

THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

CASE NO.: ICTR-98-44-T
CHAMBER III

THE PROSECUTOR
OF THE TRIBUNAL
v.
ÉDOUARD KAREMERA
ANDRÉ RWAMAKUBA
MATHIEU NGIRUMPATSE
JOSEPH NZIRORERA

19 APRIL 2004
0904H
CONTINUED TRIAL

Before the Judges:

Andrèsia Vaz, Presiding
Florence Rita Arrey

For the Registry:

Mr. Christopher Fry
Mr. Ramadhani Juma

For the Prosecution:

Mr. Don Webster
Ms. Dior Fall

For the Accused Édouard Karemera:

Mr. Felix Sow

For the Accused André Rwamakuba:

Mr. David Hooper
Mr. Andreas O'Shea

For the Accused Mathieu Ndirumpatse:

Mr. Charles C. Roach

For the Accused Joseph Nzirorera:

Mr. Peter Robinson

Court Reporters:

Ms. Shannon Eboe-Osuji
Mr. Rex Lear
Ms. Judith Baverstock

I N D E XWITNESS

For the Prosecution:

WITNESS GBU

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P R O C E E D I N G S

MADAM PRESIDENT:

The session is opened. This morning we are going to sit as a two Bench judge (*sic*), Judge Array and myself. Judge Lattanzi is absent. We shall therefore apply Rule 15 *bis* of the Rules of Procedure and evidence. It is possible that we continue in this manner for the whole of this week.

Good morning, ladies and gentlemen of the parties.

Mr. Webster, is your -- your witness is present? Are you ready to continue with your examination-in-chief, if there were no preliminary issues to deal with.

MR. WEBSTER:

(*Speaking over interpretation*)...Your Honour, good morning.

I've noticed the security outside of the waiting room, so that's an indication to me that he's waiting inside. Thanks.

MR. HOOPER:

Madam President.

MADAM PRESIDENT:

Very well, we thank you, Mr. Webster.

Mr. Hooper.

MR. HOOPER:

If I can just position myself in the slot usually occupied at this time by Mr. Robinson, albeit fairly briefly. There are three matters that I seek the Court's assistance with.

Witness GIN is due to give evidence. She'll be the witness after next. The next witness isn't a long witness, and so I anticipate she'll be reached this week quite easily. Witness GIN gave evidence in the case of Jean De Dieu Kamuhanda. She gave evidence in that case under the pseudonym of GEK.

A letter was addressed to the Prosecution about a year ago asking for transcripts. The matter -- some transcripts have been served. There were a number of transcripts that were either representative of evidence heard in closed session or parts of transcripts that were in, or dealt with, evidence in closed session.

Witness GEK/GIN gave evidence on five days. I have been served -- provided evidence relating to one day and evidence relating to another day, but the transcript omits closed session testimony.

1 Three days' evidence is omitted; I do not have it.

2
3 I sought to make an oral application before Trial Chamber II at the end of last month, but the
4 President of the Trial Chamber did not feel it was appropriate to make an, effectively, *ex parte* oral
5 application in his chambers, as a result of which I filed a motion to obtain the closed session
6 transcripts of this witness on the 1st of April. And so far, I've not had a response, and I haven't had
7 the transcripts.

8
9 I'm not making an oral motion to this Court. I don't think it is necessary. What I am asking for is that,
10 Madam President, that this Court makes note of my difficulties and assists me in whichever way it
11 can, through the court coordinator here, perhaps, to get a very speedy resolution of the motion, which
12 is a very straightforward one and which there can be no objection to. But it's important that, before
13 Witness GIN gives her testimony, I have some access or full access to what she said on a not
14 dissimilar subject, and that's the relevance in the *Kamuhanda* case. That's the first of two matters
15 relating to Witness GIN.

16
17 The second matter relating to GIN is this. I wrote to Mr. Webster or to the Prosecution, I should say,
18 on the 29th of March raising some matters, one of which is this. I pointed out that Witness GIN was to
19 give evidence shortly and raised this issue that we the Defence have been led to believe that some
20 persons who have been witnesses, either giving evidence in the *Kamuhanda* case or providing
21 statements for possible use in the *Kamuhanda* case -- two classes, in other words, real and potential,
22 have been in contact with the Office of the Prosecutor in Kigali claiming that Witness GIN prevailed
23 upon them to make false testimony and withdrawing their statements.

24
25 If there is truth in that, then the Defence should be -- we should be informed about it, again, I hope
26 before she gives evidence. So those are the two matters relating to that witness.

27
28 In respect to the last matter I raise, I merely draw the Court's attention to it, remind the Prosecution of
29 the request, and ask for both the Court and the Prosecutor's assistance, *bone fide* assistance, in
30 obtaining these matters.

31
32 The second thing I seek to raise is this. The Court will be aware that the prime minister of the interim
33 government, Jean Kambanda, was sentenced to life imprisonment and is serving that sentence in
34 Mali. We would like to meet him and to see to what extent he can assist the defence of Andre
35 Rwamabuka. To that extent, I wrote a letter to the principal Prosecutor, Mr. Jallow, on the 16th of
36 March and again a further letter on the 3rd of April, and I've received no reply. I hope the Court feels
37 it is appropriate that through the Prosecutor, here, the Chief Prosecutor could be encouraged at least

1 to have the courtesy to respond to the letter.

2
3 The third and final matter is this. Towards the end of March, on the 29th, I wrote to the Prosecutor in
4 this case, asking him to disclose as exculpatory material copies of newspapers that were published in
5 Rwanda and naming them as *Isibo* and *Urumuli Rwa Demokراسي*. These are both newspapers issued
6 essentially on behalf of the MDR party. They have been referred to in other cases, and I believe
7 some copies have been produced, and for that reason I am confident that the Prosecution has in their
8 possession copies or originals of such newspapers.

9
10 They deal in these newspapers with specific events, installations, for example, of *préfet*,
11 announcements from congresses, meetings, listing meetings, MDR meetings in *préfecture*,
12 *communes*, and all the order of business that you would expect a political party to be informing its
13 members about. It would also potentially reveal reference to MDR Power if it exists, or existed at the
14 time, as either a street term or whatever. I've had no response to that letter.

15
16 We also requested by that letter the Prosecution to review the existence and content of any
17 statements made by persons who are referred to in the statements of intended Prosecution
18 witnesses. The situation commonly arises in these next few witnesses that they refer to a particular --
19 they refer to a name, say "go and ask X and he may be able or she may be able to tell you more
20 about, say, Rwamakuba or whatever." We take the view that it would be more probable than not in
21 those circumstances that such information and intelligence would be relied upon and acted upon.
22 We've had no disclosure at all in this case by way of exculpatory material or otherwise, but if there is
23 in fact reference, further reference, by way of those nominated persons to Rwamakuba, we'd like
24 access to it, and we would like access to it before the witness who makes reference to such a person
25 gives evidence, which will be this week, in at least -- in certainly two cases.

26
27 And finally, Madam President, we regret the absence of Judge Lattanzi. I hope all goes well there.
28 And can we reserve our position in terms of the court proceedings to hear testimony merely as two
29 judges. I don't want to jump into that; I want to give it some thought in the particular circumstances of
30 my case and the witnesses who are going to be called later this week.

31
32 So those are the matters I raise, and I raise them essentially as requests for assistance, Madam
33 President, from you and this Chamber. Thank you very much.

34 MADAM PRESIDENT:

35 We thank Mr. Hooper.

36
37 Is it Mr. Roach or Mr. Robinson?

1 MR. ROBINSON:

2 Madam President, if I could ask to speak, because I want to speak to a core issue about proceeding
3 today, and that is, I wish to raise on behalf of Mr. Nzirorera a strong objection to this Trial Chamber
4 sitting under Rule 15 *bis* in the absence of Judge Lattanzi, particularly in the circumstances where
5 Judge Lattanzi has heard the direct testimony of a witness who I will be cross-examining and will not
6 be present for the cross-examination. And I think that that is an impossible situation to rectify
7 because we don't even have a video of the protected witness for her to review, so the demeanour of
8 this witness during cross-examination, which is an important factor in assessing the credibility of the
9 witness, will be forever unavailable to Judge Lattanzi, and I don't feel it is appropriate in that
10 circumstances that we proceed in her absence.

11
12 I also wish to invoke the specifics of Rule 15 *bis* and indicate that at least on this record, the
13 requirements under Rule 15 *bis* have not been satisfied. Rule 15 *bis* (A) says there's two conditions.
14 First, "The Judge must be for illness or other urgent personal reasons absent or for reasons of
15 authorised Tribunal business unable to continue sitting in the case for a period which is likely to be of
16 a short duration." There's been nothing on the record to indicate that Judge Lattanzi's absence fulfils
17 those conditions, which are very limited. And, secondly, "That the remaining Judges of the Chamber
18 are satisfied that it is in the interest of justice to do so."

19
20 And I again raise with you that it's our strong position that, under these circumstances, having heard
21 and observed the direct examination of this witness, it is totally against the interests of justice to
22 continue in the presence of only two Judges for the cross-examination of that witness.

23
24 And so the Rule continues that you can order the hearing of the case continuing in absence of that
25 Judge for the period of more than five working days. And I understand that Judge Lattanzi can be
26 back perhaps within five working days, so we're dealing with Rule 15(A) instead of Rule 15(B), but I
27 believe that it would really be very unfortunate to proceed under these circumstances and contrary to
28 the Rules, and I object. Thank you.

29 MADAM PRESIDENT:

30 Yes, Mr. Roach.

31 MR. ROACH:

32 Thank you, Madam President. I have two matters that I should like to bring to the Tribunal's attention.
33 One has to do with a pending motion, I believe, that was submitted by my co-counsel Fredrick Weyl.
34 That motion has to do with the investigators. In particular, we should like to have a resolution of that
35 motion. It is one that involves the work schedules of our investigators. We've had some difficulty
36 getting approval for our investigators to continue their work and, in fact, since the proffering of the new
37 -- or the amendment of the new indictment with the additional charges against Dr. Ngirumpatse, it is

1 vital for to us have our investigators at an early stage working on that investigation. But we've been
2 hampered in our attempts, our extra -- outside of the judicial system, we've been making attempts,
3 and we have not been successful. So we've had to file that motion, and we should like you to, as
4 soon as you can reasonably attend to it, give us a disposition of that.

5
6 My other point has to do with carrying on the proceedings with the two Judges. I want to say I have
7 full confidence in this Tribunal to proceed in accordance with the Rules, and what I say is not anything
8 that is any kind of a blanket objection because I am not satisfied, and I just wanted to put on the
9 record that we, on behalf of Dr. Ngirumpatse, are not satisfied that the conditions have been met for
10 proceeding with just two Judges.

11
12 In any event, I should like to indicate that, in my view, or as I read the Rules, it has to be stated very
13 clearly on the record exactly what is the reason, what is the prognosis, so to speak, of the return of
14 Judge Lattanzi and, although I do admit that I missed a few words at the very beginning, I am not
15 satisfied that we do have that explicit kind of description of why she's not here and how long she'll be
16 away, as provided.

17
18 Now, we have had a situation like this before, I recall, in the first session. Towards the end,
19 Judge Arrey was not present. It was for a very short period, maybe one day or something like that, if
20 my recollection served me correctly. But even at that time, it was not put clearly on the record, the
21 reasons, and I believe that the law requires the record to indicate the reasons.

22
23 So I should like to firstly -- if the reasons could be iterated, and if they have not as yet been given, if
24 they could be given. And the next thing I should like to say is that in the absence of those reasons
25 and those conditions, we do object to proceeding with two Judges only. Thank you, Madam
26 President.

27 MADAM PRESIDENT:

28 We thank Mr. Roach.

29
30 Yes, Mr. Webster.

31
32 You have already had the floor, Mr. Hooper, have you not? Do you want to add anything else?

33 MR. HOOPER:

34 Well, merely this --

35 MADAM PRESIDENT:

36 Very briefly, please.

1 MR. HOOPER:

2 If the issue of proceeding in the absence of one Judge is going to be gone into now, and I've taken
3 the view that we're dealing with a witness who we're not directly concerned with, but the matter has
4 been raised.

5
6 We do note with concern that it appears that a decision had been taken by the Chamber to proceed in
7 the Judge's absence without any recourse to seeking the views of either party or parties, neither from
8 the Prosecution nor from the Defence. That is a matter of concern. We take the view that the Court
9 cannot peremptorily announce, as it's done, that that is the course it is taking, without seeking the
10 views and consent or lack of consent of the parties involved.

11
12 And I reserve my position in respect of that, in respect of those witnesses that are due to come this
13 week that do concern the case of Rwamabuka directly. If the matter is to be raised now, it does need
14 to be raised appropriately. Thank you.

15 MADAM PRESIDENT:

16 Yes.

17
18 Yes, Mr. Webster.

19 MR. WEBSTER:

20 Yes, if I may, I'd like to reply briefly to each of the Defence attorneys.

21
22 Directing my comments to Mr. Hooper in regard to Witness GIN, I'd like to begin by making a request.
23 Quite often we have witness that testify in several trials. They appear under one pseudonym in one
24 trial and then they are reassigned a pseudonym for purposes of testimony in a subsequent
25 proceeding. And we would appreciate it if he not make reference to the previous pseudonyms of the
26 witness, because it defeats the purpose of assigning a new pseudonym. Our efforts here are to
27 conceal the identity, and witnesses themselves have complained in the past that they have become
28 associated with a particular pseudonym, which is why we change the pseudonym. So for the future, I
29 am simply requesting that the Defence refrain from identifying one pseudonym with another.

30
31 With respect to Witness GIN, she has testified previously. My understanding was that her previous
32 trial testimony had been served on the Defence. I may be mistaken in that. And based on
33 Mr. Hooper's submission, it's clear that he has not received that information, the previous trial
34 testimony. However, when the disclosure of Witness GIN was being handled, we were operating
35 under the principle that the Office of the Prosecutor would simply indicate to the Defence the dates of
36 a witness's previous testimony, and then the burden would fall on the Defence to obtain those
37 transcripts.

1 Recently, I believe within the last four weeks or so, four or five weeks, this Court has issued a
2 decision which clearly states that it is the burden of the Prosecutor to provide the previous testimony
3 of witnesses, and we are endeavouring to do that, but we do that with respect to witnesses who are
4 upcoming, for whom disclosure has not been completed. So it may have been an oversight on our
5 part. I was operating under assumption that Mr. Hooper already had those materials. If that's
6 incorrect, we will make efforts to remedy the situation.

7
8 I am aware that he has filed a motion for the closed session testimony. That motion was unopposed.
9 I spoke to the attorney that responded to that motion, and it's clear that the Office of the Prosecutor is
10 certainly not opposing that motion. So my assumption was that he had all the materials he required,
11 and I didn't look into it beyond that. Now that he's made an issue of it, I will double-check. I will see if
12 we have hard copies of the closed session testimony, and after these proceedings, I will either contact
13 Mr. Hooper or he can contact me in my office, and we can resolve this without any further ado before
14 this Court.

15
16 Concerning his letter of the 29th of March, I am aware of the letter. We are looking into it. The
17 attorney that is handling that specific matter is not with us this morning. She probably will have more
18 details about that, and that also I will address with him after the court session today, and we can
19 perhaps resolve that by the end of business today.

20
21 Concerning his request to meet with the former prime minister, Jean Kambanda, I am aware of his
22 letters to the Prosecutor. My understanding was that responses to those letters had been generated
23 and sent out. If that has not happened, I will look into that as well. But I did discuss this matter with
24 other members of my office recently, and I was made to understand that the matter had been
25 resolved, that a response to his inquiries had been generated. That also is a matter that we will
26 discuss outside the hearing of this Trial Chamber.

27
28 Concerning his request for copies of *Isibo*. I believe a number of copies of that magazine have
29 already been provided to the Defence. They were provided by CD-ROM. We do not consider these
30 materials exculpatory; however, we have no objection providing them to the Defence. I know
31 materials have already been placed on a CD-ROM. I have not had an opportunity to review them,
32 which is why these additional materials have not been served on the Defence as yet. But they are
33 listed in the index that we are preparing to provide to all of the Defence teams, which will include all of
34 the exhibits or potential exhibits in this case.

35
36 So we certainly have no opposition to providing those materials. They are on their way. They should
37 arrive with the Defence sometime this week. That also is a matter that can be discussed outside of

1 the hearing of the Trial Chamber. So all of these matters, certainly, are important. They are important
2 to Mr. Hooper, but we can take care of them, really, outside of Court. It doesn't need to be raised in
3 court.

4
5 Concerning the position, it seems now, of the entire Defence concerning the 15 *bis* application, I'll
6 state for the record, the Prosecutor as well is concerned that all Judges hear the testimony of all
7 witnesses. But of course sometimes that is a practical impossibility, and this Court has to weigh the
8 interests of justice and judicial economy with the right of the Defence -- or excuse me, the right of the
9 Defence -- all of the parties to have all the testimony heard by all of the Judges.

10
11 Under the circumstances, our submission is that it is much more important to proceed with the trial, to
12 hear the testimony of the witness that is already on the stand. There are transcripts that will be made
13 available to Judge Lattanzi when she returns. We have no objection to proceeding without the
14 presence of Judge Lattanzi. Of course, it would be preferable if all three Judges were here, but
15 Rule 15 *bis* was adopted in order to confront this particular predicament, which when a Judge is
16 unavailable and a witness -- proceedings can go forward and should go forward. We're comfortable
17 with the recommendation of this Trial Chamber that we proceed under Rule 15 *bis*.

18
19 Having stated that, we are ready to proceed. I believe the witness is in the waiting room, and we
20 would wish to complete his direct examine during this morning session. So I am ready to proceed,
21 and I hope that the Court is ready to proceed with the testimony of the witness. Thank you.

22 MADAM PRESIDENT:

23 Thank you.

24
25 The Chamber, by applying Rule 15 *bis*, which deals with the absence of a Judge, is of the opinion that
26 it does not need to request the opinion of the parties in order to decide to sit as a two-Judge Bench.

27
28 We ourselves, we are regretting the fact that we have to do this, but as we have already stated, the
29 texts, the Rules allow to us do so. Rule 15 *bis* says that, "If for illness or other urgent personal
30 reasons or for reasons of authorised Tribunal business," which is the case because our colleague
31 Judge Lattanzi is absent from the Tanzanian territory. She is going to attend a conference, and this
32 has been authorised by the President of the Tribunal. Her absence will not be for the period provided
33 for by the Rules; in other words, Friday at the latest our Judge colleague will be back here in Arusha.
34 We, therefore, believe that we may proceed.

35
36 As for the other issues which have been raised by Mr. Hooper, the Prosecutor has responded to your
37 concerns, and therefore we request that you contact Mr. Webster so that you can obtain the

documents that you wish to have for the preparation of the defence of your client.

We ask the registry now have the witness ushered in, Witness GBU.

There has been a motion which has been filed also by the Prosecutor concerning the pseudonyms of witnesses. I believe that for the protection of witnesses, it would be a good idea that we avoid making any linkages between pseudonyms used by one single witness because this may be a way of revealing the identity of said witness.

Yes, as regards the motion by Mr. Roach, we want to say the investigators do not have direct jurisdiction. It's the registry's jurisdiction. I don't remember if it was an oral or written application. You said that we had not responded. Perhaps it was an oral application.

MR. ROACH:

Madam President, I am advised that it was in writing, but I will check on the transmission of that. And if there is a problem, I'll raise this again. Thank you.

MR. ROBINSON:

Madam President, may I?

MADAM PRESIDENT:

Yes, thank you very much, Mr. Roach.

You have something to add, Mr. Robinson?

MR. ROBINSON:

Yes, I do, Madam President, in light of your ruling.

Under Rule 15 *bis* that we proceed in the absence of Judge Lattanzi, it's my motion that we suspend the testimony of this particular witness, GBU, until Judge Lattanzi returns, either on Friday or next week.

I think it is very unfair for Judge Lattanzi to only hear one side of a witness's story. And I understand the need to sit and the need to move forward expeditiously, but the concerns of the Defence can at least be taken into consideration somewhat by ensuring that at least the testimony that she does miss is both sides.

And so I am requesting that we suspend the testimony of this witness and that we proceed with the remaining witnesses, both direct and cross-examination, so at least the parties are on equal footing with respect to those witnesses.

1 But here we have a situation totally unequal, where a Judge has heard only one part of a witness's
2 story, and clearly the Trial Chamber will be making findings on this witness's credibility in its judgment.
3 So I make a motion to suspend the testimony of this witness until the return of Judge Lattanzi and
4 proceed with other witnesses. Thank you.

5 MADAM PRESIDENT:

6 Counsel, we've already made our decision. In agreement with Judge Lattanzi, she will have the
7 transcripts upon her return. She is in a position to know everything that happened, and so we're
8 going to move on to listen to the witness. Of course, your motion is denied. We've already made our
9 ruling. So we will continue with the witness.

10
11 Good morning, Mr. Witness.

12 THE WITNESS:

13 Good morning.

14 MADAM PRESIDENT:

15 Witness, we shall remind you that you are still on oath. The Prosecutor is going to continue with his
16 examination-in-chief of you, after which you will be cross-examined by the Defence.

17 THE WITNESS:

18 Very well.

19 MADAM PRESIDENT:

20 Mr. Webster, you have the floor.

21 MR. WEBSTER:

22 Thank you, Your Honour.

23 WITNESS GBU

24 EXAMINATION-IN CHIEF (continued)

25 BY MR. WEBSTER:

26 Q. Good morning, Mr. Witness. I'd like to begin the conclusion, actually, of --

27 A. Good morning.

28 Q. -- by directing you to several photographs that have already been admitted in evidence.

29 MR. WEBSTER:

30 This is -- I am referring to Exhibit P5, which is a booklet of photographs. The first photograph I would
31 like to have displaced to the witness appears on page 8548. It's at the bottom of the page. I have an
32 enlargement of the photograph which may come across a bit better on the overhead projector.

33
34 So I'd request that the registry display this photo, or have this photo mounted on the projector.

35
36 For the record, it's photograph K0275243 and it's on page 8548 of Exhibit P5. And I've previously
37 displayed this enlargement to the Defence team, so there should be no problem.

You have to shift it over a bit so that there's more of the road showing. Fine.

BY MR. WEBSTER:

Q. All right, Mr. Witness, I'd like to direct your attention to the screen. Do you recognise what's depicted on the screen?

A. Yes, I recognise this image. This is Byangabo square. The road, however, is not very visible.

Q. Well, Mr. Witness, if you look over towards the left-hand side of the image, you see a man walking alongside the road. Would we agree on that?

A. Yes, I can see a man. He's near a tree and that man's walking.

Q. And that man's back is towards us. Would you agree with that statement as well?

A. Correct.

Q. Can you tell us what direction that man is walking in? Is he walking towards Gisenyi or towards Ruhengeri?

A. He's going towards Ruhengeri.

Q. If you were taking the path that that man is taking, walking towards Ruhengeri, can you tell us on what side of the road we would find Nzirorera's mother's house and on what side of the road we would find the --

A. It would be on the side where this man is.

Q. And with respect to the Isimbi house, where would that be in relation to where this man is?

A. Isimbi is near the parked vehicles, but on the left side of the road.

Q. Mr. Witness, would you be able to refer to anything on this photograph that would indicate where Rukara was when he was killed on the morning of the 7th of April?

A. He was murdered a bit further. I can see buildings, and there was a pharmacy belonging to Barasesa (*phonetic*). It was next to that pharmacy where the house was.

THE ENGLISH INTERPRETER:

The witness is indicating something on the screen. He is pointing something out on the screen, but of course the interpreters are not able to ascertain what that is.

BY MR. WEBSTER:

Q. Mr. Witness, if you look towards the right-hand side of the photograph, you see three poles. There is the tree and then there are three poles on the right-hand side of that tree. There is the pole that is closest to the tree and the pole that is the second one from the tree and the pole that is the third one from the tree. Perhaps if you made reference to those poles, you can tell us where this pharmacy was.

A. I see the first pole and the second. You see one that is rather inclined. It is near Bitihusi's (*phonetic*) house. He's Nzirorera's father. Lower from that pole there is a house and it's a bit further. And he was killed next to that house. He was thrown into a ditch near that pole which is slightly inclined.

Q. All right. But directing your attention to the three poles, are we talking about a house which is between the first and second pole or between the second and third pole? If you can distinguish those

1 two areas for us, please.

2 A. It's between the first -- you see the first one. It's where we see a man and two women. Now, the
3 second one, the second one is right next to the house where Rukara was killed. It's right next to that
4 pole.

5 MR. WEBSTER:

6 I'd like to have another photograph placed on the screen, please, which would be also in P.5. It's on
7 page 8550. It's at the bottom of the page.

8 BY MR. WEBSTER:

9 Q. All right. Mr. Witness, directing your attention to the image on the screen.

10 MR. WEBSTER:

11 For the record, it bears K-number K0275239.

12 BY MR. WEBSTER:

13 Q. Mr. Witness, do you recognise this image?

14 A. Yes.

15 Q. What is this, please?

16 A. It's the Mukingo *communal* office.

17 Q. Mr. Witness, recall the image that we just looked at of Byangabo centre, where a man was walking
18 with his back towards us. If that man continued walking in the same direction, would he be walking
19 towards this building or away from it?

20 A. Yes, if he continued to walk, he would have arrived at the place we see here on the screen.

21 Q. Early in your testimony you described some training that had been taking place at the bureau
22 *communal*. Directing your attention to the photograph, would you be able to describe where that
23 training took place with reference to this photograph?

24 A. You can see in front of the buildings, you can see a pole there. It's a flagpole. Between the flagpole
25 and the building there is a field, and that's where the training was held.

26 Q. Well, you described two sets of training, one that was taking place out in the open and one that was
27 taking place in secret. The training that was taking place between the flagpole and the building, which
28 one of those trainings was that, the one in secret or the one out in the open?

29 A. This is where the public training was given. The secret training was behind this building, a bit further
30 down.

31 Q. Now, Mr. Witness, if you were standing in front of that building, in front of the bureau *communal*
32 looking out towards the road, what would you see on the other side of the road?

33 A. When you're at the place where you see people getting water, in front of that you see a water tower.
34 It's on Ruhehe hill, on the other side of the hill.

35 Q. And would you remind us, please, what the significance is of Ruhehe hill for the purposes of the
36 training that was going on?

37 A. It was on Ruhehe hill where the firearms were located.

1 Q. Looking at the buildings on the left-hand side of this photograph, was there any building or any office
2 among those buildings of any particular significance, Mr. Witness?

3 A. The building next to the *communal* office housed the MRND office.

4 Q. Did any other political party have an office in the complex of the bureau *communal*, as far as you
5 know?

6 A. No, none.

7 MR. WEBSTER:

8 May I have a third photograph placed on the screen, please. This will be photograph bearing
9 K-number K0275254. It appears on page 8542 of Prosecution Exhibit 5, and it's the top photograph
10 on that page.

11 BY MR. WEBSTER:

12 Q. Mr. Witness, do you recognise what's being placed on the screen?

13 A. I do.

14 Q. Tell us what it is, please.

15 A. This is a building. It's the sisters' convent. Many people were killed in this location.

16 MR. ROBINSON:

17 Excuse me, Madam President. I would like to object to this testimony because the witness has
18 testified that he did not go to Busogo parish on the 7th of April. I don't see the probative value of this
19 witness identifying the locations where he was not present.

20
21 Secondly, I also believe he is incorrect in his description of what this is. But more importantly, I don't
22 think this witness should be testifying to things that he did didn't participate in or observe.

23 MR. WEBSTER:

24 Well, certainly you agree -- well, I oppose the Defence application. This witness is from Busogo
25 *secteur*. He's identifying various locations in Busogo *secteur* that are relevant to the issues we
26 determined in this case and with the accusations against Mr. Nzirorera.

27
28 The witness said he didn't go inside the church, but certainly the photograph depicts the outside of the
29 church, and this witness, through his testimony, can provide this Court with another description of the
30 area of Busogo. And it's simply for that reason that I elicit his testimony. But clearly, I believe, his
31 previous testimony is that he at least passed in front of the church, so it's relevant to that extent.

32 MADAM PRESIDENT:

33 Objection overruled. Please proceed.

34

35 You may answer, Mr. Witness.

36 BY MR. WEBSTER:

37 Q. Mr. Witness, did you approach this building on the morning of the 7th of April, or would you explain to

the Court how close you came to this building and what you did in the vicinity this building on the morning of the 7th of April?

A. Thank you very much. The Defence lawyer said that I can't testify as regards this place, but I can assure you we lived very close to this building, below it. Within that building many people were killed; others were killed in a house further down.

On the 8th, we went there to get the bodies. My *Interahamwe* friends went to kill; I remained on the way, on the road. As I explained before, I was slaughtering a cow, but I can tell you that I know this place very well.

Q. Mr. Witness, you began to explain what you were doing on the 8th of April in relation to this building. Can you please go on a bit with that. Under what circumstances did you come to this building on the 8th of April?

A. In the morning on the 8th, we came there to bury the dead.

Q. And when you say "we", who are you referring to, please?

A. There were police officers as well as inhabitants of Busogo *secteur*. We loaded the bodies into the communal vehicle.

Q. Who was organising this operation?

A. *Bourgmestre* Harera. He died on that same day at 5 o'clock. He was killed because he had helped Tutsis, I think.

Q. Mr. Witness, would you have any way of estimating how many bodies you removed on that morning?

MR. ROBINSON:

Excuse me, Madam President. I'd like to make an objection. The question is vague. And maybe I'm having a problem because of the translation, but it is my understanding that the witness had identified this particular photograph as the sisters' convent not the church. And I also believe he's in error in that.

But in any event, I think if Mr. Webster is going to put questions to this witness about the parish, it should be clear, the distinction between the church and the sisters' convent. Thank you.

MR. WEBSTER:

Your Honour, these are all issues that Mr. Robinson can explore during his cross-examination. If he thinks that the witness is in error, certainly he can bring that out in his cross-examination.

For my purposes, the answer and the question are fine. We're not going into the details of where the bodies were in the church. The church is one complex. I can bring that out through this witness's direct examination, but certainly Mr. Robinson will have an opportunity to bring out all the contradictions that he recognises in this photograph and between the photograph and the witness's testimony when he has an opportunity to cross-examine the witness.

1 MADAM PRESIDENT:

2 You may proceed, Mr. Webster. That objection is overruled.

3 BY MR. WEBSTER:

4 Q. Nonetheless, on that point, Mr. Witness, are you aware of another building which is the sisters' home
5 that is attached to the church, or the nuns' home or the nuns' residence?

6 A. The place called the convent, that's the whole complex. There is a church there. There's also a
7 hospital there and there's a convent. The nuns lived in the convent and went to the hospital to care
8 for the ill. We called the entire complex the convent. You see plants here. The building in question is
9 below these plants. That's where the convent in question lies.

10 Q. All right. Mr. Witness, going back to the issue of the bodies that were inside, or the bodies that you
11 found on the morning of the 8th, would you have any way of estimating how many bodies were inside
12 that church that were buried that morning?

13 A. We found about 200 bodies in that building, but that's only an estimate. There were very many of
14 them.

15 Q. Can you tell me if they were men, women, children? Can you describe, you know, the demographics?

16 A. There was -- it was a mixed group. We killed them with grenades. The assailants did not go inside.
17 Some bodies had the intestines laying out. Some had their heads cut. There were all kinds of
18 wounds. There was every age group. Children, men, women, they were mixed.

19 Q. Is there any way that you could tell the ethnicity of the persons that were killed inside the church?

20 A. They were Tutsis. When Kajelijeli convened us, he was a teacher at Nzirorera's school. He had a
21 Kalashnikov. He said that it was Tutsis that had taken refuge at that place. He said, "You don't know
22 where they are hiding. Come with me, I'll show you."

23 Q. Mr. Witness, among the bodies that you found in the church that morning -- again, this is the 8th of
24 April -- did you see any soldiers or anyone among the victims that you would determine to be soldiers
25 from their dress or from their physicality?

26 A. There were no soldiers.

27 Q. Did you recover any weapons inside the church, any guns or things of that nature that would have
28 been used for defensive purposes by the people inside?

29 A. We didn't find any weapons. Those refugees were not armed.

30 Q. And, Mr. Witness, just with reference to the attack on the 7th, just briefly, do you recall if soldiers,
31 soldiers from the Rwandan government side, participated in the attack on that church? This is
32 directing your attention to the 7th.

33 MR. ROBINSON:

34 Objection. Lacks foundation. He's already testified he wasn't at that attack.

35 MR. WEBSTER:

36 I can rephrase the question; go over the area with around four or five questions, but that's really the
37 only issue that I am trying to resolve.

1 MR. WEBSTER:

2 Shall I proceed?

3 MADAM PRESIDENT:

4 Yes, please rephrase. Please rephrase, Mr. Webster.

5 BY MR. WEBSTER:

6 Q. Mr. Witness, before we go on, I would like to take us back to the 7th of April. Do you recall seeing any
7 soldiers from the Rwandan government side that morning in the vicinity of this church?

8 A. We were with the soldiers at Rwankeri. I did not go to the church on the 7th. That is why I can't tell
9 you that I saw soldiers. But in Busogo, in Rwankeri, we were together.

10 Q. What were the soldiers doing when you were together?

11 A. They were killing. They even brought gas to burn and light fires -- to burn the Tutsis, of course.

12 Q. When you and the soldiers parted company, what direction did you --

13 MADAM PRESIDENT:

14 Please, Mr. Webster, if you could please observe a pause between your question and answer. We
15 missed the end of the witness's answer.

16 MR. WEBSTER:

17 I'll put the question to the witness again.

18 BY MR. WEBSTER:

19 Q. Mr. Witness, can you tell us who the soldiers were killing that morning?

20 A. They were killing Tutsis.

21 Q. And, simply for the record, where were these attacks taking place, the attacks that you observed
22 personally?

23 A. The attacks of the 7th took place in Rwankeri.

24 Q. And what was the interaction that you could observe between the soldiers and the *Interahamwe* on
25 the 7th that morning? What were they doing with each other?

26 A. The soldier, the *Interahamwe*, members of the CDR together were killing people in Rwankeri.

27 Q. To the extent that you were able to observe, was one group leading the other?

28 A. A certain Rachel from the Bigogwe camp brought a container with gasoline. He was leading the
29 soldiers. Niyigaba, Michel was leading the *Interahamwe*, Ntirugirumwe, Ngatama (*phonetic*), and a
30 girl called CDR were at the head of the CDR group. Jean Ntirugirumwe seemed to be the leader of
31 the entire CDR group.

32 Q. Were you able to observe what the interaction was between Corporal Rachel and Michel Niyigaba?
33 Can you get a sense of one leading the other?

34 A. No. Both participated in the killings. They had the same goal: to exterminate the Tutsis. We knew
35 they were on equal footing as leaders.

36 MR. WEBSTER:

37 May I have another image displayed.

Again, another photograph from Prosecution Exhibit No. 5. I will display photograph K0275235. It's on page 8552 of Prosecution 5 on the bottom of that page.

BY MR. WEBSTER:

Q. Actually, I have one more question before I go on to this photograph, and it's in relation to the church, Mr. Witness. On the 8th of April, were you able to observe -- make any particular observation concerning the women, the bodies of the women that were taken out of the church? The dead bodies I am referring to.

A. Yes, there were bodies which belonged to women.

Q. Would you be able to tell us if those bodies were dressed or undressed when you were removing them in order to bury them?

A. Yes, the bodies were dressed.

Q. Were there any bodies that were not clothed?

A. No. Except one body which was damaged because the victim had received a blow from a grenade in the abdomen and obviously her clothes were torn and her entrails were exposed.

Q. All right. Now moving on to the photograph that is now on the screen, Mr. Witness, do you recognise the image that is now on the screen?

A. Yes.

Q. Tell us what it is, please.

A. It's the court of appeals.

Q. We left off on Thursday when you were talking about the attack on the court of appeals. Does the photograph or the image in the photograph resemble the building that you attacked in mid-April 1994? Is there anything that is different about this photograph in relation to the building as it existed in 1994?

A. Yes, there was a change. When we attacked, the buildings had just been repainted.

Q. All right. Mr. Witness, can you tell us how that attack was organised, to the extent that you remember?

A. When the Ruhengeri people came aboard two Daihatsu vehicles, they came to seek reinforcements at Byangabo. When they reached Byangabo, they asked for reinforcements so that we can go and kill the Tutsis who had come from Busengo. We told them that we cannot leave with you unless we are told to by our leaders. So they said, "Who are your leaders?" And we said that it was Kajelijeli. So they went to look for Kajelijeli, who told us to go and help the others. So we left together with him, Kamira (*phonetic*), in order to go and look for other members of the CDR at Gervais's house.

They gave us petrol and we went to Karorero, the warrant officer's, home, who gave us grenades, and we went down right up to the court of appeals. We found there three gendarmes. They told us, "First of all let's shoot in the air," and they shot in the air.

Q. I appreciate your account, but we're going to have to go just a bit slower so everybody can absorb what you are saying. So let's take it from the point at which you meet Kajelijeli in Mukingo. Tell us

- 1 again where this occurred, please, to the extent that you remember.
- 2 A. When Kajelijeli came, he asked us to go and support the others.
- 3 Q. And can you remind us the names of these persons who came to seek your assistance? Do you
- 4 remember their names?
- 5 A. There was one Cyaka.
- 6 MR. WEBSTER:
- 7 For the record, Cyaka is C-Y-A-K-A.
- 8 BY MR. WEBSTER:
- 9 Q. Go on, Mr. Witness.
- 10 A. There was one Evariste as well.
- 11 MR. WEBSTER:
- 12 Evariste is E-V-A-R-I-S-T-E.
- 13 BY MR. WEBSTER:
- 14 Q. Continue, Mr. Witness.
- 15 A. There was also one Mwenge.
- 16 MR. WEBSTER:
- 17 For the record, Mwenge is M-W-E-N-G-E.
- 18 THE WITNESS:
- 19 Those were the persons whose names I knew. They were also with a number of other individuals
- 20 whose names I did not know.
- 21 BY MR. WEBSTER:
- 22 Q. Did you have any weapon that morning, you personally?
- 23 A. No, it wasn't in the morning; it was rather in the evening. When they found me at Byangabo, I didn't
- 24 have my weapon on me. I told you that I had told them that I cannot go without my weapon, and that
- 25 is how I went to Karorero, the warrant officer's, home who gave me grenades.
- 26 Q. You also mentioned purchasing gasoline or petrol. Can you remind us where that took place, please?
- 27 A. We went to Mukamira in order to collect other members of the CDR at Gervais's home. It was
- 28 Kajelijeli who bought the petrol.
- 29 Q. Did you observe how he paid for the petrol?
- 30 A. Yes, we were together with him in front of the Rwandan Petrol station -- petrol station in Mukamira.
- 31 Q. Did you observe the means by which he paid for the petrol? Did you know if it was cash or any other
- 32 means that he used to actually purchase the petrol, if you observed and if you remember?
- 33 A. Yes, he used money from his own pocket. He paid in cash.
- 34 Q. All right. Thank you. Now, with respect to the attack itself, the attack on the court of appeals, do you
- 35 know who ordered that attack?
- 36 A. It was Kajelijeli who gave us the order to go and attack the appeals court.
- 37 Q. Do you know a Colonel Augustin Bizimungu?

- 1 A. Yes, I do.
- 2 Q. Do you know if he had any role to play in the attack that day?
- 3 A. No, I didn't see him on that day, but later on we met him at Nyakimana, where we had been sent to go
4 and kill those who were hiding at the Nyakimana University.
- 5 Q. Well, did you receive orders to go to Nyakimana University?
- 6 A. Yes.
- 7 Q. And who did those orders come from?
- 8 A. It was Kajelijeli who ordered us to go to the Nyakimana University. We reached Nyakimana, and that
9 was where Bizimungu found us, and told us, "These are intellectuals. Maybe you need to leave them
10 because they are going to die later on." That same night, these people were indeed killed.
- 11 Q. Were you present for that or did you learn about that afterwards?
- 12 A. No, I wasn't present when those persons were killed.
- 13 Q. Directing your attention to the persons inside the court of appeals building when you attacked it, would
14 you be able to tell us the ethnic identity of the persons inside?
- 15 A. They were Tutsis.
- 16 Q. Would you able to tell us if they were men, if they were women, if they were children? If you can,
17 describe the persons you were able to observe.
- 18 A. There were children, men and women.
- 19 Q. Do you recall if there were any soldiers, soldiers from the opposite side, inside the church. Soldiers
20 that were not affiliated with the FAR; that's what I am talking about.
- 21 A. No, I didn't see any soldier.
- 22 Q. With respect to the gendarmes that you had mentioned that were outside of the building, would you
23 tell us what they were doing when you approached, please?
- 24 A. When we found them there, they told us, "Let us have time to shoot in the air so that we can cover
25 ourselves." When they shot in the air, they left, went behind this building going through there. They
26 left their military uniforms and put on civilian clothing, and they began to shoot the Tutsis because
27 they used their own weapons, their own guns.
- 28 Q. Well, what did you understand them to mean when they said they had to cover themselves? Could
29 you explain that to us, please?
- 30 A. I think the person who had posted them there to watch over the Tutsis, I presume they wanted to
31 explain to their boss that they had confronted us before we came to kill the Tutsis; in other words, that
32 they had done their job.
- 33 Q. Mr. Witness, do you know a Corporal Bivugabagabo?
- 34 MR. WEBSTER:
- 35 For the record it's B-I-V-U-G-A --
- 36 THE WITNESS:
- 37 *(No interpretation)*

1 MR. WEBSTER:

2 -- B-A-G-A-B-O, Bivugabagabo.

3 MADAM PRESIDENT:

4 Mr. Prosecutor, can you please repeat that spelling?

5 MR. WEBSTER:

6 Yes, if you hold on one second, Mr. Witness.

7

8 The spelling is B-I-V-U-G-A-B-A-G-A-B-O, Bivugabagabo.

9 BY MR. WEBSTER:

10 Q. Mr. Witness, do you know that person?

11 A. I would like to tell the Prosecutor that Bivugabagabo was not a corporal. I know one Bivugabagabo
12 who was a colonel, who was a commander of operations in Ruhengeri region. He was known as
13 Commander Opius Ruhengeri and his office was in the regional area of Ruhengeri. His office was
14 opposite the (*interpretation unintelligible*) in Ruhengeri.

15 Q. Thank you. Did Bivugabagabo have any role to play in the attack on the court of appeals that day that
16 you know of or that you observed?

17 A. At that point in time I didn't see Bivugabagabo, but when we went to Nyakimana he stopped us on the
18 way and he told us that he was going to provide us with weapons so that we can go and chase away
19 *Inyenzi* in the bush. He therefore stopped us from going to the university to go and kill people there.

20 Q. Did this person ever give you any other instructions with regard to the attacks that day or
21 subsequently?

22 A. No, we didn't launch any attack on that day. When we left the court of appeals, some of us***** were
23 arrested and imprisoned at the brigade.

24 Q. Were you among the persons that were arrested?

25 A. Yes, I was amongst those who were arrested and imprisoned.

26 Q. And can you tell us how long you remained in custody at that time?

27 A. It wasn't actually a prison. They took us to the gendarmes' brigade camp. The brother of Nsabimana
28 telephoned his brother, and that's how later on, about 50 minutes or so, we were released. We didn't
29 even spend a night in that camp.

30 Q. Witness, I think you went a bit quickly there. Tell us how you were released from custody that day.
31 Who intervened or how was your freedom negotiated that day?

32 A. Actually, Nyamakuba's younger brother and Nzirorera's younger brother came. They asked us why
33 we had been arrested. We explained that it's because we had gone to kill at the court of appeals. So
34 they promised that -- he promised that he would go and telephone his brother, Nzirorera. I don't know
35 whether he actually did so, but about 50 minutes later we were released, but subsequently he told us
36 that he had telephoned his brother.

37

1 MR. ROBINSON:

2 Excuse me, Madam President, I would like to object to this testimony and ask that it be stricken as
3 new material which has never been disclosed to us in any of the statements of this witness or even
4 his prior testimony on two occasions in the *Kajelijeli* case. It's a perfect example of why the
5 Trial Chamber should have issued an order a long time ago requiring the Prosecutor to disclose new
6 material when he knows he's going to be leading it.

7
8 Obviously, from the questions of Mr. Webster, he's gone over this with the witness beforehand. He
9 knows what the witness is going to say. He's confident enough to know what's in the material that has
10 been disclosed to the Defence, and this allegation that Mr. Nzirorera arranged for the release of
11 people who had attacked at the court of appeals appears absolutely nowhere within the materials.
12 And I challenge Mr. Webster to find it and point it to you if it does. And so this should be stricken.

13 Thank you.

14 MR. WEBSTER:

15 I would direct the parties to the statement of the 17th of May 2001, which is a statement that this
16 witness made to Rwandan authorities, in the English, if you take a look at page 3. In the French it
17 would appear -- actually, it's not this statement. Excuse me.

18
19 There is one other statement that this witness made to Rwandan authorities where he talks about
20 being arrested and released due to the intervening of authorities in Mukingo, and he also covers that
21 same area in his testimony in the *Kajelijeli* trial.

22
23 If you give me a moment, I can find it.

24
25 There's no specific reference to Nzirorera, but this witness has not testified that Nzirorera released
26 him. He testified about the call that Dusabimana made to Nzirorera. So my submission is that it's
27 well within the notice as provided by the witness's prior reference to being arrested and being
28 released by the intervention of authorities.

29
30 I have not elicited from this witness any testimony concerning Nzirorera's acts on that day. My
31 question was to allow him an opportunity to explain what efforts were made on his behalf by persons
32 that he mentioned were on the scene in both previous statements: his testimony before the *Kajelijeli*
33 Court and his statement to the Rwandan authorities after he made a confession.

34 MR. ROBINSON:

35 Madam President, if I could just respond to that briefly. I can guarantee you that there is no reference
36 to Mr. Nzirorera's intervention in this matter in the *Kajelijeli* testimony, or in the statement Mr. Webster
37 is referring to. Yes, there's testimony that he was arrested, there's testimony that he was released,

1 but to put this on Mr. Nzirorera at this late stage is unfair. We're taken completely by surprise.

2
3 This is an act for which under Article 6(3) Mr. Nzirorera could be held liable for the activities of the
4 court of appeals simply by assisting these people in getting released or failing to punish or to prevent
5 this attack, especially failure to punish after the fact. So we're now confronted with an allegation upon
6 which a conviction for a serious crime can be based without any notice whatsoever.

7
8 Mr. Webster says he didn't elicit the fact that Mr. Nzirorera was responsible for getting him released.
9 So since he didn't elicit that, why don't we strike that from the record and then we'd be in the same
10 position we were in before we heard this completely new material.

11
12 And I again, now for the third time, renew my motion, formally, that you order the Prosecutor when he
13 is to elicit new material to disclose it to us in advance so we don't keep having these problems. Thank
14 you.

15 MR. WEBSTER:

16 I'll simply rely on my previous submission. I did not elicit information. I didn't ask this witness what
17 Mr. Nzirorera did. I asked this witness what Dusabimana did. Dusabimana is mentioned in the
18 previous testimony in the Kajelijeli trial. If you give me one moment, I can find the reference in the
19 transcripts.

20
21 If we look at page 42 of the English transcripts on the 23rd of July 2001, reading from the witness's
22 response at that time --

23 MADAM PRESIDENT:

24 Yes, Mr. Webster, you were talking about a statement of 23 July 2001?

25 MR. WEBSTER:

26 No, I'm referring to a statement.

27 THE ENGLISH INTERPRETER:

28 Microphone, please, Mr. Webster.

29 MR. WEBSTER:

30 I'm referring to a statement of the 17th of May 2001 on page 2 of the English statement. It bears
31 K-number K0285215. There's some reference to this witness being arrested on the evening after the
32 court of appeals attack. And then when we look to this witness's testimony before the *Kajelijeli* trial,
33 his testimony on the 23rd of July 2001 -- it's page 42 on the English language transcripts of that day,
34 and there's one paragraph of his response where he mentioned, and I am reading from the transcripts
35 now, "In the evening, four of us were detained at the brigade, and so we demonstrated and we
36 blocked the road, stopping all vehicles coming from Kigali. There was a gentleman. I didn't know
37 him. He came and asked us what happened. We told him that four of our colleagues had been

1 detained. So he said, 'I am going to called Mukingo to enquire if they are aware of your operation.'
2 He did so, and after obtaining the information that he sought, he was the one -- he was the one who
3 called the brigade and our colleagues were released."
4

5 So there is some mention of the arrest of a few of the attackers and their subsequent release. And
6 that's the information I was trying to elicit from this witness. Whether it was Joseph Nzirorera who
7 negotiated their release, this witness is not in the position to say. That information may come before
8 the Court through another witness.
9

10 But based on this portion of his testimony in the *Kajelijeli* trial, it is my submission that it was
11 appropriate to ask the witness about his arrest and about his release. And if other witnesses who are
12 in closer contact either to Joseph Nzirorera or to the person who made a call on behalf of this witness
13 can fill out the factual scenario a bit, then this Court can make an assessment of that evidence.
14

15 But at this point, I'm simply laying the foundation for that type of evidence that can only come through
16 another witness, because this witness explains to us that he was inside the jail. So he cannot tell us
17 who spoke to whom, but he can raise the inference of contacts being made on his behalf. And that's
18 all I sought to elicit.

19 MR. ROBINSON:

20 Madam President, if I could just have one more word on this. My motion is to strike the testimony
21 relating to Mr. Nzirorera. I think there's a very good basis for doing that. Thank you.

22 MADAM PRESIDENT:

23 Very well. The Chamber is of the opinion that the Defence was not at all informed that the witness
24 would say that it was indeed Mr. Nzirorera who negotiated their release. Therefore, we shall not take
25 this information into account.
26

27 You may proceed, Mr. Webster.

28 BY MR. WEBSTER:

29 Q. Mr. Witness, do you know who it was that made a call on your behalf when you were arrested in
30 Ruhengeri --

31 MR. ROBINSON:

32 Excuse me.

33 BY MR. WEBSTER:

34 Q. -- if you know.

35 MR. ROBINSON:

36 Excuse me, Madam President.
37

Excuse me, please. Don't answer until the Trial Chamber makes a ruling, please.

Madam President, this is again eliciting information which is not contained in the disclosure materials. So this is one step -- it's the same problem, but one step removed. If he elicits the fact that Mr. Nzirorera's brother is the one making the telephone call, it's the same thing. There is no notice of that either. His name or any reference to him as an individual appears nowhere in the disclosure materials.

So we have the very same issue. He's just trying to go about it through a different route. And I also object to this question and for lack of advance notice of this.

MR. WEBSTER:

The issue is simply one of --

MADAM PRESIDENT:

Yes, Mr. Webster, we do believe that you asked more or less the same question.

MR. WEBSTER:

My concern, Your Honour, is to elicit information from his witness that I will be able to connect through this witness -- excuse me -- through the testimony of another witness. There is no way that this witness can inform this Court who made a call on his behalf. He can, however, talk about efforts that were made on his behalf that resulted in his release.

That's really the objective that I have here. It's not to implicate Joseph Nzirorera through his testimony but to lay the foundation for the testimony of another witness who will testify, who can then make that connection. So the issue of providing notice will come up before or well in advance of the testimony of any other witness that will provide information that links Joseph Nzirorera to these phone calls.

But through this witness, I'm simply trying to lay the foundation for a connection that will be made through another witness.

MR. ROBINSON:

Well, Madam President, if I could just say one last thing, and that is that Mr. Webster has to understand that if he wants to do something like this, there is an obligation of disclosure, and I think if he had disclosed this, it would be perfectly proper for him to have gone into this. But having failed to disclose it he can't, and you need to make that clear to him so that in the future we don't have the same problem. Thank you.

(Pages 1 to 24 by S. Eboe-Osuji)

1 1045H

2 MADAM PRESIDENT:

3 Mr. Webster, you are putting, more or less, the same questions to the witness. That's what we said
4 earlier. You cannot come back to Nzirorera's -- his involvement in the -- or lack of involvement in the
5 release of this witness. The witness has already said how he was released, and I think that you can
6 move on to another issue at this point.

7 BY MR. WEBSTER:

8 Q. Mr. Witness, do you have any idea how many people were killed at the Court of Appeals, as a result
9 of that attack, the attack that you participated in?

10 A. There were very many victims.

11 Q. You mentioned Busengo in one of your previous responses. Can you expand upon that, please?
12 What is the relation between Busengo and the persons that were sheltered at the Court of Appeals?

13 A. In fact, the Tutsis were in Busengo, they were loaded onto buses to bring them to the Court of
14 Appeals under the pretext that they would find protection there. In fact, it was demonstrated that they
15 were going to be killed. I did not really pay attention to the people who brought them from Busengo to
16 the Court of Appeals.

17 Q. Do you have any idea of when that happened, the transport of these people from Busengo to the
18 Court of Appeals, if you know?

19 A. They came to call us just after dropping them at the Court of Appeals. I think that those people were
20 dropped at the Court of Appeals about two weeks after the beginning of the massacres, that's when
21 the journalist on Radio Rwanda announced that, "Those mean *Inyenzi* had come to kill people at the
22 Court of Appeals," but in fact we knew the real version of the facts.

23 Q. Well, with regard to your last response, Mr. Witness, where did you hear this announcement? Tell us
24 a bit about that announcement of *Inyenzi* that had killed at the Court of Appeals.

25 A. It was Louise Kayabanda, she was the broadcaster who announced that on Radio Rwanda. She said
26 that, "Those mean *Inyenzi* shelled the people who were taking refuge in the Court of Appeals." In
27 fact, we were the ones who had killed the people who were there.

28 MR. ROACH:

29 One moment, please. With respect to this evidence, Madam President, I'm not clear whether the
30 Prosecutor is trying to impute any falsity of any radio broadcasts to my client, and therefore, it should
31 be made clear, with some sufficient foundation, as to whether or not he is putting the blame or
32 culpability for any misinformation on the radio station on Dr. Ngirumpatse. There has been no
33 connection that has been shown so far between what has been broadcast or the radio station itself
34 and Dr. Ngirumpatse or for that matter any other defendants, so far as I can see. And this evidence
35 would be misleading, unless we have that kind of foundation to show that there is responsibility for
36 this radio broadcast, if the purpose is to saddle responsibility the Accused.

1 MR. WEBSTER:

2 And, Your Honour, with all due respect, that connection is going to have to come through subsequent
3 testimony to other witnesses, and we haven't gotten to that point yet. We are simply eliciting
4 testimony from this witness about his characterisation or his account how this event was
5 characterised by official sources with the government. So I am attempting to lay the foundation,
6 actually, for other evidence that may be brought forth through other witnesses. At this point, all I can
7 do is go step-by-step and we build our case incrementally. This witness -- we haven't even gotten
8 into the substance of the testimony on this point. He mentioned hearing an announcement he hasn't
9 told us if it was on the radio. He hasn't mentioned when he heard it. He mentioned Louise
10 Kayabanda. So I'm trying to fill out the record on that point, and we'll see where it leads. If it can be
11 connected to Radio Rwanda, then eventually to the Accused, we'll do that, but certainly not through
12 this witness alone. But we take things bit by bit, which is, basically, the same argument I was offering
13 for Mr. Robinson's objection about the rest of the Accused. I'm simply trying to put bits and pieces of
14 a story together that can be connected later to other witnesses. So that's my submission.

15
16 I cannot predict exactly what this witness will say. I can anticipate his testimony based upon his
17 previous statements and his previous testimony in the Kajelijeli trial. The details that come out during
18 his testimony in this case are sometimes richer than the details that we find in his previous statement
19 or even in my previous conversations with him. So all I can do is put a question to him and take
20 whatever answer I get. If I was allowed to lead this witness then I can be a bit more surgical in how I
21 elicit his testimony, but it's actually in trying to place open-ended questions to the witness that allows
22 us to give the witness the opportunity to fill out the factual record in this case. So I ask a question and
23 we simply have to accept whatever answer the witness gives us. But there's nothing improper about
24 my question or my line of questioning. The witness mentioned a radio broadcast in one of his
25 previous statements. I'm asking that question on that basis.

26 MR. ROACH:

27 If you will permit me to respond, Madam President. I'm not saying that the question is improper, I'm
28 saying that -- I'm enquiring what is the reason for putting the question. Is the reason for putting
29 question to this witness -- or the reason for putting the question to any previous witness, as to these
30 radio broadcasts, an attempt to connect that broadcast to the Accused? If it is, and if my friend says
31 that he is going to present more evidence to connect and he's undertaking, as an officer of the Court, I
32 would certainly trust him if he is going to undertake to present evidence in which he can directly
33 connect the Accused, my client in particular, with the radio broadcast. But my friend can't say, "I'm
34 just bringing this evidence out and let's see where it would lead," as he says, "let's see where it would
35 lead." This has to be a matter with certainty and predictability. And he has to have the real intention
36 of calling that evidence, if it is going to be relevant for showing any culpability on the part of the
37 Accused.

MR. ROBINSON:

Madam President, may I also have an objection to this testimony on different grounds? We have in common law what is known as The Best Evidence Rule, which is if you have evidence of a declaration, direct evidence, such as a recording, that evidence is admitted as the best evidence, not some witness's recollection of what was said. Now, we've taken up a lot of time with the previous witness, GFA, when Mr. Webster had him tell us what President Habyarimana said at the meeting in Ruhengeri in 1992, only to later have the very tape itself of exactly what Mr. Habyarimana said. And, in my submission, we wasted a tremendous amount of time on what that evidence thought when we could have had the best evidence at the outset, which is the tape. We are now in the same situation here. Mr. Webster has disclosed to us a broadcast of this very event over Radio Rwanda, which he has in on CD and which he told us he intends to elicit during this witness's testimony. Now, instead of asking for this witness's recollection of what was said, which is not the best evidence, when the best evidence available, I would ask that this witness not be allowed to give this testimony, but instead the that Prosecutor, in fact, produce the best evidence instead. Thank you.

MADAM PRESIDENT:

Yes, Mr. Hooper.

MR. HOOPER:

Thank you, Madam President. May I remind, Mr. Webster that last week he said that he was going to try and ascertain whether the broadcast that's being discussed at the moment, relating to the Ruhengeri Court of Appeals incident, whether that broadcast had in fact, been disclosed to the Defence and if so, when. It may be an opportune moment for him, if he has that knowledge, now. He said, I think, he would let us know today what the position is, we would be able to know what it is.

MR. WEBSTER:

Quite frankly, I think we can.

MADAM PRESIDENT:

Mr. Roach, could you please turn off your microphone? Thank you.

Mr. Webster, can you make a response to that last submission?

MR. WEBSTER:

Yes, Your Honour. I'm not sure about the status of the disclosure of this precise transcript. We still are going over our records on that point. We don't have an index, a full detailed index of all the Kinyarwanda transcripts. But, in theory, all of those transcripts were disclosed to Defence. But I have been looking into it and we have further information about the source of the tapes. But as information comes we'll consolidate it and then bring it to the attention to the parties and the Court. But it is something we are still working on. I believe the transcripts themselves, the two different sets of transcripts, were served on the Defence last week and we were able to generate some additional

1 information over the weekend about the source of the tapes themselves and how they have been
2 cataloged and archived in our evidence unit, and I'll have that information.

3
4 But returning to this witness, I think if we are allowed to ask two or three more questions along these
5 lines of what this witness is referring to is not the tape I was referring to last week, and we are talking
6 about two different broadcasts. So we are talking a void now.

7
8 Going back to Mr. Robinson's application to hear the actual broadcast, I have no objection to playing
9 the broadcast of 15th of April. But I expect this witness to tell us, he was listening to a different
10 broadcast with much of the same substance. So, all of this information about radio broadcasts will
11 have to be something that is going to have to be developed through further questions to this witness
12 and questions that will be put to other witnesses.

13
14 Addressing myself to Mr. Roach's comment -- enquiry as to where I am going with this. It is the
15 prerogative of the Prosecutor to plan his case to put forward. We are not under an obligation to
16 Defence to explain the logic of every question and every witness and every piece of evidence we
17 brought forward. But having said that it is clear that the objective is to connect this misinformation
18 coming from Radio Rwanda to the government at large and connect it in some sort of way to the role
19 his client and the other Accused played in articulating and implementing that policy. Now, whether we
20 will be successful in that is a question of evidence. Do we have the evidence to connect that policy to
21 the persons that are on trial in this Trial Chamber? And all I can say is, we will have to wait and see.
22 But that's the direction this is going, that should be clear, and there is no mistake in that. The
23 Accused are to be held responsible for formulating and implementing the policy of the interim
24 government, and if the Prosecutor has an opportunity or wishes to try to develop a connection
25 between the policy of Radio Rwanda and the policy of the interim government, then that is what we
26 seek to do. And deliberate misinformation would be a part of that policy. But we will not know that
27 until other witnesses come forward to help us make that connection.

28 MR. HOOPER:

29 Yes, well, it would seem --

30 MADAM PRESIDENT:

31 Very briefly, very, very briefly, Mr. Hooper, please.

32 MR. HOOPER:

33 I won't be as long as Mr. Webster's announcement awhile ago, but part of that announcement was
34 quite plain in intention by the Prosecution to create a link between misinformation and interim
35 government. And I've heard no evidence, at all, in respect of that. Full and timely disclosure is the
36 very means by which the Prosecution can assist the Chamber in expediting the case. And by fair
37 bona fide disclosure properly represent its responsibilities to the Accused.

1
2 There was mention a moment ago of transcripts of this or a broadcast dealing with this. I've had
3 none. And I see at least one nodding head in front of me here to support the fact that there has been
4 no disclosure. I'm concerned about the provenance of this tape. I hope the Prosecutor is in a position
5 by lunchtime to let us know whether there has been disclosure of it. We've traced or sought to trace it
6 in the disclosure that has been made to us unsuccessfully. And so one is concerned about where it's
7 come from and if it hasn't been disclosed to date, how it suddenly popped up as evidence seems to
8 do so regularly in this trial. So these are matters of proper concern.

9 MR. ROACH:

10 Madam President, I should like to assist this Court in one way and my friend, too. My friend says, "I'm
11 under no obligation to say where this evidence is leading" and so on. But really, we do have a fair
12 trial, the right to know what is the case against us and what is the case we have to meet. But having
13 said so, I know that my friend says he does want to make a link. We want to know now whether he is
14 going to produce evidence to support this. If he's not going to produce evidence to support this from
15 some other source, some other witness, then there is a categorical objection to this line of
16 questioning.

17 MR. WEBSTER:

18 Just to bring to it the attention of the Court and the parties, before me I have a memo that was
19 submitted the 15th of April, Thursday, that was directed to Court Management with copies to be
20 directed to each of the Defence teams, where item number 2 on the memo says: "Transcripts of
21 Radio Rwanda, AZ/912. The transcripts for disclosure to all Accused, a CD-ROM of the actual
22 broadcast, was served on the Defence in court this morning. I am forwarding a copy of the same for
23 your records."

24
25 So, by our records, the disclosure was made on Thursday, that is two separate transcripts of the
26 same broadcast and the CD-ROMS that were delivered to parties in Court. In terms of providing
27 notice to the Accused, the notice comes from the indictment. I can refer you to the specific
28 paragraph, but there is one paragraph in the indictment where the interim government is to be held
29 responsible for mischaracterising the killings. And if you give me a moment I can look for it and direct
30 you to the specific paragraph.

31
32 But in the conspiracy count there is a specific allegation that interim government ministers
33 mischaracterised the killings and sent emissaries abroad to mischaracterise the killings and use the
34 media at their disposal to mischaracterise the killings. And this falls within that rubric. So in the
35 indictment I don't think that there is a specific allegation of the radio broadcast on the 15th of April, but
36 there is a catch-all paragraph that refers us specifically to a policy of the interim government to
37 mischaracterise what was going on in Rwanda in April, May, June, and July of 1994, and it's on that

1 basis we go forward with this evidence.

2 If I may interrupt for one second, I would direct the parties and the Court to Count 31.32 of the
3 indictment -- of the amended indictment. There is a paragraph toward the end that specifically states
4 that, "The media was a means by which the killings were mischaracterised."

5 JUDGE ARREY:

6 The Chamber points out that the Prosecutor says that he disclosed to the Defence the different radio
7 broadcasts and the transcripts, notably that of 15 April 2004 -- that on April 15, 2004 the Chamber
8 authorises the Prosecutor to proceed but, of course, the Chamber will have to verify the probative
9 value of what will be said by this witness.

10
11 We are now going to take the 15-minute break. If the parties can meet during that break to see if,
12 indeed, that disclosure was made or to ascertain whether or not there was a problem. But you can tell
13 us after the break about that. But we are of the opinion that we may proceed after the break. We
14 may proceed with the evidence-in-chief of this witness.

15 MADAM PRESIDENT:

16 Proceedings are adjourned for 15 minutes.

17 *(Court recessed from 1103H to 1126H)*

18 MADAM PRESIDENT:

19 The session is resumed.

20
21 I can see Mr. Robinson on his feet. Is there a problem, Mr. Robinson?

22 MR. ROBINSON:

23 Madam President, no problem, but I did ask a representative of the registry to verify the fact that no
24 disclosure has been received on these transcripts, and in discussing it with Mr. Webster I
25 acknowledge that on the 15th of April he transmitted something to the registry, but truly none of us
26 has received that document. I ask that to be verified and when Mr. Fry returns I think he can verify it
27 for you.

28
29 And this brings up a problem that we are having regularly, but I don't know what the solution is to it
30 but, for example, you ordered the disclosure to begin on the 15th of April of Witness G's statement.
31 Here we are on the 19th of April, we don't have a single bit of that yet. Perhaps Mr. Webster, I think,
32 did start disclosing either on the 15th or the 16th, but we don't have any of that. And they want to
33 bring this witness on the 17th of May, so we are already beyond the 30 days in which we are to have
34 disclosure. So I don't know what the solution is. The registry is probably doing the best they can, but
35 never the less, we don't have it so we can't work with it, so I think it is a problem that should be
36 addressed by the Trial Chamber.

37 MR. ROACH:

1 I just want to say that I did receive, on Friday afternoon, a copy of the transcripts that my friend has
2 referred to, and I do know that there was someone who was coming around late on Friday, when most
3 of the people had not been in their offices.

4 MR. HOOPER:

5 Very briefly, Madam President. We haven't received the CD either, which was referred to. That won't
6 help us a great deal, because it would be in Kinyarwanda, I know, but I am not aware of having
7 received it.

8 MR. WEBSTER:

9 Just for the clarity of the record, the CD was actually distributed in Court. I believe that took place on
10 Thursday, and we distributed it in Court to expedite its receipt by the Defence, so I believe either you,
11 Mr. Hooper or Mr. O'Shea received it in Court. If they have not received it, we can provide them with
12 a copy, but it was not provided through CMS because we wanted to get it to the Defence as soon as
13 possible.

14
15 With respect to the Witness G transcripts, those also were disclosed to CMS, and I believe those
16 disclosures were made the morning of the 16th, which was Friday morning, and they were disclosed
17 in four CD-ROMs, and there was also a set of hard copy transcripts that were disclosed, simply to
18 insure that the Defence had copies of the closed session testimony of Witness G. So we did serve
19 those on CMS last week, the very end of last week. Unfortunately we're constrained to serve
20 everything to the Defence through CMS because that is the only way we can ensure some sort of
21 record keeping. It would probably get into the hands of the Defence much faster if we delivered it to
22 the Defence, but then we would have no way of keeping track of what we've given to the Defence and
23 when they received it. So unfortunately, this is something we have to live with or find other ways of
24 speeding things up. But we cannot -- when we disclose things in Court even that seems to present a
25 problem now because I do recall coming down to Court with four copies of the CD-ROM so that I
26 could hand deliver it to each Defence attorney. I had given instructions that that be done and it
27 surprises me that Mr. Hooper doesn't have his copy, but we can certainly provide another copy if he
28 doesn't have one.

29 MADAM PRESIDENT:

30 Very well, we have taken due note of that. You may proceed with the examination-in-chief,
31 Mr. Webster.

32 BY MR. WEBSTER:

33 Q. Mr. Witness, we left off when you were telling us a bit about an announcement that you heard and you
34 mentioned the name of a radio broadcaster. Can you state that name again, so we can take up
35 where we left off?

36 A. After our release, we left the brigade camp and I learnt of the existence of that broadcast at home.
37 That announcement had been made on the radio.

1 Q. Did you hear that announcement yourself, or were you told about the announcement?

2 A. I personally heard the broadcast. Louise Kayabanda, the journalist, was saying, "The damn *Inyenzi*
3 had killed the people." I heard the broadcast myself.

4 Q. Do you recall when it was you heard this broadcast, was it the same day, the following day or
5 sometime thereafter?

6 A. It was that same day, but in the evening when we reached home.

7 MR. WEBSTER:

8 Well, at this time I would like to have the broadcast actually played for the Court. It -- I believe I can
9 either provide a copy or a copy was distributed to CMS. If we can take a CMS copy of that, it would
10 be helpful, or otherwise I can use the copy I have among my materials.

11 MR. ROBINSON:

12 Madam President, I would request this be admitted as an exhibit and then played. I think it should be
13 part of the Court record to have the CD-ROM containing this broadcast entered as an exhibit.

14 MR. WEBSTER:

15 I have no problem admitting it. I mean, that's the objective of having it played in the first place, for the
16 witness to recognise it and then to offer into evidence, but if you are willing to stipulate and put it into
17 evidence at this point, I certainly have no objection.

18

19 For the record, this comes from a cassette that is identified as KT000422, it was served -- a four-
20 minute excerpt was served on the Defence. The portion that was taken as an excerpt runs from 35
21 minutes, point 17, which I assume is 35 minutes and 17 seconds, to 39 minutes and 59 seconds.

22 That portion has been copied onto a CD-ROM. When it's on the CD-ROM it no longer has those
23 numbers to identify it. So it runs from 000 to 4 point something or other. I'm not exactly sure where it
24 ends, but it is approximately four minutes in length. But the numbers on the counter for the CD-ROM
25 that was served on the Defence do not correspond to the numbers of the original tape. The original
26 tape, I repeat, runs from 35.17 to 39.59. And the portion that should be of interest to the Trial
27 Chamber is from 3.15 to 3.42.

28 MR. HOOPER:

29 May I emphasise again, Madam President, we don't have a transcript of this, none of us. We don't
30 know what is meant to be on this tape. Is it possible to get us a transcript?

31 MR. WEBSTER:

32 You know, my apologies. The transcripts were served on Defence. I'm sorry that you don't have
33 them. I have a copy before me, it is a transcript in English. There is also a transcript in Kinyarwanda.
34 What I can propose is -- I actually had not anticipated playing it this morning. It was really the
35 witness's response that actually brought us to this point of actually playing the tape.

36

37 Perhaps I could continue with my direct-examination, terminate that, then we can play the tape and

1 look at the transcript at a later time and I'll prepare those materials so that we can do that. It seems
2 that Mr. Robinson was stipulating to the entry of the exhibit in evidence. I believe Mr. Hooper did
3 almost the same thing last week when we were talking about the transcript and the broadcast in
4 relation to GSA. Then if it can come into evidence now we can listen to it at a later time.

5
6 The point of playing it for the witness is really to have him identify it. But if admitting this item as an
7 exhibit is not a problem, then we can do that and we don't have to play it at this time.

8 MR. HOOPER:

9 Would it be possible for Mr. Webster just to let us see the transcript? It won't take very long for us to
10 run an eye over it, that's all I want to do; or all I want to do anyway.

11 MR. WEBSTER:

12 In fact, I believe the transcript -- I provided everybody with a CD, an e-mail, where the exact portion
13 was actually copied into the e-mail. So that was definitely served on all the parties, and this was
14 sometime last week, as a matter of fact. It was an e-mail directed to court management, with copies
15 to the Defence, three sentences, all in French, which comprise maybe a minute of a broadcast. It's a
16 very brief communiqué, but I know that a copy of that was sent to both to Mr. Hooper's e-mail address
17 and O'Shea's e-mail address. So everybody has actually seen the transcript of this one-minute
18 broadcast.

19 MR. HOOPER:

20 I'm sorry, Mr. Webster. I'm sure the Court is irritated by my interventions on this type of subject. With
21 the best will in the world, I haven't accessed my e-mail, I'm afraid, this weekend, nor has Mr. O'Shea, I
22 take it, and we haven't seen it. If you've got a hard copy there in English could you just pass it over?
23 It wouldn't take me more than 30 seconds to run my eye over it. Thank you.

24 MR. WEBSTER:

25 I have no objection to doing that. I have no transcript in English. The transcript exists in French and
26 Kinyarwanda. What I have you are welcome to look at.

27 MR. HOOPER:

28 Well then, let's try the French then.

29 MADAM PRESIDENT:

30 Mr. Webster, you must decide what you want to tender as an exhibit. If you don't wish to tender it,
31 you only tender what is of interest to you.

32 MR. WEBSTER:

33 My interest, Your Honour, is in having this exhibit or this one-minute broadcast be admitted into
34 evidence on the CD-ROM. That is really the purpose of playing it at this point. If it's admitted into
35 evidence, the Court and parties can listen to it at their convenience. It is really not necessary to play it
36 for the witness. I put it in issue now simply to have the witness listen to it and recognise it. But if
37 Defence are stipulating to its entry into evidence, I have no problem simply admitting it and we can go

on with the questioning, and it can be played at a later time.

MADAM PRESIDENT:

Very well. You can tender it now and we will hear it thereafter, when we are towards the end of the evidence-in-chief of this witness.

MR. WEBSTER:

This, I believe, would be Prosecution 20, if the registry would confirm that, please. Prosecution 19.

MADAM PRESIDENT:

Any objections from the Defence?

MR. ROBINSON:

Madam President, on behalf of Mr. Nzirorera we do not object to the admission of this tape.

BY MR. WEBSTER:

Q. Mr. Witness --

MADAM PRESIDENT:

Very well, one moment, please, Mr. Webster. The document K200422 is the number; is that correct?

MR. WEBSTER:

That is the number that identifies the cassette, but only four minutes of that cassette are recorded on the CD-ROM.

MADAM PRESIDENT:

The cassette of four minutes admitted and marked as Prosecution Exhibit P. 19.

(Exhibit No. P.19 admitted)

MADAM PRESIDENT:

You may proceed with the examination-in-chief, Mr. Webster.

BY MR. WEBSTER:

Q. Mr. Witness, can you tell us -- did there come a time that you returned to Mukingo *commune* after the attack on the Court of Appeals?

A. I returned -- we returned to see Kajelijeli and we went to Bisesero *(sic)*.

Q. Is that Bisesero or Gisesero?

A. It's Gisesero.

Q. Mr. Witness, can you tell us what if anything happened to the land of those Tutsis that had been killed at Busogo parish and Rwankeri?

A. The land was sold. The *communal* authorities sold it. After the sale of those parcels, they gave us some reward. Rachal's property was given to us. We said that the reward was not sufficient. And they said, go see the merchants, and each merchant was supposed to hand over a sum of money to us as a means of salary.

Q. Do you recall when this took place, how soon after the attack at the Court of Appeals?

A. That took place after the attack, after the attack on the Court of Appeals.

Q. Do you recall how much time elapsed between the attack on the Court of Appeals and this distribution

of land or this sale of land; if you remember?

A. After the attack launched on the Court of Appeals, there was three days, and three days later the land belonging to the Tutsis were sold.

Q. Who organised the sale of this land?

A. Semahane, the assistant *bourgmestre*. He had replaced Harera, who had died. There was Jean Demascene Niyoyita, Gdisetse, the *conseiller*, as well as police officers, including Bazininerya the *communal* brigadier.

MR. WEBSTER:

Bazininerya is spelled B-A-Z-I-N-M-I-N-E-R-Y-A, I believe. All the other names have been previously spelled. Niyoyita, just to remind the parties, is N-I-Y-I-O-Y-I-T-A. Gdisete is G-D-I-S-E-T-S-E.

Semahane is S-E-M-A-H-A-N-E.

BY MR. WEBSTER:

Q. Mr. Witness, did Juvénal Kajelijeli have a role to play in the sale of this land?

A. He was present, even if he wasn't the leader.

Q. Well, are you suggesting to us that he was not the leader at that time?

A. At that time he had not yet become *bourgmestre* again as the head of the *commune*.

Q. Even if he was not the *bourgmestre*, did he have any authority with respect to the other persons that you described?

A. He himself led them, gave them orders.

Q. Based upon your personal experience and what you could observe at that time, could you tell us who was more influential, Juvénal Kajelijeli or the other authorities that you mentioned, Niyoyita, Semahane and Ndisetse?

A. Kajelijeli himself gave us the land. If he didn't have any authority he wouldn't have been able to do so.

Q. Well, how was he able to do so, if he had no official capacity at that time? Can you explain to the Court how it came to be that he was the one who made those types of decisions?

A. You see, regarding the meetings at Nyiramakubwa, all of the *communal* authorities feared Nzirodera. He was the one who was the influential official there. So no such decisions could be taken, such as distributing the land.

Q. Well, now that you mention Mr. Nzirodera, can you tell us how influential he was in relation to the other authorities in Mukingo. Previously you've mentioned Casimir Bizimungu. You've mentioned Augustin Bizimungu. You've mentioned Jean Demascène Niyoyita, among others. How did Mr. Nzirodera's authority compare to the authority of these other persons?

MR. ROBINSON:

Objection, Madam President. This is calling for an opinion by this witness. This witness hasn't testified to ever attending any meetings where the division of authority, such as Mr. Nzirodera and others, were apparent to him. There is no foundation. It is pure speculation on his part. He is certainly not an expert on Mukingo politics or authority and I think he's not competent to give this

1 answer. Thank you.

2 MR. WEBSTER:

3 Your Honour, I'm not seeking expert testimony from this witness. I'm speaking from his personal
4 experience, his personal knowledge, and his observation based upon his perception what were the
5 relative degrees of influence of Mr. Nzirorera vis-a-vis the other authorities he's already mentioned in
6 his testimony. So my question is anchored specifically in this witness's own personal experience and
7 observations.

8 MADAM PRESIDENT:

9 Very well, you may proceed, Mr. Webster.

10 THE WITNESS:

11 Now, as regards Nzirorera's power, in fact, he seemed to be superior to all of the persons that I
12 mentioned. He seemed to be their leader.

13
14 As regards the events that took place in Mukingo, he was the one who had the higher authority overall
15 of all those people that I've just mentioned.

16 BY MR. WEBSTER:

17 Q. And, can you tell us what you base that observation on, Mr. Witness? Tell us the things that would
18 indicate to you that he had the greater authority. What did you observe? What did you hear? What
19 did you see?

20 A. First of all, as regards Nzirorera and his authority, no one else set up the *Interahamwe* in Mukingo.
21 No one else took the initiative to buy them clothing. No one else decided to give cards to the
22 *Interahamwe*. Consequently, Nzirorera, who did all of that, had more authority than all of the people
23 that we've mentioned.

24 Q. When you say "cards", Mr. Witness, what are you referring to?

25 A. Membership cards for the *Interahamwe*.

26 Q. And can you tell us what responsibility and what role did Mr. Nzirorera have in relation to those cards?

27 A. Nzirorera carried the cards and distributed them. Some didn't receive them, however.

28 Q. Mr. Witness, do you recall when that was, if you remember?

29 A. The first cards were brought after the attack, the RPF attack, the first one, an attack that took place
30 after Habyarimana's rally.

31 MR. ROBINSON:

32 Excuse me, Madam President. Once again, I object to this testimony. It is new material that has not
33 been disclosed to us. I think, perhaps, Mr. Webster is not at fault. The witness seems to be
34 embellishing upon information that he gave earlier. But in all of the disclosures that we have there is
35 reference to him having received a membership card in the *Interahamwe* and in that reference he
36 attributes that directly to Mr. Kajelijeli and makes no mention, whatsoever, of Mr. Nzirorera and these
37 cards.

Now, I would have hoped that if Mr. Webster would have anticipated this, he would have disclosed it to us as new material. I suspect he didn't. But, nevertheless, this testimony should be stricken from the record because there has been no allegation that Mr. Nzirorera distributed or caused to be the distribution of *Interahamwe* cards until this moment when it has been raised in Court, and I ask that it be stricken because we have had no notice of this. Thank you.

MR. WEBSTER:

Your Honour, this witness as with most of the other witnesses that testify about events in Ruhengeri, consistently maintains that all of the weapons, the uniforms, the cards, all the paraphernalia that was used by the *Interahamwe*, were brought Mukingo by Joseph Nzirorera, and then distributed by others, by Kajelijeli, by Michel Niyigaba and others, but there is certainly not new information or inconsistent information to suggest that Kajelijeli has played a role or had a hand in the distribution of the cards but that they were brought into the Mukingo by Mr. Nzirorera.

In terms of notice on this issue, if we turn to page 52 in the English language transcript for this witness's testimony in the Kajelijeli trial on the 23rd of July 2001, it clearly states he has clearly given evidence before about receiving MRND membership cards and *Interahamwe* membership cards and these cards being distributed in Mukingo *commune*. So this is certainly not new information. And I'm simply putting questions to the witness and we simply have to accept his answers.

MR. ROBINSON:

Madam President, just to read to you on page 54, it says that, "I had an MRND membership card, but later on Kajelijeli himself distributed cards to us, which served as identity cards. These are *Interahamwe* cards with our photograph."

And then the question was, "Do you remember the date Kajelijeli gave you these cards?"

And he says, "I don't recall the exact date, but he gave us these *Interahamwe* cards in 1993." This is the same situation that we had just a bit earlier with the telephone call to get him released from prison. Yes, the subject matter is contained in the disclosure, but the testimony that Mr. Nzirorera was responsible for that is not. And so on the same basis that you've already excluded the evidence about his release from the prison, you should exclude the evidence of Mr. Nzirorera's having distributed these membership cards. Thank you.

MR. WEBSTER:

Your Honour, we're going to run into this problem over and over and over again. These witnesses have testified in several different cases. They provide evidence on a number of different targets and accused. Clearly what has been a consistent theme in the testimony of this witness, as with previous witnesses, is that Kajelijeli, Bizimungu, August Bizimungu, Casimir Bizimungu, Michel Niyigaba, all

these persons were acting in concert and doing various things in relation to providing training for *Interahamwe*, weapons for *Interahamwe*, uniforms, et cetera, et cetera. So it is not inconsistent to find his testimony before the Court before Kajelijeli with evidence that it was Kajelijeli who distributed the cards if Joseph Nzirorera was responsible for causing the cards to be brought to Mukingo in the first place. If that is a standard by which the Prosecutor is going to be held responsible for notice, every witness statement is going to have to be book length to go into every detail of anything that can be attributed to the Accused in this case. So the Court has to exercise some latitude. Clearly the testimony about the membership cards places the Defence on notice. The previous testimony of the last witness, in fact, has placed the Defence on notice, and I think it's an appropriate question and an appropriate line. My submission is that the question is appropriate and the answer is appropriate. So I'd like to proceed.

MADAM PRESIDENT:

Very well, you may proceed, Mr. Webster.

Mr. Robinson, you can raise these issues in your cross-examination.

BY MR. WEBSTER:

Q. Mr. Witness, can you tell us how it came to be that these cards were distributed in Mukingo? What, specifically, to the extent that you can, tell us what role Mr. Nzirorera played in causing these cards to be distributed in Mukingo.

A. Once I arrived here, I told you that Nzirorera had showed up and he promised to give us cards. When Kajelijeli collected the cards he said that Nzirorera had sent them. The cards were given to Niyigaba and Ndayisabe, Noel, received a card, he (*unintelligible*) it as well. And others did, but there weren't enough of them for all of the members.

Now, as regards to 1993, I should point out that there were other cards that arrived later on with the uniforms. The last delivery was when those were given.

Q. Mr. Witness, would you be able to describe this *Interahamwe* identification card to us? Tell us what it looked like, to the best of your recollection.

A. The *Interahamwe* membership card had a hammer and sickle and there was a place for the photo of the card's bearer. Now, regarding the difference between the *Interahamwe* and MRND card, there was no place for a photo for the bearer of the card.

THE ENGLISH INTERPRETER:

Interpreter corrects, it is a hoe and sickle, not a hammer.

"And the card," continues witness, "the MRND card was longer in length compared to the *Interahamwe* card."

MR. WEBSTER:

Can I have the Defence exhibit displayed to the witness, please? It was a Defence exhibit. I'm not sure of the number, but it was a previous exhibit taken from the Rutaganda trial with a series of cards, if that can be displayed to the witness, please.

MR. ROBINSON:

Madam president, for the record, that is DNZ. 20.

BY MR. WEBSTER:

Q. Mr. Witness, I'd like you to take a look at the first two pages of DNZ. 20, just page 1 and 2, and tell us if it looks familiar to you in any regard.

A. Page 1 is the *Interahamwe* card, the outside portion. Pages 1 and 2 are the *Interahamwe* cards, both sides are depicted; as a matter of fact it's one card just showing both sides.

Q. Take an a look at page 2, is there anything on that page 2 that you recognise?

A. Yes, it's the MRND card.

MR. WEBSTER:

Well, perhaps we could display page 2 on the overhead projector, please.

BY MR. WEBSTER:

Q. Mr. Witness, can you read the words on that card?

A. No.

Q. What is it that you are able to recognise on that page?

A. This is the *Interahamwe* card that we see before us here.

Q. Is there anything on that page or on that card that you can recognise that is distinctive to you for any reason?

A. There's a hoe and a sickle, as well as a place reserved for the photograph of the bearer of the card.

Q. Does the hoe and the sickle represent anything in particular to you? Does it connote anything, in particular, to you?

A. We used machetes, hoes, and clubs. We used the implements that you see here on the card. We used some of those.

Q. Well, Mr. Witness, if you were to make a determination that this card was affiliated with a political party, how would you do that?

A. The CDR party did not have any emblem, nor did the MDR, nor did the PSD. In fact, this was for the MRND. The MRND had a party emblem.

Q. And when you refer to the "party emblem," be more specific for us, please. Tell us what the emblem for the MRND party was.

A. In fact, it's this hoe and sickle that you see here.

Q. Thank you. Now, Mr. Witness, you had testified earlier that Kajelijeli had been removed as *bourgmestre* at some time, and I believe your testimony was that it took place in 1993. Do you know why that was, why did that happen?

A. The MDR party was opposed to the MRND. They said that Kajelijeli had decimated the people in the

1 *commune*. Later on he was removed from office and Harere replaced him. He was from the MDR
2 party.

3 Q. Well, when you say that Kajelijeli had decimated the people, can you be a bit more specific? What
4 were the allegations against him at that time?

5 A. He had already killed Rudatinya at the *commune* office. Bodwa was killed at the *communal* office by
6 Saganesa, and Kajelijeli was there when it happened.

7 Q. Well, were there any particular class of people that were target by Kajelijeli or whose deaths were
8 attributed to Kajelijeli?

9 A. When you look at the parties that were present in Rwanda, those parties said that people who weren't
10 members of the MRND were being killed.

11
12 In fact, the MDR wanted to say that the Tutsis were killed in Mukingo *commune*. They were
13 considered as accomplices, and they were killed in different places. For that reason Kajelijeli was
14 removed from his post.

15 Q. Was there ever a time that Kajelijeli regained his post?

16 A. Nzirorera arrived, together with other persons of authority, after the genocide, in the latter days of
17 April, a few days before the end of that month, and he was reinstated as *bourgmestre* of the
18 *commune*.

19 Q. Well, when you say Nizorera arrived with other authorities, can you be a bit more specific? Who did
20 Nzirorera arrive with, if you remember?

21 A. I did not know the persons with whom he came. They had come from Kigali, but I knew Nzirorera
22 amongst those who arrived.

23 Q. Do you recall whether this was before or after the attack at the Court of Appeals?

24 A. It was afterwards, after the attack on the Court of Appeals.

25 Q. Can you tell us what transpired when Nzirorera arrived?

26 A. Nzirorera came, he spoke, he said, "You have withdrawn your leader, and I'm now coming to reinstate
27 him, but you did a good job for having killed the Tutsis in Mukingo *commune*."

28 Q. Who was he addressing when he said this?

29 A. He was speaking to the *Interahamwe* who were present, the *Interahamwe* who had marched in front
30 of the authorities.

31 Q. Can you tell us where this occurred, please? Do you remember the physical location where this took
32 place?

33 A. It was at Gisesero, right by the ISAE school, up above the road which comes from the *commune*
34 office.

35 Q. Do you recall approximately how many persons were present when this transpired?

36 A. The persons who were there were many.

37 Q. Well, was this a private gathering, a public gathering. Be a bit more descriptive, because the Court

would like to understand what happened. You have to describe it to them.

A. A meeting was called for that area, but a few people went there together with the *Interahamwe* and members of the *Virunga Force*. At the time when certain members of the population were arriving, others were already at the meeting place.

Q. Well, was this an official meeting, Mr. Witness?

A. As far as we were concerned, we were told that a person of authority was going to be installed, and that's what we knew from the people.

Q. Well, did you play any particular role in this event or in this meeting?

A. I was amongst those who marched in front of those persons in authority.

Q. Well, describe the march to us. Tell us exactly what you did and the purpose of what you were doing.

A. As for the march, we were told that we needed to welcome Nzirorera and the other persons of authority.

As for the objective of that march, I do not know. When a leader tells you something, you cannot ask the reason for the action you are being asked to perform. You just comply. We didn't know what the objective of the activity was.

Q. Well, were you dressed in any particular fashion at that time?

A. We were wearing the *kitenge* uniform belonging to the *Interahamwe*.

Q. About how many of the *Interahamwe* were dressed in *kitenge*, if you can estimate or if you can remember?

A. There were about 70.

Q. Were there any speeches during the course of this meeting?

A. Yes, Nzirorera made a speech. Another person who had come with him from Kigali also spoke.

Q. Tell us, to the best of your recollection, everything that Nzirorera said on that day.

A. Nzirorera said, "You have done well for having killed these Tutsis who were living in Mukingo *commune*. In fact, it's an honour that this community has had, given what is happening throughout the country."

Q. Did he say anything else? I'd like you to try and remember as best you can and tell us in as much detail as you can about everything you remember about what Nzirorera said on that day.

A. There are other points which he raised, but that's a long time ago. I do not remember them.

Q. Well, aside from being thanked, were you encouraged to do anything?

A. At that point in time he didn't encourage us to do anything else on that occasion.

Q. Well, when this event was taking place, Mr. Witness, were there any Tutsis still living in Mukingo, that you were aware of?

A. In that Mukingo *commune* no Tutsi was still alive.

Q. Did the fate of the Tutsi have anything to do with what Nzirorera was saying on that day?

A. He thanked us for having killed the Tutsis. Didn't you understand, there is a link between his speech

and the destiny of the Tutsis.

Q. That's what I'm trying to have you explain, Mr. Witness. I'd like to you explain it to the Court. Explain to them exactly what you mean and what had transpired.

A. When that man came -- I'm talking about Nzirorera -- he told us that we had done a good job in having killed the Tutsis and that it was an honour for us and that we had made political gains in government. In fact, what he was talking about was the killing of the Tutsis, and that was what was mentioned by him and that was why he was thanking us.

Q. And in relation to the killing of those Tutsis in Mukingo, based upon your own personal observation and your own knowledge of the events, what role did Joseph Nzirorera play in causing that to happen in the first place?

MR. ROBINSON:

Objection, Madam President. No foundation for this question.

MR. WEBSTER:

Well, I can put it this way.

BY MR. WEBSTER:

Q. Did Joseph Nzirorera have a role, that you were able to observe, in causing the Tutsi to be killed in the first instance?

A. Yes, he had a role in the killing of those Tutsis.

Q. Tell us exactly what that was, please. Explain to us as if this is something we never discussed before. Tell us exactly what his role was in those events.

MR. ROBINSON:

Objection. There is no foundation for him explaining Mr. Nzirorera's role. He can relate what Mr. Nzorera said, what he did, but to give us an overall opinion as to Mr. Nzirorera's role is improper.

MR. WEBSTER:

I've asked for the witness to rely on his own personal observations, his personal experience, what he can see and hear, and on the basis of that to explain to us what Joseph Nzirorera's role was.

MADAM PRESIDENT:

You can answer that question, Mr. Witness.

THE WITNESS:

Thank you, Madam President. I would like to answer this question. What shows that Nzirorera had a role in the killing of the Tutsi is as follows. I have told you that he had given a weapon to Tuyizere and he killed people with that. He gave us money and he gave us orders to go and pursue the Tutsis where they had sought refuge. Please recall that there were telephone calls which were made by his brother, and it was still dealing with this matter of killing the Tutsis. He gave us clothing. He gave us everything we needed. If, subsequently, he asked us to do this or that and if we complied, that is what needed to be done. If someone orders me to do something and he remains in his office, subsequently the time comes to establish responsibility of one and all, I would say it is necessary to

1 explain everything, even if Nzirorera gave us those orders and we committed those killings, he is the
2 one responsible after all.

3 Q. Well, you mentioned telephone calls, Mr. Witness. Can you be a bit more specific? Do you
4 remember any specific phone calls between the authorities in Mukingo and Mr. Nzirorera? Tell us
5 what you mean by that.

6 A. I have told you that when Dusabimana came that morning and said that his brother had called him
7 and said that the Tutsis should be killed, I told you about that.

8 Q. Well, aside from that incident, were there any others, either before this call to Dusabimana or after it.
9 Do you recall any other connection, conversation, phone calls, any other type of communication
10 between Nzirorera and the authorities in Mukingo?

11 A. Before, Nzirorera himself would come and he himself would say, "Let's come and fetch the Tutsis."
12 And we would go and fetch them, and we noted that the refugees had gone somewhere and at a point
13 in time we would go and look for the gendarmes. So before that date he would come. But
14 Dusabimana told us that he had telephoned that day, and even when I went home I found people
15 there. Maybe it's because he had come from his home.

16 Q. Would you expand a bit on the last portion of your answer? I'm not sure I understand you,
17 Mr. Witness. Explain that again to us please, just the last portion of what you were saying.

18 A. I cannot confirm that it was Nzirorera who telephoned on the 7th. I can't either confirm that he was at
19 his mother's house. But I am saying that Major Nzabarymana (*phonetic*) and Nyabusore and Casimir
20 Bizimungu and Kajelijeli could not go to Nyiramaku's residence in order to go see her, Nyiramaku. In
21 fact, I cannot confirmed whether he telephoned or whether he was at his mother's house. I left my
22 home and I saw vehicles which were coming from Nyiramaku's house.

23 Q. And the last portion of what you said, is this all in relation to 7th of April or are you referring to other
24 dates; just for the clarity of the record?

25 A. As for the telephone calls, it was Dusabe who told us about that on the 7th of April in the morning of
26 that day.

27 Q. Well, did anything happen after the 7th of April that would lead you to believe that Joseph Nzirorera
28 had anything to do with ordering the killings that day? Were there any other communications by
29 telephone or otherwise, if you remember?

30 A. What I recall is that Minister Nzirorera telephoned to call and say that even his son should be killed.
31 This was a child he had with a Tutsi woman.

32 Q. And when was that phone call made, if you remember?

33 A. He telephoned at around 2 p.m. and he telephoned his brother.

34 Q. Which brother, please?

35 A. I'm speaking about Dusabimana, his mother's youngest son.

36 Q. And how did you come to learn about this conversation?

37 A. Dusabe came and he told us, "He has just called me so that I can go and kill his child. We should go

and kill this child," who was a neighbour.

THE ENGLISH INTERPRETER:

Madam President, the witness made mention of the name of the neighbour, but we didn't understand what he was saying.

MADAM PRESIDENT:

Mr. Witness, can you please give us the name of the neighbour that you are referring to, the neighbour, Nzirorera's mother's neighbour.

THE WITNESS:

This was someone that was referred to as Makone (*phonetic*).

BY MR. WEBSTER:

Q. Mr. Witness, taking your -- drawing your attention back to this meeting you described with Nzirorera after the meeting of April 7th, what did that particular meeting have to do with Kajelijeli, in particular?

A. Are you referring to the meeting whose objective was to reinstate Kajelijeli?

Q. Yes. I'm taking us back to take meeting and I'm asking you to explain what that meeting, what that gathering had to do, what the relationship between that gathering was and Kajelijeli's status in Mukingo.

A. They came to reinstate Kajelijeli to the office of *bourgmestre*, and it was said because Tutsis or friends of Tutsis had made him be removed from his position in fact, it was a way of thanking him by reinstating him in the job.

Q. Do you know who or what caused Kajelijeli to be reinstated?

A. Nzirorera came with those persons in authority and he said that he had come with persons of authority in order to reinstate Juvénal Kajelijeli in the leadership position. But I didn't ask him what was happening in Kigali. I was in Mukingo. The fact is that when he arrived in the area Kajelijeli said that they had come to reinstate Kajelijeli to the post of *bourgmestre*.

Q. During the course of that meeting, was there anything that was said by anyone in your presence that made reference to the killings at the Court of Appeals, if you remember?

A. No one ever mentioned what happened at the Court of Appeals.

Q. Well, Mr. Witness, you mentioned that Nzirorera thanked the *Interahamwe* for what they had done. What did you understand that to mean, this notion of what the *Interahamwe* had done?

A. He said, "You have done well for having removed these Tutsis."

Q. Was there any reference to Tutsis in any other locations in Ruhengeri?

A. Are you speaking about the Tutsis who were at the Court of Appeals, Mr. Prosecutor?

Q. I'm asking you, Mr. Witness, I'm trying to understand, if based upon what was said on that day, whether there was any reference to Tutsis either in Ruhengeri, and Ruhengeri town, at the Court of Appeals, or any other *commune* of Ruhengeri *préfecture*. Your previous answers seem to suggest that the attention was on Mukingo, and I'm trying to have you clarify that for the record.

A. They said the following, "Be it at Mukingo or elsewhere, where you have gone, we know very well that

1 you have done a good job."

2 Q. Well, based upon everything you heard that day, and based on any other conversation or observation
3 that you made prior to that day, do you have any basis to think that Joseph Nzirorera was aware of
4 the killings of the Tutsi at the Court of Appeals?

5 A. He himself said, "We know all the places to which you have gone," in fact, that meant that he was
6 receiving reports regarding those activities that were taking place.

7 Q. Well, Mr. Witness, I'm asking you to just clarify that a bit. How do you know or do you know that he
8 was receiving reports about the killings?

9 A. Kajelijeli would tell us every day that he was in connivance with him and that he would report to him
10 that they were planning together with him all the time. Kajelijeli would tell us that every day he was in
11 communication with him, and that he was giving him a report on what was happening.

12 THE ENGLISH INTERPRETER:

13 Madam President, the term is connivance, in reference to the term which is being used by the
14 witness, but it has already been corrected by the interpreters. The word connivance was not correct.
15 *(Pages 25 to 45 by R. Lear)*

1 1230H

2 BY MR. WEBSTER.

3 Q. Do you know how Kajelijeli was in contact with Nzirorero? Did he tell you how he was able to be in
4 touch with Nzirorero?

5 A. Yes, he told us that every day he was in communication with him and that he made reports to him, but
6 I personally was not a witness of their conversation.

7 Q. Mr. Witness, you mentioned, or at some point we talked about the term "*Interahamwe*,"
8 "*Interahamwe*," the word itself. Can you explain to us what that word means, the word
9 "*Interahamwe*"?

10 A. I cannot explain the meaning of the term "*Interahamwe*." When we were enrolled, we were told that
11 we formed a youth wing and we needed other information, other capabilities for us to be able to
12 explain the meaning of the term "*Interahamwe*".

13 Q. Well, you describe it as a youth wing, but you also mentioned Juvénal Kajelijeli, did you consider him
14 a youth at that time?

15 A. No.

16 Q. Well, was Juvénal Kajelijeli an *Interahamwe*?

17 A. No.

18 Q. Mr. Witness, tell us what is the relationship between the *Interahamwe* and the civil defence?

19 A. There is no difference; in fact, Virunga force in which we were trained and *Interahamwe*, there is no
20 difference between the two.

21 Q. And Mr. Witness, this is probably my last question to you. Can you tell us what Joseph Nzirorero's
22 role was, what his implication was in the civil defence or in the *Interahamwe*?

23 A. I didn't quite understand your question. It was too complicated.

24 Q. All right. Well, we've talked a bit about the *Interahamwe*. You've just described a bit of the civil
25 defence, and my question to you is: Did Joseph Nzirorero have any role or any -- what was the
26 connection that you were able to observe between Joseph Nzirorero and the creation of this civil
27 defence or the creation of the *Interahamwe*?

28 A. I don't know. When you are speaking about the civilian defence, do you mean Virunga force? So, I
29 don't know exactly to what you are referring.

30 Q. Well, I believe your response to a previous question was that the civil defence and the Virunga force
31 and the *Interahamwe* were all the same thing. You correct me if I am wrong, or explain that for us
32 again.

33 A. Yes, the civil defence means the same thing as the Virunga force. It's the *Interahamwe* who had
34 been trained in what was known as Virunga force.

35 Q. And my concluding series of questions to you is, what role did Joseph Nzirorero himself, as an
36 individual, play in the creation of this force and the formation of this group?

37 A. I have just explained a moment ago Nzirorero's role in the genocide. It was he and Bizimungu who

brought guns from -- to Ruhehe hill, and which were used for training in the framework of Virunga force.

Q. Well, Mr. Witness, your testimony previously was that this force was created in 1993, and you even mentioned meetings in 1991 and 1992, but we've also been discussing events that took place in April of 1994. And I am asking you, based on your observations, and having lived through events in Mukingo, do you see a relationship between the creation of this force in 1993 and what happened in Mukingo in 1994?

A. Yes, there is a link.

Q. Explain it to us, please.

A. The youth wing was from the MRND. It then developed, the wing, into what was called the *Interahamwe*. Thereafter, the *Interahamwe* became the Virunga force when they learnt how to handle weapons. I used the term "civil defence" to describe the Virunga force. These are the same people who killed. You see, there is no difference. There is a logical sequence of events.

Q. Well, Mr. Witness, when you were undergoing military training in 1993, at that time in 1993 did you anticipate the time when you were going to use that training to attack Tutsi who were civilians, and to kill them the way that you killed them in 1994? Did you see the link at that time when you first received training?

A. In 1992, we had already attacked the Tutsis. In 1993, during the training, we were told that we were going to protect the country at the borders. We didn't know what was going to happen. Then the program was changed -- the plan was changed and we killed the Tutsis.

Q. Well, Mr. Witness, if we go back to 1993, had you ever been taken to the border or taken into combat against the RPF?

A. No, never --

Q. In 1993 and in --

A. -- but the training I received was for that purpose.

Q. Was there ever a time when you engaged in any sort of combat with soldiers of the RPF?

A. From the beginning of the war to the end of this war, meaning up to when we fled, I never fought RPF soldiers; even to this day.

Q. And from the beginning of your training up until the end of war or when you fled Rwanda, you used your training against what class of people, if you could put a definition to it?

A. The Tutsis.

Q. Was that in keeping with the training you had received?

A. We were told that we had to learn how to handle firearms in order to defend the population on the borders. But that's not what happened; the plan changed. We rather were told to kill the Tutsis.

I think there was a plan. They wouldn't have chosen those same people who had learned to handle weapons to then ask them to attack the Tutsis.

1 Q. Thank you, Mr. Witness.

2 MR. WEBSTER:

3 I am at the conclusion of my direct examination, Your Honour.

4

5 We do have the matter of the Prosecution Exhibit 19 to be played. We can do that. It, I think -- what I
6 propose is that we do that. I don't know if the Court proposes to call -- to start the cross-examination
7 now. I have no objection to playing the tape at a later time, but it's going to require us getting the
8 transcripts, if it has to be played for the Court now. It can be played even when the witness is not on
9 the stand, if the Defence has no objection to that.

10 MADAM PRESIDENT:

11 Mr. Webster, if you are prepared, we can watch the cassette now.

12 MR. WEBSTER:

13 I can play the cassette now. I simply don't have transcripts, or extra transcripts, to distribute to the
14 parties. We can certainly play it, and we can ask the interpretation booth if they can interpret that
15 portion of it.

16 MADAM PRESIDENT:

17 If it is of good quality, I believe that the interpreters will be able to progressively tell us the content of
18 the speech or the announcement.

19 MR. WEBSTER:

20 According to our machine, the tape is being played, but apparently we don't get any sound coming
21 through. So what I propose to do is complete my cross -- my direct examination here. The tape is in
22 evidence and we can play it for the Court at a later time.

23 MADAM PRESIDENT:

24 Very well. We shall give the floor to the Defence for the cross-examination of this witness.

25

26 Mr. Robinson, your witness.

27 MR. ROBINSON:

28 Thank you, Madam President.

29

30 Madam President, before proceeding with the cross-examination, I just want to raise two points with
31 respect to the absence of Judge Lattanzi and proceeding with the cross-examination under Rule
32 15 *bis*. First, I would like that the approval of Judge Lattanzi's travel or trip away from this Tribunal be
33 recorded and filed with the registry so that the record is clear. Second, I would ask that the video
34 technicians be directed to make a video recording of this witness's testimony while he is giving it so
35 that Judge Lattanzi can observe his demeanour as best as possible when making the credibility
36 assessment, given that you are insisting that we go ahead without her being present. So that's my
37 request at this time.

1 MADAM PRESIDENT:

2 Yes, Mr. Webster.

3 MR. WEBSTER:

4 I am going to oppose that request. This Court has already made its determination on the matter of the
5 15 *bis* application.

6
7 With respect to tape recording or video taping this witness, the Prosecutor is very much in opposition
8 to that and objects to that. We are taking testimony from this witness under a protective order from
9 this Trial Chamber to protect the identity of this witness. It would compromise that protective order to
10 record his testimony at this time, and I am opposing that motion by the Defence.

11 MR. ROBINSON:

12 Madam President, a video recording can be made and kept under seal, only to be unsealed for the
13 use of Judge Lattanzi. There is no compromise to the witness's security by doing that.

14 MR. WEBSTER:

15 I mean, if I could just further reply. It's a question that goes beyond the issue of this 15 *bis*
16 application, it goes to the administration of this trial and the administration of procedures of this
17 Tribunal. If it's not an issue of witness protection and it can be done for every witness, then that's
18 what should happen: All of testimony should be taped. If we do not adopt that procedure, I think it
19 would be inconsistent and not in the interests of justice to make this witness an exception. If this is an
20 application, then Defence counsel should seriously have made it when this witness -- when I began to
21 commence my direct examination of the witness almost an hour ago. If there was a concern to
22 preserve this witness -- some record of this witness's demeanour, that's when the application should
23 have been made. Here we are, at the completion of my direct examination and we have an
24 application to record the witness, simply to preserve his testimony for Justice Lattanzi. I don't -- my
25 submission is that it's not appropriate, it's late, and it's not in the interests of the effective
26 administration of this trial, and I oppose it on that basis.

27 MR. ROBINSON:

28 And, Madam President, if I could just add one point here. First of all, I made the application because
29 Judge Lattanzi has already seen the demeanour of the witness on direct examination; I think she
30 should see it on cross-examination.

31
32 Secondly, you asked us to trust you, and as we came to court this morning we find out that one of you
33 Judges has gone out to a conference and is not going to hear the cross-examination of this witness.
34 Surely, there were other judges who were not in session that could attend these conferences. I think
35 it is inappropriate that we even be proceeding in a serious case like this under those circumstances.
36 But if we are going to proceed, can you at least take some steps to assist in making a fair
37 determination of this case?

1 MADAM PRESIDENT:

2 Mr. Robinson, it is not up to you to decide if a Judge can be absent or not. It is not your problem. It is
3 the Chamber's problem. We have already ruled on that. You are not to come back to that issue.
4

5 Now, as regards the witness, Judge Lattanzi was able to watch the witness during a part of the
6 examination-in-chief, and for the other part she was not here. We don't have the means at any rate to
7 be able to comply or satisfy your request. Perhaps one day, if we have the means to do that, we can
8 record the witness and have all of the information given during the testimony, the examination-in-chief
9 and the cross-examination when a judge is absent. But, for the time being, in this Chamber we do not
10 have sufficient facilities in order to do that. And I think that those preparations are being made, but
11 they are not currently ready very well.
12

13 Very well. Mr. Robinson, we have ruled on your objection and overruled it, and you can begin your
14 cross-examination of this witness.

15 MR. ROBINSON:

16 Thank you, Madam President.

17 CROSS-EXAMINATION

18 BY MR. ROBINSON:

19 Q. Witness GBU, *muraho*.

20 A. *(No response)*

21 Q. Witness GBU, *muraho*. How are you, Witness?

22 A. Very well, Counsel.

23 Q. My name is Peter Robinson. I am counsel for Nzirorero. Were you told that I would like to meet with
24 you before this trial?

25 A. I was told.

26 Q. And were you willing to meet with me before you gave your testimony in this case?

27 A. I did not want to. I wanted to meet you in the courtroom.

28 Q. Why?

29 A. I don't know if you have ever been to Rwanda, but I have no intention of speaking to you. You are
30 defending a killer. Your intention was to contradict my assertions, my statements; and I was present
31 during the events.

32 Q. Did you meet with the Prosecutor before you came to give your testimony in this case?

33 A. Yes.

34 Q. And can you tell us on how many different days you met with the Prosecutor before giving your
35 testimony?

36 A. Only once.

37 Q. And for how many hours did you meet with the Prosecutor, approximately?

1 A. We met; he asked me questions about massacre sites. We probably spent some two hours together.

2 Q. And did he show you any pictures or recordings, for example, the meeting of President Habyarimana
3 in Ruhengeri?

4 MADAM PRESIDENT:

5 We are wondering if all of this is necessary, Mr. Robinson. Perhaps you can get to the more relevant
6 issues.

7 BY MR. ROBINSON:

8 Q. Have you received any money for being a Witness at the ICTR?

9 A. No.

10 Q. Well, when you came in the *Kajelijeli* case, did you receive any money for that?

11 A. Are you insinuating that you're the one who disburses that type of money?

12 Q. No, it's a crime for me to disburse that kind of money. I am insinuating that you have received money
13 from the ICTR for coming to testify; is that true?

14 THE KINYARWANDA INTERPRETER:

15 The interpreter did not understand the nuance given by the witness.

16 THE WITNESS:

17 Are you insinuating that you give money to the witnesses?

18 THE ENGLISH INTERPRETER:

19 Correction made by the Kinyarwanda interpreter. The interpreter did not correctly understand.

20 BY MR. WEBSTER.

21 Q. And Witness GBU, I am telling you it's a crime for me to give money to a witness, but I am wondering,
22 did you receive any money from anyone at the ICTR?

23 A. No one ever gave me any money, but it's really you, Counsel on the Defence, who give money to
24 witnesses.

25 MADAM PRESIDENT:

26 I think that we are going out of the bounds of relevant issues here. You need to concentrate on those
27 relevant issues, Mr. Robinson. Witnesses are not paid in this Tribunal.

28 MR. ROBINSON:

29 Please, Madam President, I think that evidence should come from the witness, and I do believe that
30 that is not correct.

31 BY MR. ROBINSON:

32 Q. So, let me ask you again: Witness GBU, do you expect to receive any money for your testimony in
33 this case or do you expect to receive any money from the ICTR for having come to Arusha and having
34 testified?

35 A. Counsel, please listen to me. If you give money to a witness, I have never heard about it. Nobody
36 ever promised me that.

37 Q. Do you expect to receive a certain amount of money each day for the time you are staying here in

Arusha?

MADAM PRESIDENT:

You have already put that question to the Witness, Counsel.

THE WITNESS:

Madam President, please ask counsel if he has planned to give me some money after my testimony.

BY MR. ROBINSON:

Q. Witness GBU, I have no intention whatsoever of giving you any money, okay. But my question --

A. So, in your opinion, who pays witnesses?

MADAM PRESIDENT:

Counsel, please move on to other issues. I think you are starting to badger the witness.

MR. ROBINSON:

Madam President, at this time I would like to start to question the witness about statements he made a while ago in Rwanda. And, as with Witness GFA, I have a stack of those statements. And so, if you would like to do this in the same manner in which we did this with GFA, by taking them all as a group, I would like to tender a series of documents beginning with what I would entitle DNZ. 22, and ask the representative of the registry to receive these from me and distribute them, and then begin the process of trying to admit them into evidence.

MADAM PRESIDENT:

Registry, I see you with a pile of documents. Have you given us a list pertaining to these documents?

MR. ROBINSON:

Madam President, I have given to the representative of the registry a series of documents that I have marked beginning with DNZ. 22 up through DNZ. 29. I don't have a list, but I will go through each of these numbers and explain what the statement is, and then offer that statement. I can, perhaps, wait until the registry has distributed the statement before doing that or I can do it now if you prefer.

MR. WEBSTER:

Your Honour, we have covered similar territory before; in fact, with all of the witnesses that have testified so far. Just for the record, the Prosecutor opposes the introduction of these statements unless a foundation has been laid for them. The foundation should be inconsistencies that the witness cannot explain, and Defence would then introduce a statement that they were, in fact, prior inconsistent facts. With the last witness, the Court was willing to accept all of the statements and not hold the Defence to that standard.

Simply, for the record, I am making the same objection now. If the Court is inclined to submit all those Rwandan witness statements, we might as well label them now and put them in evidence at the same time, but the Prosecutor still submits it is not the appropriate way to proceed with previous statements of the witness.

1 This witness should be given the opportunity to describe how he made those statements and the
2 contents about the events, and then we see if there is any contradiction between his account in court
3 and his previous statements and his ability to explain any previous inconsistency. That should be the
4 basis on which -- it is the Prosecutor's submission that that should be the basis for the introduction of
5 these items into evidence. But if it's going to -- if the Court makes a ruling on that, then we can
6 proceed with numbering the statements, as Mr. Robinson suggests.

7
8 My recollection, however, is that there were nine statements that were made to Rwanda authorities,
9 and Mr. Robinson is listing for us seven. So I am curious if he has all of them or if there is a reason
10 why he has neglected to include two of those statements.

11 MR. ROBINSON:

12 Madam President, in answer to that last portion, I have eight statements that I have listed from 22 to
13 29, and there is one additional statement which, in my opinion, is not a statement but is simply a
14 record of a court proceeding at which the witness was offered the opportunity to plead guilty, and
15 declined to do so and didn't offer any substantive information; so I didn't include that. But if the
16 Prosecutor would like that included, we can add that.

17 MADAM PRESIDENT:

18 You spoke of one document, apparently there's two; is that correct?

19 MR. ROBINSON:

20 What I am speaking of, Madam President, is as Mr. Webster said: there was a total of nine
21 statements that this witness made to Rwandan authorities that were disclosed to us. I have included
22 eight of those in my proposed exhibits. The one I did not include is simply a form in which the witness
23 was asked if he wants to plead guilty and he said no. And in that form, it doesn't contain any
24 substantive information about his version of the events, so I chose not to include that as an exhibit. I
25 didn't think it had much value. But I am offering, if Mr. Webster would like it to be included, I have no
26 problem doing that, but I had no plan to do that.

27 MR. WEBSTER:

28 My position is simply that I am opposed to the introduction of these statements in the first instance;
29 but, if we are going to introduce them, then they should all be introduced and marked accordingly.

30 MADAM PRESIDENT:

31 Do you have the ninth document, Mr. Robinson?

32 MR. ROBINSON:

33 Actually, Madam President, I don't have the ninth document; it has not yet been served on me by the
34 CMS, but I think, maybe Mr. Webster can produce it for us. But I don't actually have a copy of it with
35 me.

36 MADAM PRESIDENT:

37 Mr. Webster, are you aware of this document? Do you have it in your possession?

1 MR. WEBSTER:

2 I don't have a clean copy with me. Copies have been served on the registry. There were two
3 documents that arrived, maybe two weeks ago, that were served on Mr. Robinson only -- maybe 10
4 days ago or so where -- actually we provided him with a courtesy copy last week, and it was served
5 on CMS some time last week. Your Honour, I misspoke. But if he has one of those documents which
6 he has admitted, he should have the other because both of them were given to him at the same time.
7 In any case, we can certainly find copies of these for tomorrow morning. We can bring it and mark it
8 at that time, but copies have already been served with CMS, and they should have it in their archives.

9 MR. ROBINSON:

10 Madam President, it is true that we received a courtesy copy, but when I decided not to use this
11 second document, I just discarded it, thinking I would be receiving an official copy from the registry,
12 but I never have. So that is why I don't have it in my possession.

13 MADAM PRESIDENT:

14 Very well. The Chamber is admitting these eight documents, which will bear the code DNZ. 22 to
15 DNZ. 29, and these are exhibits tendered by the Defence for Nzirorero.
16 (*Exhibit Nos. DNZ. 22 to 29 admitted*)

17 MR. ROBINSON:

18 Thank you, Madam President. If I could list for each exhibit, the date of that exhibit so that everyone
19 has the same information: Exhibit DNZ. 22 is a statement dated April 18, 1997, and was admitted as
20 Exhibit No. 8A in the *Kajelijeli* trial and has that exhibit number denoted on the face of the first page.
21 Exhibit No. DNZ. 23 is a statement dated the 22nd May 1997, and was admitted as Exhibit No. 8B in
22 the *Kajelijeli* trial. Exhibit No DNZ. 24 is a statement dated the 4th of November 1998. Exhibit DNZ.
23 25 is dated the 2nd of February 1999, and bears No. 8C from the *Kajelijeli* case. Exhibit DNZ. 26 is
24 dated the 18th of February 1999 and bears Exhibit 8D in the *Kajelijeli* case. Exhibit DNZ. 27 is dated
25 the 25th of May 1999 and was Exhibit 8E in the *Kajelijeli* case. Exhibit DNZ. 28 is dated the 19th of
26 October 1999, and was Exhibit 8F in the *Kajelijeli* case. Exhibit No. D29 is an undated statement,
27 and I -- which we received from the Prosecutor some time ago, and in the Prosecutor's disclosure log
28 it's indicated that the date of this statement is the 17th of May 2001, although that date doesn't appear
29 anywhere that I could see on the face of the statement. So those are the identifications for each of
30 those exhibits.

31 MR. WEBSTER:

32 I just wanted to indicate to the parties and the Court that I see trouble up ahead because of the eight
33 exhibits that I have been served with, only one has a K-number from the Office of the Prosecutor,
34 which would indicate that the Defence received this document from our office. So, I am bringing that
35 matter to the attention of the parties in the Court now because I can see where it is going to pose
36 problems later on.

1 Every document that comes from our office should have a K-number on it, and of the eight exhibits
2 that I have received from the Defence, I believe only one has such a number on it, which would
3 indicate that the documents are coming from another source.

4 MR. ROBINSON:

5 That's correct, Madam President. All but one of these documents come directly from the Court
6 Management Section. When I requested the closed session and exhibits under seal from the *Kajelijeli*
7 case, I was provided with a copy of each of these statements by Court Management: 8A through 8F
8 from the *Kajelijeli* case. And I used these copies, rather than the copies that have been provided with
9 me with K-numbers because in the *Kajelijeli* case, the witness himself admitted that these statements
10 were his, and so he admitted them by reference to the numbers 8A, 8B, 8C. So I thought it would be
11 easier, if there is any dispute later on, that we have the documents that he had actually admitted were
12 his at a previous trial, and that's why I used the ones I have. But Mr. Webster can also verify, if he
13 would like, compare them with the documents he has disclosed to us, and he will find that they are the
14 same.

15 MADAM PRESIDENT:

16 According to the information you have provided, all these documents, except the one bearing the
17 number K0, in other words, those which come from the Office of the Prosecutor, all the other
18 documents are from the *Kajelijeli* case and have already been given a reference number in the
19 *Kajelijeli* case. I believe that's what you are saying.

20 MR. ROBINSON:

21 That's correct, Madam President.

22 MR. WEBSTER:

23 Sorry to belabour the point, but I still see a problem with that. Mr. Robinson can handle it as he sees
24 fit; he's the one conducting the cross-examination, but anyone that's familiar with the *Kajelijeli* case
25 knows that there was a long debate about the authenticity of documents. Some documents that the
26 Accused -- excuse me, that the witness refused to acknowledge. And I was hoping that we would
27 avoid that, simply by referring to documents that were coming directly from the Office of the
28 Prosecutor.

29
30 But I am sure Mr. Robinson has a reason for proceeding the way that he is doing, but I bring it to the
31 Court's attention that it is going to pose a problem at some point because the witness did not
32 recognise all of the documents that were put in front of him in the *Kajelijeli* trial.

33 MR. ROBINSON:

34 Madam President, if you want more detail on that I can provide you exactly -- in the *Kajelijeli* trial,
35 exhibits -- at one point in his testimony, he admitted each of -- that each of these exhibits were his.
36 For Exhibit 8A, on the 26th of November, at page 38, line 21, he admitted that that document was his.
37 For Exhibit 8B, on the 26th of November, at page 43, line 4, he admitted that the document was his.

On page -- for Exhibit 8C, on the 26th of November, page 44, line 20, he admitted the document was his. For exhibit 8D, on 26th November, page 46, line 123, he admitted it was his. On 8E, at page 50, on the 26th of November, line 7, he admitted was his. And for 8F, on the 26th of November, page 63, line 22, he admitted they were his. However, later, on the 27th of November, two days later, the witness changed his mind as to exhibits 8C, D and E, and testified that they were not his, and that's on page 46, line 7, of the testimony of 28 November.

Thereafter, the Defence of Kajelijeli obtained an order to compare the fingerprint that's placed on Exhibits 8 C, D and E with the fingerprints of this witness, and they filed with the Trial Chamber -- and I have a copy of this I could file with you as well, if it's necessary -- a report of the fingerprint examiner that said that, indeed, the fingerprints for Exhibits 8C, D and E from those of this witness. And on that basis, all of the exhibits, 8A through F, were admitted in the *Kajelijeli* trial. So that's exactly the complete information from the *Kajelijeli* case.

MADAM PRESIDENT:

Very well, you may proceed, Mr. Robinson.

BY MR. ROBINSON:

Q. Witness GBU, after your arrest, were there several times that you were taken to an office and questioned about your role in the massacres?

A. Yes.

Q. And the statements that we have just been discussing are transcripts of what it is purported that you were asked and what it is purported that you were answered -- that you answered, and I am going to ask you some things about that.

A. You did not show me the contents of those documents, and it's difficult for me to express myself about them.

Q. Well, I am going to ask that you be shown the contents of the documents. I am happy to have you do that, but I understood that you couldn't read.

A. Yes, that's the case. So, please, don't ask me questions about documents because I won't know my way about them.

Q. That's why I am going to read them to you, parts of them to you, and ask you about them so that we can discuss them. Do you understand?

A. You had said that there were documents which I had acknowledged in the *Kajelijeli* case. There had been a problem. I was challenging the authenticity of some documents, and I had wanted that those documents be set aside. The challenged documents should be excluded from this exhibit. Do you remember that incident?

Q. I do. But, Witness GBU, you were lying about that. That's the problem. You said that your finger -- you said they were not your statements, and they found your fingerprints on them.

A. Where was I when that verification was done?

1 MADAM PRESIDENT:

2 Please, these documents that you are referring to, can you inform the Chamber about them?

3 MR. ROBINSON:

4 Yes, Madam President.

5 Each of these documents are question and answer statements recorded by the Prosecutor in
6 Ruhengeri beginning in 1997, after this witness was arrested, going all the way through 2001, after he
7 had made his guilty plea. And in each of those question and answer sessions, the witness makes
8 statements about the very events that he has testified to at this trial. Many, many of these statements
9 are completely contradictory to his testimony; and so my plan is to ask him about these statements.

10
11 And as I informed you, there were three of these statements that he initially admitted were his during
12 *Kajelijeli's* trial, and later in the questioning he said, "No, these are not my statements." So, they took
13 his fingerprints and compared them with the fingerprint that was on the statement -- these three that
14 he denied -- and it was found conclusively that they were his statements, that it was his fingerprint
15 affixed as a signature to each of those statements. So his denial of these statements was not correct.
16 And I am going to go through some of these statements; I am not going to go through all of them, but I
17 am going to highlight a few of the stories that he told to the Rwanda prosecutor so that we can assess
18 his credibility versus the story he has told you. That's the story about the documents.

19 MADAM PRESIDENT:

20 Yes, but before you proceed in that manner, we need to know about the document which attests to
21 the fact that the fingerprints of the witnesses (*sic*) are the same on all these documents which he
22 challenged; in other words, 8C, 8D and 8E.

23 MR. ROBINSON:

24 Very well, Madam President. Just give me one moment, I'll produce that fingerprint report and we can
25 also admit that as an exhibit. I think that would be a good idea.

26 MR. WEBSTER:

27 May I comment briefly to put the whole thing in context? The problem arose in the *Kajelijeli* trial
28 because the Defence obtained these statements by their own efforts and through unofficial channels.
29 So, during the cross-examination -- I believe that was the case. I am not a hundred per cent sure, but
30 my information is that the Defence obtained these statements. When the witness was confronted with
31 the statement, initially he acknowledged it and then, some time during course of his
32 cross-examination, he disputed the contents of the statement as they were read back to him, and on
33 that basis disputed his fingerprint on the statement.

34
35 It was a confusing situation then; it's not going to be any less confusing now with the passage of time.
36 And the root of the confusion is that this witness cannot read the statements himself, that any time he
37 is confronted with the content of a statement, someone has to read the statement to him, and every

1 time he has read the statement, he can't verify that the person reading the statement is accurately
2 reading everything that is on the statement. So I think things would have been much easier to
3 administer, even the process of the cross-examination, if the statements we had referred to were
4 coming directly from the Office of the Prosecutor because then it wouldn't be an issue.

5
6 The issue of the authenticity of the statement would be less of a question; it wouldn't be completely
7 resolved, but it would be less of an issue. So what we are going to do, or what I see coming ahead
8 during Mr. Robinson's cross-examination, is a replay of some of the very same issues that the Court
9 had to confront in the *Kajelijeli* trial because the statements were not coming from the Office of the
10 Prosecutor, they were coming from the Defence in that case.

11
12 I bring it to the Court's attention so that we know there is trouble up ahead. I don't think there is any
13 way to resolve it because, fundamentally, the problem is that the witness cannot read the statement
14 himself. But there is a large back story to this whole issue, and I am simply bringing that to the
15 attention of the Court and the parties before we proceed.

16 MR. ROBINSON:

17 Madam President, I have for you a copy of the fingerprint report -- the report of the fingerprint
18 examiner that was admitted. This itself was admitted as 8G in the *Kajelijeli* case. And if it can be
19 retrieved by the registry, I would like to offer it as DNZ. 30 so that the record is complete.

20
21 I would also like to advise the Trial Chamber that each of these statements has a translation in
22 English and in French, which came from the Office of the Prosecutor, and which has the K-number
23 that they are referring to. So there should be no question that these statements are authentic, in the
24 sense that the Prosecutor has also -- has had them in their possession. The reason they were not in
25 the possession -- the reason the Defence didn't have K-numbers on them in the *Kajelijeli* case was
26 that the Prosecutor, who was supposed to give all of his statements to the Defence, didn't do that job
27 and so the Defence had to go out and do it themselves. But these are now verified to be the
28 statements of this witness, either by his own admission or by his fingerprint having been identified on
29 the bottom of the statements. So there is a proper foundation for each of these statements to be
30 admitted, based on his own admissions and based on the fingerprint evidence.

31 MADAM PRESIDENT:

32 I would like to know who commissioned this expert; was it the Chamber or was it the Defence who
33 requested the services of this expert, the fingerprint expert?

34 MR. ROBINSON:

35 Your Honour, it was the Defence who requested the fingerprint expert. They received an order from
36 the Chamber allowing the expert to compare the known fingerprints of this witness to the unknown
37 fingerprints. And then, after the Defence did that, they submitted this affidavit attached to a motion to

admit Exhibits 8C, D and E and F; and, in fact, that motion was granted in the *Kajelijeli* case and all of these exhibits were admitted, including the fingerprint report which is Exhibit 8G in *Kajelijeli*.

MADAM PRESIDENT:

Very well. So Mr. Robinson, you want to tender these documents as Defence exhibits.

MR. ROBINSON:

Yes, Madam President, I would like these statements tendered as DNZ. 22 through 29 and the fingerprint report as exhibit DNZ. 30.

MR. WEBSTER:

Yes, Your Honour, I object not only to the fingerprint report but to all of the statements. The witness has not even been questioned about the content of his -- of his recollections. So, he should be asked the question, and then Mr. Robinson can bring out a contradiction. If he is unable to explain that contradiction, Mr. Robinson can rely on the witness statements to show that there is a contradiction. At that point it can come into evidence, but not before. The Court has been in the habit of admitting all of these previous Rwandan statements, so I assume it's doing to make the same ruling in this case. But, for the record, we are opposed to it. The statement should only come in if there is a contradiction that the Accused -- excuse me, the witness is not willing to acknowledge.

MADAM PRESIDENT:

Very well. The Chamber is going to give the following reference numbers to the documents: DNZ. 30, three, zero.

We have noted the objections which have been raised both by the witness and by the Defence -- I do beg your pardon, objections raised by the witness and the Prosecutor. The Chamber will later on come to an assessment of the probative value of this document.

(Exhibit No. DNZ. 30 admitted)

MADAM PRESIDENT:

At the moment -- at this present moment, we are going to have to adjourn because it's already twenty-five before the hour, and we shall resume our session tomorrow morning.

Mr. Robinson, I believe you will be able to continue with your cross-examination of this witness tomorrow.

MR. ROBINSON:

Yes, Madam President, I will continue. I'll be prepared to so.

Just so I understand, is Exhibit 30 -- DNZ. 30 is admitted into evidence at this time, with the weight of that document to be determined by the Trial Chamber at a later time; is that correct?

MADAM PRESIDENT:

Yes, that is indeed what we said.

1 MR. ROBINSON:

2 Thank you.

3 MADAM PRESIDENT:

4 Very well. Have a good afternoon. Thank you very much.

5

6 We will resume tomorrow. And now the session stands adjourned.

7 *(Court adjourned at 1335H)*

8 *(Pages 46 to 60 by Judith Baverstock)*

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CERTIFICATE

We, Shannon Eboe-Osuji, Rex Lear, and Judith Baverstock, 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.

Shannon Eboe-Osuji

Rex Lear

Judith Baverstock