

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

TUESDAY, 8 MARCH 2005
0906H
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. Alphonse Van
Ms. Ifeoma Ojemeni Okali
Mr. Moussa Sefon
Mr. Segun Jegede
Mr. Abubacarr Tambadou

For the Accused Augustin Ndindiliyimana:

Mr. Christopher Black
Ms. Tiphaine Dickson

For the Accused François-Xavier Nzuwonemeye:

Mr. André Ferran
Ms. Danielle Girard

For the Accused Innocent Sagahutu:

Mr. Seydou Doumbia
Mr. Fabien Segatwa

For the Accused Augustin Bizimungu:

Mr. Gilles St-Laurent
Mr. Ronnie MacDonald

Court Reporters:

Ms. Karen Holm, Mr. Mark Porter, Ms. Ann Burum

I N D E XWITNESSFor the Prosecution:

WITNESS GFC

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WITNESS DCK

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PROCEEDINGS

1

2 MR. PRESIDENT:

3 Good morning, ladies and gentlemen.

4

5 Registrar, you may commence the proceedings.

6 MR. FRY:

7 Yes, Your Honour. Trial Chamber II of the International Criminal Tribunal for Rwanda, composed of
8 Judge Asoka de Silva, presiding, Judge Hikmet and Judge Park, is now sitting in open session, today,
9 Tuesday, the 8th of March 2005, for the continuation of the trial in the matter of the Prosecutor v.
10 Ndindiliyimana et al, case number ICTR 2000-56-T.

11

12 Thank you, Your Honour.

13 MR. PRESIDENT:

14 Prosecution, please enter your appearances.

15 MR. BÂ:

16 Thank you, Mr. President. Mr. President, Your Honours, the Office of the Prosecutor is represented this
17 morning by Mr. Abubacarr Tambadou, legal officer, Mr. Alphonse Van, senior trial attorney,
18 Mr. Moussa Sefon, trial attorney, Ms. Ifeoma Ojemeni Okali, trial attorney, Mr. Segun Jegede, trial
19 attorney, Ms. Faria Rekkas, case manager, Ms. Valerie Richey, legal intern. I am Ciré Aly Bâ, senior
20 trial attorney. Thank you.

21 MR. PRESIDENT:

22 Defence, please enter the appearances.

23 MR. ST-LAURENT:

24 Good morning, Mr. President, Your Honours. For Augustin Bizimungu, I'm Gilles St-Laurent, lead
25 counsel, with Mr. Ronnie MacDonald and Ms. Nathalie Leblanc, assistant. Mr. President, after the
26 introductions, I would like to address you with relation to a little problem I have.

27 MR. PRESIDENT:

28 Yes, Counsel.

29 MR. BLACK:

30 Good morning, Mr. President, Your Honours. Christopher Black for General Ndindiliyimana, with
31 *Maitre* Tiphaine Dickson, and Claver Sindayigaya present. And I'd like to salute all women today on
32 International Women's Day.

33 MR. PRESIDENT:

34 Yes. We have to play a secondary role today.

35

36 Yes, Counsel. Yes, Mr. Segatwa.

37

1 MR. SEGATWA:

2 Good morning, Mr. President. Good morning, Your Honours. Innocent Sagahutu is defended by
3 Seydou Doumbia, co-counsel, and myself, Fabien Segatwa, lead counsel. We have
4 Mr. Mathias Sahinkuye, our legal assistant. Thank you.

5 MR. FERRAN:

6 Good morning, Mr. President, Your Honours. I am André Ferran of the Montpellier Bar. I am defending
7 Major Nzuwonemeye, together with Miss Girard, co-counsel, of the Canada Bar.

8
9 With your permission, Mr. President, before we resume and before the witness is brought in, I'd like to
10 make a statement.

11 MR. PRESIDENT:

12 The witness is already in.

13 MR. FERRAN:

14 If possible, Mr. President, I would like the witness not to be in the room.

15 *(Witness stood down)*

16 MR. PRESIDENT:

17 Yes.

18 MR. FERRAN:

19 Thank you, Mr. President. Mr. President, Your Honours, it is my duty and also courtesy obliges that I
20 need to ask the registry to discharge me from my position representing François-Xavier Nzuwonemeye.
21 It appears that I am supposed to inform you in this Court, which is our place of work, and I have to give
22 you a number of explanations, given that it is unusual for a lead counsel to ask to leave the bar.

23
24 My client and I have cultural differences, even professional-level. As far as he's concerned, the
25 ground -- the whole trial, and his troops included, should comply with him, even if the interest of justice
26 would be best served otherwise. It appears then that we have a different vision, a completely different
27 vision. As far as I'm concerned, my culture or my experience spans 40 years, and during this time I
28 have learned that the lawyer comes armed into the field of battle, as it were, to achieve his work, just
29 like a worker bee that makes its honey. So I've organised my office in such a way to allow me to be
30 with you and also to serve the interests of this Court, so that every time the witness concerned me
31 directly or if there were any legal issues that I needed to participate in, I ensured that I was absent from
32 my office. And when I was absent, I would leave the excellent Miss Girard to take over. And I must say
33 she has worked with great discretion. I must pay tribute to her for her efficacy as well. But there are
34 other issues that are being dealt with in my office. For instance, recently I was in Brussels looking for
35 witnesses, which I managed to do, and it appears that these things are not obvious to
36 Mr. Nzuwonemeye. I don't think it is bad faith on his part, and I also do not think that he is trying to
37 complicate or hinder the progress of his trial. I think that he is mortified by this; however, I cannot meet

1 his wishes.

2
3 The lawyer is essentially an independent spirit, and the spirit with which he endeavours to defend the
4 interests of his client requires that there should be some proximity between -- or closeness between the
5 lawyer and his client so that he can be of use to his client. He should be available, as well, to the
6 Judges, and it should be apparent, and it should therefore be clear, that he needs to be free in his mind
7 and in his work. It appears to me that it would be unfortunate if I were to further hinder the progress of
8 work in my own office in order to come here to work. Therefore, Mr. President, Your Honours, I think I
9 would be working in a half-hearted manner if I were not free to work as I have to be. I have given my all
10 to the case of François-Xavier Nzuwonemeye, which I think is a valid case. It is unfortunate that I am
11 unable to work with the conviction that would be necessary. And I think that I will pass the torch to
12 someone else, someone who will be free to ensure that Mr. Nzuwonemeye's interests are served. One
13 must be passionate, one cannot be forced to be passionate, and I would not wish to continue to work
14 without this innate passion.

15
16 And in closing, Mr. President, I would like to ask your indulgence just for a few more moments. I would
17 like to tell my learned friends how much I've appreciated their professionalism and how lucky these
18 Accused are to work with such splendid lawyers, with whom I've been able to work with in a spirit of
19 harmony and fraternity and also with so much efficiency. I leave them with a sad heart, but I will not
20 forget them. They have supported me very much. And I think that as a criminal lawyer in other courts, I
21 will always keep a memory of the time I served in this Court. And I hope that in other spheres, in other
22 courts, others will entrust me. And to you, Your Honours, I would like to thank you for the dignity you
23 have infused into the debate in these trials. I am not flattering you. I always say what I think, and I
24 believe that the Accused are very lucky to have you presiding on their destiny, and I think that you will
25 not disappoint them. You must know that I've always personally appreciated your discreet manner in
26 this Court, Mr. President, the way you intervene with so much courtesy, so much respect to the
27 Defence, so that there have been some rather lively debates. I thank you for all that. That, as well, is a
28 memory I will take with me. I wish the Accused the best of luck and I will tell him, as well, that I will not
29 forget him. Thank you.

30 MR. PRESIDENT:

31 Yes, Mr. Ferran. I think we are sad that you are leaving. I think your intentions must be indicated to the
32 Registry by writing. We cannot force a person to be in this Court, and I know that you have been giving
33 your best to the Tribunal for the last so many years that you have been here. And since this is a conflict
34 between you and your client, I don't think that we have any say in the matter. And I wish you well and I
35 thank you for the assistance that you have given us. But however you may indicate, I have no role to
36 play in this. I think it is the Registrar who has to take a decision, so you may indicate to the Registrar in
37 writing. Thank you. Thank you, Mr. Ferran.

1 MR. FERRAN:

2 Thank you very much, Mr. President.

3 MR. PRESIDENT:

4 Mr. Laurent, you had something to say?

5 MR. ST-LAURENT:

6 It's as if I was rising from a mountain.

7 MR. PRESIDENT:

8 *(Microphone not activated)*

9 MR. ST-LAURENT:

10 No, Mr. President. What we have -- I just wanted to inform you that I would like the Chamber's
11 assistance in the next few days with regard to my learned friends on the other side. There's a problem
12 we've come up with, and it seems that it is more serious than we had thought. It is with regard to
13 translations, the English and French versions not matching. I've noticed some incongruities that are
14 very grave, so some text should be prepared with regard to the translation. I'm almost finished with this
15 text. I have compared the English and French versions of a number of transcripts, stenographer's
16 notes, which I will submit for your appreciation so that you will be aware of the grounds on which we will
17 base our complaints. There is quite a large number of information and comparisons to be made, which,
18 Mr. President, I just wanted to announce to you. Thank you.

19 MR. PRESIDENT:

20 Yes, Mr. Bâ, have you got to say anything about this? We also find that there is some discrepancies
21 with regard to the translations. So the best way I can think of getting at this problem is to stick to the
22 original. Have you got to say anything, Mr. Bâ?

23 MR. BÂ:

24 You are quite correct, Mr. President. The original should be used but one should also find a way of
25 improving or rectifying a number of errors that we find in the transcripts. I think that Mr. St-Laurent's
26 request is quite welcome, and he should help the Chamber in giving additional directives in order to
27 improve the quality of the work. But if there is a difference between a text and its transcripts, I think that
28 the original should be used.

29 MR. SEGATWA:

30 Mr. President, excuse me. I do not quite understand when they say that it is the original that should be
31 used with regard to the hearing transcripts. I'm not aware that the original can be used to confront
32 another, because as a francophone, for me the original is the French. For the anglophone, the original
33 can only be English, of course. Clearly, with regard to documents, it is a different matter, and there the
34 original should take precedence, but when we talk about the hearings, you should allow francophones
35 to consider, although we are the poor relations in this Court, that we should be allowed to take into
36 account the French version. Thank you.

37

1 MR. PRESIDENT:

2 I think, Mr. Segatwa, what Mr. St-Laurent was referring to was the statements, that translation was
3 regard to the statements. So we can overcome that by sticking to the originals. Some documents are
4 signed in French. The French document is signed. And some of the statements in English are signed.
5 So we will try to stick to the original for the statements. With regard to the transcript, of course, I don't
6 know how it should be treated, but I think as far as practicable, I think what should be considered -- and
7 whenever there is a discrepancy, I think it will be the Appeals Court or the other Chamber to decide
8 whichever to follow. I don't know how to -- because we are unable to interfere with the transcripts.

9

10 Is that the position? Can we correct them as and when -- we can't -- we have to take it as it is.

11

12 Yes, Mr. Nzuwonemeye, I think you heard what your counsel said. Have you got anything to say in
13 respect of what Mr. Ferran had said? If you have anything to say, I will record that, too.

14 THE ACCUSED NZUWONEMEYE:

15 Thank you, Mr. President. I accept *Maître* Ferran's decision to withdraw from my case for the reasons
16 that he set forth. While waiting for the Registry to take a decision and while waiting for a new lead
17 counsel to be assigned to me, I will request that, to ensure the continuity of the proceedings, that
18 Counsel Girard will brief for me during this period. Thank you, Mr. President.

19 MR. PRESIDENT:

20 Thank you, Mr. Nzuwonemeye. I think you have to make an application to the Registrar under
21 Rule 45(C) for a lead counsel to be appointed. Please take steps, and I think meanwhile your
22 co-counsel will cover the duties of the lead counsel. Thank you.

23

24 Prosecution, you may call the witness in.

25

26 Mr. MacDonald, you have time 'til ten.

27 MR. MACDONALD:

28 I will comply with whatever you ask me, Mr. President, but I'm going to reiterate to you what I said
29 yesterday. I've had -- throughout this cross-examination, I've had interference from the Prosecutor and
30 from the witness. You are putting me in a situation where -- I could be in a situation this morning where
31 I can barely cover two or three questions, depending on the cooperation we get, so -- but I will do -- I
32 will do my best, Mr. President.

33 MR. PRESIDENT:

34 Thank you.

35 *(Witness entered courtroom)*

36

37

WITNESS GFC

CROSS-EXAMINATION (continued)

1
2
3 BY MR. MACDONALD:

4 Q. GFC, was it brought to your knowledge, sir, that the -- and I'll say it in French because I don't know
5 what the translation is -- that the G-O-M, GOM, which is the group of military observers, was based at
6 the ISAE Busogo as far as back as February 1993? Was that brought to your attention, sir?

7 A. Thank you, Mr. President, Your Honours. I was not aware of that.

8 MR. MACDONALD:

9 I'm sorry, my apparatus wasn't working. Could -- no, it's okay.

10 MR. WITNESS:

11 I said that I was not aware of what you've just said.

12 BY MR. MACDONALD:

13 Q. Had you ever heard about that, the *groupe d'observation militaire* -- is this the first time that you hear
14 about that -- which is an organism that preceded the MINUAR?

15 A. I have not heard about it.

16 Q. We've discussed the authorities, the knowledge of the authorities, with respect to the roadblock that
17 was erected back in 1993, the roadblock where you allege that you had been sent. Should we
18 understand, sir, that this roadblock was also approved by the opposition party which was in function as
19 far as back as April 1992? Were you aware of that?

20 A. Thank you, Mr. President, Your Honours. As I have already told you, as a matter of fact, the erection of
21 those roadblocks was supported because the authorities would pass by and say nothing. They let us
22 go ahead. So that is to say that the authorities supported the existence of these roadblocks.

23 Q. Sir, how long had you been in that *secteur*, in the Busogo -- Busogo *secteur*? Must I assume that you
24 were born and raised in that area, sir?

25 A. I was born in the *secteur*.

26 Q. And is it correct to say, sir, that you probably knew just about everybody that lived around there? You
27 knew who was a Tutsi, you knew who was a Hutu, who was a Twa? You knew that.

28 A. Thank you, Mr. President, Your Honours. As I keep saying, Defence counsel is setting traps for me, but
29 I didn't know -- I did not know all of these people because I was not responsible for administering the
30 population.

31 Q. So some Tutsis you know; some you didn't know?

32 A. Thank you, Mr. President, Your Honours. I knew a few and I did not know others, or I knew of others
33 that they were neighbours of mine, without knowing that they were Tutsis. When we underwent
34 training, they told us about the Tutsis, and we asked how would we identify them, how would we identify
35 the Tutsis. And that is when we were shown how to go about identifying the Tutsis, and that is how we
36 were able to identify them.

37 Q. And, sir, you were brought up from a very early age, you knew that there was an ethnic diversity in

1 Rwanda; you knew about the Hutus, the Twas and the Tutsis? You knew that from a very young age,
2 sir; isn't that correct?

3 A. Mr. President, Your Honours, the Defence counsel does not want to understand my answer. With
4 regard to the ethnic diversity or differences, I said it was the authorities who incited us to ethnic hatred
5 by talking to us about the Tutsis, Hutus and Twas. All I knew, though, was that we were all Rwandans,
6 that we all lived in the same country, Rwanda.

7 MR. MACDONALD:

8 I will ask you the same thing I've asked you yesterday, Mr. President, is it to reprimand the witness.
9 Again, again, he's pulling off his routine. The question was very simple: Did he know from a very
10 young age that there was an ethnic diversity? I mean, if you don't do anything about this, we're going to
11 be paralysed here in our cross-examinations. And it is purely strategic, Mr. President. There's no other
12 explanation. And there he goes, standing up.

13 MR. TAMBADOU:

14 My Lord, if I may, I do understand my learned friend's frustrations, but, My Lord, he is bringing these
15 circumstances upon himself. Yesterday, when we broke off, My Lord had indicated -- because the area
16 that the witness had testified on about General Bizimungu and the roadblock is such an important area,
17 and My Lordship had decided to give him another half an hour to cover today. If my learned friend goes
18 into that issue, we would probably not be getting into a situation like this. He has half an hour to go. He
19 wants to drag that on, so that at the end of the half an hour, he could legitimately ask for more time.
20 And we will -- My Lord, this witness has given two and a half hours of evidence; he has been
21 cross-examined for four days today. It is totally unacceptable. If he follows My Lord's direction and
22 concentrates on the last issue that we broke off from yesterday, we wouldn't be getting into a situation
23 like this. And I would urge Your Lordships to direct him to do so. As Your Lordship please.

24 MR. PRESIDENT:

25 Witness, please listen to the question and answer.

26
27 Counsel, I think that -- I thought the area, the meeting of Bizimungu, was the crux of this matter, and I
28 think you have covered the other areas, and I thought that you would concentrate on this. Anyway, it's
29 up to you. You handle the half an hour. You can --

30 MR. MACDONALD:

31 I'm not going to finish within a half an hour. When you tell me to sit down, I'll sit down. But I won't be
32 finished, for the record.

33 MR. PRESIDENT:

34 Yes. You will get time 'til ten.

35 BY MR. MACDONALD:

36 Q. Sir, I'm going to ask the question again, and you can pull off your routine again. Did you know from a
37 very young age, sir, that there was an ethnic diversity in Rwanda, that there existed Twas, there existed

- 1 Hutus and Tutsis, and as a matter of fact, sir, that diversity was even included at one time in the
2 national anthem of Rwanda? Do you agree with that?
- 3 A. Mr. President, Your Honours, I am aware that I was trained to this effect when I took part in the training
4 I told you about.
- 5 Q. You are refusing to answer the question?
- 6 A. I have answered. Personally, with regard to the various ethnic groups, Twa, Hutu or Tutsi, I was only
7 informed about this when I was undergoing training. That is when it came to my attention. I don't know
8 what other answer you want from me.
- 9 Q. You think everybody here are imbeciles, sir? Are you telling this Court that before 1993 you did not
10 know that there was an ethnic diversity in Rwanda? I just want to make sure on this so you don't feel
11 trapped.
- 12 A. Mr. President, Your Honours, I am telling you that if I do not know something today, well, I do not know
13 today. But if tomorrow I learn of it, I will know then. With regard to my knowledge of the existence of
14 the -- rather, with regard to the existence of the ethnic groups, yes, well, they did exist, but the way I
15 grew up, together with Tutsis and Twas, we did the same things, we cultivated together, and the ethnic
16 differences were only made known to me during my training. Why are you asking me questions about
17 Tutsis or others when I didn't create these ethnic groups?
- 18 Q. Because I know you're going to lie, sir. That's why I'm asking you that. Now, coming back to the
19 alleged incident involving General Bizimungu with the four Tutsis, could you tell us what happened with
20 the bodies? Once these four Tutsis were killed, what happened? Who took care of the bodies?
- 21 A. The bodies were buried.
- 22 Q. And who took care of that?
- 23 A. Residents of that area, with our assistance.
- 24 Q. When you say "your assistance," are you involving yourself in that?
- 25 A. Mr. President, Your Honours, I said -- I told the Defence counsel, with regard to the roadblock, that
26 there were many of us at that roadblock. When I say that we assisted other members of the population
27 in this task, that means that some remained at the roadblock whilst others went to bury those people.
28 Then we ran away. Does the Defence counsel want us to believe that we killed people and just left
29 them there? Well, that is not the case. That is not what happened.
- 30 Q. Well, the question was very simple: Were you involved, yes or no, in the burial of these bodies? If you
31 don't understand the question, just say so, sir.
- 32 A. I did not go and bury those bodies -- people.
- 33 Q. And when were the bodies buried, sir?
- 34 A. The victims were buried the day they were murdered.
- 35 Q. So if anybody else came in here and testified and said that the bodies had been buried three days after
36 the incident, they would be lying and you would be telling the truth, right? Because you always tell the
37 truth, sir.

1 A. I cannot confirm or deny that type of statement. If someone makes such a statement, well, then it is
2 only he who can account for it. All I can say is what regards myself.

3 Q. Sir, I draw your attention to your testimony of March the 1st. With respect to this alleged incident, you
4 mention that –

5 MR. MACDONALD:

6 And I'm referring, Mr. President, to page 3 of the transcript, the English transcript.

7 BY MR. MACDONALD:

8 Q. You say on March the 1st, sir, that Alexis Rukundo shot one of these persons and Augustin Bizimungu
9 left in his vehicle. And you continue by saying that the Bararwerekana shot another one and others
10 were -- others were beaten with clubs and sticks. You remember saying that, sir?

11 MR. PRESIDENT:

12 I think, Mr. Counsel, you have made a mistake. It is not of the 1st of March. It is the 11th of March.

13 MR. MACDONALD:

14 No, it's the --

15 MR. PRESIDENT:

16 The transcript?

17 MR. MACDONALD:

18 The transcript, yes.

19 MR. PRESIDENT:

20 Thank you, thank you. Sorry.

21 BY MR. MACDONALD:

22 Q. You remember saying that, sir?

23 A. I remember.

24 Q. Okay. Now, I understand it. Again, were you just watching or did you participate in that? Did you have
25 a stick? Did you hit these Tutsis, the two remaining Tutsis? Or again, you're -- you're alleging that you
26 were -- you did nothing? What is your position on that?

27 A. Thank you, Mr. President. I said that I participated in the beating of one of the victims. I used a stick.

28 Q. I draw your attention now to your statement dated October the 29th, 2002.

29 MR. MACDONALD:

30 And I'm going to refer to page 5, Mr. President, the two last -- well, the last sentence, two last lines in
31 the paragraph. There's only one paragraph on the page.

32 BY MR. MACDONALD:

33 Q. Referring to these other two people, sir, what you say in your statement of 2002 is the following. You
34 say, "The other two were subsequently killed with machetes and clubs." So what's the real story here?
35 Was it machetes and clubs or sticks and clubs? Because you were there, sir, you saw what went on.
36 Do you remember saying this to the investigators?

37 A. Mr. President, Your Honours, thank you. I stated that the two remaining victims were killed using

1 traditional weapons, and when I say "traditional weapons," I mean sticks, machetes and clubs. I did
2 make that statement.

3 Q. Well, you're lying again, sir, because we have it on paper here. We have the transcript here, and what
4 you said on March the 1st is that the two others were killed with clubs and sticks. You did not mention
5 anything about traditional weapons. So where are you lying? Were you lying before this Court or were
6 you lying to the investigators with respect to using machetes? Because there is a lie here somewhere.
7 Where is it?

8 A. Thank you, Mr. President, Your Honours. The Defence counsel is still saying that I'm lying, but I'm not
9 lying. If I said that machetes were used, he should not say I'm lying. But these people were killed. You
10 know, I'm not God. I'm a human being, I may make mistakes. Only God is all knowing and he
11 remembers everything. Besides, if I were to recite everything that took place, I would never end. I'm a
12 human being.

13 Q. You're a lying human being, that's what you are.

14 MR. PRESIDENT:

15 Counsel, I think we must use – (*Microphone not activated*)

16 THE ENGLISH INTERPRETER:

17 Your Honour's microphone, please.

18 MR. PRESIDENT:

19 If he is not telling the truth, I don't think that it's wise to use that word.

20 MR. MACDONALD:

21 Very well, Your Honour.

22 BY MR. MACDONALD:

23 Q. Sir, you discussed about a meeting. You referred to a meeting in your testimony, sir, where you
24 mention that you were briefed by Rukundo about a certain meeting that was held at -- well, in your
25 statement you mention Nzirorero's residence; here, before this Court, you mentioned his mother's
26 residence. And following that meeting, you were told about the people who participated at that meeting.
27 Do you remember saying that before this Court, sir, on March the 1st?

28 A. Thank you, Mr. President, Your Honours. As I stated, the interpreter made a mistake because I talked
29 about Nzirorero's mother's house and he heard it as "Nzirorero's house." The meeting did take place,
30 and my informer informed me of it subsequently, when he told me as well the composition, that is, the
31 attendance of the meeting.

32 Q. All right. Where were you -- where were you when you were briefed by Rukundo with respect to the
33 people that were present? Where did that take place?

34 A. We were with other persons.

35 Q. Where did that take place? Where, sir?

36 A. At the primary school.

37 Q. And when Rukundo gave you these names -- actually, in your statement, sir, of October 2002, you

1 mention 13 names. Here you mentioned six. But with respect to the names that were given to you by
2 Rukundo, did you take these names down? Did you write these names down?

3 A. No, I did not note down the names that he gave me.

4 Q. And in the period between 1993, when these names were given to you, and 2002, October 2002, when
5 you made your statement before the ICTR investigators, had you mentioned these names to other
6 people at any other time?

7 A. Which persons are you referring to? Give an example.

8 Q. I'm referring, sir, to the 13 people that you mention in your statement of October 2002, where you
9 mention that Rukundo told you of the presence of these 13 people. You read your statement. You
10 know what I'm talking about.

11 A. Thank you, Mr. President, Your Honours. I think that in my evidence I did not talk about 13 people,
12 unless Defence counsel is referring to my confessional statement, where I denounced the people who
13 had acted together with me in committing the crimes.

14 MR. PRESIDENT:

15 He is referring to your statement given to the ICTR, not the evidence. In the statement you mentioned
16 13. That's what the counsel says. You mentioned six here.

17 THE WITNESS:

18 No, that is not the number of people I mentioned.

19 BY MR. MACDONALD:

20 Q. Well, I have your statement here, sir. I understand the purpose of your exercise is to consume some
21 time here, but I'm stuck with that. There's nothing I can do. All right. So the names that you
22 mentioned, sir, in your statement, page 3, and that's the one of October 2002, you mentioned
23 Bizimungu, Augustin; you mentioned Bakuzakundi; you mentioned Ntirivamunda; you mentioned
24 Kajelijeli; you mentioned Baheza; you mentioned Bambonye, B-A-M-B-O-N-I-E -- N-Y-E; you mentioned
25 Nyabusore; you mentioned Niyigaba; Rukundo; Karorero; Dusabe; Tuyizere and Musafili. Do you
26 agree with me that you mentioned these people in your statement of October 2002, sir?

27 A. Thank you, Mr. President, Your Honours. It is true, I mentioned those people because I had been told
28 that these were among those who had taken part in the meeting, but with regard to the matter at hand,
29 the investigators told me, "No, we are not looking for information on the people you have just named.
30 We have people we are targeting, our own targets."

31 MR. PRESIDENT:

32 Yes, Counsel.

33 MR. TAMBADOU:

34 Yes. My Lord, if I may refer My Lords to the evidence of the witness, on the English transcript at page
35 17 of March 1st, the witness mentioned names and then he said, "Those are the names I remember,
36 but he told me other people attended that meeting, took part in that meeting." That's his evidence.
37 Those are the names he remembered here. As Your Lordship please.

1 MR. MACDONALD:

2 Well, what's that objection for? I'm not contesting that. I'm not trying to contradict him on that. That's
3 exactly what I told him. If you listened to the debate, probably you wouldn't interfere so much.

4 MR. TAMBADOU:

5 No, you said he mentioned 13 in his statement and he mentioned six here. That's what you said.

6 MR. MACDONALD:

7 Well, he gave us six names.

8 MR. TAMBADOU:

9 Yes, and then you said --

10 MR. MACDONALD:

11 As you can see, there's six names here, sir. Not 13; there's six.

12 MR. PRESIDENT:

13 *(Microphone not activated)*

14 THE ENGLISH INTERPRETER:

15 President's microphone.

16 MR. PRESIDENT:

17 He gave six names and he said that "The others are the ones I cannot remember."

18 MR. MACDONALD:

19 That's right. It's on paper. I'm not denying that. Again, wasting time. Every trick is good.

20 BY MR. MACDONALD:

21 Q. Sir, one of the names you mentioned to the investigators back in 2002 is Ntirivamunda. Do you
22 remember that name? N-T-I-R-I-V-A-M-U-N-D-A.

23 A. Thank you, Mr. President, Your Honours. Ntirivamunda was also a member of the group.

24 Q. All right. But when that name was given to you by Rukundo, you knew who that person was, right?

25 A. Mr. President, Your Honours, even if I name all these people, I didn't see all of them. If I knew the
26 Accused, it is because he had brought people to our roadblocks. That is when I saw him and how I
27 knew him. With regard to the meeting, Rukundo told us that Colonel Bizimungu had also attended the
28 meeting.

29 MR. PRESIDENT:

30 Now, Witness, the question was whether you know this particular person, the name that was given.

31 THE WITNESS:

32 Mr. President, Your Honours, I do not know that man.

33 BY MR. MACDONALD:

34 Q. So that you didn't know that man and the name was given to you back in 1993. You never wrote down
35 that name. And in 2002, you remembered that Rukundo had told you, nine years earlier, that name of
36 an individual that you didn't know. Now, sir, did Rukundo tell you what his first name was, this
37 individual, Ntirivamunda? Did he mention his first name?

1 A. Mr. President, Your Honours, in fact, all I am saying is what I know. If I do not know someone, I do not
2 claim to know them. When Rukundo told me about Ntirivamunda, all he mentioned was Ntirivamunda.
3 He did not give me his first name.

4 JUDGE PARK:

5 Do not explain, just answer.

6 THE WITNESS:

7 I'm not the one who baptised him.

8 BY MR. MACDONALD:

9 Q. Well, you see the problem you have here, sir, is because you gave a first name to the investigators.
10 Not only did you give a first name to the investigators, you told the investigators what his position was,
11 and my suggestion to you, sir, is that you never mentioned that name; that name was planted there by
12 the investigators. And that's a clear illustration of that, because you don't even know this guy's name,
13 his first name. So what you're saying to this Court is he never mentioned the first name to you, but on
14 the statement -- you remember what you told the investigators, sir, back in October 1992? You
15 remember the name that you gave the investigators, the first name?

16 A. Mr. President, Your Honours, I did not deny that Rukundo told me -- mentioned Ntirivamunda's name to
17 me. Whether, with regard to his Christian or first name, I do not know if that is the name he carried, but
18 he did talk to me about Ntirivamunda. I didn't know whether that was reference to a first name or a
19 surname.

20 Q. Well, sir, you gave the investigators, apparently, if we assume that these are the names that you gave,
21 you gave a first name and you gave a second name. So if you gave a first name back in 2002, I'm
22 assuming that you must know this first name today, unless it was invented and planted by the
23 investigators. So what is it? Could you tell us what his first name is, sir?

24 A. Mr. President, Your Honours, as I have told you on several occasions, I'm a human being, and to err is
25 human. If Defence counsel states that it is in my statement, well, let him read it to me.

26 Q. So, you don't remember what his name is. And you never knew what the name was because you didn't
27 say that to the investigators. They had a list and they put these names there, sir. I'm going to tell you
28 what the first name is. That's the one that's in your statement, here. It's Alphonse. All right?

29
30 Now, again, not only do you give his first name but you always give -- you also gave the title of this
31 individual. What was he, Mr. Alphonse Ntirivamunda, back in February 1993? What was his title?
32 Where did he work? You must have known it, sir, because you told it to the investigators in your
33 statement. So what was it?

34 A. I remember having asked Rukundo where that man worked, and he told me he worked in a ministry in
35 Kigali. I do not remember the ministry because I've forgotten. But Rukundo talked to me about it.

36 Q. Well, you had a good enough memory to remember it, sir, from '93 to 2002. How could you explain
37 today that you forgot about it? Because you gave that in your statement, that position in your

1 statement, very clearly, back in 2002. So you don't remember the ministry where he worked?

2 A. I do not remember.

3 Q. Well, you see, back in 2002, you did, and you said to the investigators that he was a director general of
4 the ministry of public works. Have you ever heard of that ministry, ministry of public works?

5 A. Yes, indeed. Rukundo told me that the person in question worked in the ministry, but actually, he did
6 not give me the name of the ministry. He said the person concerned was working as director general in
7 a ministry.

8 Q. Well, "director general," you just made that up. But I have difficulty in understanding, sir, if he didn't tell
9 you that, where exactly he worked, in which ministry he worked, how could you tell the investigators in
10 2002?

11 MR. TAMBADOU:

12 My Lord --

13 BY MR. MACDONALD:

14 Q. And furthermore -- moreover, you didn't even know this gentleman, so how could your memory be so
15 good in 2002, sir?

16 MR. TAMBADOU:

17 My Lord, I believe I heard the witness say "director general," and my learned friend said that the
18 witness just made that up. If my learned friend could care to read --

19 MR. MACDONALD:

20 No, no. I don't want to cut you off, Mr. Abubacarr. If you're referring to the statement -- I think you
21 are -- but that's the point. What I'm saying is that he never told that to the investigators. They made --
22 they had a list and they made that up. He doesn't even know who he is today; he doesn't even know
23 who he worked for. So I agree with him on that.

24 MR. TAMBADOU:

25 Yes. My Lord, I am not trying to swerve my learned friend away from his line of cross-examination. But
26 all I'm saying is the witness mentioned "director general," and my learned friend just said, "You made
27 that up." He means here now. All I want to point out is that it is also in the statement. As Your
28 Lordship please.

29 MR. PRESIDENT:

30 *(Microphone not activated)*

31 THE ENGLISH INTERPRETER:

32 Mr. President's microphone, please.

33 MR. PRESIDENT:

34 Director general of which place? He gives the place of -- where is that?

35 MR. TAMBADOU:

36 Yes, My Lord, he gives the place, but he did not just make director general up here and now. As Your
37 Lordship please.

1 MR. MACDONALD:

2 He just made that up here. What you don't understand is that he never told that to the investigators
3 because he doesn't know it today.

4 MR. PRESIDENT:

5 *(Microphone not activated)*

6 MR. MACDONALD:

7 All right.

8 BY MR. MACDONALD:

9 Q. What is that ministry called, sir? It's called ministry of public works, but there's something else we have
10 to add to that. What is the real name of that ministry?

11 A. Thank you, Mr. President, Your Honours. Mr. President, Your Honours, I have a request I would like to
12 make. I think that Defence counsel wants to get into my mind, and I have the feeling that he wants to
13 be everybody's advocate. I do not see any reason why he wants to put all those questions to me
14 concerning those people.

15 MR. PRESIDENT:

16 Well, Witness, he has a reason. That is why he's asking. You will just answer the question.

17 BY MR. MACDONALD:

18 Q. You don't know the answer, do you, what that ministry is called, or do you?

19 A. I was told that it was the ministry of public works.

20 Q. So for you, that's the name, that is the full name of the ministry, sir, that's what it's called? That's what
21 you refer --

22 A. You see, I was not aware previously of the existence of that ministry, and by the way, I do not know
23 where the ministry was located.

24 Q. Well, the question is this, sir: How could you -- if we assume that this statement was given by you, sir,
25 how could you, back in October 2002, say to the investigators that one of the persons present was
26 Ntirivamunda, Alphonse, and that he was the director general of the ministry of public works, energy
27 and water? How come you knew that back in 2002, when you don't even know what the ministry is
28 called today?

29 A. Mr. President, Your Honours, I have said, and let me reiterate, that I am a human being and I can forget
30 things. Defence counsel wants to say whatever he has to say, but if that is not -- if there is something
31 not written down, you can forget it. We are all human beings.

32 Q. I agree with you, sir, but how could you remember it for nine years if you don't know the individual, you
33 don't know his first name, you don't know where he works? How can you, back in 2002, say to the
34 investigators that -- not only give his full name but the -- his position, director general, and the place
35 where he works, ministry of public works, energy and water? Anyways --

36 MR. PRESIDENT:

37 Five more minutes, Mr. MacDonald.

1 MR. MACDONALD:

2 Yes.

3 BY MR. MACDONALD:

4 Q. Sir, during your interrogation with the -- whether it be with the investigators, whether it be with the --

5 MR. BÂ:

6 Mr. President, we were of the opinion that the cross-examination had to end at 10 a.m. Has there been
7 any change?

8 MR. PRESIDENT:

9 No, there is no change -- since he was on a particular point, I didn't want to stop him, but I have given
10 him another five minutes. So it will end at 10:15.

11 MR. MACDONALD:

12 Is my friend going anywhere? Maybe we could help him out. I have one more point, Mr. President and
13 I've screened most of what I have.

14 BY MR. MACDONALD:

15 Q. Sir, during all the interviews that you gave to the -- whether it be the ICTR investigators, whether it be
16 the Rwandan authorities, were you ever questioned, sir, about your participation in the -- what was
17 referred to as the court of appeal massacres? Were you interrogated on that? Because apparently you
18 were there, sir, so -- and the authorities knew that.

19 MR. TAMBADOU:

20 Objection, My Lord. This line of questioning is irrelevant. It wasn't raised in-chief, and I don't know
21 where my learned friend got his evidence that he was at the court of appeal. As Your Lordship please.

22 MR. PRESIDENT:

23 Yes, Mr. MacDonald, he never spoke about court of appeal, and why do you want to plant him there?
24 He'll be another witness.

25 MR. MACDONALD:

26 He made a plea back in October the 30th, where he says that he's -- after the divine intervention, his
27 conscience is now cleared; he's ready to tell all. If we could put him on the premises of the court of
28 appeal, which was referred to as the "court of appeal massacre," and he denies that, we could prove he
29 was there, I think it's an important element to assess his credibility.

30 MR. PRESIDENT:

31 You can ask him whether he was there. He didn't refer to anything in the evidence. You can ask him
32 whether you were present.

33 MR. MACDONALD:

34 Right. Well, the first question was whether or not he was interrogated on that. And that was the
35 second question.

36 BY MR. MACDONALD:

37 Q. Were you at all asked about that, sir, your participation in the court of appeal massacre in Ruhengeri?

1 A. Thank you, Mr. President, Your Honours. I did not participate in the massacres that took place in the
2 court of appeal.

3 Q. Well, again, you're lying because you were --

4 A. Questions were not put to me.

5 Q. So nobody ever asked you about that? But, sir, there's a witness that came in here and testified on
6 April the 1st, 2004, and we refer to this witness as GFA, and he says that you were there, sir, and that
7 your brother was there.

8 MR. MACDONALD:

9 And I have the transcript, Mr. President, which I'd like to produce, under seal, of course, because the
10 names given are the -- his name and his brother's name. So it would have to be under seal. So I'd like
11 to produce that for your assessment.

12 MR. PRESIDENT:

13 Do you accept that the reference is to this witness?

14 MR. TAMBADOU:

15 My Lord, let us have a look at transcript first. As Your Lordship please.

16 MR. MACDONALD:

17 It's April the 1st and page 5, and it's the second-last paragraph, Mr. President.

18 MR. TAMBADOU:

19 Can you give us the page number again, please?

20 MR. MACDONALD:

21 Yes. It's page 5, line 29. I gave you the two previous pages to situate you in the context, but clearly
22 we're talking about the incident of the court of appeal.

23 MR. TAMBADOU:

24 Line?

25 MR. MACDONALD:

26 Line 29.

27 MR. PRESIDENT:

28 I see the name there, but we will see whether it fits into what -- it merely says, "went to Ruhengeri."

29 MR. TAMBADOU:

30 Yes, My Lord, we have taken note of that. We will wait for my learned friend's questions.

31 MR. PRESIDENT:

32 Yes, Mr. Counsel, I think this will be your last document.

33 MR. MACDONALD:

34 Yes, sir. That's it.

35 BY MR. MACDONALD:

36 Q. Sir, had you at least heard about that alleged massacre at the court of appeal, or are you learning this
37 today?

1 A. Thank you, Mr. President, Your Honours. With regard to the court of appeal massacres, I have told you
2 that questions were put to me in that connection, and my answer was that I did not participate in those
3 massacres. Defence counsel is stating that one witness testified to my participation in the killings of the
4 court of appeal. That witness should be the one to prove that to you, but I am telling you I did not
5 participate in the massacres at the appeals court.

6 MR. PRESIDENT:

7 Mr. MacDonald, how are you marking this?

8 MR. MACDONALD:

9 D -- under D, but under seal, again, sir.

10 MR. TAMBADOU:

11 My Lord, I will object to this document being tendered into evidence. Firstly, My Lord, the witness has
12 denied that he took part in the massacre at the court of appeal.

13

14 Secondly, My Lord, my learned friend has not pointed out any -- anywhere in this transcript where it
15 explicitly says that the witness went to Ruhengeri and took part in the attack at the court of appeal.

16 MR. PRESIDENT:

17 We will note that. We will note that. This is what I was -- but since this is the evidence given in court,
18 whether we can exclude that. We can consider it; that's what I said.

19 MR. TAMBADOU:

20 My Lord, I agree that --

21 MR. PRESIDENT:

22 You may have your submissions to make on that, but since this is evidence that is tendered in a court
23 here, whether we -- whether we can ignore it.

24 MR. TAMBADOU:

25 My Lord, I'm not asking My Lords to ignore it. Certainly, evidence that is taken from this Court,
26 My Lords, is certainly admissible in evidence. But there has to be relevance to an issue before this
27 Court for any other document, from any other Chamber, to be admitted into evidence. What I'm saying
28 is my learned friend has not sufficiently established the relevance of this document in the instant case.
29 He has to. We don't have any objection if at all he has established the relevance. But what is the
30 relevance of this document?

31 MR. PRESIDENT:

32 There is a denial from the witness that he took part in the court of appeal massacres.

33 MR. TAMBADOU:

34 And even the transcript itself does not state that the witness took part in the attack at the court of
35 appeal. If the transcript had said that, I wouldn't have objected. The transcript only said that those who
36 went to Ruhengeri included, and it gave names. There is nothing on this document to show that the
37 witness took part in the attack on the court of appeal. Certainly, my learned friend hasn't shown us, we

1 haven't seen it yet, and the witness has also denied it, My Lord. As Your Lordship please.

2 MR. MACDONALD:

3 I am very -- he's done a lot of things in the past, but I'm very surprised to see my friend stand up and
4 say something like this to this Court. As an officer of the Court, sir, you're a great deception. The
5 context -- I don't have 25 minutes to read the context. Read the context and he will see that clearly
6 we're referring to the court of appeal. It's always these unfounded objections that are time consuming
7 and useless. I mean, as an officer of the Court, sir -- this is -- this is an inadmissible abdication of a
8 moral responsibility, sir. So I'm just going to finish up on that. If I could --

9 MR. PRESIDENT:

10 Yes. No, we will try to accept this and -- yes?

11 MR. TAMBADOU:

12 As Your Lordship please.

13 MR. PRESIDENT:

14 Yes. Registry, what is the marking given?

15 MR. FRY:

16 Forty-four.

17 MR. PRESIDENT:

18 Forty-four.

19

20 And that's the end of the evidence, Mr. MacDonald. We will -- that's enough. Thank you.

21 MR. MACDONALD:

22 That's it. If you tell me to sit down, I will sit down.

23 MR. PRESIDENT:

24 This is under seal. You want it to be kept under seal?

25 MR. MACDONALD:

26 Yes. Yes, sir.

27 MR. PRESIDENT:

28 Yes, yes.

29

30 Mr. Counsel, you may re-examine the witness.

31 MR. TAMBADOU:

32 My Lord --

33 MR. PRESIDENT:

34 This document that was tendered by Mr. MacDonald is marked as D. 44, within brackets, Bizimungu.

35 MR. TAMBADOU:

36 As Your Lordship please.

37

1 MR. PRESIDENT:

2 And the document should be kept under seal, as it refers to certain names.

3 *(Exhibit No. D. 44[Bizimungu] admitted, under seal)*

4 MR. PRESIDENT:

5 Yes, Mr. Counsel.

6 MR. TAMBADOU:

7 My Lord, I have only one question for re-examination, but I have one issue to talk to Your Lordships
8 about after the end of the re-examination.

9

10

RE-EXAMINATION

11 BY MR. TAMBADOU:

12 Q. Now, Witness, my learned friend has spent the whole day yesterday asking you about dates,
13 approximations, estimates. In your statement of 19th of August 2003, page 3, second paragraph --

14 MR. MACDONALD:

15 Which one, sir?

16 MR. TAMBADOU:

17 The statements to the ICTR investigators of 19th of August 2003.

18 BY MR. TAMBADOU:

19 Q. On page 3, second paragraph. Just two sentences. That paragraph contains only two sentences. And
20 I'll read this, Witness. Listen carefully. "I am prepared to tell you everything that I know about" --

21 MR. MACDONALD:

22 I object to this question. I'm not afraid of it or anything like that, but it's illegal. This is called
23 self-serving evidence. You cannot use a statement, a previous statement, from a witness in order to
24 rehabilitate his credibility, Mr. President. And what he wants to bring to your attention is that he said at
25 a certain point in time, "I am not good at remembering dates." If that is entitled -- if my friend is entitled
26 to re-examine him on that -- first of all, it wasn't raised necessarily in cross-examination. I've asked him
27 about specific dates and he gave us answers. But this --

28 MR. PRESIDENT:

29 This Court won't expect any witness to remember all the dates, so I don't think that this is -- anyway,
30 since it is there, what is your objection with regard to the first line?

31 MR. MACDONALD:

32 Well, my objection is that they're trying to use this as self-serving evidence in order to try to rehabilitate
33 the witness on answers that he has given. So -- if the witness, Mr. President, if the witness had said in
34 cross-examination, "Sir, I am not good with dates," and I would -- I was to contest that particular point
35 by saying, "No. You are good with dates. You gave us this; you gave us that," then he would be
36 entitled to bring this in because I'm directly attacking something he said in his -- in another statement.
37 Where I'm alleging you never said that before, then you could raise it. But here, it's just -- it's purely

1 and simply self-serving evidence which can't, I respectfully submit –

2 MR. PRESIDENT:

3 Do you really want to mark this? Because our impression is that we don't -- we know the difficulties the
4 witness had in remembering all these dates.

5 MR. TAMBADOU:

6 My Lord --

7 MR. PRESIDENT:

8 I thought there was one area that you wanted to clarify.

9 MR. TAMBADOU:

10 My Lord, I don't think there is any area where I need to clarify the issues.

11 MR. PRESIDENT:

12 No. I don't think so, because you remember in the jeep there were ten people, so you must remember
13 as to how you counted these people. But when Bizimungu came in that jeep, so -- because at least you
14 must take this witness up to the jeep.

15 MR. TAMBADOU:

16 My Lord, we have established in our evidence-in-chief that there were three soldiers on every -- on
17 either side of the jeep and that four people were lying down and they had been trampled upon. That's
18 sufficient for our purposes. My learned friend has not cross-examined on that, and it's his right, but we
19 have established that four -- there were three soldiers on either side of the jeep, four people lying down,
20 and they were trampled upon. That's good enough for us, My Lord. We don't need any further
21 discussions on that. If my learned friend chose to spend the fewest time on the incident concerning
22 General Bizimungu, well, that's entirely his priority. I just have one issue. My learned friend is on his
23 feet.

24 MR. MACDONALD:

25 No, I just want to say something. I did not choose not to cross-examine. I was limited in my
26 cross-examination. I want this to be very clear for the record.

27 MR. PRESIDENT:

28 Yes, Mr. Counsel, I think I gave you half an hour from yesterday for that incident, but you were dwelling
29 on something else. That also should be reflected in the record.

30 MR. TAMBADOU:

31 My Lord, for the records, this witness gave evidence for two and a half hours, and my learned friend
32 took four days.

33 MR. PRESIDENT:

34 We don't have to speak about the record; it speaks for itself.

35 MR. TAMBADOU:

36 As Your Lordship please. As Your Lordship please.

37

1 MR. PRESIDENT:

2 Yes. Thank you, Witness, for coming.

3

4 Are you finished?

5 MR. TAMBADOU:

6 Yes, My Lord, I am finished. I just have an issue that I have --

7 MR. PRESIDENT:

8 Thank you, Witness, for coming.

9

10 Any other Defence counsel wants to --

11

12 Yes, Witness, you may go. Thank you for coming.

13 THE WITNESS:

14 I also thank you for having listened to me.

15 *(Witness excused)*

16 MR. PRESIDENT:

17 Yes. You may call the next witness.

18 MR. TAMBADOU:

19 My Lord, I just have an issue to raise between or amongst ourselves here, My Lord, an issue that is of
20 great concern to everybody in the Office of the Prosecutor and certainly to me. Yesterday, my learned
21 friend attacked the witness and said to the witness, "You were coached." That's exactly the term he
22 used. Now, My Lord, I don't think that was meant for the credibility of the witness; I think that was
23 meant for the integrity of the Prosecutor, My Lord. What my learned friend basically was saying is that
24 we told the witness what to say. Now, My Lord, I certainly will not leave that unchallenged; neither
25 would the rest of my colleagues here. If my learned friend has evidence to show that that was indeed
26 the case, he is more than welcome to show this Court. If he has any reasons to believe that that was
27 the case, he must make his reasons known to the Court.

28

29 My Lord, if I were to stand here and accuse my learned friend of fee splitting with his client, he wouldn't
30 like it; I'm sure he wouldn't be happy. Whether we have reasonable grounds for believing so or not is a
31 matter that -- it does not give us the right to accuse him of that. We also have our way of thinking.
32 Certainly, I do. But no matter how suspicious I am, as an officer of this Court, I will not attack my
33 learned friend on an issue such as fee splitting with his client in open court. I think the respect must be
34 mutual. My learned friend, no matter how strong his convictions are, must exercise restraint. I know he
35 has a personal weakness; he gets personal in these issues; he gets carried away. And he must do
36 better as an officer of this Court. As Your Lordship please.

37

1 MR. PRESIDENT:

2 I think -- yes, Mr. Counsel, I think we must not cast aspersions on our colleagues, because I have been
3 on that side and this side also, and now I am here. So I know the workings. So sometimes these
4 witnesses, when the Prosecution meets them, it is not for the purpose of telling as to what they should
5 tell in court, but it is to remind them as to what the evidence is. So I think we must restrain ourselves in
6 making such kind of thing. But your line of questioning was really -- he was suggesting that it was the
7 investigators who were giving the touchup. That is what he was saying. But then at the same time, he
8 mentioned that as a passing reference to the Prosecution, which I think we should avoid.

9 MR. MACDONALD:

10 Well, there was a line of questioning there, sir, and I specifically mentioned to the Court yesterday
11 morning, because of the motions that were presented, we had not yet received a response. So I
12 thought maybe I would ask my questions in general terms, and there were a few objections, but I think
13 this matter was resolved. My concern was with respect to the fact that this witness had been seen at
14 least four or five times since January. They had all the chances in the world to let the witness explain
15 what these meetings were about. I didn't know what the answer was. I'm not attacking anybody. I'm
16 investigating; I'm entitled to it, and we should not expect the Defence attorneys to know all the answers
17 when they get up and cross-examine. We know some of them, but some of them we don't.

18 MR. PRESIDENT:

19 Yes. Now that the incident has happened, I think maybe we will forget about it and we will be careful in
20 the future. I think that's all we can do. So both sides, I think, must keep in mind that we must conduct
21 ourselves in a dignified manner.

22 MR. MACDONALD:

23 Yes, sir.

24 MR. PRESIDENT:

25 Yes. You can call your next witness.

26 MR. ST-LAURENT:

27 Mr. President. Mr. President, sir, what I have heard throughout these hearings, and I have been here
28 almost always, is what my colleague has insisted in giving you fair warning about the purpose of the
29 questions he is putting, and nowhere, at no point, did I hear any particular trick to cast doubt on the
30 credibility of the Prosecutor in any coaching whatsoever. And, Mr. President, I think that in reaction to
31 what my learned colleague thinks is an ethical lapse; he is talking about fee splitting, for instance. I do
32 not know exactly what he is doing here. Mr. President, we have our work to do. I think we are doing
33 our best to do it with -- bearing in mind respect for the rules of this Tribunal.

34 MR. PRESIDENT:

35 Yes, Mr. Counsel. I think we have closed that chapter now so we don't want to reopen it.

36

37 Please call the next witness. I think we will take your --

1 MR. MACDONALD:

2 Sir, just one thing. Mr. President, before I -- actually, not before I forget, because I forgot. My client just
3 reminded me. The incident with respect to the statements that the witness said he made before the
4 Rwandan authorities -- I think he mentioned four or five -- and following this there was somewhat of a
5 debate, and I understand that the Court asked the Prosecutor's office to --

6 MR. PRESIDENT:

7 Make an effort to get this done.

8 MR. MACDONALD:

9 Make an effort. But must I understand that when we do get -- if we do get this information, I mean, I
10 would want there to be like a follow-up on this. I don't want this to die of -- like this. I mean, they
11 should have a certain period of time to come back before this Court and say, "Listen, this is their
12 position. They're saying they have nothing" or "They're saying they have it and they're going to send it
13 to us." And if they do send it to us, then we will file the motion, the appropriate motion, to have the
14 witness come back, if necessary, and we would ask the Court for permission to cross-examine him on
15 these statements. So I think this is a live matter and it should be dealt accordingly. So, but what I'm
16 suggesting to the Court is to give the Prosecutor a deadline, not just let it run, give him a deadline, and
17 he would have to come before the Court and say, well, this is their position. Respectfully submitted.

18 MR. PRESIDENT:

19 What's your response to that, Mr. Counsel?

20 MR. TAMBADOU:

21 My Lord, I'm sure my learned senior Mr. Bâ will have a word or two. But before he does, My Lord, let
22 me just briefly say this, My Lord, that the document my learned friend is referring to are documents that
23 the witness --

24 MR. PRESIDENT:

25 Has denied.

26 MR. TAMBADOU:

27 -- has denied making confessions. My Lord, in fact --

28 MR. PRESIDENT:

29 No. He has not denied the document, but he says that it is --

30 THE ENGLISH INTERPRETER:

31 Your Honour, your microphone, please.

32 MR. TAMBADOU:

33 *(Microphones overlapping)* ... denial, My Lords. In the Chambers even, My Lord, these denials are
34 deemed irrelevant, My Lord, at all and they are dispensed with. And to ask the Prosecutor to provide
35 documents that are not in the possession of the Prosecutor and to impose a time limit to that, My Lord,
36 is preposterous. I mean, how would denials of the witness in his trial or in his examination in Rwanda,
37 in his investigation, during the course of investigations of matters affecting himself, how can that in any

1 way change substantially the context of his testimony here in Court? Some Chambers have gone
2 further, My Lord, to even disregard such denials. And to ask us to provide these statements --

3 MR. PRESIDENT:

4 The only obligation on the part of the Prosecutor is to give or disclose what is in your possession.

5 MR. TAMBADOU:

6 What is in our possession, My Lord.

7 MR. PRESIDENT:

8 And you don't have to go on a voyage of discovery and then give. That is the judgement in that other
9 case.

10 MR. TAMBADOU:

11 My Lord, yes.

12 MR. PRESIDENT:

13 And I support that also.

14 MR. TAMBADOU:

15 Yes. Yes. Not only that, My Lord, but they have investigators; they have the same resources at their
16 disposal as we do for investigations. We disclose statements of witnesses who come in here to testify;
17 we give them a lot of time so that they could conduct their investigations on the background of those
18 witnesses. If -- they cannot come in here and cover their inadequacies and blame us or ask us to do
19 their job for them. Let them conduct their own investigations. As Your Lordship please.

20 MR. MACDONALD:

21 I will answer to this. Let's get the record straight. They sent us five documents: Three statements
22 allegedly given by the witness to the ICTR, a plea of guilt dated November the 30th, and this document
23 dated May the 22nd, 1997. They tell us, "Here's the evidence we have. It emanates from the witness."
24 We stand up; we cross-examine this witness. He says, "I had nothing to do with this document dated
25 May the 22nd, 1997." Fine. "Did you speak with the Rwandan authorities?" He says, "Yes, I met with
26 them at least four or five times." And there was written material he denied, but he gave answers to
27 questions that were asked by the Rwandan authorities. My friend knows it's not true, but what he does,
28 he stands up and he covers the witness. So -- and furthermore, and furthermore, and this is the
29 important part: When the witness is asked whether or not he was shown this document dated May the
30 22nd, 1997, he says he was not; he was shown all other documents except that one. So, in that case,
31 if we believe the witness, then the Prosecutor is trying to induce the Defence in error by giving us
32 documents that have nothing to do with this witness. So how could he stand up here and keep on
33 protecting that witness? I mean, credibility is a very important thing, Mr. Abubacarr. You should think
34 about that. But the point is --

35 MR. TAMBADOU:

36 My Lord, I take exception --

37

1 MR. MACDONALD:

2 But they stood up and they covered the witness, and now they're stuck with their position, because their
3 position is -- they're saying, "We believe our witness, and he says he's got five statements, and these
4 statements are in the hands of the Rwandan authorities." So let him carry through with that position,
5 and we want -- because you gave an order to that effect, that they should --

6 MR. PRESIDENT:

7 I made a request to them to make an endeavour to get the documents.

8 MR. MACDONALD:

9 That's right.

10 MR. PRESIDENT:

11 Yes.

12 MR. TAMBADOU:

13 My Lord, I will not allow my learned friend to -- again, he is attacking, but I will not stoop so low and
14 respond to him. What I will respond is, I am not protecting anybody here, not the witness; I am
15 protecting the integrity of the proceedings here. If my learned friend chooses to keep on attacking me,
16 he can do so for as long as he wishes.

17 MR. PRESIDENT:

18 I think we should stop this. We are officers of the Court, so we must respect -- we must have mutual
19 respect; otherwise, others will not respect. So we will keep that in mind then.

20 MR. MACDONALD:

21 Well, I'm still asking for a deadline so they'll come before you and tell you, "Mr. President, there are no
22 such statements," and this is what's going to happen.

23 MR. PRESIDENT:

24 Well, I have given the directive of -- I made a request of them, so let them -- let them report to me. I
25 can't -- I can't say, because I don't know how fast the authorities will act, so I can't give them a -- I have
26 made a request, so we will -- you have time to -- sometime later I think you will remind us, and we can
27 ask them as to what has happened.

28 MR. MACDONALD:

29 Certainly, sir. Thank you.

30 MR. PRESIDENT:

31 Yes, Mr. Counsel. You may lead the witness.

32 MS. GIRARD:

33 Your Honour, Mr. President, is it possible for us to take a break before the witness begins his evidence?
34 Before the witness begins his evidence, perhaps this will be a good time for us to take a break.

35 MR. PRESIDENT:

36 Since Mr. Ferran is not here, I think we will give the *Maître* time. We will take a break and come back in
37 about 10, 15 minutes.

1 MR. JEGEDE:

2 Thank you, Your Honour.

3 MR. PRESIDENT:

4 Court is adjourned for 15 minutes.

5 *(Court recessed at 1043H)*

6 *(Pages 1 to 27 by Karen Holm)*

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1 (Court resumed at 1100H)

2 MR. PRESIDENT:

3 Yes, Counsel.

4 MR. JEGEDE:

5 Your Honour, my name is Segun Jegede and I will be conducting the examination-in-chief of the
6 witness, Witness DCK, who is the next witness, number 13.

7

8 I will ask that the necessary oath be administered.

9 MR. PRESIDENT:

10 Yes.

11 (*Declaration made by Witness DCK in Kinyarwanda*)

12 WITNESS DCK,

13 first having been duly sworn,

14 testified as follows:

15 EXAMINATION-IN-CHIEF

16 BY MR. JEGEDE:

17 Q. Witness, do you have a document entitled "*Information protégée*" in front of you? Do you have that
18 document in front of you now, Witness?

19 A. Yes, I have the document.

20 MR. JEGEDE:

21 Sorry, I didn't -- I wasn't having my headsets, Your Honour, but I presume he said yes.

22 BY MR. JEGEDE:

23 Q. Have you read that document?

24 A. Yes. I had the document in the evening, last night.

25 Q. Is there a signature at the bottom of the document?

26 A. Yes, there is a signature.

27 Q. Whose signature is it?

28 A. It is mine.

29 Q. Does that imply that the information in the document is correct?

30 A. I think the information contained therein is correct, but perhaps you could give me some time to peruse
31 the document one more time.

32 Q. Yeah, you can -- please do so, Witness.

33 A. Yes. I notice that the information contained in this document is correct.

34 MR. JEGEDE:

35 Your Honour, the Prosecution wishes to tender the protected information sheet as the next Prosecution
36 exhibit, number 22, P. 22, under seal, Your Honour.

37

1 MR. PRESIDENT:

2 P. 22.

3 MR. JEGEDE:

4 Under seal, Your Honour.

5 MR. PRESIDENT:

6 Keep it under seal.

7 *(Exhibit No. P. 22 admitted, under seal)*

8 MR. PRESIDENT:

9 Yes, Counsel.

10 MR. JEGEDE:

11 Mr. President, I would like to commence the examination-in-chief in closed session. I'm mindful of the
12 Accused's right to a public hearing, but we won't take more than 15 minutes, Your Honour.

13 MR. PRESIDENT:

14 Counsel requests that a closed session be given to him for the purpose of protecting the witness's
15 identity. Sessions will be closed to public for 15 minutes, around 15 minutes.

16 *(At this point in the proceedings, a portion of the transcript [pages 30 to 32] was extracted and sealed
17 under separate cover, as the session was heard in camera)*

18 *(Pages 28 to 29 by Mark Porter)*

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1 1117H

2 MR. PRESIDENT:

3 Witness, when you answer now without disclosing your identity, you can answer now, because we are
4 in open session.

5 BY MR. JEGEDE:

6 Q. And -- okay.

7 MR. PRESIDENT:

8 Yes, you may continue.

9 BY MR. JEGEDE:

10 Q. Witness, in answering my questions, I would urge you to answer to the President of this Court, look at
11 him and not me. That's the way things are done here. Are we clear on that?

12 A. We are together, sir.

13 Q. Did there come a time when you were posted back to Camp Kigali after you left Bigogwe?

14 A. Mr. President, Your Honours, with regard to the Prosecutor's question, it is true that I was posted to the
15 music company after I left Bigogwe.

16 Q. When were you posted to that company?

17 A. The Arusha Peace Accords were signed, and there was a truce. It was at that time that I was reposted
18 to the music company.

19 Q. In which unit were you serving in April 1994?

20 A. I was posted to the music company.

21 Q. In what part of Kigali is Camp Kigali located?

22 A. Camp Kigali is located at a place known as the plateau, near the Café Impala. It is some sort of an
23 extension of the Kiyovu neighbourhood. Camp Kigali is located near the Kigali hospital centre, CHK.

24 Q. What kind of neighbourhood is Kiyovu?

25 A. Kiyovu is a neighbourhood in the Rwandan capital, which is inhabited by the authorities of the country.

26 Q. Do you recall the authorities who lived there in 1994?

27 A. Inter alia, I will mention the president of the republic who lived at Kiyovu neighbourhood, as well as the
28 prime minister. Most embassies are located in that neighbourhood, as well as the residences of
29 ambassadors. There are also senior officers of the army, as well as government authorities.

30 Q. You mentioned the prime minister is one of the authorities living in Kiyovu. Do you know the name of
31 the prime minister?

32 A. It was Madam Agathe Uwilingiyimana.

33 MR. JEGEDE:

34 Mr. President, that's number 27 on the spelling list.

35 BY MR. JEGEDE:

36 Q. Do you know where she lived in April 1994?

37 A. Yes, sir.

1 Q. Please describe the residence to the Court, if you can.

2 A. From Camp Kigali to the prime minister's residence, you go through ESM, and there is a road going
3 down near ESM. The road is between ESM and the prime minister's residence. But between the prime
4 minister's residence and the road, there is another house. The residence is along Paul VI Avenue.

5 Q. How will it -- how long will it take you to drive from the main entrance of Camp Kigali to her residence?

6 A. Roughly speaking, I would say two or three minutes to cover the distance.

7 Q. And how long will it take you to walk there?

8 A. If you are walking at a normal pace, you can cover the distance in five or ten minutes. It all depends on
9 the speed of the person walking.

10 Q. Beginning with the music company, of which you were a member, please tell the Court what the
11 functions of that company were in 1994.

12 A. Under normal circumstances, the music company was responsible for providing music during
13 ceremonies, but we were also responsible for the protection of Camp Kigali.

14 Q. How many soldiers were in the music company?

15 A. I cannot recall the exact number of soldiers in the music company, but, roughly speaking, I would say
16 between 140 and 150 soldiers.

17 Q. Did that company have subunits in 1994?

18 A. Yes. There were units referred to as platoons.

19 Q. How many platoons?

20 A. There were four platoons.

21 Q. Were all those four platoons based in Camp Kigali in April 1994?

22 A. There were two platoons of the music company based at Camp Kigali. Two others were based at the
23 Nyabarongo bridge on the road to Gitarama.

24 Q. The two platoons that were based at Nyabarongo bridge, do you know when they were posted there?

25 A. From what I remember, the two platoons had been posted there pre-April 1994, but I cannot be too
26 specific regarding the date.

27 Q. Do you recall their functions when they were first posted there?

28 A. The Nyabarongo bridge was a strategic location. Accordingly, it was necessary to set up a military post
29 there to avoid infiltrations from the enemy.

30 Q. Do you know what their functions were in April 1994, from April 1994 to June 1994?

31 A. The two platoons were destined to protect the bridge, but afterwards, after the president's plane was
32 downed, the two platoons were beefed up in order to intercept passers-by, and some of those
33 passers-by were killed at that location.

34 Q. How did they intercept passers-by, Witness?

35 A. Passers-by were searched, and those of them belonging to an ethnic group were held back while the
36 others continued their journey. But those who were held back were killed.

37

1 MS. GIRARD:

2 Objection, Mr. President, these are new elements brought in by the witness, which do not appear in the
3 statements disclosed to us. So I would request that the witness does not testify to these new elements
4 which are not in the statements disclosed to us.

5 MR. JEGEDE:

6 Your Honours, I understand that counsel is new -- well, she's not completely new, but if she has taken
7 the pains to read the statement, she would know.

8 MR. PRESIDENT:

9 You refer to the areas.

10 MR. JEGEDE:

11 Oh, yes. If she looks at the statement dated 3rd October 2000.

12 MR. PRESIDENT:

13 2000.

14 MR. JEGEDE:

15 The English version.

16 MR. PRESIDENT:

17 2001?

18 MR. JEGEDE:

19 2000, Your Honours. There are two statements. Oh, sorry, 2001.

20 MR. PRESIDENT:

21 Yes. Okay.

22 MR. BLACK:

23 I also object on the grounds that there is no foundation to this question. How does he know what
24 happened to that bridge? You haven't led any questions about where he was, what his source of his
25 knowledge was, where he was, what he saw. This might as well just be hearsay, in which case we all
26 object to that.

27 MR. PRESIDENT:

28 Where is it?

29 MR. JEGEDE:

30 Yeah, the last paragraph on that page, Your Honour, page 4.

31 MR. PRESIDENT:

32 Counsel, are you satisfied with that? Have you found the place?

33 MS. GIRARD:

34 Not yet.

35 MR. PRESIDENT:

36 It refers to -- only to two platoons, so you may --

37

1 MR. JEGEDE:

2 As the Court pleases. As the Court pleases.

3 BY MR. JEGEDE:

4 Q. So, Witness --

5 MS. GIRARD:

6 But I'd like to go on to continue objecting, if it is not within the witness's personal knowledge.

7 MR. PRESIDENT:

8 That's right, yes.

9 MR. JEGEDE:

10 Your Honours, it's absolutely ridiculous that eight years and several cases, several judgements, after
11 this Tribunal was set up, some counsel will still get up and contend that the hearsay evidence is not
12 admissible before Your Lordships. We know that this matter has been decided over and over again, in
13 cases -- I can mention 20, in *Akayesu*, in *Musema*, in *Rutaganda*, in *Kayishema*, in all the cases
14 virtually, this point was brought up and it was decided, even on appeal by the Appeals Chamber. So --

15 MR. ST-LAURENT:

16 Mr. President, with your permission --

17 MR. JEGEDE:

18 It's Rule 89.

19 MR. PRESIDENT:

20 One second.

21

22 Yes, Mr. Counsel? Yes, Mr. Counsel?

23 MR. JEGEDE:

24 Your Honours --

25 MR. PRESIDENT:

26 I thought they were objecting on that side. That's why I was looking -- yes, I know the cases.

27 MR. JEGEDE:

28 No, no. Your Honours, I think we ought to set the record straight now because we keep having these
29 objections, and it's completely unacceptable for them to waste the time of the Court based on
30 unfounded objections. We ought to set the record straight now. Hearsay evidence is admissible. It
31 behoves on Your Lordships to consider the weight at the end of the trial. That's the jurisprudence of
32 this Tribunal. The parties to these proceedings cannot change what's contained in Rule 89(C), and
33 Your Lordships also cannot change. You have to apply the provisions of the Statute. These provisions
34 are couched in imperative terms.

35

36 If Your Honours look at Rule 89(A), it says, "The Chambers shall not be bound by national rules of
37 evidence," and then it says that "The Rules of evidence set forth in this section shall govern the

1 proceedings before these Chambers." Your Honours, we know that wherever the word "shall" is used,
2 it is mandatory, compelling, obligatory, and it does not give Your Lordship discretion. It says it shall be
3 done, and what it means is that it shall be done. We are not permitted to digress at all or to derogate
4 from the provisions of these Rules.

5
6 We have heard it said in this Court that the hearsay must come within an exception known to the
7 common law. That is not the jurisprudence of this Tribunal. Although we have categories, what the --
8 we have been able to establish here is there are categories of hearsay. We have firsthand hearsay, we
9 have secondhand hearsay, and we have some that are far removed. So it is not for me to judge which
10 is far removed. It is for Your Honours to judge at the end of the trial. So they cannot -- they cannot
11 stultify the progress of these proceedings. That has been their stock in trade since we started, and that
12 is what they intend to do so that we never leave here. But, My Lords, we want to leave this. We have
13 to leave this. We have to conclude this case. There has to be an end to litigation. That is what we
14 know. And for them to always object on the grounds that someone says something that was said to
15 him while he was not there is objectionable, that is complete -- that is complete nonsense,
16 Your Honours. It's arrant nonsense.

17 MR. PRESIDENT:

18 This Chamber is aware of the Rule 89 and the jurisprudence. You may continue now. We will -- but
19 anyway, when they object --

20 MR. BLACK:

21 Mr. President.

22 MR. PRESIDENT:

23 -- we have to record their objections. That's all.

24 MR. JEGEDE:

25 As the Court pleases.

26 MR. BLACK:

27 Mr. President, we are all going to object to this, because if he's going to make this point now, the crucial
28 issue to decide this matter, then we are all going to object for a long time. If he wants to turn this --
29 what is supposed to be a trial into a farce and a comedy, he can do -- and call hearsay evidence and
30 witnesses which know nothing except what they heard, it's going to be a farce and the world will see it
31 as a farce. It's a scandal he proposes this.

32
33 The Rules state that no evidence can be admitted into this Court unless it's proven to be reliable. If you
34 want to call hearsay evidence, then you better establish that it's reliable, which means establishing all
35 the grounds for his knowledge, where he got it from, how reliable that evidence was; otherwise,
36 inadmissible. And you can't -- that's the rule, Mr. President, not what he says.

37

1 MR. PRESIDENT:

2 No, Mr. Black. I think what you said is correct, but the reliability will be decided by us and not by the
3 Prosecutor nor --

4 MR. BLACK:

5 That's correct, but he has to establish reliability, not you.

6 MR. PRESIDENT:

7 Let him lead the evidence. Then you can make your submissions as to why we should shut out or
8 ignore that evidence.

9 MR. JEGEDE:

10 As the Court pleases.

11 MR. BLACK:

12 But he's not going to lead any evidence on how reliable the source of this man's information is.

13 MR. PRESIDENT:

14 He cannot decide whether the evidence is going to be reliable or not. How can the -- otherwise, it is not
15 necessary. Whatever he says will be led.

16 MR. JEGEDE:

17 As the Court please.

18 MR. BLACK:

19 With respect, Mr. President, that's not -- the Prosecution --

20 MR. PRESIDENT:

21 We will demarcate the boundaries and then tend to our jobs, and then that will be easier.

22 MR. BLACK:

23 The Prosecution has the obligation, as we would do if we tried to do the same thing, to establish
24 reliability of that information. Without it being reliable, it cannot be admitted. Hearsay cannot be
25 admitted at large because this becomes trial by rumour; it becomes a complete farce, not a trial. And
26 my -- these men are not going to be condemned on rumours.

27 MR. PRESIDENT:

28 That is the thing. That is correct, Mr. Black. Whether it is going to be accepted or not is a matter for the
29 Court, and that will be done.

30 MR. BLACK:

31 Okay. I agree with you, but he's now asked the witness directly.

32 MR. PRESIDENT:

33 He can lead that evidence, but it is your duty to say that this is not evidence and it can be rejected.

34 MR. BLACK:

35 I agree.

36 MR. PRESIDENT:

37 Yes.

1 MR. BLACK:

2 I'm saying he's now --

3 MR. PRESIDENT:

4 So when the role is reversed, we will jot it down and say that you are objecting and we will assess that
5 evidence at the appropriate stage.

6 MR. BLACK:

7 What he's done is jumped that whole step and just asked him what he heard. He had no intention to
8 establish reliability, and still doesn't, because he can't.

9 MR. PRESIDENT:

10 Yes, Mr. Laurent, I see you are on your feet.

11 MR. ST-LAURENT:

12 Thank you, Mr. President.

13

14 My learned friend can take his seat because I have about two or three minutes.

15 MR. PRESIDENT:

16 Okay, Mr. Jegede.

17 MR. ST-LAURENT:

18 I find my learned friend's assertion to the effect that hearsay is to be admitted in this room, with you as
19 President, is heresy and cannot be proved in law. With regard to Article 89, may I? Because it is a
20 fundamental issue which will keep recurring throughout this trial and it is fundamentally -- fundamental
21 notably for the Defence in ensuring full answer and defence.

22

23 I'd like to suggest, first of all, Mr. President, that one cannot talk about hearsay being prohibited without
24 looking at the definition of "testimony," and I'd like to suggest a definition that is as follows: The witness
25 will come to relate orally before the Court facts which were known personally to him, with a view to
26 establishing the veracity of what he reports, which will take place after a solemn oath being
27 administered and cross-examination. That is, in my opinion, the closest definition to the truth of --

28 MR. PRESIDENT:

29 Yes, Mr. Counsel, I think you are referring to the best-evidence rule.

30 MR. ST-LAURENT:

31 Now, based on -- no, Mr. President, I'm not talking about the best evidence. I'm talking about the
32 definition of what testimony before this Chamber should be. It's very different, I submit, Mr. President,
33 from the rule of best evidence which requires from the person eliciting that evidence to provide to you,
34 the Chamber, the best possible primary evidence, and given -- taking into account a few of the
35 exceptions that have been developed in law, there is need to look at admissibility of secondary
36 evidence. But this has nothing to do with the very definition of testimony. And why is this definition of
37 testimony so important? It's because whatever falls outside this definition of testimony constitutes

1 hearsay, which, in principle, is inadmissible. Based on that, that would be to say that if a witness were
2 to come and give a written testimony, if he doesn't open his mouth, but, rather, tenders his writings as
3 evidence, then that would not be possible. It would be prohibited. A witness who comes to testify
4 without giving an oath, well, then, his testimony would not be accepted because it would not be
5 testimony. It would also run counter to the definition of testimony. And based on that, I submit that my
6 definition of testimony --

7
8 I have not yet finished, my learned friend. I suggest that you remain seated. I still have some points to
9 cover.

10
11 So whatever does not enter within this definition is hearsay, and any hearsay evidence is -- are we
12 saying that there is complete inadmissibility with regard to any evidence that is presented? The answer
13 is no. There is some exception and some latitude that allows us to accept hearsay evidence, but that is
14 in the most exceptional of cases, only in cases of extreme urgency. I can talk about this because my
15 Master's thesis was on this subject and I can talk about it until my learned friend falls asleep, but
16 obviously that is not the purpose of my intervention. I only wish to support the objection.

17
18 In this case, and in other cases that we have seen before us, the witness was reported -- reporting the
19 evidence that he heard, with a view to transmitting -- to having its veracity proved, and anything based
20 on Rule 89, Mr. President, I think it is important for this Chamber to render a decision confirming that
21 anything that does not fall within the definition of testimony should be considered hearsay, and unless
22 my learned friend can prove the necessity --

23
24 I am concluding, my learned friend. Please hold back.

25
26 It has nothing to do, Mr. President, with the issue raised by my learned friend on the other side to the
27 effect that this is the stage where we are appreciating the evidence. I've already intervened on this
28 subject. There is a lot of difference between probative value of evidence and probative force.

29 Probative force means that once evidence has been admitted, you will weigh this evidence, you will
30 appreciate its credibility, you will decide whether you are more or less or not at all convinced by the
31 quality of the evidence. Probative force is the quality it has in terms of convincing the Bench a little bit,
32 a lot or not at all. It has a bearing on the very admissibility of evidence, evidence that is hearsay, and it
33 is in this regard that I am objecting to my learned friend's intervention.

34 MR. JEGEDE:

35 Your Honours, I would like to respond to that before anyone takes the floor. Mr. St-Laurent apparently
36 has spent too much time in the classroom and he forgets that this is a completely different jurisdiction.
37 This is a mixed jurisdiction, and the rules of this Court does not purport to conform to any system or

1 tradition. It is a mixed jurisdiction; the rules of this Court govern proceedings before this Court.
2 Whatever you do in Canada or wherever does not affect proceedings in this Court. So that is the
3 situation in this Court. That's number one.

4
5 You have to understand that now. And you also claim to be a professor of law. You should also know
6 that the hearsay rule was developed in response to the exigencies of trial by jury. It was taught at that
7 time that juries would not be able to know and appreciate the weight to be attached to hearsay
8 evidence. Here we have professional Judges.

9 MR. PRESIDENT:

10 We shouldn't have discourses here on law.

11 MR. JEGEDE:

12 He brought it up, Your Honour.

13 MR. PRESIDENT:

14 Yes. I think, if both sides want, I can -- we can give a decision. There is no problem.

15 MR. JEGEDE:

16 Maybe that will solve the problem, because they keep getting up.

17 MR. PRESIDENT:

18 Mr. Counsel, I think what Mr. Counsel for the Defence said was also true. But in determining whether --
19 how much weight should be attached to the evidence given, or if it is hearsay and it must be completely
20 ignored, should be at the time when we deliberate. If the witness -- if the Prosecution has led the entire
21 case on hearsay, what we have to say is that no evidence has been led and there is nothing for us --
22 that nothing can be done, that the case has not been proved. So if they have best evidence, they must
23 place the best evidence before Court. So if the case -- when the case -- when they don't have the best
24 evidence, they will rely on other evidence to show -- at least, to establish that they have established a
25 prima facie case. But in assessing the evidence and admitting and in considering whether the Accused
26 is guilty and whether the Prosecution has proved the case beyond reasonable doubt, at that stage,
27 weight and the quality of the evidence will be considered by this Court.

28

29 So I will give you the assurance that if the Prosecution is relying only on hearsay evidence, they will not
30 succeed.

31 MR. JEGEDE:

32 That's our case, Your Honour.

33 MR. PRESIDENT:

34 They will not succeed. So we will -- on that assurance, we will get the counsel to lead that evidence,
35 yes.

36 MR. JEGEDE:

37 Thank you very much, Mr. President.

1 MR. ST-LAURENT:

2 Mr. President, I am sorry, but before you render your decision, this is so important a decision, if I
3 understood you correctly, with all the respect, it means that all members of the Defence can also
4 produce any type of evidence and so there will be no need to dispute its quality. We could scribble
5 something on a piece of paper, by somebody who is in Europe, and produce it as evidence. Now,
6 where are the limits, Mr. President? Please forgive me for insisting, but there is some difference
7 between probative value and the fate you reserve for it. It's very important for us, because there are
8 several factors that are outside our control with regard to the type of evidence that can be concocted by
9 the Rwandan authorities, for instance.

10 MR. PRESIDENT:

11 Well, the evidence will be admitted on the ground of relevancy. Relevancy is the matter that guides this
12 Court in admitting and accepting evidence.

13 MR. JEGEDE:

14 As the Court pleases. I agree entirely with Your Honours.

15 MR. SEGATWA:

16 Mr. President, excuse me. I take the floor so rarely that I think you will allow me to speak. I believe that
17 there is a problem of intellectual honesty when such debate is engaged. I am not contesting the
18 admissibility of hearsay. That is for your Bench to assess. But intellectually, we ought to know what
19 was personally witnessed and what was heard. There should not be a confusion between what was
20 seen and what was heard. So the witness should make that distinction between the two, in order to
21 avoid any confusion. If he saw bodies on the bridge, he should say, "I saw bodies on the bridge." If he
22 heard that there were bodies on the bridge, he should say that he heard that there were bodies on the
23 bridge. He should not now transform himself into an eyewitness to events that he did not witness. So
24 I'd like it to be made clear that there should be a distinction between what he was a fact or eyewitness
25 to and what he heard. And then things will be clear. Thank you, Mr. President.

26 MR. PRESIDENT:

27 I think, Mr. Counsel, that is why you are all there on the Defence side, to get the witness to say -- even
28 if he says if he had not seen everything, you get him to say he had never seen that. So that will
29 straighten the matter.

30 MR. BLACK:

31 Sorry to interrupt, Mr. President.

32 MR. PRESIDENT:

33 Yes.

34 MR. BLACK:

35 There is one other thing which is important for these prisoners, these Accused, is that the press only
36 reports the Prosecution side of these witnesses when they testify, never the Defence side or the
37 cross-examination.

1 MR. PRESIDENT:

2 But you must understand that this is not trial by press, Counsel.

3 MR. BLACK:

4 No, but the world public only gets the eyes of what's going on in this trial because nobody can come to
5 Africa -- to see these trials usually is through the press, and the world is watching through the press,
6 and they want to know what's going on in this war, what happened in this war, and unless it's made
7 clear that this witness is saying, as Mr. Segatwa said, "I saw this" or, "This is what I heard," it needs to
8 be clear, because it's reported in the press that way.

9 MR. PRESIDENT:

10 I can make a request to give wider coverage to the cross-examination. That's all I can do.

11 MR. BLACK:

12 I guess what we are saying is that the questions -- if he wants to lead these questions, he has to
13 establish the foundation for the source of the knowledge. He's never doing that. They never do that.

14 MR. PRESIDENT:

15 Yes, Mr. Counsel, I think you lay the foundation and get the witness there.

16 MR. JEGEDE:

17 As Your Lordship pleases, but we cannot -- I cannot start from behind. He has to state the facts, what
18 the facts are, and then I will ask him, "How come do you" -- "How you come to know" -- "How do you
19 come to know about these stated facts?" I shouldn't start from the other way. And it's my case. As
20 Your Lordship has said, I should be allowed to conduct this case, and if at the end of the day, it's found
21 to be worthless, then that's my problem.

22 MR. BLACK:

23 That's not right, Mr. President. He should say to the witness, "Do you have any knowledge about what
24 happened at that bridge, yes or no?" "Yes, I do." "What's the source of your knowledge?" "My source
25 is this." "What did you see? What did you hear?" It's very simple. You don't put the facts first and
26 then go backwards. That's not how it's done in a court. You can't do it that way.

27 MR. PRESIDENT:

28 Well, we have our own --

29 MR. JEGEDE:

30 Your Honour --

31 MR. SEGATWA:

32 Mr. President, if you please, I think that we have moved away from the main objection, which was
33 whether these were new facts which he cannot testify to because it was not disclosed. What was the
34 answer by the Prosecutor? Because based on the statements, that fact does not appear.

35 MR. PRESIDENT:

36 What is your answer to that, Mr. Counsel?

37

1 MR. JEGEDE:

2 Your Honour, I've quoted -- I've referred Your Honours to the statement of 2001, on page 4.

3 MR. PRESIDENT:

4 Yeah. Paragraph?

5 MR. JEGEDE:

6 Paragraph 4.

7 MR. PRESIDENT:

8 Last paragraph, yes.

9 MR. JEGEDE:

10 But in addition to that, if you read paragraph 2 of that -- on that same page, it talks about incidents at
11 the Nyabarongo bridge. Paragraph 2, Your Honours. That's from the fifth paragraph -- from the fifth
12 line on that paragraph.

13 MR. SEGATWA:

14 Mr. President, reading the statement in French, I see that the witness says, "I did not see bodies at
15 Nyabarongo," with reference to the bridge. Is that correct?

16 MR. JEGEDE:

17 Your Honours --

18 MR. PRESIDENT:

19 Not the bodies. He says he did not see the killings.

20 MR. JEGEDE:

21 Exactly. If they would allow me to finish this portion of the evidence, they can now raise their objections
22 at the end of --

23 MR. PRESIDENT:

24 Yes, Counsel. Move on.

25 MR. JEGEDE:

26 As the Court pleases.

27 BY MR. JEGEDE:

28 Q. Witness, you've stated to this Court that you -- that certain persons were killed at the Nyabarongo river
29 by elements of the music company in 1994. How do you know that those persons were killed?

30 A. I received that information from the soldiers who were posted in the platoon, the one that was posted at
31 Nyabarongo.

32 Q. Do you recall any of the names of the soldiers who told you?

33 A. It's hard for me to remember the names of those soldiers, of the soldiers who gave me that information,
34 but Warrant -- Chief Warrant Officer Munyabarenzi, who was their superior, is, as far as I know, the one
35 who was responsible for the killing.

36 MR. JEGEDE:

37 Your Honour, Munyabarenzi is number 11 on the spelling list.

1 BY MR. JEGEDE:

2 Q. So, Witness, we'll get on with your evidence-in-chief. Who was the head of the music company in April
3 1994?

4 A. It was Warrant Officer Aloys Babonanginda.

5 Q. To whom was he reporting?

6 A. His superior was the commander of the Camp Kigali.

7 Q. Who was the commander of Camp Kigali in April of 1994?

8 A. There were many changes at that time, but I think that with regard to the period we are referring to, it
9 was Colonel Nubaha.

10 Q. Thank you, Witness. You mentioned reconnaissance battalion as one of the army units in Camp Kigali.
11 Witness, how many platoons or units were located in Camp Kigali in April 1994 ?

12 A. There were quite a few. I remember there was the music company, which I belonged to. There was
13 the general headquarters battalion, also known as QG. There was the reconnaissance battalion.
14 There was the base unit or maintenance unit. And there was the flight squadron. There was the senior
15 officers training school, which had a unit. And there was the army staff headquarters within Camp
16 Kigali. Even certain units which were not based at Camp Kigali had their offices therein, for instance.
17 The Muvumba battalion had its headquarters at Kigali camp.

18 Q. Thank you. You mentioned reconnaissance battalion as one of the battalions in Camp Kigali; is that
19 correct?

20 A. Correct, sir.

21 Q. Does the name reconnaissance battalion have an abbreviation?

22 A. That is recce.

23 Q. How close were the premises of the music company to the premises of recce battalion in April 1994?

24 A. The distance separating the two buildings was about a hundred metres, but standing from one building,
25 you could not see at the other building because there was another building between the two of them.

26 Q. Do you know the functions of that battalion, the recce battalion?

27 A. The recce battalion was a special unit responsible for providing support to the entire Rwandan Army.

28 Q. What equipment did recce have in 1994, if you know?

29 A. That battalion had combat vehicles known as armoured vehicles. Those are vehicles which the other
30 units did not have at their disposal.

31 Q. Are there other weapons that you -- that were used by recce battalion in April 1994?

32 A. They had ordinary weapons. Concerning the weapons the others did not have were grenade
33 launchers; that is, guns used to launch grenades. Otherwise, the other soldiers had the same types of
34 weapons as soldiers of the recce battalion.

35 Q. Who was the commander of recce battalion in April 1994?

36 A. I remember that the commander was François-Xavier Nzuwonemeye.

37 Q. Do you recall his rank?

- 1 A. He was a major.
- 2 Q. How long had you known him before April 1994?
- 3 A. I had known him a long time before. I had known him for at least 10 years prior to.
- 4 Q. How often did you see Major Nzuwonemeye before April 1994?
- 5 A. Since I knew him, I used to see him often, very often.
- 6 Q. When was the last time you saw him?
- 7 A. I saw him for the last time in early June 1994.
- 8 Q. Where did you see him on that occasion?
- 9 A. I saw him in Kigali.
- 10 Q. Please describe him as you last saw him.
- 11 A. He was a man of average height; I would say more or less the same height as mine. And if we
12 consider that my height is 1.68 metres, his height was more or less like mine, and he was partly dark,
13 partly fair complexion, with -- at that time, in my opinion, he was actually developing a paunch. That is
14 what I can say concerning him.
- 15 Q. Thank you, Witness. What subunits were in recce battalion at that time, in April 1994?
- 16 A. I remember that that battalion had squadrons: A squadron, B squadron, and C squadron. There was
17 equally a group of soldiers which could be referred to as infantry soldiers. That is foot soldiers. They
18 can be referred to as the infantry of the recce battalion.
- 19 Q. Did the three squadrons in recce battalion have commanders?
- 20 A. Yes, sir.
- 21 Q. Who was the commander of company A in 1994?
- 22 A. That was squadron A, and to the best of my knowledge, Captain Sagahutu was the commander.
- 23 Q. Do you know his full name?
- 24 A. Captain Innocent Sagahutu.
- 25 Q. Do you know him in person?
- 26 A. I know him.
- 27 Q. How long had you known him before 1994?
- 28 A. I knew him prior to 1994. I had known him for a long time, about 10 years before.
- 29 Q. How did you come to know him?
- 30 A. He was a member of the recce battalion, and he was well known. That is how I got to know him. But
31 personally I got to know him when there was a problem. There was one lance corporal who was dead,
32 and Sagahutu was accused of having killed that corporal, and I even think that he was tried for that
33 offence.
- 34 Q. And when -- what year would you put that to be?
- 35 A. I cannot remember the year for sure, but it was before 1994.
- 36 Q. How often did you see Sagahutu before April 1994?
- 37 A. Since we lived in the same camp, I used to see him very often. I am not in the position to tell you how

1 often I saw him.

2 Q. When was the last time you saw Sagahutu, Captain Sagahutu?

3 A. The last time I saw him was in early June 1994.

4 Q. Where did you see him on that occasion?

5 A. I saw him at Runda.

6 Q. Please describe Captain Sagahutu as you last saw him in Runda.

7 A. As I had told you that my height was 1.68 metres, and if I remember correctly, I was slightly taller than
8 him. He is dark in complexion. He's rather dark in complexion. He's darker than fair. And at the time,
9 he wore a beret usually. And he usually also wore a military cap.

10 Q. Witness, if you saw Major Nzuwonemeye again, would you recognise him?

11 A. Yes, sir.

12 Q. If you saw Sagahutu again, Captain Sagahutu, would you recognise him?

13 A. Yes, sir.

14 Q. Now, I want you to look around this court carefully, and see whether Major Nzuwonemeye is here with
15 us today.

16 A. I can see him. He is seated to my left. He is sporting a white shirt and a blackish tie. He's equally
17 wearing a pair of spectacles, sitting in the first row to my left.

18 Q. Is he sitting to the aisle or to the wall?

19 A. He is seated towards the wall, near two white ladies.

20 MR. JEGEDE:

21 Your Honours, may the record reflect that the witness has positively identified Major Nzuwonemeye?

22 MR. PRESIDENT:

23 Witness identifies Major Nzuwonemeye from the witness box.

24 BY MR. JEGEDE:

25 Q. Yes. I want you to do the same thing. Look around this courtroom and see if Captain
26 Innocent Sagahutu is in court today.

27 A. I can also see him.

28 MR. SEGATWA:

29 Mr. President, this exercise is useless.

30 MR. JEGEDE:

31 Do they admit? Or what does that mean? He's here, and he has positively recognised him?

32 MR. PRESIDENT:

33 The witness also says that he has seen him for the last 10 years, so we will say that Defence says that
34 they accept the fact that this witness recognised the Accused.

35 MR. JEGEDE:

36 Thank you very much, Mr. President.

37

1 BY MR. JEGEDE:

2 Q. Witness, where was the office of the chief of staff of the army located in 1994?

3 A. The army chief of staff's office was at Camp Kigali.

4 Q. Was the office known as -- what was the office called? Did they have a name?

5 A. It was known as *état-major* in French.

6 Q. Who was the chief of staff of the Rwandan Army in April 1994?

7 A. In 1994, after the plane crash, it was General Marcel Gatsinzi who became chief of staff, and a short
8 while afterwards, General Augustin Bizimungu replaced him.

9 Q. Did the *état-major* have subdivisions, to your knowledge?

10 A. Yes. There was what was commonly referred to as the G1. Then there was the G2, a G3 and the G4.

11 Q. What department was G1?

12 A. G1 was in charge of administration, personnel and recruitment.

13 Q. What department was G2?

14 A. G2 was in charge of intelligence.

15 Q. What department was G3?

16 A. G3 was in charge of military training, as well as military operations.

17 Q. Do you know who the G3 was in April 1994?

18 A. In 1994, G3 was commanded by General Gratien Kabiligi.

19 Q. Do you know what ESM stands for?

20 A. Yes, sir.

21 Q. What kind of -- okay. What does it stand for?

22 A. ESM is a French abbreviation for the *école supérieur militaire*, or military officers school.

23 Q. Who was the head of that school in April 1994?

24 A. That school had as commander General Léonidas Rusatira.

25 Q. Thank you. Witness, have you recently prepared a sketch of Camp Kigali and immediate -- and its
26 immediate environs?

27 THE ENGLISH INTERPRETER:

28 Can counsel repeat the question, please? The interpreters missed a bit of it.

29 BY MR. JEGEDE:

30 Q. Have you recently prepared a sketch of Camp Kigali and its neighbourhood, immediate
31 neighbourhood?

32 A. Yes. I have.

33 MR. JEGEDE:

34 It's meant -- the sketch is meant for the witness. Defence counsel -- all Defence counsels already have
35 copies of that.

36 BY MR. JEGEDE:

37 Q. When did you prepare the sketch, Witness?

1 A. This sketch was drafted during my present stay in Arusha, and I finalised it on the 7th of March, 2003.

2 Q. Is there a signature on the --

3 THE ENGLISH INTERPRETER:

4 2005; correction from the interpreter.

5 THE WITNESS:

6 Yes, sir.

7 *(Pages 33 to 49 by Mark Porter)*

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1 1230H

2 BY MR. JEGEDE:

3 Q. Whose signature is it?

4 A. It is mine.

5 Q. I'm going to ask you to look at a sketch and see whether you can find all the places you mentioned in
6 your testimony this morning.

7 MR. JEGEDE:

8 If the witness may be allowed to step down to the monitor.

9 BY MR. JEGEDE:

10 Q. Witness, is music company indicated on the sketch, your company, in 1994?

11 A. This sketch is not very legible on this screen. You see, I have problem of sight, and I will not be able to
12 read adequately. But on this sketch, I can indicate that location.

13 Q. Please do, Witness.

14 A. The office of the music company was located here.

15 MR. JEGEDE:

16 My headset was not on. Could you repeat the answer.

17 THE ENGLISH INTERPRETER:

18 He said, "The office of the music company was located here."

19 MR. JEGEDE:

20 Thank you.

21 BY MR. JEGEDE:

22 Q. The recce --

23 THE ENGLISH INTERPRETER:

24 "Here I can see the office of the music company," says the witness.

25 BY MR. JEGEDE:

26 Q. Is the recce battalion on the sketch, the premises of recce battalion?

27 A. A while ago I talked about a building situated between the music company and the recce battalion. You
28 know, I'm not good at drawings, but you see there was a building between those two buildings. Here
29 you have the football pitch, and there below is the recce battalion base located below the football pitch.

30 Q. Is the office of the chief of staff of the army on the map -- on the sketch?

31 A. Actually, I sketched the premises in which the army headquarters was located. I hope you have seen
32 the place I was indicating just now. That is where the headquarters of the army was located.

33 Q. You may put "HQ." Please put "HQ" in that box -- in the box that you have indicated.

34

35 Where's the main gate to Camp Kigali, Witness? Is it indicated?

36 A. The main gate to Camp Kigali is found here, just to the left of where is written "Café Impala" opposite
37 that house that I have just indicated.

1 Q. I see a box near the gate. What appears to be a box, what is it, Witness, near the gate on inside --
2 yeah -- yes, that one.

3 A. There?

4 It was in this building that the camp commander worked. There were three doors: One leading to the
5 office of the camp commander; the next office was that of his staff, those who helped him in his work;
6 and the third door was the door to the office, which in 1994 was used by UNAMIR, the United Nations
7 mission in Rwanda.

8 Q. Did UNAMIR maintain an office in Camp Kigali in 1994?

9 A. Yes.

10 Q. When did they start using that building?

11 A. They started using that building during the Arusha talks, at the end of which the UNAMIR was assigned
12 the mission of monitoring circulation in Kigali. So UNAMIR used that office. And to get into the office,
13 you had to go through the third door of that building.

14 Q. Thank you, Witness. Let's now go outside the camp and see if we can locate the prime minister's
15 residence.

16 A. I can see that residence.

17 Q. Please indicate the residence to the Court.

18 A. As I have said, she lived just near ESM. You see the fence surrounding ESM, and there is a road going
19 down between ESM and the prime minister's residence. And, as I had testified to, between that road
20 and the prime minister's residence, there was another house. So that is where she lived.

21 Q. So can you indicate her residence now, using your -- your pen, now -- stick.

22 Thank you, Witness.

23 A. That is where she lived.

24 Q. Thank you, Witness. You may now go back to your seat.

25 A. Thank you, sir.

26 Q. We will now go to April 1994.

27

28 Where were you on April 6, 1994, when President Habyarimana died in a plane crash?

29 A. I was in Camp Kigali at the noncommissioned officers mess, in a room where we were watching
30 television.

31 Q. How did you become aware of the event, of the news?

32 A. We were watching a football match. After the match we went to a room to take a drink, and when we
33 got to this room, we met people who were discussing this incident --

34 MR. PRESIDENT:

35 Counsel, I -- have you finished with the --

36 THE WITNESS:

37 -- but the way they were reporting it, it was not yet clear.

1 MR. PRESIDENT:

2 Have you finished with the map or the sketch?

3 MR. JEGEDE:

4 Oh, yes, Your Honour.

5 MR. PRESIDENT:

6 So are you tendering that?

7 MR. JEGEDE:

8 Yeah, I am tendering that.

9 THE ENGLISH INTERPRETER:

10 Counsel's microphone is off, Mr. President. We did not get the answer.

11 MR. JEGEDE:

12 Yeah, I'm tendering the sketch as the next Prosecution exhibit, number 23.

13 *(Exhibit No. P. 23 admitted)*

14 MR. BLACK:

15 Mr. President, I object to the term -- my friend should be accurate when he's talking to the witness, and
16 there was no plane crash. Everybody knows that plane was shot down, so I prefer he use the accurate
17 terminology when he refers to it and ask what happened after the President's plane was shot down.

18 MR. PRESIDENT:

19 Yeah, we will come to that.

20

21 By the way, what exhibit number is that?

22 MR. JEGEDE:

23 That is P. 23, Your Honour.

24 MR. SEGATWA:

25 Mr. President, I am objecting -- Mr. President, I am objecting to this exhibit being tendered for two
26 reasons: First of all, as far as we know, some buildings or elements did not exist in 1994. And the
27 witness himself said he is not good at drawing, so he could mislead the Court. So we object so -- for
28 the schedule, though it is indeed his, does not conform to this layout in 1994. And he can be asked
29 whether all the elements he puts in the Impala Café, Jali Club, whether all of this existed in 1994. So it
30 is not through a sketch that we are going to faithfully reflect the situation in 1994.

31 MR. PRESIDENT:

32 Your objection is recorded, Counsel. I think you may ask those questions from him. You are free to
33 ask those questions from him when the turn comes to you. You can ask those questions. Yes.

34 MR. JEGEDE:

35 Thank you, Mr. President.

36 MR. PRESIDENT:

37 Is this --

1 THE ENGLISH INTERPRETER:

2 Your Honour's microphone.

3 MR. JEGEDE:

4 P. 23.

5 MR. PRESIDENT:

6 P. 23?

7

8 Yes, Counsel, now you can.

9 MR. JEGEDE:

10 Yes.

11 BY MR. JEGEDE:

12 Q. Witness, did you hear my question?

13 MR. PRESIDENT:

14 When the plane was shot down --

15 BY MR. JEGEDE:

16 Q. When the -- when the -- when the President died in a plane crash --

17 MR. JEGEDE:

18 I'm not going to dignify Mr. Black's --

19 MR. BLACK:

20 No, no, no, no, no --

21 MR. JEGEDE:

22 *(Speakers overlapping)* -- objection with an answer because that is extraneous matter. It is a collateral
23 matter. We are here -- Your Lordships are not empanelled to investigate the cause of the crash.

24 MR. PRESIDENT:

25 It doesn't matter because he said that it was -- it --

26 MR. JEGEDE:

27 We are not going to --

28 MR. PRESIDENT:

29 *(Speakers overlapping)* It is in evidence that it was shot down, so we will go by that. It is not going to
30 take your case anywhere or his case anywhere, so why are you talking about it?

31 MR. JEGEDE:

32 I know, Your Honour, but that evidence is not before Your Lordships.

33 MR. PRESIDENT:

34 We will not squabble over these minor things. So if he wanted that term, we'll give it.

35 MR. BLACK:

36 It's not a minor thing, Mr. President, it affects the entire trial.

37

1 MR. PRESIDENT:

2 "Minor" in the sense that we are not inquiring -- we are not inquiring into that. That is why I said.

3 MR. BLACK:

4 I know it is one of the standards of this prosecution case.

5 MR. JEGEDE:

6 We --

7 MR. PRESIDENT:

8 You may put it that when the plane was shot down --

9 MR. JEGEDE:

10 When the plane came down. I don't have that evidence, so I can't put that to the witness.

11 BY MR. JEGEDE:

12 Q. When the plane crashed, where were you, Witness?

13 A. I told you that I was at the noncommissioned officers mess in Camp Kigali in a room where we were
14 watching television.

15 Q. And how many of you were watching television -- watching television that day?

16 A. There were several noncommissioned officers because this mess was reserved for noncommissioned
17 officers. I cannot give you an estimate. There were many of them.

18 Q. In what unit were those in that senior officers -- or, noncommissioned officers mess that evening? Do
19 you know the units of those who were present?

20 A. They were drawn from most of the various units I described to you.

21 Q. Can you mention them again.

22 A. Let me start with the music company, to which I belonged, and HQ, KQG. There also were soldiers
23 from the reconnaissance battalion, soldiers from the base. I don't know if I have to tell you all units that
24 were represented in that room, but I would say that most of these units were represented.

25 Q. Thank you, Witness. Sir, how did you now become aware of the event? You said you were drinking in
26 the --

27 MR. PRESIDENT:

28 He was watching TV. He said "watching TV."

29 MR. JEGEDE:

30 Watching -- watching TV.

31 BY MR. JEGEDE:

32 Q. So how did you become aware of the event, Witness?

33 A. I told you, when we left the room where we were watching television. It was the Africa Cup of Nations
34 that was playing. So when we left that room, we went into the bar area where we noticed people
35 engaged in a discussion. And they were saying that the President's aircraft had been brought down,
36 other people who were outside when they noticed a fire in the air -- when they saw the aircraft catch
37 fire.

1 MR. JEGEDE:

2 That interpreting didn't come out clear. Can you repeat the answer, please.

3 THE ENGLISH INTERPRETER:

4 Could the witness repeat his answer.

5 THE WITNESS:

6 We were watching -- we were watching a football match, the Africa Cup of Nations, in 1994. After the
7 match we left and went into a room to have a drink, and we found people in a discussion. Apparently
8 there was a huge problem. Some approached me, told me that the aircraft was brought down. Others
9 said, "We saw the aircraft catch fire." That is how I learned that news.

10 BY MR. JEGEDE:

11 Q. Thank you, Witness. Were you later able to confirm the news, what you heard at that place? Were you
12 able to confirm?

13 A. Yes.

14 Q. How?

15 A. When we were in the drinking room, there was a clarion call to alert us. And we, of the music company,
16 went to the assembly ground, and that is where this information was given to us. And we were told that
17 we would be given further briefing on this incident subsequently.

18 Q. You said that a bugle sounded. Who was in charge of sounding the bugle in Camp Kigali?

19 A. There was a soldier from the music company who was responsible for sounding the bugle.

20 Q. And as a member of the music company yourself, how many types of bugle do you know of?

21 A. I know several types, but I can give you a few. There were bugles which were used to call people to
22 assembly. There were others that called them to lunch. There was a bugle call for people to report to
23 evening duty. There was another that called personnel to switch off the lights. So there was a specific
24 bugle call for every type of activity. There were many, but I cannot cite them all.

25 Q. Thank you, Witness.

26 Now, what type of bugle did you hear that night after the crash?

27 A. I told you, it was the alert bugle.

28 Q. Are you able to make the sound you heard that day with your mouth?

29 A. Yes, I can attempt to do it.

30 *(Witness complies)*

31 THE WITNESS:

32 That bugle call was directed in several directions and repeated many times so that all the soldiers
33 would hear it because it was an important call.

34 MR. JEGEDE:

35 Your Honour, may the record reflect that the witness has indicated the sound I *(sic)* heard that day
36 because it won't reflect on the record?

37

1 MR. PRESIDENT:

2 Witness from the witness box indicated the sound on -- he makes the sound that he heard.

3 MR. JEGEDE:

4 After the crash.

5 MR. PRESIDENT:

6 After the -- on the 6th, night after the crash, yes.

7 MR. JEGEDE:

8 Thank you, Your Honour.

9 BY MR. JEGEDE:

10 Q. Witness, was the bugle blown that night for the music company only or for all the units in Camp Kigali?

11 A. No, that bugle was not solely intended for members of the music company nor only for the Camp Kigali
12 members. Rather, it was meant to call all soldiers, wherever they may be.

13 Q. So what did the members of company -- music company do after hearing the bugle?

14 A. They immediately went to the tarmac right next to the music company office. That is the place where
15 they were to report once the bugle had been sounded.

16 Q. What did members of *quartier général* do when they heard the bugle?

17 A. The HQ members, just like the other unit members, reported to their assembly points. The *quartier*
18 *général* building was opposite us -- rather, the elements of the *quartier général* unit were opposite us,
19 so they faced us.

20 Q. Do you know what members of the recce battalion did after hearing the bugle?

21 A. The members of the recce battalion headed similarly to their base.

22 Q. How do you know that they went to their base?

23 A. In answer to your question, it would be easier for me to do so if I used the sketch or map I drew for you.
24 When we left, they headed to the place where they were based, and I reported to my assembly point. I
25 saw them at that moment heading to their assembly point.

26 Q. Thank you, Witness. It won't be necessary for you to use a sketch.

27

28 Where did members of the music company assemble that night?

29 A. I told you, members of the music company assembled on the tarmac opposite the building that the
30 music company used as an office. That is where they headed.

31 Q. How many soldiers were present at the assembly?

32 A. Approximately 70, 70 members of the music company.

33 Q. Were they arranged in any kind of order that night?

34 A. Yes. Normally, the soldiers do not assemble anyhow. They took their places according to their
35 platoon.

36 Q. Was the commander of the music company present at the assembly?

37 A. Yes, he was present.

- 1 Q. Where was he standing in relation to the soldiers?
- 2 A. He was standing in front of the two platoons.
- 3 Q. Where were you standing on that occasion?
- 4 A. I was standing opposite the members of my platoon.
- 5 Q. Did anyone speak to members of your company on that occasion?
- 6 A. After the assembly had been composed, a lieutenant named Munana came, and he spoke to us and
7 told us something.
- 8 Q. Tell the Court in some detail what he told you.
- 9 A. I will first have to apologize. I used the rank lieutenant. He was actually a second lieutenant, but it is
10 unusual for us to say "second lieutenant" because we were ordered to use the rank lieutenant. So
11 Lieutenant Munana came, told us, "You have noticed that the presidential aircraft was brought down. It
12 is our enemy, the RPF that brought this aircraft down, and so I urge you to take up your arms, take your
13 positions. You will receive further instructions later."
14
- 15 So he did not tell us all. It was a very brief order. Rather, he told us that further orders would be given
16 once we had taken up our various positions.
- 17 Q. How long did the assembly last?
- 18 A. About one hour. The assembly did not last a full hour.
- 19 Q. What did the members of music company do after the assembly?
- 20 A. We took our weapons, ammunition as well, and took up our positions, our respective positions.
- 21 Q. Where did you take your weapons?
- 22 A. We took them from the store, which was very close to the music company office building, which was
23 very close to the place where we were assembled.
- 24 Q. Was there any procedure in place for opening the armory in April 1994?
- 25 A. I will first come back to the UNAMIR office, which I showed you. UNAMIR was tasked with ensuring --
26 supervising use of the weapons. There was a type of -- so I would say there was a place that was
27 sealed off, and UNAMIR was responsible for monitoring this armory. So in order to open the armory,
28 UNAMIR elements would have to have been present when opening the armory to collect weapons.
- 29 Q. In line with that standard procedure, was UNAMIR present when you were opening the armory that
30 night?
- 31 A. No, UNAMIR was not there.
- 32 Q. How did you then open the armory?
- 33 A. Munana told us, "Given you have the key -- that you have the key, open the storeroom door." It was
34 not hard for us to remove the lock. We opened it, and we took the weapons.
- 35 Q. After each soldier got his weapon, what did you do?
- 36 A. We took up our respective positions because we all, each of us, knew our respective position.
- 37 Q. Where was your position, the position that you took that night?

1 A. I took position in Camp Kigali close to a wall that was situated close to Avenue Paul VI.

2 MR. PRESIDENT:

3 Mr. Counsel, I think when you've come to a good point, you can stop.

4 MR. JEGEDE:

5 Okay. Then we may stop here, then, Your Honours.

6 MR. PRESIDENT:

7 Okay. Court is adjourned till nine tomorrow.

8 *(Court adjourned at 1302H)*

9 *(Pages 50 to 58 by Ann Burum)*

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CERTIFICATE

We, Karen Holm, Mark Porter and Ann Burum, 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 (*stenotype*) 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.

Karen Holm

Mark Porter

Ann Burum