 2005. The request is legitimate and we are sure that
24 you will grant it. Thank you.

25 MR. BLACK:

26 Mr. President, I would -- I'm waiting for you. Sorry.

27 MR. PRESIDENT:

28 Yes. Yes.

29 MR. BLACK:

30 Sorry. I would like to support the motion as well, and I wish to echo everything my friends have said so
31 far. I won't waste your time repeating it. From our, General Ndindilyimana's point of view, we received
32 on the 31st of January similar information adding two new fact allegations against
33 General Ndindilyimana concerning gendarmes in Nyamirambo which would require us some months to
34 investigate to see what the facts really were and to find witnesses to contradict what this witness
35 purports to say. Therefore, this witness cannot be allowed to come here and testify about those facts,
36 because this whole trial will be delayed in order for us to cross-examine him. So it is best, as my
37 friends have said, not to allow him to testify about these facts at all. They are not even included in the

1 indictment against us either.

2
3 Another fact we have to take into account is I received word yesterday from Professor Peter Erlinder in
4 the *Military I* trial. He represents -- he is lead counsel for a man named Ntabakuzi. Their lead
5 investigator, who is a Rwandan, has been threatened by the regime in Kigali, and their contacts in
6 Rwanda have been arrested, threatened with death if they cooperate with the Defence team, and the
7 threats are of such a nature that the investigator has now received -- applied for refugee status in
8 France because he no longer even feels safe in Africa, Arusha or anywhere else. So that gives you
9 some idea what the present circumstances are and how almost impossible it is for the Defence to
10 prepare their case -- a full answer and defence in these cases, with investigators threatened, with
11 potential witnesses picked up by the police after being interviewed by Defence teams and threatened.
12 It is in fact impossible to have a fair trial here. So I wish you to take that into consideration when
13 considering the submissions about this particular motion. But it certainly cannot continue with UB
14 adding new allegations against everybody here. And in my submission, it would be impossible --
15 almost impossible, probably impossible, to investigate these new charges and prepare a defence.

16 Thank you.

17 MR. PRESIDENT:

18 Yes, Mr. Prosecutor.

19 MR. BÂ:

20 Thank you, Mr. President. I think that two concerns have been expressed here by the Defence.
21 Apparently Counsel Girard had a very hard-working weekend and we congratulate her for that, but I
22 think she has put the cart before the horse. She wants to exclude parts of UB's evidence whereas he is
23 not yet here and he is not appearing before you, which is a bit unrealistic, I think. And what we
24 disclosed was a will-say, which is very common practice. And in *Bagosora et al*, the Bench ruled
25 several times on will-says, refused to reject them, saying that they would be assessed when the time
26 came to deliberate on the merits. Whereas, as regards the 15 December statement by UB, it was the
27 statement taken by *Government I*, Mathieu Ngirumpatse et al. And since Article 6(vi) obliges us to
28 disclose all witness statements, we also disclosed that to you. We can't -- if the statement is taken on
29 the 15th of December, we can't disclose it in September or November. It is subsequent to giving them
30 the statement, but it is not a statement we are going to use here, but we are obliged to disclose it to
31 you. If we hadn't disclosed it, you would have accused us of non-disclosure. It was taken by the
32 *Government I* team in the course of events, and we gave disclosure to you, which is clear evidence of
33 our good faith. And a witness can very well come to the box and say things that weren't contained in
34 his written statement. I refer you to the decision in *Prosecutor versus Niyitegeka* on the
35 16th of May 2003. In paragraph 44, it says a witness can, in testifying, reveal facts that had not been
36 disclosed before. Matters of disclosure or notice of disclosure have to be assessed in relation to each
37 allegation should the need arise. That judgement of the 16th of May 2003 was confirmed by the

1 Chamber of appeal on the 9th of July 2004. And will-says, I will refer you to the president of Trial
2 Chamber I -- will-says are normal practice before this Tribunal. So I don't see that there has been any
3 prejudice. The statement of the 15th of December we don't intend to use. We are obliged to disclose it
4 to you, which is why we have disclosed it to you because it was taken by another team, the
5 *Government I* team. And as regards to will-says, we will provide all precedence. In *Bagosora et al*, it
6 was practically a daily occurrence and the Trial Chamber refused to reject them. Those are the
7 comments I had to make, Mr. President.

8
9 And, once again, let me say they only need to wait for UB to come and testify and tell us after he's
10 testified as to what passages they consider relevant and those which are not relevant or pertinent. But
11 he has not yet appeared, and it is premature for them to say anything on that score. And if they say
12 that the allegations in the will-say are not in relation to any item in the indictment, that is also not true,
13 because there is Article 3, crimes against humanity, in the indictment. And if we don't ascribe any fact
14 to Nzuwonemeye or Sagahutu, we have to prove the general and systematic nature of the attacks. In
15 that respect, the statement is quite pertinent. Thank you, Mr. President.

16 MR. SEGATWA:

17 If you would allow me, Mr. President, I would briefly like to respond to the Prosecutor. Mr. President, I
18 thank the Prosecutor, since he has not awaited your decision, to tell us that he will not be using this
19 15th December statement which concerns other people not concerned in the present trial. However, I
20 have stood up to put a question -- a fundamental question to the Trial Chamber as to the -- what is the
21 fate of the rulings handed down by the Trial Chamber on oral or written motions in ruling on a written
22 Defence motion. This is Sagahutu's written Defence motion, and after debate, a somewhat stormy
23 debate even, gave the Prosecutor 35 days to disclose the statements of the witnesses that he intends
24 to call in each session. We only ask for the respect of that decision. And a decision which is not
25 followed by taking effect is not relevant. And your decision which has a value of *res judicata* because
26 there was no appeal against it, that decision should be respected by the Prosecution. Thank you.

27 MR. BÂ:

28 Mr. President, with your permission, a short response. We have violated no Court ruling. Ciré Aly Bâ.
29 We have violated no Trial Chamber ruling. If you agree that -- if you agree that the statements taken by
30 other teams from witnesses that are to apply here, you don't want us to disclose their statements to
31 you, we won't. If you dispense us with that obligation, we won't fulfill it. But there is no way we could
32 have disclosed a statement taken in December, in November or in October. I should think you had
33 better --

34 MR. PRESIDENT:

35 When was it disclosed? On the 20th of January?

36 MR. BÂ:

37 The 31st of January. But the case manager discovered it on -- at the end of January. The case

1 manager -- the case manager discovered it at the end of January, but it's not a statement that our team
2 took. It was a statement taken by the team in *Government I*.

3 MR. PRESIDENT:

4 Mr. Defence -- Defence Counsels, what I understand is the Prosecution is only discharging their
5 obligation with regard to disclosures. So they are not going to rely on this statement as such. So in
6 these circumstances, I think we will have to -- I think your application is a little premature.

7 MR. BLACK:

8 If I might make a small response as well. Firstly, it's not a will-say; it's a natural statement. Not a
9 will-say -- it's a natural statement by the witness signed. Secondly, why disclose it if they are not going
10 to use it? What is the point?

11 MR. PRESIDENT:

12 No.

13 MR. BLACK:

14 I think they are only disclosing it because they intend to have these witnesses say these things.

15 MR. PRESIDENT:

16 No. What Mr. Bâ said was if they had not disclosed, there would be an allegation that there is this
17 statement but they had not disclosed it. So to get over that difficulty, they have disclosed. So since
18 they say they are not going to rely on it, I think your application is premature. We'll see what they are
19 going to do with it.

20 MR. BLACK:

21 Well, it's not premature because -- Ms. Girard's motion is not premature because if we can get an
22 undertaking right now from Mr. Bâ that he will not ask his witness any questions on his
23 examination-in-chief on these areas and the witness will never talk about it, then of course, it's no
24 problem, but he won't give us that undertaking, in which case we need an order that he just can't do
25 that, and that will solve the problem before it ever occurs. Because once the witness is in the box and
26 the question slips out, the testimony is going to slip out very quickly, and it's going to be too late.

27 MR. PRESIDENT:

28 But in response to one of your questions, if he comes out with that --

29 MR. BLACK:

30 Then I will be careful to stay away from Nyamirambo -- that town. I won't ask those questions. But if he
31 asks those questions -- I mean, he can control his witness more than I can.

32 MR. PRESIDENT:

33 Please, Mr. Bâ, you are not going to rely on the testimony -- on the 20th statement of this witness which
34 is dated the 15th of December?

35 MR. BÂ:

36 Mr. President, the 15th of December statement taken by the *Government I* team, is one which we do
37 not intend to use. However, there is a will-say. The will-say we will be using.

1 MR. PRESIDENT:

2 So, Mr. Bâ, shall I put it on record that you will not be reading the statements of this witness which is
3 recorded on the 15th of December?

4 MR. BÂ:

5 Quite, Mr. President. Quite.

6 MR. BLACK:

7 And how about the one given on the 20th of January this year concerning my client?

8 MR. PRESIDENT:

9 Yes, I think along the same lines, they will not rely on that too.

10 MR. BLACK:

11 All right. And if the witness --

12 MR. BÂ:

13 However, the will-say, we will use. And I tell you that is normal practice. I refer you to the decision on
14 the admissibility of evidence of Witness DBQ, the *Prosecutor versus Bagosora et al*,
15 18th of November 2003; decision on admissibility of evidence of Witness DP, *Prosecutor versus*
16 *Bagosora et al*, 18 November 2003; decision on certification of appeal concerning will-say statement of
17 witness DPQ, DP and DA, *Prosecutor versus Bagosora et al*, 5th of December 2003. It is normal
18 practice in this Tribunal. We do not use the 15 December statement; we only disclosed it because we
19 are obliged to, but the will-say we will use. And if you want afterwards to raise a motion for exclusion of
20 evidence, we will come to that, and then we will answer it.

21 MR. SEGATWA:

22 Thank you, Mr. President. Segatwa, Fabien, counsel for Sagahutu. I was saying that is why
23 Sagahutu -- Innocent Sagahutu's Defence raised the oral motion concerning delays in disclosure.
24 We're not presently discussing whether will-says are admissible or not. We are saying that even
25 will-says must be disclosed within the time limits in your ruling for us to be able to have the time needed
26 to find counterevidence, and that's why we reject it, because this will-say declaration -- will-say
27 statement was entered too late or disclosed too late.

28 MS. GIRARD:

29 Mr. President, as regards the time limit, it is -- the Rules require that we present or raise a motion or
30 motions to exclude as early as possible and not when the witness comes to testify. I think that we are --
31 the Trial Chamber is of the view that an objection of this type should have been raised as soon as
32 possible; at the minimum before the commencement of the evidence of the disputed witnesses.

33

34 And then with respect to this new witness, the Prosecution has said that with regard to the charges
35 which are leveled at all of the Accused, that they could implicate my client using UB's testimony, but we
36 submit that UB's testimony would be added to charges against my client which are not contained in this
37 indictment, and the Prosecutor with regards to Witness UB had not linked my client with respect to UB's

1 testimony in *Ntagerera, André*.

2 MR. BLACK:

3 One more comment from myself, Mr. President. First of all, what does Mr. Bâ mean by he is going to
4 use a will-say statement? A will-say statement is only an indication of what a witness will say. It can't
5 be used in any way. It's just an indication to us of what he is expected to say. So what does he mean
6 by saying he is going to use it? I don't understand what he means by that. And this is very dangerous
7 because I think -- off the top of my head, I might be wrong, but I think in the *Ntakirutimana* case,
8 Mr. Ntakirutimana younger was convicted, he got life imprisonment for a slight -- a passing mention by
9 a witness about a murder he saw this man do; it was never in the indictment, it was never questioned
10 on by the Prosecution, never cross-examined by the Defence -- it was just a passing remark -- and on
11 that passing remark, Mr. Ntakirutimana was convicted. And yet they purport to bring in new allegations
12 against all these people, all the clients here, all the Accused here, and they treat it as if it's nothing, and
13 they won't give us a guarantee that they won't ask this witness about these facts. He said he's going to
14 use it -- he won't tell us what he means by that --

15 MR. PRESIDENT:

16 Since the assurance is given that these are given for the purpose of fulfilling their obligations, I think as
17 and when the matters arise, we will look into it and make our decisions on that.

18 MR. BLACK:

19 Well, perhaps you could ask Mr. Bâ what he means, because it is very murky right now what he means
20 when he says he is going to use the will-say statement. I have no idea what that means.

21 MR. PRESIDENT:

22 Mr. Bâ, Mr. Black says you are still relying -- even though you say that you are going to use it, but in a
23 different way that you are going to use it. That is what he says. What is your response to that?

24 MR. BÂ:

25 We have given them notice -- that is all we did -- of additional statements that could have been made by
26 the witness. And if we are asked to withdraw them, I have to turn the question on them: How do we
27 withdraw our notice of something that is yet to happen? And once again, I must say that this is
28 standard practice before this Tribunal.

29 MS. GIRARD:

30 Mr. President.

31 MR. ST-LAURENT:

32 With your leave, not all will-say statements have the same bearing. If we go along with the
33 Prosecutor's argument, just before a witness is heard, he is to be allowed to produce a will-say which
34 would introduce new allegations on one of the Accused's responsibility in a reprehensible act. So
35 whether the witness comes to add, to refine, to adjust a statement previously made under the guise of
36 details, well, this is new information to the trial at hand. And I submit that we should scrutinise -- this
37 Trial Chamber should scrutinise and examine the manner in which this evidence could compromise the

1 Defence's ability to counteract -- to counter new evidence that has been brought in by the Prosecution.
2 And I respectfully submit that this is quite another matter than just a witness making a few additional
3 remarks to his statements.

4
5 Secondly, Mr. President, the Defence is entitled to expect the witness to come and testify based on the
6 evidence that has been disclosed. The objective of UB's testimony is unfounded with regard to these
7 statements that have been given to us on this witness. If we are to go along with the Prosecutor, that is
8 to say that new facts will be brought in to incriminate people who up to now have not been incriminated
9 and which would impair a full answer and defence.

10 MR. PRESIDENT:

11 In response to the -- in response to the objections raised by the Defence, Counsel for the Prosecution
12 submitted that these disclosures were made to fulfill the obligations on their part. Counsel further states
13 that the statement was recorded on the 15th of December, and there was no way that they could have
14 disclosed this prior to that, and the case manager has discovered this statement which had been
15 recorded for the purpose of the *Government I* case, and to discharge their obligations they have
16 disclosed this statement to the Defence. The Defence has raised the objection that because of this
17 disclosure, that new material has come in and therefore there is -- that they need further time for the
18 purpose of investigating the material that is disclosed in this statement which is on the
19 15th of December. In the circumstances -- in these circumstances, we say that the material referred to
20 in the statement -- the new material referred to in the statement of the 15th of December cannot be
21 used for the purpose of examination-in-chief.

22
23 Yes, Mr. Bâ. Now you can call your next witness.

24 MR. BLACK:

25 Mr. President, could you include the statement made against my client dated January 20th in the same
26 order?

27 MR. PRESIDENT:

28 Yes, the same order will apply.

29 MR. BÂ:

30 Mr. President, these are two different matters. There is the statement of the 15th of December which
31 was taken in *Government I* and which does not concern their clients. We do not intend to use it. We
32 just did our duty in disclosing it. But there is a will-say and it was already used with Witness DA, and
33 that will-say we will question the witness on it -- on the facts contained therein. And this is in keeping
34 with the decision by Chamber I and which is in keeping with standard practice within this Tribunal.

35 MR. PRESIDENT:

36 (*Overlapping microphones*) ... will apply to the 20th --
37

1 MR. BÂ:

2 That is not a statement, per se. It is some supplementary points which the witness is explaining or
3 expanding on. And it was a will-say that was disclosed to the Trial Chamber as well as to the Defence,
4 and this disclosure was made and it raised no objection at the time. So no objection was raised at the
5 time.

6 MS. GIRARD:

7 Mr. President, Danielle Girard. With regard to UB's new statement dated 20th January, it is not
8 information that is complementary. It is bringing in changes to the charges brought against our client;
9 that is, that a house was shelled; and it links up with no other paragraph in the indictment. And I would
10 like the Prosecutor to tell us in what manner this links with the indictment as regards the shelling of the
11 house. I am talking about the case of Casimir Bizimungu, where the general nature was rejected
12 because it was requested that the *préfecture* of Ruhengeri be specified. It was considered that
13 Ruhengeri could not be included in the charges brought against the Accused, but after the testimony --
14 it is not after the testimony that this type of motion can be made. We want to exclude his testimony
15 because it has no link whatsoever.

16 MR. BÂ:

17 The problem is the Chamber is not talking about the issues he is going to testify on. The Chamber is
18 not referring to the indictment to know how it links up with the indictment, but I wonder how such an
19 objection can be raised. Following the testimony, you will make a motion for exclusion, we will respond,
20 and the Chamber will assess.

21 MR. SEGATWA:

22 Counsel Segatwa, Fabien. I'm putting the same question, which is fundamental. Once a decision is
23 rendered by the Chamber, are the parties authorised to discuss that matter unless they disagree and
24 therefore wish to appeal? I insist that you have already rendered your decision, and whichever party is
25 not pleased with that can make an appeal.

26 MR. BLACK:

27 Mr. President, I don't think you have made a decision with regards to the 20th of January statement,
28 which is why we are on our feet again. It's quite evident that Mr. Bâ has a distinction in his mind. He
29 has agreed to your order about the 20th, but he intends to use the 20th of January statement, and it's
30 not a will-say; it's a natural statement signed by the witness. And it includes two new allegations about
31 gendarmes being involved in killing people in Nyamirambo, which we've never seen before. They can't
32 be allowed to bring this in, because it's not in the indictment. It has no bearing on the case whatsoever.
33 And his position that, well, if the witness comes out with it, you can make a motion after the fact, it's too
34 late now; it is in your heads. And you can't -- I mean, you maybe can try to exclude it, but it's going to
35 be sitting there for the next couple of years, and we can't permit that. We've got no way of being able to
36 cross-examine the witness on these points if it comes out in his testimony, we can't prepare the case to
37 defend it, and it is not in the indictment. It can't be allowed. And the same order, Mr. President,

1 respectfully, must be applied to this 20th of January statement. It is the most important one.

2 MR. BÂ:

3 Mr. President, Counsel Bâ. I think it is a fundamental issue and it deserves a written decision to avoid
4 any confusion or contradiction between various chambers' decisions, and I told you this is standard
5 practice in Trial Chambers and that a Trial Chamber has already rendered a decision on it. Whether
6 you share this view or not, you may take a decision, but I think that this is something that requires some
7 thought and a written decision.

8 MR. PRESIDENT:

9 I think we will take the break now and come and give a decision on that once we resume. The
10 Chamber is adjourned for 10 minutes.

11 *(Court recessed at 1032H)*

12 *(Pages 1 to 14 by Leslie Todd)*

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1 (Court resumed at 1045H)

2 MR. PRESIDENT:

3 Mr. Bâ, one question. Well, when do you propose to call this Witness UB?

4 MR. BÂ:

5 Probably tomorrow, after the witness we have today.

6 MR. PRESIDENT:

7 If it is going to be tomorrow, I think there will not be sufficient time for them if you are going to utilise the
8 twentieth statement as a will-say statement, because we recall that at least 35 days' notice must be
9 given to the other side, if you are going to use that statement tomorrow. So there is a solution. If you
10 can push this witness further down, then I think the problem could be solved.

11 MR. BÂ:

12 Yes, Mr. President, we could push it back, but they had this since the 31st of January - - yes, since the
13 31st of January, but we push this back.

14 MR. PRESIDENT:

15 (Microphone not activated) So there are only seven days. So I think the best thing is to push him down,
16 bring another witness where you have given sufficient time to them. So that will solve the problem.

17 MR. BÂ:

18 We will do so. And what date would be convenient for them?

19 MR. ST-LAURENT:

20 Mr. President, could you - - should we give you a couple of minutes to confer? Would you give a few
21 minutes to the Defence teams to confer? Do we have your permission for the Defence lawyers to
22 consult for two minutes?

23 MR. PRESIDENT:

24 The time limit will be decided by us, but you can consult them.

25 MR. ST-LAURENT:

26 Thank you.

27 MR. PRESIDENT:

28 Yes, Mr. Bâ, I think if you -- you are free to call that witness tomorrow if you want to, but then we will not
29 permit you to use the statement, but if you push the witness down, then we will - - the Defence will have
30 sufficient time, and I think since you have tendered or disclosed this statement on the 31st, the witness
31 could be brought in within the first week of March, when they have sufficient time. Then - - with regard
32 to this witness. Since you have other twenty witnesses lined up, you may as you have said you may
33 adjust your schedule and bring some other witness.

34 MR. BÂ:

35 We will do so, Mr. President.

36 MR. PRESIDENT:

37 Yes, since Mr. - - with regard to the 20th statement dated 20th January, Mr. Bâ says that that was

1 disclosed and handed over to the Defence on the 31st of January and the Chamber observes that this
2 witness was lined up to give evidence tomorrow, this is the 8th of February. However, the Chamber
3 indicated to the Prosecution that since no sufficient notice had been given to the Defence, they are free
4 to bring this witness on the 2nd, but they will not be permitted to refer to the statement of the 20th.
5 However, the Chamber also indicated to the Prosecution that if they give sufficient time to the Defence,
6 they could re-schedule the calling of witnesses and call this witness somewhere in March.

7
8 So I think in the light of this decision, I think the matter is resolved. Prosecution is permitted to call their
9 next witness now.

10 MR. BLACK:

11 Mr. President, before my friend does that, I would like to ask your indulgence. I am not feeling well at
12 all. And I was trying to come today and not waste your time. What - - I can suggest this; I am prepared
13 - - I think I can stand through the examination-in-chief if my friend wants to do that.

14 MR. PRESIDENT:

15 We will permit --

16 MR. BLACK:

17 And then start the cross-examination tomorrow. Or he may not want to do that, I don't know, but --

18 MR. PRESIDENT:

19 Since the witness is here, we will record the evidence. If you are not feeling well; you may -- I think
20 your colleagues will look after you. We will give you your turn to cross-examine the witness.

21 MR. BLACK:

22 I think, the fact is I may be the only one cross-examining this witness, which is the problem.

23 MR. PRESIDENT:

24 If that is so, I will postpone the cross-examination until tomorrow.

25 MR. BLACK:

26 Thank you, very much. I will appreciate that.

27 MR. PRESIDENT:

28 You may call him.

29 MR. ST-LAURENT:

30 With your leave, Mr. President, before we continue, Gilles St-Laurent for the Defence of
31 Augustin Bizimungu. I would like to clarify something. If I am not mistaken, if we are not going to have
32 UB appearing, there is Witness GAP. If we follow the list, it is GAP, and I wanted to make my
33 representations on the testimony of this witness for reasons I will express after this witness has been
34 heard. I just want to tell you for now we lack so many documents, documents that should have been
35 disclosed, and this is a witness who is very crucial for our Defence and, I therefore ask for an additional
36 week's preparation and that there be a stay in the proceedings in hearing this witness, unless my
37 learned friend on the other side would assist me, as is his custom, by making another witness appear.

1 MR. PRESIDENT:

2 I think, Counsel, you must give a list of the documents to the Prosecution and say that these are
3 documents that are necessary; otherwise, they will not know. If you give - - make a general statement
4 that you need certain documents, they may not know. If you give a list of the documents, sometimes
5 they might say whether they have the documents or we do not know whether they have the documents
6 with them to disclose. If you can do that in the course of the day, I think at lunch, we may be able to
7 resolve this matter.

8 MR. ST-LAURENT:

9 I will certainly do so, Mr. President. You understand that we had come to hear part of this testimony, so
10 I had not brought the documents with me. But I think that in the course of the day, I will be in a position
11 to present such documents to you.

12 MR. PRESIDENT:

13 The witness who is going to come tomorrow, not this witness.

14

15 Yes, Mr. Counsel, you may --

16 MR. BÂ:

17 Mr. President, which solution would you prefer, that the witness be sworn in now or - - would you rather
18 the witness is sworn in now or after identification? Which solution would you prefer?

19 MR. PRESIDENT:

20 Yes, you follow the normal practice.

21

22 Mr. Registrar, you may swear the witness.

23 *(Declaration made by Witness ANB in Kinyarwanda)*

24 MR. KOSHOPA:

25 Thank you.

26

WITNESS ANB,

27

first having been duly sworn,

28

testified as follows:

29

EXAMINATION-IN-CHIEF

30 BY MR. BÂ:

31 Q. Witness ANB, good morning.

32 A. Good morning, Counsel.

33 Q. Do you have before you a form which has some type-written text on it?

34 A. Yes.

35 MR. BÂ:

36 Mr. President, I would like one of the Kinyarwanda interpreters to come and assist the witness in
37 reading the information contained in that form.

1 MR. PRESIDENT:

2 The Kinyarwanda interpreter come, please.

3

4 Mr. Black, if you are not feeling well you are free to go now.

5 MR. BLACK:

6 I have no co-counsel, so I think I have to stay to listen to the testimony. I will -- I think I am capable of
7 doing that and it's just my -- I don't want to waste your time, I mean everybody's time.

8 BY MR. BÂ:

9 Q. Witness ANB, the information on this document, was it read and translated to you?

10 A. Yes and it was read to me in a language that I understand.

11 Q. Would you say that this information corresponds to your details?

12 A. Yes.

13 Q. There is a signature appended at the bottom of that document; is that your signature?

14 A. It is my signature.

15 MR. BÂ:

16 Thank you. Mr. President, I would like this exhibit to be recorded as Prosecution Exhibit P. 13 and
17 under seal, to be placed under seal.

18 MR. PRESIDENT:

19 Yes, this document may be marked as P. 13, and should be kept under seal.

20 *(Exhibit No. P. 13 admitted, under seal)*

21 MR. BÂ:

22 Mr. President, I would like you to issue an order for a closed session that will not exceed five minutes
23 because I am going to deal with matters that may relate to the witness's identity and as well as other
24 Prosecution witnesses.

25 THE ENGLISH INTERPRETER:

26 Your Honour, your microphone

27 MR. PRESIDENT:

28 On the application of the Prosecutor, I declare that the sessions will be closed for five minutes for the
29 purpose of recording the identity of the witness.

30 *(At this point in the proceedings, a portion of the transcript [pages 19 to 20] was extracted and sealed
31 under separate cover, as the session was heard in camera)*

32 *(Pages 15 to 18 by Petrus Chijarira)*

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1 BY MR. BÂ:

2 Q. Witness, in which country were you living in April 1994?

3 A. I was living in Rwanda.

4 Q. In which -- at what place in Rwanda exactly?

5 A. I was living at Matyazo.

6 MR. BÂ:

7 Matyazo is number 8 on the names of groups and places, M-A-T-Y-A-Z-O.

8 BY MR. BÂ:

9 Q. What sort of administrative entity was Matyazo, a *cellule*, *secteur* or a *commune* or a *préfecture*?

10 A. It was a *secteur*.

11 Q. And which *commune* is Matyazo in?

12 A. It was in Ngoma *commune*.

13 Q. And under which *préfecture* was Ngoma *commune* in?

14 A. Butare *préfecture*.

15 Q. How far from Butare is Matyazo?

16 A. Matyazo is approximately four kilometers from the *préfecture*.

17 Q. Witness ANB, in April 1994, how did you learn of the death of President Juvénal Habyarimana?

18 A. On the night of the 6th of April 1994, we learned of the president's death in an airplane accident having
19 crashed. We heard it over Radio Rwanda.

20 Q. How was the news of his death taken in Matyazo?

21 A. That announcement was heard with a great astonishment.

22 Q. And further?

23 A. Well, the population was afraid and the next day, the 7th, we were forbidden from leaving our homes.

24 No one could go out or even stand in the gate of his residence.

25 Q. Did you stay in Matyazo throughout April 1994?

26 A. No, I did not stay in Matyazo. I was in very advanced pregnancy and it was a problem for me. I had to
27 give birth. Kabeza called us to know whether I had already given birth or not, and came to take me
28 away because my husband could not take me to hospital at the required time. So Kabeza came and
29 took me to his house on the 15th. On the 15th of April, he took me away.

30 Q. The 15th of which month and which year?

31 A. The 15th of April 1994.

32 Q. And he took you where?

33 A. He took me to his house in Kabilizi in Nyaruhengeri *commune*.

34 Q. So when you arrived in Kabilizi, what did you do?

35 A. I spent the night in Kabilizi, and the next day, I went to Nyange to see my mother. I spent the night
36 there also, and the next day, I came back to Kabeza's place.

37 Q. How did you get to Nyange? What means of transport did you employ?

- 1 A. Kabeza sent me with his wife in his car.
- 2 Q. And you say you spent the night there only?
- 3 A. Yes, one night.
- 4 Q. And once back home at Kabilizi, at Kabeza`s house, Kabeza Charles`s house, did you see or meet the
5 either the local or national authorities of the time?
- 6 A. Yes, I saw Major General Augustin Ndindiliyimana.
- 7 Q. When did you see him?
- 8 A. It was either the 24th or the 25th, approximately.
- 9 Q. The 23rd or 24th of which month and which year?
- 10 A. April 1994.
- 11 MR. BLACK:
- 12 *(Microphone not activated)*
- 13 MR. PRESIDENT:
- 14 April 24th, and you are referring to 23rd.
- 15 MR. BÂ:
- 16 No, I said 23rd or 24th; I thought that is what I heard.
- 17 MR. BLACK:
- 18 No, the 24th or the 25th. He said 23rd
- 19 BY MR. BÂ:
- 20 Q. When did you see him?
- 21 A. I think it was on or about 23rd or 24th. It was either the 23rd or the 24th of April.
- 22 Q. Where were you when you saw him?
- 23 A. I was in a room when I saw him through the window. In fact, I heard the motor, the vehicle
24 approaching. I got up and stood by the window, and through the window, I saw the person in question
25 come. He got down from his car and came into the house, and from the living room, he said,
26 "General Ndindiliyimana is coming." So we went to the door, greeted him, and shook hands. They
27 went together into the living room. I heard Ndindiliyimana lecturing Kabeza, saying, "I have heard that
28 you are hiding Tutsis here ". And Kabeza immediately answered that he was not hiding any Tutsis in
29 his house. And I was afraid. And there was a cupboard there and so I climbed in the cupboard - - in
30 fact, a wardrobe - - and a few minutes later, I heard the motor of the vehicle departing.
- 31 Q. Is that all you heard those words you have just reported to us? Is that all you heard of the
32 conversation?
- 33 A. They didn't say anything else. When he pronounced the word "Tutsi," I was afraid and I climbed into
34 the wardrobe and I could not hear any further conversation, but later, I did hear the vehicles departing.
- 35 Q. Can you describe that wardrobe or cupboard in which you hid? Can you describe it to us?
- 36 A. It was two - -in two compartments. One compartment had shelves and the other was for hanging
37 clothes. And I hid in there because it was high enough for me to be able to stand up inside.

1 Q. Can you describe Kabeza, Charles's house to us, to the extent that your memory is good enough?

2 How did you -- can you describe the living room, the bedroom, the layout of the house?

3 A. The house was built along the road, facing the road. On the side facing the road, there were two rooms
4 and a living room. Before going into the living room, you had to go through the two rooms, I have just
5 mentioned and then you could enter the living room. The living room faced the two windows. In fact it
6 was on a corner. To enter that living room, you opened the door and then you see the rooms in front of
7 you. When you come from the courtyard, you can be seen by someone in one of the rooms of the
8 house and a person on the road can see someone in the window of the room. The road runs right
9 along the house and the window faces the road and there was another window on the living room, so
10 one could hear what was being said in the living room. That is how I heard what was being said
11 between the two men.

12 Q. Can you tell us -- can you remind us what was said between these two men?

13 MR. BLACK:

14 *(Microphone not activated)* ... don't ask that question. Sorry. This is cross-examination. You've already
15 asked that question. Sorry.

16 MR. BÂ:

17 Thank you. I am sure you will not deprive yourself when you come to that.

18 BY MR. BÂ:

19 Q. So it was possible to hear the sound of conversation in the living room from where you were?

20 A. Yes, quite clearly. And in any case the men in question were speaking quite loudly and the room is
21 right next to the living room. The window -- the room's window is open and the living room door was
22 also open and the two rooms touched upon each other. If you go straight into the living room and the
23 window is also there, so I could hear what was being stated in the living room.

24 Q. Approximately how long did Ndindilyimana, General Ndindilyimana, stay at Charles Kabeza's house?

25 A. Not very long. I could say he stayed there about two minutes.

26 Q. Why did you feel it necessary to hide in the wardrobe?

27 A. I hid when I heard what he'd said and I felt concerned. I could understand that I was one of the people
28 hiding in his house and since he'd mentioned Tutsi that frightened me. It was something serious and I
29 was afraid of dying.

30 Q. On the 23rd, 24th or 25th, what was the security situation there?

31 A. After the 21st of April 1994, the massacres began in that area. I did not see any massacres, but I heard
32 about them. As regards security, there was none. One could see people driving around with weapons
33 and I could see that from my window, the window of my room, and moreover on the date I mentioned,
34 we heard firing at night. People were killed in Kibilizi. So I heard the firing and that was people being
35 killed. I heard the firing from Kabeza's house.

36 Q. After General Ndindilyimana's visit, how did the rest of your stay at Charles Kabeza's house proceed?

37 A. After he left, Kabeza decided to take me to his younger brother at Gitwa. His brother's name was

1 Antoine Nsengiyumva.

2 MR. BÂ.

3 Number four on the list of proper nouns of persons -- of proper names.

4 BY MR. BÂ:

5 Q. What day was that; do you remember?

6 A. I do not remember the exact date but after which the general left, the decision was taken I must leave
7 the house and hide at Antoine's house. In the night Kabeza himself took me to Gitwa that to Antoine's
8 house. So the day after the general's visit, because after the general's visit, I spent the night and then
9 the next day, at night, Kabeza took me away to his younger brother's.

10 Q. And what was the reason for moving to his younger brother's place?

11 A. It was because, after Ndindilyimana's departure, the family was afraid, since I was there with my
12 children, and they decided to take me somewhere safer further from the road. That is to say at the
13 house of the person I mentioned.

14 Q. And where is Antoine Nsengiyumva's house situated?

15 A. He lived approximately 300 metres from Kabeza's house.

16 Q. And how was that place safer than Kabeza's house?

17 A. Kabeza's house was visited by authorities of all ranks, from the lowest to the highest, and we felt that it
18 was not a safe hiding place.

19 Q. You have said that you were in an advanced state of pregnancy. Did you give birth at
20 Antoine Nsengiyumva's house?

21 A. Yes. When I arrived at Nsengiyumva's house, I gave birth to a boy, and I stayed there until the family
22 fled. So I left with the Nsengiyumva and Kabeza families to Zaire.

23 Q. When exactly?

24 A. I gave birth on the 3rd of May 1994.

25 Q. And how long did you stay on after that at Antoine's house?

26 A. We stayed there until the end of June. It was in July that we went to Zaire.

27 Q. And how long did you stay in Zaire?

28 A. I didn't stay very long in Zaire, two or three weeks, and a priest helped me to leave Zaire through
29 Burundi and get home to Rwanda.

30 Q. Witness ANB, had you seen General Ndindilyimana before that day in April 1994?

31 A. No. I didn't see him very often, but I had seen him about twice before them, but we were -- we did not
32 see other frequently.

33 Q. So can we say that he is familiar to you, a little familiar to you or very familiar to you?

34 A. He was -- I wouldn't say very familiar, but I knew him because I had seen him on the couple of
35 occasions I mentioned.

36 Q. If you saw him again today, could you recognise him; would you be in a position to recognise him?

37 A. If he hasn't changed, I can try and recognise him.

1 Q. Witness ANB, please stand up and tell us if you see that person in this room.

2 A. I think I see him.

3 MR. BÂ:

4 Mr. President, without going too much into descriptions, could we draw the curtains and the witness can
5 then point the person out?

6 MR. BLACK:

7 I think this is an improper procedure. He should have her describe him. Now she's already -- she has
8 got to describe him, what she remembers of him. Then we know that she can recognise him.

9 Otherwise, it is just an in-court identification which is useless.

10 MR. BÂ:

11 Well, fine, if you want, I really wasn't trying to gain time.

12 BY MR. BÂ:

13 Q. Witness ANB, you may sit down. I will ask you a few further questions. The one you feel could be
14 Augustin Ndindiliyimana, what is he wearing today? How is he dressed?

15 MR. BLACK:

16 She should have been asked before "What does he look like?" And then he could say, "Give me a
17 description. Now do you see the man in Court?" Just saying the guy sitting next to me, that is
18 meaningless.

19 MR. BÂ:

20 There is no sacred formula for that. Each one handles it as he wishes.

21 THE ENGLISH INTERPRETER:

22 Mr. President, your microphone.

23 BY MR. BÂ:

24 Q. Witness, can you tell us what General Ndindiliyimana looked like? Was he tall or short?

25 A. He a tall - - large.

26 Q. Was he very dark complexioned or not so dark?

27 A. He had a darkish complexion.

28 Q. And indeed was there any particular characteristic about him you remember?

29 A. No, I don't remember anything.

30 Q. Was he thin or medium, fat?

31 A. He was stout, very stout.

32 Q. You say that you can see him here, you'd recognise him - - you think you'd recognise him. Can you tell
33 us what he is wearing? What is the colour of his jacket, if he is wearing a jacket, or his caftan, if is he is
34 wearing a caftan?

35 A. He is wearing a black jacket and a white shirt, as well as a tie which is reddish.

36 Q. Is he sitting on the first, second or third row?

37 A. He is seated in the second row.

1 MR. BÂ:

2 If that is sufficient, Counsel Black, we can stop there. Otherwise, if you want, she can get up and go
3 and point at him with her finger. It is up to you. What do you prefer?

4 MR. BLACK:

5 That's fine, Mr. Bâ.

6 MR. BÂ:

7 Mr. President, I have no further questions for this witness

8

9 Witness ANB, thank you

10 THE WITNESS:

11 Thank you, counsel for the Prosecution.

12 MR. PRESIDENT:

13 Does the Defence have any -- anybody else other than Mr. Black who wants to cross-examine?

14 MR. MACDONALD:

15 I don't think I will have any questions, Mr. President, but I think it would be preferable that *Maitre* Black
16 start the cross-examination.

17 MR. PRESIDENT:

18 I don't know. It's up to him.

19 MR. MACDONALD:

20 I understand he can't cross-examine today, but I'd like to --

21 MR. PRESIDENT:

22 So if you want time, I will give you time till tomorrow.

23 MR. BLACK:

24 I really appreciate that. I was trying to complete the day so that I don't waste the Tribunal's time, but I
25 really appreciate it. There is one thing, though; I might ask General Ndindiliyimana to stand up. I think
26 you will note that General Ndindiliyimana is shorter than I am, and I am six feet tall. Thank you. I'm
27 sure I'll be better tomorrow morning. I'm already on medication so --

28 MR. PRESIDENT:

29 Mr. Black informs the Court that he is not well. And this is just to get time to cross-examine this witness
30 until tomorrow since the counsel is not well.

31 MR. BÂ:

32 One last remark. It is clear that the Defence for Bizimungu is not ready to take GAP tomorrow. So we
33 can vary our order and call Witness - - and withdraw our will-say and then we will call Witness UB
34 immediately after this witness.

35 MR. BLACK:

36 Okay. I don't expect to be more -- depending on how it goes with her, I don't expect to be more than
37 three hours, if that helps my friend.

1 MR. PRESIDENT:

2 So you can bring your witness tomorrow. You can bring another witness tomorrow.

3 MR. BÂ:

4 Yes, but apparently the Defence for Bizimungu is not ready for GAP. They want a week more.

5 MR. ST-LAURENT:

6 Mr. Bâ, thank you for your cooperation, and I would have appreciated it more if you hadn't been the one
7 to make that statement, that last remark.

8 MR. BÂ:

9 So, Mr. President, we can withdraw the will-say and call Witness UB as soon as Witness ANB
10 completes her testimony.

11 MR. PRESIDENT:

12 Yes, since -- since Mr. Black is not well and the other counsel are not cross-examining this witness, the
13 proceedings are adjourned until 9 tomorrow.

14 *(Court adjourned at 1156H)*

15 *(Pages 21 to 27 by Petrus Chijarira)*

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CERTIFICATE

We, Leslie Todd and Petrus Chijarira, Official Court Reporters for the International Criminal Tribunal for Rwanda, do hereby certify that the foregoing proceedings in the above-entitled cause were taken at the time and place as stated; that it was taken in shorthand (*steno*) and thereafter transcribed by computer; that the foregoing pages contain a true and correct transcription of said proceedings to the best of our ability and understanding.

We further certify that we are not of counsel nor related to any of the parties to this cause and that we are in nowise interested in the result of said cause.

Leslie Todd

Petrus Chijarira