

1 THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

2

CASE NO.: ICTR-95-1-T

3

THE PROSECUTOR
OF THE TRIBUNAL

4

AGAINST

5

6

CLEMENT KAYISHEMA

7

AND

8

OBED RUZINDANA

9

5 NOVEMBER 1998
0930

10

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Before: Mr. Justice William H. Sekule, President
Mr. Justice Yakov Ostrovsky
Mr. Justice Tafazzal Khan

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Courtroom Assistant:
Mr. Abraham Koshopa

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Courtroom Officer:
Mr. John Kiyeyeu

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For the Prosecution:
Mr. Jonah Rahetlah
Ms. Brenda Sue Thornton
Ms. Holo Makwaia

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For the Defendant Kayishema:
Mr. Andre Ferran
Mr. Philippe Moriceau
Mr. Nicolas Laboucarie

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For the Defendant Ruzindana:
Mr. Pascal Besnier

23

24

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MELINDA M. WALKER, OFFICIAL REPORTER
ICTR - CHAMBER II

1 P R O C E E D I N G S

2 Kayishema and Ruzindana Trial, Continued

3 5 November 1998

4 0930

5 MR. PRESIDENT:

6 The proceedings are called to order.

7 Could the registrar introduce the matter
8 coming before us.

9 MR. KIYEYEU:

10 Thank you, Mr. President. Trial Chamber
11 2 of the International Criminal Tribunal
12 for Rwanda, composed of Judge William H.
13 Sekule, presiding, Judge Yakov Ostrovsky
14 and Judge Tafazzal Hossain Khan, is now
15 in session today, Thursday, the 5th of
16 November 1998, for the hearing of the
17 continued presentation of the closing
18 oral arguments by the defence in the
19 matter of the Prosecutor versus Clement
20 Kayishema and Obed Ruzindana, Case Number
21 ICTR-95-1-T. Thank you, My Lords.

22 MR. PRESIDENT:

23 Thank you very much. Could we have
24 counsels' appearances starting with the
25 prosecution, please.

1 MR. RAHETLAH:

2 Good morning, Mr. President. Your
3 Honours, good morning. The prosecutor's
4 office is represented this morning by
5 Ms. Holo Makwaia, Ms. Brenda Sue Thornton
6 and myself, Jonah Rahetlah.

7 MR. PRESIDENT:

8 Thank you. Could we also have the
9 appearances for the defence.

10 MR. FERRAN:

11 Mr. President, Your Honours, good
12 morning. Dr. Kayishema's defence is
13 ensured this morning by Batonnier
14 Moriceau and Batonnier Ferran, myself,
15 assisted by Nicolas Laboucarie.

16 MR. PRESIDENT:

17 Thank you.

18 MR. BESNIER:

19 Good morning, Mr. President. Your
20 Honours, good morning. Pascal Besnier,
21 lawyer of the Paris bar, representing
22 Mr. Obed Ruzindana.

23 MR. PRESIDENT:

24 Thank you very much. We continue with
25 the oral presentation by the defence of

1 Clement Kayishema. Mr. Moriceau,
2 yesterday evening we left off when you
3 were still discussing the evidence of, I
4 think, Witness OO with regard to the
5 incident at Mubuga church.

6 MR. MORICEAU:

7 Good morning, Mr. President. Your
8 Honours, good morning.

9 MR. PRESIDENT:

10 You may continue.

11 MR. MORICEAU:

12 That is indeed what I was -- where we
13 left off yesterday.

14
15 Mr. President, Your Honours, I had
16 virtually finished with Witness OO who
17 effectively, as I indicated to you, was
18 inside the -- was inside the Mubuga
19 church.

20
21 Three additional things I'd like to say
22 concerning this witness. I would like to
23 remind you that we are going to be coming
24 back to Mubuga several times, on several
25 occasions.

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The witness arrived at the beginning of April, and he witnessed killings on the 15th, 16th and 17th of April in the church. Concerning 17 April, he said they came on the 17th during the total extermination. It is important because you will see that in the witnesses -- most of the witnesses of Mubuga, apparently, if we follow the declarations by the other witnesses, there was no extermination on the 17th because these witnesses had left, and the other witnesses will tell you that when they left the church there was no longer any killing because unfortunately everybody was killed. Therefore, the 17th seems to be rather improbable. It is a first -- it is the only witness who witnessed the killings of the 17th and who gives the impression that the killings ended on the 17th of April.

He confirms that Dr. Kayishema came on the 17th after the massacres. You will

1 see, therefore, that this is quite
2 impossible, the -- not only because of
3 the alibi that Dr. Kayishema has for this
4 date but because it will be
5 contradictions in the testimonies of
6 other witnesses talking about this day,
7 this date.

8
9 Witness W would also make a contradiction
10 between his written statement and his
11 oral presentation. It is not -- it's a
12 minor contradiction, but this underscores
13 the fact that we have to take the
14 declarations of the witnesses with great
15 care. The -- in the written statement of
16 close to 1994 we see that he would -- he
17 said that the priest in the church was
18 called Sylvain and that -- and, and in
19 his oral statement he says that the
20 priest was called Marcel.

21
22 This witness indicated that there were
23 about four to five thousand victims in
24 the church and does not say anything
25 about the fact that they were counted,

1 and he remained there on the 14th, 15th
2 and the 16th.

3
4 On the 15th of April he says nothing
5 about what happened on the 14th. You
6 will remember that Dr. Kayishema came on
7 the 14th of April, and this is confirmed
8 by the -- by his diary. This witness
9 does not mention anything about seeing
10 Kayishema on the 14th. In any case, he
11 does see him on the 15th. Of course,
12 this is the day of the attack, and he
13 says that Kayishema came with the
14 minister of information -- this is a new
15 piece of information -- and that he came
16 at -- and that they came at 6:00 a.m. It
17 is important to note this because it is
18 contradictory to what other witnesses
19 said. No other witness mentioned this
20 hour of six o'clock marking the beginning
21 of the attack in the presence of
22 Dr. Kayishema. Others said that the
23 attacks started at 5:00 in the morning
24 but Dr. Kayishema came later, and some of
25 them said eight o'clock, 00, for

1 instance.

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On the 15th of April he says that he was in church -- inside the church at the time which was the day of the major attack when the most people were killed, about 5,000. He says that the assailants left at 4:00 p.m. and that they killed about 10 or 15 people on the 15th and that it was on the 16th for Witness W that the assailants came back in great numbers and that they exterminated every Tutsi that was inside that church.

Under the circumstances, you would understand that when we analyse the testimonies of the two witnesses there are flagrant contradictions, flagrant because the 15th, which is the major -- which is the day of a major -- of the major attack is the day when only about 10 to 15 people were killed and the 16th is the day when most of the people in that church were killed, and he says that he left on the 16th. There were many

1 people who were, who were cut up, who
2 were chopped up, who were chopped and who
3 were wounded. He says in contradiction
4 to what -- to Witness 00, that on the
5 16th when he left the church -- and I
6 read what he said so as not to deform his
7 answer at Page 128 of the cross -- and on
8 the 16th there was no longer anybody in
9 the church.

10

11 In the first of this session, many
12 questions come to mind. What -- the
13 witness confirms that when he left the
14 church on the 16th everybody was killed,
15 dead, and that there was nobody -- no
16 assailant. This is in total
17 contradiction with Witness 00 who says
18 that the 17th was a day of total
19 extermination. He did not see Kayishema
20 fire, this witness, and he says -- and he
21 indicated when he was put -- when the
22 question was put to him as to who advised
23 him to, to flee into the church, and he
24 says that it was the good God, whereas in
25 his written statement -- and I insist on

1 this because this is corroborated by
2 other witnesses -- he said that it was
3 the military, the gendarme who advised
4 him to flee. This is as far as Witness W
5 is concerned.

6

7 Your Honours, we are going to find -- we
8 are going to refer to this witness at
9 other stages of this story.

10

11 We now move on to Witness V. Witness V
12 indicates that there were 4,000 people in
13 the church, and once again, he does not
14 mention that they were counted in order
15 to estimate the amount of food to be
16 given. This witness is interesting,
17 Witness VV, because I think he is, as it
18 were, the basis of -- the knot of the
19 general confusion when we talk about the
20 fragility of human testimony and the
21 situation of facts and this principle of
22 piecing together events so as to make
23 them look probable.

24

25 This witness said that he had been there

1 for several days and that on the 14th --
2 he says that the authorities came on the
3 14th of April. The authorities came by
4 vehicle, and he said that the gendarmes
5 fired in the air. The Interahamwe and
6 the others fled, and on that day,
7 Kayishema was with them.

8
9 Effectively, there is a confirmation by
10 the gendarmes that on the 14th
11 Dr. Kayishema, who indeed had sent
12 gendarmes to protect these people, came,
13 and we know that on the 14th he came --
14 he was at Mubuga, and thanks to a few
15 gendarmes, he was able to chase away the
16 Interahamwe or, rather, the assailants or
17 rogues who were loitering around and
18 trying to pillage, because for one thing,
19 we should not forget that there was a
20 reserve of food kept by CARITAS, and we
21 should not forget this, and also, they
22 wanted to attack the people in the
23 church. They did not remain -- they did
24 not stay there for a long time, that is,
25 the authorities, and then they left.

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Unfortunately, what happened was that having chased away these assailants, Interahamwe and brigands who were there, these assailants left the church and its vicinities and, unfortunately, went to kill in the surrounding areas people who had hidden in the countryside close to the church. So you can see that this group was bloodthirsty and that everything was good to kill, to plunder and to steal.

On the 14th the gendarmes, he confirms, in additional -- in the cross -- that the gendarmes were with Kayishema. They came to the church after having chased away the Interahamwe.

Now, with regard to the next day, the 14th, he says -- the 15th, rather, he says that other people who were wearing uniforms of -- gendarme uniforms -- I have no doubt that they were gendarmes. You will remember, and this is an

1 important factor and I think in all of
2 this matter concerning the search for
3 military authorities or authorities of
4 the force -- of the police force, you
5 will remember that during the events and
6 at this time there were many soldiers who
7 were demobilized or demilitarized. Some
8 of them are called reserve -- in the
9 reserve forces. There were -- some of
10 them were called -- were said to be
11 soldiers on vacation because they did not
12 know the technical term. In fact, these
13 are soldiers who have laid down -- who do
14 not carry any weapons. Some of them have
15 abandoned the army. Some of them have
16 not had any pay for several months and so
17 on and so forth, and we have been told by
18 experts that these people moved about,
19 and they -- they did a great deal of evil
20 throughout the area of Bisesero. And
21 these people are taken as -- taken for
22 soldiers, and this will be confirmed by
23 the fact that I'm going to expose before
24 the tribunal.

25

1 On the 15th of April --

2 MR. PRESIDENT:

3 But do we have that kind of evidence,
4 Mr. Moriceau?

5 MR. MORICEAU:

6 Yes, Mr. President, yes, quite so. I
7 think that there is in the case file
8 information about the displaced persons,
9 and some witness will tell you that there
10 were people who were wearing military
11 fatigues, you know, either a top or the
12 trousers. I think I will have the
13 opportunity to bring this out when I talk
14 about certain testimonies. There were
15 cases of refugees who came to -- who came
16 to Kibuye and, you know, dressed in this
17 manner, and the -- this is going to be
18 elicited as will be illustrated as we
19 move and -- as we move further into this
20 story.

21

22 I think Dr. Guichaoua also --

23 MR. PRESIDENT:

24 Where you think you are referring to --
25 trying to, say, draw a specific inference

1 on events, it is better you say so rather
2 than, for example, presenting an issue as
3 if it is one of fact, a factual setting.
4 I see what you want to say.

5 MR. MORICEAU:

6 I thank you, Mr. President. Effectively,
7 it is not because people were able to
8 keep their fatigues, former military
9 fatigues that they were soldiers or --
10 the fact is that the witnesses could not
11 make the difference. This is why we
12 talked yesterday about the relativity of
13 witnesses and of the -- and of images.

14
15 We -- this witness saw Dr. Kayishema on
16 the 15th armed, and he said that the
17 authorities stayed there for just about
18 one hour, which as you will see is in
19 contradiction with what Witness 00 said.
20 According to the witness, there is this
21 element which is, which is
22 incomprehensible and incredible. You
23 will remember the pictures of the church.
24 You will remember the doors on the three
25 sides, the windows through which the

1 Interahamwe, the assailants, fired, and
2 the Witness 00 said, I lay down on the
3 ground, and it is those who lay down on
4 the ground that were saved for the most
5 part.

6
7 This witness did not do that. He stood
8 up in a chair to see and he said -- and I
9 do not want to deform what he said -- I
10 climbed on the chair because there were
11 chairs in the church, and I tried to hide
12 my face so that I would not be
13 recognized. I think that this is
14 incredible. He goes up a chair so as
15 to -- to see better, whereas he is
16 exposing himself to the fire and -- and
17 perhaps to make sure that he's not hit,
18 he is hiding his face.

19
20 I do not think that this is serious. It
21 is not reasonable according -- this
22 witness by his statements, like the
23 preceding witness, witnesses, does not
24 succeed in the examination, as it were.
25 He is not credible, and there again, I

1 will go back to -- I send you back to the
2 principle of the decoding of the
3 testimonies of witnesses there and the
4 assessment of their validity.

5
6 I think it was the gendarme, he thinks,
7 because they were the only people who
8 wore uniforms of people, and they were
9 the only people who could have -- who
10 could normally have guns. This confirms
11 what I was saying, Mr. President, Your
12 Honours. A witness tells us there were
13 gunshots. Nobody has a right to have
14 guns except gendarmes. Therefore, the,
15 the shots were fired by gendarmes because
16 they, they alone have the right to shoot,
17 and the gendarmes who were there to
18 protect us had turned against us. This
19 is the explanation. This is not
20 corroborated and cannot be deemed
21 credible.

22
23 On the 15th of April he says that all the
24 assailants came at once, and this I would
25 tell you is, once again, in contradiction

1 with what Witness OO said. He no longer
2 remembers the time, and he did indicate
3 in his previous statement, from one end
4 to the other of that statement followed
5 by the -- led, led by the prosecutor, he
6 does not remember any more, and now I
7 will finish with the story of -- with the
8 problem of grenades.

9
10 Yesterday you will remember that I, I
11 made mention of the scientific knowledge
12 of Mr. Olsen. I will, therefore, like to
13 avail myself of this Witness VV to oppose
14 him, to Witness OO once more. Because
15 one of them, VV tells us that a grenade
16 was hauled in, and Witness OO tells us
17 two grenades. I would say that the
18 difference is considerable, insofar as
19 these are extremely same day --
20 dates -- it's the same date and,
21 particularly, because of the effect.
22 Remember that these witnesses said that
23 these were tear gas canisters and
24 everybody was coughing. Therefore, there
25 were no deadly debris of -- that one

1 would expect from offensive grenades --
2 from attack grenades that Mr. Olsen
3 mentioned here.

4
5 Now, then, we move to Witness PP who
6 arrived on the 13th of April in -- at the
7 church. He confirms, like others, that
8 he went there voluntarily, spontaneously.
9 He did not see Kayishema on the 15th of
10 April. He did not see him on the 14th.
11 Of course, certainly, he -- nevertheless,
12 he talks about an attempt to plunder on
13 the 14th.

14
15 Amongst the people who had taken refuge
16 with us in the church there was some who
17 said they saw Kayishema, but I did not
18 see him since the door had several -- the
19 church had several doors, and he
20 specifies that the assailants of Mubuga
21 were rogues and reserve soldiers, and
22 amongst the assailants, there were
23 gendarmes and even those who were keeping
24 watch over the church joined in with the
25 assailants, and amongst the assailants,

1 there were rogues who were there in
2 church, and there were also soldiers who
3 were in -- who were on vacation, as well
4 as reserve soldiers and soldiers who had
5 deserted.

6
7 I find that it is interesting what this
8 witness says. He does not talk to us
9 about soldiers in regular service, but he
10 tries to draw a line between the various
11 sorts of soldiers that were there,
12 reserve -- reserve soldiers on vacation
13 or deserters, nothing to do with regular
14 forces. This is at Page 35 of his
15 transcript of 3 March 1998.

16
17 So this witness is going to talk about
18 the -- talks about the killings, but
19 there again, he does not make mention of
20 Kayishema as having been present at these
21 facts and which seems to me particularly
22 important because the aim of this witness
23 was to prove the effective and objective
24 presence of -- the effective presence of
25 Kayishema and objectively.

1
2 Now, then, we move on to Witness UU who
3 also confirms that he arrived on the 9th
4 of April and that he got there to the
5 church of his own volition, and he says
6 that nothing happened in the church
7 before the 15th. So this witness does
8 not say anything about what happened on
9 the -- in the eve -- on the 14th in the
10 presence of the prefect who chased away
11 the hooligans. He says that nothing
12 happened -- nothing special happened
13 before this date or throughout the week
14 that I spent there, and he confirms that
15 the gendarmes were keeping watch over the
16 church and that the attacks started on
17 the 15th at six o'clock in the morning.
18 We saw an attack which came from the site
19 of the graveyard and the side -- the
20 attack was heading for the church and
21 they were singing in loud voices. There
22 is a contradiction between what he says
23 and what Witness W said who said, namely,
24 that the attackers came by buses and by
25 other vehicles.

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This witness is important because I think that he does explain fairly well the confusion, and I think there's a confusion that reigns in the minds of the witnesses in the church. He said on the 15th, he said Kayishema came into -- came to the church. I did not see anything special that he did. And later on, You said you saw Kayishema's car arrive; is that right? He said, Yes, and then he says, When the car was parked it was to allow the prefect to talk to Ruzindana. So it was in the front, at the entrance of the church, and on the that day it was about 7:00, 7:30 in the morning.

And that is very important, Mr. President, Your Honour, because obviously it is clear that this witness is mistaken in terms of the day, and this is quite in line with the defence of Dr. Kayishema.

He wound down the window. I saw him. He

1 was in the car.

2

3 And the question is put to him: Are you
4 inside the -- were you inside the church
5 and close to the door when you saw him?

6 Yes, I was in the position which I

7 indicated. And he had indicated in a

8 picture that he was near the main

9 entrance door. And he said, yeah,

10 because the people who were with us, with
11 me, said that is the prefect.

12

13 So you recognized him then? Yes, I

14 recognized him.

15

16 This is rather strange. This is somebody
17 who did not know the prefect before that
18 time, and he said that, I saw the prefect
19 arrive, and then later on he says, Oh, it
20 was the people who told me that is the
21 prefect, and he comes back later to say,
22 I saw the prefect.

23

24 Now, at the time that Dr. Kayishema

25 arrived were the doors closed? He says,

1 yes, the doors were closed.

2

3 And you indicated -- next question --
4 that Kayishema left thereafter and he
5 never got out of the vehicle? And the
6 answer of this witness is most important.
7 In the cross-examination at Page 71, He
8 did not come out of the vehicle. I do
9 not know when he came out of the vehicle,
10 but I did not see him come out of the
11 vehicle. He immediately went into the
12 priest's quarters, and he left again by
13 vehicle, by his car.

14

15 So you can see through this witness the
16 account of what happened on the 14th.
17 The prefect came by church -- by car. He
18 did not stay too long. He went directly
19 to see the priest, and it was then that
20 certainly he was obliged to evacuate the
21 assailants and to chase them away.

22

23 And questions continued to be put to him,
24 to know -- to have confirmation that he
25 did not indeed see Kayishema, that he did

1 not see him go out of the car, and he, he
2 confirms that immediately the prefect
3 went to the back of the priest's house.

4
5 This witness had had the opportunity, he
6 said, of meeting the prefect in 1992 when
7 he had -- when he went to -- when
8 Kayishema went to his grandfather's
9 house, and this witness says, I was
10 obliged, since he was a hierarchy
11 personality, to shake his hand and to say
12 hello to him. That was the first time --
13 the only time that this witness saw
14 Kayishema. Can he reasonably see from
15 inside the church and, you know, being
16 nudged by other occupants of the church,
17 could he truly through a car window
18 confirm, ensure that or assert that he
19 saw Kayishema? The question locks inside
20 my mind, and I think that the same
21 applies to you.

22
23 There are many difficulties through these
24 witnesses of Mubuga that one has in
25 trying to establish exactly what happened

1 and to be able under these conditions to
2 assert peremptorily that Dr. Kayishema
3 was there on the 15th and 16th of April,
4 the testimonies of Mubuga do not allow us
5 to have this kind of certainty. They are
6 always contradicting each other with
7 regard to the way the events unfolded,
8 they hour, the time, the day -- the days,
9 the presence or absence of Dr. Kayishema
10 and with regard to the necessary absence
11 of Dr. Kayishema.

12

13 Yes, Mr. President.

14 MR. PRESIDENT:

15 My French was not coming out,
16 translation. Can you go on?

17 MR. MORICEAU:

18 I was saying, Mr. President, that this
19 witness has come to confirm all the fears
20 that we may have, fears regarding the
21 credibility of their testimony. You may
22 have noted that -- I do not know whether
23 the translation was working at the
24 time -- you may have noticed that the
25 hours do not agree, the events as they

1 happened do not agree, the days are
2 confused obviously, and the presence of
3 Mr. Kayishema has not at all been proved
4 by the testimony of Mubuga, and once
5 again, this highlights the alibi of
6 Mr. Kayishema on the 15th, 16th and 17th
7 of April.

8
9 With regard to the behaviour of the
10 gendarmes, there is a question, a
11 question that immediately comes to mind.
12 There is no doubt that Mr. Kayishema on
13 the requisition, requisition by
14 telephone, this telephone call enabled
15 him to have some gendarmes to protect the
16 people at the church. This is clear.
17 This is not refutable. In regard to this
18 point, the difficulty is to remark that
19 the witnesses told us that there were
20 gendarmes and that those who were
21 protecting them were, on the 15th or the
22 16th, they were turned against us or,
23 rather, they turned against us and shot
24 at us.

25

1 Earlier on, I highlighted the absence of
2 certainty, the deductions, but there is
3 something else which seemed to me
4 important in this testimony given by
5 Witness UU. Have you explained in the
6 circumstance, if the gendarmes turned
7 against them, and this seems to be
8 contradictory, but let us imagine that
9 the gendarmes turned against them, he
10 says, but there are all these gendarmes
11 that came to see us. He tried to
12 apologize. He said he could not contain
13 the Interahamwe. This is what this
14 witness tells us. He indeed confirms
15 that all the assailants withdrew and that
16 only one gendarme stayed behind. He was
17 a Christian, and the gendarme told us,
18 Well, if you can escape, you could do so.

19
20 So here is a gendarme sent by Kayishema
21 with two or three other gendarmes who
22 were completely overwhelmed by the
23 situation, and one perfectly understands
24 what happened.

25

1 On the 14th they were set to flee. They
2 came back on the 15th in greater numbers,
3 and they overcame the gendarmes.
4 Yesterday, when I was talking of
5 recollection of images that are encoded
6 in the memory, the witnesses kept images
7 of gendarmes in this d'etre -- confusion,
8 the images of soldiers, and I think this
9 is the only explanation, because how else
10 do we understand that under these
11 circumstances who came to protect on the
12 15th would turn against the people in the
13 church and that, when the assailants
14 withdrew, the gendarmes would come to
15 apologize and tell them, if you can, try
16 to escape because we cannot contain the
17 deadly force of these assailants and the
18 Interahamwe?

19
20 So it seems to me that you here have
21 proof of what happened and that this is
22 indeed in favour of Mr. Kayishema and in
23 favour of the demonstration of the fact
24 that the presentation of the facts may
25 sometimes be betrayed or distorted. You

1 have to read the testimony, examine it in
2 order to discover some truth about what
3 happened at that church.

4
5 I will, I will take advantage of this
6 study, the study on Mubuga, to talk about
7 Witness DV, Defence Witness DV. Witness
8 DV was kind of mistreated. Witness DV
9 was living along the road in the small
10 side road between the main road and the
11 Mubuga church, and DV tells us that there
12 were 600 metres in his questioning; that
13 he lived in this area; and that he heard
14 gunfire; and that he indeed saw people
15 passing in great numbers. The reaction
16 of this man -- and I think this is the
17 reaction that we would all have -- is
18 that when he saw this he questioned
19 himself. He came out. He was attentive
20 to what was happening because, according
21 to his curiosity, he wanted to know, and
22 he told us that on that day, on that
23 morning, well, he did not see vehicles,
24 vehicles of the prefecture. He did not
25 see the prefect's vehicle pass by.

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There were questions put to him by honourable Judge Ostrovsky. Judge Ostrovsky: You're always at your window watching? No, of course. I think what we should understand is that paying attention to what was happening he effectively wanted to know more about it and wanted to watch the traffic and all these people who certainly were converging towards the Mubuga church. He was attentive. He could see a vehicle and the driver of the vehicle by virtue of the fact that at this point vehicles move very slowly given that the road is very bad. I think this defence witness provides additional information on this day of the 15th. No vehicle from the prefecture, and let alone the prefect, passed by.

Mr. President, Your Honours, I will continue with an examination of the prosecution witnesses, and I would now move on to the Bisesero site. The

1 Bisesero site, I would ask you and I'm
2 convinced that -- well, once again, we do
3 not have the opportunity of having been
4 to the sites so as to be able to have an
5 idea of the configuration of these hills
6 or how the place looks like.

7
8 I would like to refer you to document
9 three hundred and -- Exhibit 325 and
10 Exhibit 303. That is Prosecution Exhibit
11 325 and 303. Here, indeed, you have a
12 photograph or maybe -- or, rather, two
13 photographs which apparently, according
14 to what we were told, these photographs
15 must have been shot from the top of the
16 Muyira hill, and we will see a road at
17 the bottom. This road is the famous road
18 linking Gishyita to Gisovu, and on this
19 road, vehicles are alleged to have been
20 stopping, and it is on this road that
21 many acts developed by the witnesses are
22 alleged to have taken place.

23
24 Bisesero, Bisesero, in a few words,
25 because you know, as well as I do,

1 because you were present at all the
2 hearings, we know that Bisesero is a
3 remote area of Kibuye, with many hills,
4 many high hills. Sometimes the terrain
5 is very uneven with forest and also
6 crops. Bisesero is an important place
7 from a point of view of life in the
8 prefecture of Kibuye. Indeed, in this
9 place there are mines, but above all
10 there is water, there is electricity or a
11 power plant, power plant, and there is
12 also a transmitter, a radio transmitter.

13
14 So Bisesero is an important place and we
15 know that. This is not refutable. We
16 know that this region is, to a large
17 extent, inhabited by the Tutsi. I think
18 the percentage of the Tutsis there is
19 about 60 percent, approximately 60
20 percent before the events.

21
22 So this is a presentation of Bisesero
23 where people took refuge, and I would say
24 that the prosecution witness told us
25 this, but also, the defence witnesses

1 also confirm that a great many people
2 sought refuge in this area, in Bisesero.
3 Many people who were fleeing from other
4 sectors or communes, neighbouring sectors
5 and communes sought refuge in Bisesero.
6 In fact, even people from neighbouring
7 prefectures and people from the north who
8 were fleeing from the armed conflict
9 thought initially that they could find
10 refuge and greater peace in the Kibuye
11 region. So I'm going to study, like I
12 did for Mubuga, I'm going to study the --
13 examine all the prosecution witnesses.

14
15 Witness U, first of all, talked to us
16 about the Karongi attacks. Karongi is
17 alongside Bisesero. It is a mountain, a
18 very high mountain under which, if my
19 recollection is right, on which you have
20 the transmitter, but Karongi is also an
21 important linking road.

22 MR. PRESIDENT:

23 What's that witness?

24 MR. MORICEAU:

25 Witness U, Witness U.

1 MR. PRESIDENT:

2 U.

3 MR. MORICEAU:

4 U.

5 MR. PRESIDENT:

6 Okay.

7 MR. MORICEAU:

8 So this witness told us that there were
9 many attacks, and furthermore, that these
10 attacks were on a daily basis. We asked
11 him for more precision, and he confirmed
12 that in Karongi there were two attacks on
13 the 13th or the 14th, and this witness
14 was not very clear on these attacks and
15 how they took place.

16
17 He said that the first attack in Karongi
18 was with Kayishema. He says, During the
19 first attack there was Kayishema, and
20 that later on -- well, he tells us,
21 During the first attack there was no
22 authority from the prefecture. One may
23 be surprised -- one may be surprised at
24 this contradiction because he said that
25 those who came from the road, from the

1 prefecture, came with Kayishema.

2 Kayishema was in a vehicle during this
3 first attempt to attack.

4

5 Therefore, already this -- was Kayishema
6 there during the first attack or no?

7 Questions were asked to the witness

8 during the cross-examination to know a

9 little bit more because the witness is

10 alleged to have seen Kayishema. Now, the
11 witness says or told the court that

12 during the first attack, yes, that is it.

13 So during the cross-examination he

14 reiterates the fact that Kayishema was

15 there during the first attack.

16

17 Now, he was asked the following question:

18 How did Kayishema arrive? He came in a
19 convoy of vehicles.

20

21 In which vehicle was he? That was the
22 question put to him. I was not able to
23 see the vehicle. I was not able to see
24 the vehicle in which he arrived. I saw
25 him only when the vehicles stopped and

1 when he came out of the vehicle.

2

3 Up to there maybe one may understand, and
4 another question: Were you able to
5 identify Kayishema? We were very close
6 to the place where the vehicles stopped.
7 I wanted to go over that sentence again
8 because I do not know how many times --
9 and I believe my colleague Besnier may
10 have also pointed this out to you -- the
11 -- I do not know how many times -- well,
12 the witnesses have a tendency -- the
13 witnesses have a tendency to always be at
14 the appropriate place when it's
15 necessary. They're always in the brush
16 nearby. They are always at a few metres
17 away. They can hear things because, of
18 course, in order to be able to report to
19 us what was said it is necessary for them
20 to have been very near. There is where
21 we have the greatest confusion.

22

23 This witness, as if by chance, who
24 already does not know between the
25 beginning of the questioning, the end of

1 the questioning, the cross-examination,
2 who doesn't know whether or not Kayishema
3 was there, at the end tells us that he
4 saw Kayishema come out of the vehicle
5 because he was nearby. This is not quite
6 logical.

7
8 And then when he's asked more questions
9 on the vehicle, he, he becomes angry, and
10 he says, Don't ask me that question. Of
11 course, when the questions are -- when
12 the questions are more rigorous he
13 becomes perturbed, and when he's asked
14 the question a last time after many
15 attempts on Page 33 of the
16 cross-examination, Therefore, you did not
17 see Kayishema come out of the vehicle?
18 He answered, No, I did not see him come
19 out of a vehicle.

20
21 Here you are with a witness who
22 apparently cannot be taken into
23 consideration. He came to tell us
24 stories, fabricated stories. Maybe he
25 was in Karongi, but he came here picking

1 up recollections here and there, and I'll
2 refer Your Honours to my explanations of
3 yesterday, explanations regarding the
4 fragility of human testimony once again.

5

6 This witness, in the second attack, once
7 again, is going to be surprising because
8 he told us that it was Kayishema
9 personally who was commanding them. How?
10 How did he come about this? Of course,
11 he says, I did not hear him give orders.
12 This is surprising. He affirms on the
13 one hand that the prefect was in charge,
14 was commanding, but that he did not hear
15 the prefect give orders or what he was
16 saying.

17

18 And he's right, Mr. President, the
19 witness is right, and here again, later
20 on I would like you to bear this in mind.
21 You would have to bear in mind the
22 fact -- well, this witness said it was
23 him. Since he was the head of the
24 prefecture and since everyone obeyed him,
25 in other words, once again, everything

1 that happens in the prefecture of Kibuye
2 from the moment that there is some
3 semblance of responsibility that must be
4 established it must be Kayishema, and
5 this is how the name of Kayishema is
6 transported to the hills of Karongi and
7 other hills.

8
9 Here again, as I was saying earlier, the
10 witnesses are always at the appropriate
11 place during the first attack but also
12 during the second attack. Not only
13 may -- one thing that these witnesses are
14 chased, but furthermore, the witnesses
15 come closer. We came to see -- we came
16 closer to see. Indeed, can we accept
17 that under conditions when you are chased
18 a witness would come closer to take more
19 risks when the witness is chased?

20
21 The witness confirmed to us that the
22 assailants came for the two months and
23 that there was no truce. This, I would
24 like to remind you, is contrary to many
25 other testimonies that establish that

1 during the first half of May, at least
2 towards the end of April up to 13th May,
3 there were no attacks in Bisesero. The
4 witness in his testimony once again came
5 back to the fact of having seen or not
6 having seen Kayishema, and I believe that
7 this permanent metamorphosis or change in
8 his testimony does not render him
9 credible.

10

11 Now, I will move on to witness, Witness
12 J -- Witness G, sorry, Witness G. This
13 witness, Witness G, Witness G, this
14 witness moreover will be examined with
15 regard to another site.

16

17 What I gathered from this witness is that
18 he said -- he said something interesting
19 in relation to what I was saying
20 yesterday about crowds. He said, Apart
21 from the Interahamwe who came lastly, the
22 people who were attacking Bisesero were
23 normal citizens. I believe this is
24 interesting. It is interesting -- it is
25 important to note that, indeed, the

1 people who were attacking Bisesero were
2 motivated by this collective madness
3 which I mentioned yesterday.

4
5 I will now move on to Witness FF. He was
6 asked the following question: How did
7 you come to know Kayishema? Like many
8 other witnesses, he told us that he knew
9 Kayishema because, because he
10 participated in meetings. Indeed, he
11 participated in one meeting. I think
12 that this witness here is committing a
13 grievous error that affects the
14 credibility of his testimony because he
15 said, I saw Kayishema in a party meeting,
16 a meeting of the MDR party.
17 Mr. Kayishema is a member of the PDC
18 party, and I suppose that he never
19 participated in an MDR meeting.

20
21 This witness told us that he was in
22 Bisesero. He told us -- and this element
23 is related to other testimony -- he told
24 us that he never saw Kayishema armed;
25 that he saw him during the event that was

1 narrated by my colleague Besnier on the
2 possible truths and the fact that
3 Kayishema and other persons passed for or
4 pretended to be members of the Red Cross
5 in order to attract the Tutsi.

6
7 This version is not credible because,
8 obviously, if you had been attacked, I do
9 not see how the day after you would
10 believe your assailant of the previous
11 day and go towards him thinking that
12 suddenly he would have been sent by the
13 Red Cross or that he's a member of the
14 Red Cross. I think this is not
15 reasonable, the witness, if it is true as
16 he says, that he knew him, he knew that
17 he was a prefect and that he was not a
18 member of the Red Cross.

19
20 Another contradiction that emerges with
21 regard to other testimonies, the presence
22 of a megaphone because it seems that
23 witnesses, to give credibility to the
24 fact that they could hear from a
25 distance, said that there was a megaphone

1 and that was Mika who was speaking in the
2 megaphone, but other witnesses -- and
3 other witnesses told us that Kayishema
4 spoke in the megaphone.

5
6 This witness is interesting when he
7 describes the Muyira attack. He is found
8 in Gitwa and he sees vehicles on the
9 road. This witness tells us that the
10 vehicle -- Kayishema's vehicle was red.
11 That is fine. But he's the only one who
12 saw a real -- a red vehicle, sorry. We
13 do not see mention of a red vehicle
14 anywhere in the testimonies.

15
16 Kayishema stopped where the vehicles were
17 because Ruzindana's vehicle arrived
18 later. This is an element that I recall
19 because it is contrary to other -- many
20 other testimonies who -- where the
21 witnesses said that it is Kayishema who
22 came first during the attack of 13 May.

23
24 Now, this brings me to the attack of 13
25 May where it is asserted by the

1 prosecution with the witnesses in support
2 that Kayishema was there during the 13th
3 of May, during the attack. I remind you
4 that on the 13th of May we have an alibi,
5 a dual alibi. I would even say triple
6 alibi. One, Mrs. Kayishema gave
7 testimony and gave us details on
8 Mr. Kayishema's timetable on that day.
9 Two, this is confirmed by the agenda,
10 Mr. Kayishema's agenda which has been
11 submitted. And three, this has also been
12 confirmed in the political -- in the
13 political events of Kibuye because this
14 day was the day when the sub-prefects
15 were submitted or introduced to the
16 population.

17
18 Now, this witness finds himself in Muyira
19 on the 13th and he is in Gitwa. Remember
20 the distance. The distance varies
21 depending on the witness, but I think
22 that -- well, when some people tell us it
23 is 10 or 15 minutes walking, and other
24 people tell us it is a difference of 800
25 metres, this, more or less, corresponds

1 to that distance. Should we hold that
2 between the two there is, in fact, a
3 distance of 800 metres to one kilometre
4 that is in the relation to the speed of
5 human walking and the maps, the maps
6 which give us an indication of such a
7 distance?

8
9 Now, this witness poses some problems.
10 He is in Gitwa. He is at hundreds of
11 metres and tells us that Kayishema was
12 speaking in a loud voice and that he
13 could hear Kayishema. This witness also
14 narrated a very surprising story. While
15 from a point of principle the idea is
16 quite acceptable, the reality seems to me
17 difficult to accept. The witness tells
18 us that the assailants who came from
19 different places had to, had to identify
20 themselves so that they should not kill
21 one another. This causes a problem of
22 understanding.

23
24 These people arrive in the morning to
25 attack and it is decided that they should

1 be identified on the basis of their
2 origin, or they arrive from their
3 respective communes, sectors or
4 prefectures already with distinguishing
5 marks, and this leads us to an
6 extraordinary scene where you have
7 Kayishema distributing some strings that
8 would enable the assailants to put on
9 their badges, badges. I think this is
10 not quite credible.

11
12 And here again, one cannot understand
13 the -- how the distribution was done --
14 could be done by Kayishema if the number
15 of assailants is correct. They are --
16 assailants are supposed to be about
17 10,000. So let us imagine -- we can
18 imagine the difficulty that one would
19 have in distributing ropes and enabling
20 the, the assailants to put on their
21 distinctive badges. This will require
22 many, many hours. So I think this
23 testimony, once again, appears not to be
24 credible.

25

1 This witness also told us that Kayishema
2 stayed close to the vehicle, that he
3 stayed static for three hours, that is,
4 for three hours when the attack lasted.
5 He stayed close to his vehicle without
6 moving, and this is contradicted by
7 testimony given by other witnesses. This
8 witness, who is not eager to obtain
9 information, to better convince us of the
10 reality of what he told us did not
11 hesitate to say that he even joined the
12 assailants.

13
14 Now, he came to tell the court that the
15 assailants had a lot of trouble
16 identifying one another in order not to
17 kill one another, and yet he, he's able
18 to join the assailants. I think this
19 is -- there is absolute improbability
20 here which you will certainly notice.

21
22 But in this testimony, there is something
23 else which is surprising, and this
24 witness, in fact, seems to have a lot of
25 fetter (sic) imagination and poor

1 recollection. This witness, while
2 fleeing, passed close to Kayishema,
3 Kayishema who is supposed to be in his
4 vehicle, and Kayishema is alleged to have
5 shot at him, to have chased him. Now,
6 this witness hides in -- hides somewhere
7 and Kayishema pursued him and lost sight
8 of him when he hid behind or in a rock --
9 when he hid in a rock. This seems
10 improbable.

11
12 Kayishema allegedly climbed on the rock
13 since he did not see the witness in
14 question, and at this point the witness
15 enters in a delirium by narrating to us
16 stories he heard at the time. Kayishema
17 is supposed to have been giving orders,
18 Kayishema is supposed to have been asking
19 for cut hands, and the witness is
20 supposed to be hiding, we do not know
21 how, and Kayishema is on the rock.
22 Imagine the scene. And from that point,
23 the witness can hear everything. One
24 wonders how. In particular -- in fact,
25 he tells us about the number of hands

1 that were cut. How can this be taken
2 into consideration by your tribunal?

3

4 Furthermore, there is also contradiction
5 with the initial statement made to the
6 investigator, exhibition number --

7 Exhibit Number 10, Exhibit Number 10 --

8 Number 12. The witness has said, During

9 the attack I heard the attackers say

10 something. They said that they had to

11 cut the hands of the people that they

12 killed. I heard them say that Kayishema

13 had said to the attackers, et cetera, et

14 cetera.

15

16 What I'm interested in is what he says,

17 namely, that -- in the declaration it

18 says that he heard people talk about

19 this, and before the tribunal, he no

20 longer talked about -- he, he no longer

21 creates sensational events, but he hears

22 and sees Kayishema. This cannot be

23 probable at all.

24 MR. PRESIDENT:

25 That statement is defence exhibit number?

1 MR. MORICEAU:

2 Number 10.

3 MR. PRESIDENT:

4 Number 10.

5 MR. MORICEAU:

6 Ten.

7 MR. PRESIDENT:

8 Yes. Thank you. Please go on.

9 MR. MORICEAU:

10 Now, with -- to conclude on this witness,
11 still talking about the 14th of May, he
12 says that Kayishema fired three shots at
13 him. Then there was a discussion.
14 During the examination in chief he had
15 said three shots, and in the
16 cross-examination he talked about four
17 shots, and he said that these third
18 bullet or fourth bullet killed his
19 friend, and he said the bullet went
20 through him.

21

22 How could he remember this? How could he
23 see this, whereas he himself was fleeing?
24 Once more, as my colleague indicated, the
25 witnesses where they are escaping have

1 eyes in their backs, they are fleeing,
2 they can hear everything and they can see
3 everything. This is not credible, and
4 this is why your tribunal cannot base its
5 judgment on such testimony.

6
7 Around Dr. Kayishema, he says, there are
8 soldiers who are firing. How can he tell
9 for sure, individualize the fourth
10 bullet? How can he through -- how can he
11 identify the number of bullets and which
12 ones are fired by who? It is not
13 credible. It is not possible.

14
15 So, these witnesses were rather
16 disturbed, and they tell us -- made up
17 stories, cock and bull stories, and this
18 goes back to what I was saying yesterday
19 regarding what Dr. Mathias Ruzindana
20 said.

21
22 And I now move on to Witness 00. This
23 witness who was at Mubuga, we now find
24 him in Bisesero since he had fled, and he
25 said something interesting once more. He

1 saw the prefect. It was him, he said it
2 was him because it was he who was
3 responsible for the prefecture. He was
4 the most high-ranking authority. That is
5 the conclusion of this witness who said
6 that Dr. Kayishema came two times per
7 week to Bisesero but that he only saw him
8 on two occasions. He was the one who was
9 responsible, once more, because he led
10 the attacks, whereas he was responsible
11 for ensuring our security.

12
13 Once more, we are again referring in the
14 realm of what I called external and, and
15 subsequent interventions on testimony.
16 People have heard things and they
17 attach -- and these things have
18 influenced their testimony, and now they
19 say, for instance, that Dr. Kayishema was
20 prefect, responsible for everything and
21 had to assume responsibility for
22 everything. If we understand this
23 witness, since Dr. Kayishema had to
24 protect us and since we were not
25 protected, it was the prefect that was

1 responsible.

2

3 He said that he saw Kayishema on the 13th
4 and 14th but does not give any
5 information at all. This seems to be
6 contradictory to the presence of
7 Kayishema before the 13th of May since a
8 certain number of witnesses of the
9 prosecutor said there were no attacks.
10 There was a lull until the famous black
11 Friday, the 13th.

12

13 Once more the witness is in a nearby
14 thicket, which allows him to see by -- to
15 see the car of Dr. Kayishema, as he says,
16 and there again, the things that -- and
17 there again, there are things that
18 demonstrate that the conclusions arrived
19 at by Dr. Ruzindana are clear, not only
20 in the culture of Rwanda but also in the
21 translation of the verbs to see and to
22 hear. We were -- in -- at Muyira and
23 they were at Mirambo, that is where the
24 cars were parked, and from there he could
25 not only see the prefect but also hear

1 him, whereas the distance is 800 metres.
2 This is confirmed both by testimonies and
3 by maps.

4

5 And he maintains that it is quite close.

6 We can hear -- one can hear somebody who
7 is speaking. How can we hear somebody
8 who is speaking from 800 metres away?

9 This seems to me to be definitively in
10 violation with -- impeding the
11 credibility of the -- of this witness
12 regarding what he heard and what he saw.

13 This witness comes to say, of course
14 Kayishema came every day, which is not
15 confirmed reality, and that he was always
16 armed every day.

17

18 Now, then, we move on to Witness KK. The
19 witness says that there were attacks in
20 Bisesero on the 15th of April, and this
21 poses a difficulty. Besides the alibi of
22 Dr. Kayishema, one wonders how there
23 could have been attacks in the presence
24 of Dr. Kayishema on the 15th and attacks
25 to -- at Mubuga at the same time, because

1 effectively we are talking about the same
2 time periods, the same hours.

3
4 This witness also gave indications on
5 distances to confirm that what he was
6 saying and that what other witnesses were
7 saying was thought -- was the subject for
8 several -- of serious questioning. He
9 specified that the Gitwa hill, from Gitwa
10 hill one could not see Mubuga, but that
11 to see Mubuga one would have to go to
12 Jurwe, Jurwe, and we asked him questions
13 on the distance. It is important, Your
14 Honours, because between Mubuga and Jurwe
15 the -- there is about a 20 minutes walk,
16 walking distance. Between Jurwe and
17 Gitwa the distance is between 30, 40
18 minutes, one hour.

19
20 So this witness would tell us that he --
21 when this witness said that he witnessed
22 killings, you have to take this into
23 consideration, particularly with regard
24 to the 14th of May. These -- you have to
25 take into consideration, therefore, these

1 distances and the fact that this witness
2 had very -- was -- could see very far
3 to -- he had to be long-sighted, very
4 long-sighted to be able to see
5 Dr. Kayishema at this distance.

6
7 And this witness also gave us examples of
8 his lack of credibility when he made
9 mention of a meeting that was allegedly
10 convened by Dr. Kayishema and held with
11 the assailants. He said that he was
12 about 200 metres away and that there were
13 about 10,000 attackers, I think, and that
14 they held a kind of information -- a
15 briefing meeting and at which -- which he
16 witnessed from 200 metres away. He said
17 it was 200 metres away. It was a meeting
18 with very many participants, and there
19 was the use of the megaphone which means
20 that he could -- which explains that he
21 could hear. I was on the side of the
22 hill 200 metres away but I could hear.

23
24 But further down, he said that he was in
25 the Uwingabo cellule and that from there,

1 again, he could hear. The distances are
2 considerable because this hill is
3 several -- is ten minutes away -- walking
4 distance away. I don't think that it is
5 reasonable to say this, even when he is
6 far -- much further removed he can hear
7 everything that is heard. He even takes
8 a risk of going quite close because 200
9 metres away, if there are so many
10 assailants, there is a great risk of
11 being seen. This is a witness who is
12 not -- who is not very credible.

13
14 To better adjust his answers to the
15 questions that are put to him, he says --
16 he said I was somewhere behind the
17 participants, those who were attending
18 the meeting, and to better spice what --
19 his statement, after the -- after -- at
20 the end of his examination he modifies
21 his declaration. He has to go closer.

22
23 And I will end up with an equally
24 interesting item concerning this witness.
25 He said, I was able to hear what was said

1 from a distance because there was a
2 megaphone. So you did not see
3 Dr. Kayishema, you only heard his voice
4 on the megaphone? And he confirms, Yes,
5 I also knew his voice.

6
7 Mr. President, Your Honours, if with
8 echos, with distortions that a loud
9 speaker may cause how you can recognize
10 somebody's voice? Indeed, Mr. President,
11 Your Honours, this is nothing but an
12 exploit, and I cannot believe that a
13 witness, a person can recognize the voice
14 of somebody. That means that they have
15 to be used to the person, that they have
16 to be very used to that person to be able
17 to recognize their voice hundreds of
18 metres away through a megaphone. This
19 doesn't seem to me to be very credible.

20
21 So, this witness is effectively somebody
22 with a great -- endowed with a great deal
23 of imagination, somebody who gives the
24 impression that he is truthful.
25 Nevertheless, he is in total

1 contradiction with his initial statement,
2 and I would like to refer you,
3 Mr. President, Your Honours, to Defence
4 Exhibit 17 and 18 tendered in this
5 regard.

6
7 This witness never mentioned Kayishema in
8 the initial declarations, and when he was
9 asked, he, who knew Kayishema, as it
10 seemed, he who was capable of recognizing
11 his voice a few hundred metres away
12 through a megaphone, when the question is
13 put to him on -- repeatedly before the --
14 in his statement before the
15 investigators, when he's asked who
16 commanded the attacks, who are the
17 important personalities, he did not ever
18 mention Kayishema.

19
20 Now, is this credible, when, later on,
21 before your tribunal he comes and
22 remembers so well the voice, even the
23 voice of Kayishema? These are important
24 declarations. We put questions to him
25 thereon, and obviously, like other

1 witnesses who would be caught off guard
2 in this connection, he would answer like
3 the others in the same manner, I was --
4 The question was never put to me. This
5 witness was only mocking us in this
6 regard and -- because when he was asked
7 who were the officials, he could -- he
8 had to have known that amongst the
9 officials, since he can so well state so
10 later, there was the prefect, if the
11 prefect had been there. I would like to
12 ask you, therefore, to consider that this
13 witness is totally unacceptable in the
14 charges that are brought before --
15 against our client.

16
17 I would like to move on to Witness NN now
18 who says that there were attacks on a
19 daily basis. Let us remember what other
20 witnesses said, namely, that there were
21 no attacks whatsoever from the 7th to the
22 20th of April and that there was about 15
23 days that lapsed without any attack in
24 May. He would tell us that he knew
25 Kayishema because he attended public

1 rallies, but he did not -- he could not
2 remember them, and he could not situate
3 them. He said that he was on Muyira
4 hill, and I saw Kayishema on this Muyira
5 hill, and he was waiting for us on the
6 road, and therefore, this confirms the
7 configuration and the fact that Kayishema
8 remained on the road on the 14th or -- he
9 remained on the road on the 13th May,
10 excuse me.

11
12 And he says that on the 14th, to the
13 question, Did you see Kayishema on the
14 14th, he answered, Each time he came in
15 his vehicle and he stopped between the
16 two communes. He does not answer the
17 question, but his generality as -- seems
18 to satisfy him. And to a much more
19 profound question, On the 14th of May, I
20 did not see him. I did not see him,
21 Kayishema.

22
23 This is also a witness who told us that
24 he saw massacres, whereas Kayishema was
25 at the roadside. He told us that, I was

1 all the better placed because I was quite
2 close to the road because I live quite
3 close to the road. So, we begin to
4 wonder how can this witness, who had just
5 said that he was at the top of the hill,
6 that he was on the hill, that he saw
7 Kayishema on the road, remember the
8 distance, which confirms that Kayishema
9 remained all the time on the road. Now,
10 all of the sudden he says that, indeed,
11 he lives quite close to the road and that
12 he was not up there at that time. That
13 is Page 96 of his examination of 2 March
14 1998.

15
16 Now, we need a great deal of time to
17 understand what this witness wants to say
18 and to understand his contradictions in
19 these pages of his declaration. This
20 witness also used a sentence, according
21 to which Kayishema was the chief, since
22 he was the head of the prefecture, and
23 when he was asked how -- and he said it
24 was when he saw the vehicle arrive. So
25 here we are again with a witness who once

1 more sees a car and concludes that it is
2 Kayishema's car.

3
4 And there this witness was, was pursued
5 through Muyira. After having escaped
6 from Muyira, I went toward the road to go
7 to the other side of the road and there
8 the assailants were waiting for us on the
9 road. And there it was then that the
10 witness was wounded, and I will remind
11 you and I would like to remind you of the
12 special wound of this witness, which I
13 will not mention since it was dealt with
14 in camera, but it is important within the
15 framework of the identification of the
16 those who were shooting.

17
18 For this witness he crossed the road, he
19 turned around and Kayishema was on that
20 road, and he asserted that Kayishema
21 fired several times upon him. So, at
22 what distance were you away from
23 Kayishema when you saw him shoot? And he
24 said -- well, after a great deal of
25 discussion, after a great deal of

1 difficulty, you, Mr. President, you even
2 had a measurement taken, and thereafter,
3 we agreed that there was a distance of
4 about eight metres in the declaration of
5 2 March 1998 at Page 62. So, there was
6 about eight metres between the two,
7 assailant and assailed.

8
9 And in the most total confusion, he told
10 us what we could understand,
11 Mr. President, in light of the fact that
12 this person was fleeing, that he was
13 being pursued, he was being fired upon,
14 he was wounded with this very special
15 wound that should have obvious
16 traumatizing effect, and this witness
17 says, I do not remember, I do not see --
18 it is confused -- it's confusing. And he
19 said Sikubwabo was with his colleague --
20 that is, his colleague was my client that
21 he pointed out then -- when he -- when he
22 shot at me, and he said -- a while ago
23 you said it was Kayishema who was firing.
24 Now it is Sikubwabo. That is where we
25 reached the incredible, and he was -- he

1 even went on to say that Sikubwabo had a
2 gun in one hand and a grenade on the
3 other -- in the other and he was firing
4 at -- with the gun and hurling a grenade
5 with the other.

6
7 How many hands does Sikubwabo have,
8 Mr. President? This is total confusion.
9 How can this witness, who is wounded, who
10 says that he has fallen to the ground,
11 give us such details which allow you to
12 base -- which, which allows you to found
13 your judgment. I think that with regard
14 to this witness I may say I have -- I'm
15 through. Maybe I can go on to another
16 witness, Mr. President. With your leave,
17 Witness DD.

18
19 Witness DD, I mentioned him yesterday
20 when I mentioned the problem of
21 investigators and pictures that were
22 taken. You will -- I will request you to
23 move on -- to look at exhibit -- Exhibits
24 323 and 322. You have two photographs
25 taken from the position where Kayishema

1 was and another from the position where
2 the witness was. In these two pictures
3 you have the positions, positions of the
4 two antagonists. It is very important to
5 examine these pictures very closely.
6 They demonstrate the improbability of the
7 testimony, on the one hand, this location
8 and distance but also the configuration
9 of the area.

10

11 When you look at these pictures you
12 cannot reasonably think that the facts
13 happened in this manner. You cannot
14 reasonably think that hundreds, perhaps
15 even thousands, of attackers were able to
16 pass through there with Kayishema leading
17 them without being able to see the
18 witness who miraculously was not hit by
19 bullets but would relate what happen and
20 how one of his friends was killed and how
21 he could, while celebrating or through
22 the -- through the volley of, of bullets
23 flying all about, identify Kayishema.

24

25 He himself -- he says that he also got to

1 know Kayishema through rallies and
2 meetings. He would also commit
3 contradictions on the manner in which the
4 events unfolded in Karongi, which, which
5 situates on or about the 12th of April,
6 and there again, his memory comes back to
7 him, and it's quite interesting. He just
8 said, I do not remember the date but it
9 was toward the end of April, and then
10 later on he says, it was the 12th.

11
12 Once more, like many witnesses, as if by
13 chance he is hiding too -- just quite
14 close to the road and by the roadside
15 without any danger, whereas there are, as
16 he said, 20,000 attackers. When you see
17 the distance, it is absolutely
18 impossible, Mr. President, Your Honours,
19 to, to go -- to hide and -- to go on
20 seeing, you know, so close to the path
21 that the attackers have to use to head
22 uphill. So he's quite close to the road,
23 he's not seen by 20,000 people, and the
24 pictures have demonstrated to you the
25 improbability as I have just said.

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Plus --

MR. PRESIDENT:

Mr. Moriceau, perhaps we'll stop here.
We shall take a 30 minutes break. When
we come back we will continue with the --
your discussion of the testimony of
Witness DD. So, until 11:30, these
proceedings stand adjourned.

(Short recess.)

(Pages 1-69 reported by M. Walker.)

1 MR. PRESIDENT:

2 Sorry we were late, Mr. Moriceau. You will
3 continue. We left off when you were discussing
4 the evidence of Witness DD.

5 MR. MORICEAU:

6 That's indeed correct, Mr. President.

7

8 I will finish with Witness DD by saying that
9 this witness told us that all the vehicles came
10 at the same time. Kayishema came later on, on
11 his own vehicle.

12 MR. PRESIDENT:

13 Could you start again?

14 MR. MORICEAU:

15 So, I was saying that this witness, Witness DD,
16 stated that during the attack came at the same
17 time and that Kayishema came later on in his
18 own vehicle, and this is contrary, I'd like to
19 recall, this is contrary to what other
20 witnesses said, in particular, Witness U.

21

22 Another point, and I would have finished with
23 this witness, another point which seems to me
24 important is the contradiction between two
25 groups of witnesses. Some of them tell us that

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1 Kayishema climbed on the Muyira hill, and
2 others tell us that Kayishema stayed close to
3 his vehicle and on the road. There you can see
4 a contradiction. This witness is among those
5 who said that Kayishema -- Kayishema climbed on
6 the hill.

7
8 I will now move on to Witness AA. This witness
9 arrived at Muyira on 9 April. He tells us --
10 he tells us something particularly important on
11 the -- when he was examined by the prosecutor,
12 when he was asked who was leading the attacks,
13 he said, "Yes, I can talk about that." He
14 answered, "So, go ahead." He said, "So, there
15 is the burgomaster, burgomaster of the Gisovu
16 commune, Ndimbati Aloys, the burgomaster of
17 Gishita commune, the director of the tea
18 factory, Musema Alfred, and a certain Ntitedeka
19 as well as Mika who was secteur conseiller in
20 Gishyita.

21
22 He was now asked who this Ntitedeka was. He
23 answered. You would note that he doesn't
24 mention Kayishema. Later on in the
25 questioning, during the examination, the

1 prosecutor obviously insisted, "Who was this
2 leader? Who was this?" the prosecutor asked.
3 He said it was the leaders, the burgomasters,
4 the conseiller, and he doesn't mention
5 Kayishema.

6
7 Of course, this was not satisfactory to the
8 prosecution. And the prosecutor on page 55 of
9 the testimony asked, "Did you know Kayishema?"
10 And the witness did not answer, did not meet --
11 did not answer this leading question. And the
12 witness continued, saying, "People said
13 Kayishema was there."

14
15 Now, this witness doesn't talk of Kayishema
16 when he was asked who was leading the attacks.
17 But after the leading questions -- well, this
18 witness gave some other important information.
19 He says that when they were in the Muyira
20 forest, the forest is dense and that if you're
21 in that forest you cannot see vehicles. He
22 said this at the end of the examination on page
23 43. So, he affirms that when you are at the
24 forest you cannot see vehicles which are on the
25 road.

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We'll come back to other witnesses who probably were more lucky, Witness QQ. This witness arrived on 9 April in Muyira. He is at the top of the hill. We know the distance, and it is interesting to follow the questioning and the answers, four answers given -- the answers given to four questions. "Did you see him?" talking about Kayishema in Gitwa. "Was it the first time you saw him?" The witness answered, "I had also seen him once with my own eyes." The next questions insists and answered, "I did not say that I saw him in Gitwa 13 May."

Another question so as to make him specify what did not seem to be quite homogenous, he said, "Personally I did not see him." And the questioning continues. "On the date of 13 May the vehicles came, and among them there was the vehicle of Kayishema, but I did not see him because I did not even participate in the meeting that held."

So, here there is -- here we have a witness who initially said he saw Kayishema in Gitwa and

1 after four questions he says that he did not
2 see him and that the only thing that he was
3 able to see was in the final analysis the
4 vehicle. But with regard to the vehicle, he
5 was once again or unable to identify --
6 identify the vehicle during the questioning.

7

8 So, he was asked, "You did not see Kayishema?"
9 The answer, "That leads me to say that
10 Kayishema was there was because there were some
11 people who saw him and said they saw him, but I
12 did not see him." So, on the 13th of May he
13 did not see Kayishema.

14

15 One understands better still the confusions I
16 was referring to yesterday because in reality
17 one notices that witnesses who report what they
18 were told are reporting only what people who
19 apparently saw only the vehicle told them.
20 This is important because these people did not
21 even see Kayishema, but they are saying that
22 they saw Kayishema's vehicle and, therefore, it
23 is concluded that Kayishema was seen.

24

25 With regard to the attack of 14 May, this

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1 witness is still on the hill, and he tells us
2 that the vehicle was coming from Kibuye and
3 that the prefect was in that vehicle, that he
4 came out of the vehicle. He was asked
5 questions concerning the attack, and here we
6 realize that the witness mixes up all the
7 dates, confuses all the dates. Even you,
8 Mr. President, you may have -- realizing that
9 the witness was confused, you asked him
10 questions for him to be more precise. And the
11 witness answered you, saying, "Excuse me. In
12 fact, I do not quite remember the date, but I
13 think it was 13 May."

14
15 We had spent many minutes or even hours for us
16 to come to the realization that this witness,
17 after having reaffirmed what happened on 13
18 May, finally told us that, well, he didn't
19 quite remember. The attack of the 14th, also,
20 and this is respect as well, he's no longer
21 quite certain of when it took place.

22
23 I will now move on to Witness X. I would like
24 to draw your attention to this witness who
25 talks of Gitwe. And as my colleague, Besnier,

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1 pointed out, Gitwe is not found in Bisesero.
2 This witness who said he was in Gitwe, how
3 could he know what was happening in Mugonero?
4 This witness said that every morning, every
5 day, there were attacks, and that every day all
6 these attacks started or were launched from
7 Mugonero, which apparently is the meeting point
8 for attacks. This already is difficult to
9 understand and to accept. And I think I accept
10 Mr. Besnier's explanations when he's talked
11 about this with regard to Ruzindana. But this
12 is even more difficult to understand with
13 regard to Kayishema, because one could not
14 understand Kayishema's reasons, if that were
15 the case, one would not understand why
16 Kayishema would leave from Kibuye and go to
17 Mugonero and then come back to Gitwe and even
18 later on move on to Gitwa or Muyira. This at
19 all is not the road. In fact, it's even the
20 opposite direction. And how can this witness
21 from his hill, which is at several kilometers
22 away, if you look at the map, how can he from
23 such a distance see from his observatory what
24 is happening, that is, Kayishema leaving Kibuye
25 going to Mugonero, he has a meeting in

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1 Mugonero, he comes back to Gitwe, and then goes
2 to Muyira? This is absolutely
3 incomprehensible, not only because of the fact
4 that he cannot see all of this from where he
5 is, but furthermore because of the distances
6 and also for reasons of mere coherence.

7
8 Certainly he tells us that the attacks started
9 on 17 April. Here again, we know that there
10 are enormous difficulties because the witness
11 told us that there was no attack at that time.
12 Once again, I recall Mr. Kayishema's alibi of
13 17 April. Of course, this witness is extremely
14 present. This is the least one can say. He
15 can be able to observe the comings and goings
16 from the top of the hill. He's there every day
17 and he tells us that Kayishema is there every
18 day. How can he see and know that Kayishema is
19 there every day? Well, you would understand
20 that he is in the brush still, always in the
21 brush, always nearby, and that from there he
22 can see Kayishema. He's always in the
23 appropriate brush at the appropriate moment at
24 the appropriate place, once again in this
25 case.

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So, he tells us that he spent approximately two weeks in the Gitwe hill and that he sought refuge in the brush and that he was wounded. If he was wounded and stayed in this brush for several days, one may accept. But if he says that for two months he went every day to go and see the assailants and, in particular, Kayishema, from his brush, this appears to me to be rather improbable.

Now, I think this testimony is not credible and he even went as far as saying that he could hear the orders given by Kayishema because he was very near them. Of course, he says in spite of everything, because I think it has some common sense for the credibility of his testimony, he says that sometimes he did not hear them. But nevertheless I think it is difficult to believe that this witness could be there for two months, always at the good place, at the appropriate place to see Kayishema coming, to hear him give orders. This does not appear to be credible.

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1 It is all the more less credible, as we will
2 see, that he does not see Kayishema in the
3 final analysis, he only sees the vehicle. And
4 it is a fact of seeing the vehicle from a
5 distance that enables him to say that the
6 prefect is there, present. The question was,
7 "Is it because you saw Kayishema's vehicle that
8 you concluded that Kayishema was there?" "Yes.
9 I saw him with my own eyes," says the witness.

10

11 And the question was put to him again, and he
12 repeated, "I also recognized the prefect's
13 vehicle at the site. I had seen it before at
14 the prefect's home. I know that vehicle," he
15 said. "It was a vehicle that belonged to the
16 prefecture because I used to see it."

17

18 Yes, but the difficulty -- well, we recognize a
19 vehicle because it has distinctive signs. When
20 you see it closely, you could identify its
21 registration number, its color, and generally
22 white is a common color.

23

24 At what distance? I would recall that we are
25 at several kilometers. How could you identify

1 a vehicle at a long distance even if you only
2 saw a white spot on it? So, I think in this
3 regard this witness cannot be considered
4 credible.

5

6 I will now move on to a witness we have already
7 seen, a witness in Muguba and whom we'll meet
8 later on in the cave. This witness, I am
9 considering him under Bisesero, because he's
10 found in Bisesero, the witness says, well, in
11 answer to the question, "Do you confirm that
12 you participated in a meeting in Kibuye?"

13 MR. PRESIDENT:

14 This witness now? Which witness?

15 MR. MORICEAU:

16 This is Witness W.

17

18 This witness in answer to a question which was
19 intended to make him say that he had already
20 seen Kayishema so as to justify that he could
21 recognize him, he said, "Yes, I was
22 participating in meetings."

23

24 And when he was asked the question again in a
25 more precise manner during the cross-

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1 examination, as we did with other witnesses,
2 "You participated in which meetings? When and
3 how?" Well, the witness told us, "I did not
4 participate in any meeting except that Boniface
5 talked to me about the meeting." Here you have
6 a witness who comes to tell us that he
7 recognized Kayishema physically and when he's
8 asked how he recognized him, he says it is
9 because he participated in some meeting in the
10 prefecture or the commune.

11
12 And when he's asked how and in what meeting he
13 participated, you realize that it is not him
14 who participated in the meeting but someone
15 else, someone who told him what happened at the
16 meeting, and that it is someone else who told
17 him that Kayishema was in that meeting.

18
19 This brings me back to what I was saying
20 yesterday. Yesterday I was recalling with
21 regard to Ruzindana's observations and
22 observations made by Trial Chamber I, this
23 hearsay takes all -- takes on all its meaning,
24 it is the other person who saw, it is the other
25 person who saw Kayishema in the meeting. And

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1 since the other person saw him, he also saw
2 him. And when he's asked to recognize
3 Kayishema, he recognizes him. This is
4 important and perfectly illustrates what I was
5 saying yesterday.

6
7 Two other points in this testimony which gave
8 us information on Bisesero and the dates of the
9 attack -- well, he says Kayishema stayed near
10 the vehicle, that he saw him near the vehicle,
11 once again at a considerable distance. The
12 witness tells us that Kayishema came every day
13 to Bisesero in the course of attacks, and he
14 tells us that -- I will tell you that the
15 primary role, the first role was played by
16 Kayishema. Here, in fact, one wonders what he
17 wanted to say, what the witness wanted to say.
18 The witness said that, "I saw him bury people
19 in a pit." One doesn't see the relationship
20 between the fact of seeing Kayishema with
21 burying people and the fact of his presence at
22 the attacks.

23
24 I will now move on to Witness HH whom we will
25 meet again later on. This is an interesting

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1 witness. It is a witness who was the subjects
2 of photographs, photograph 304 in particular.
3 He's interesting because this witness tries to
4 -- or, rather, this shows that this witness
5 found in the forest at the foot of the Muyira
6 hill that this witness probably saw Kayishema.
7 Now, what is interesting henceforth since the
8 witness is hidden in the forest through the
9 forest, a photograph is shot, the court would
10 note that -- the court would note that the --
11 well, did this photograph not distance the
12 subjects? The objective of the photograph
13 corresponds approximately to the human eye.
14 Therefore, where the photographer is found and
15 the witness seen from behind, one sees from a
16 very long distance, what would be Kayishema
17 with the assistance of someone else. Now, you
18 would see where the witness was at that point.
19 You would see that one can hardly identify the
20 person in question.

21
22 What seems interesting here also is that to
23 recognize Kayishema on that day, it would have
24 been necessary to have known him before. And
25 here we have a witness to whom we asked

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1 questions. He said he knew Kayishema, and we
2 asked him, "How did you know him?" He said,
3 "I saw him in meetings." This is the practical
4 and usual familiar answer. He was asked
5 questions about the meetings. And here we fell
6 into total confusion. He knew Kayishema for
7 having participated in two meetings. On which
8 date? He mentioned 1990, 1991. I recall that
9 Kayishema was prefect only since 3rd of July
10 1992.

11
12 So, he mentions that Kayishema chaired previous
13 meetings and he came back on track. Coming
14 back on track, he gives us dates that may
15 correspond. He tells us it was at a meeting
16 where the new burgomaster of Gishyita was being
17 introduced, this is something we have already
18 heard, and then another meeting of fathers.
19 The dates that in the final analysis are given
20 do not correspond, and he interchanged the
21 dates, the meetings, and this renders them
22 entirely impossible.

23

24 This point seems to me interesting because here
25 you have a witness who is alleged to have seen

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1 Kayishema twice. And in the final analysis did
2 he see him? One wonders. Maybe -- maybe he
3 saw him because someone else saw him, because
4 someone else participated in the meeting. And
5 not having participated in the meeting himself,
6 he creates confusion, trying to make a
7 recollection.

8
9 Even you, the judges, Judge Ostrovsky, asked
10 him a question in this regard. In order to
11 facilitate the question and to get rid of the
12 question he said, "I saw him very often when he
13 came to chair meetings in our commune." There
14 he set aside all the confusions that we had
15 heard with regard to your question, Your
16 Honour. He came back to square one, I wanted
17 to say.

18
19 Now, this witness -- this witness is in the
20 forest and allegedly saw Kayishema in the
21 forest, the forest found on the slopes of
22 Gitwa. And he tells us, "I told you the forest
23 in which I was, was not very dense. I could,
24 therefore, see what was happening. On the
25 contrary, the assailants did not see us." I

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1 remind you the witness later on told us that
2 the forest on the contrary on the slopes of
3 Muyira was dense and that he himself could not
4 see the road from there. So, you have two
5 opinions, two opinions on the density of this
6 forest, that is, from which you cannot see the
7 forest and this seems to be the reality
8 concerning the distance and what we were able
9 able to see on the photographs regarding the
10 density of this forest, and another opinion
11 which talks about a situation where the witness
12 finds himself in a situation where he alleges
13 to have seen everything.

14
15 Here again, what he says is contrary to the
16 fact that if he saw Kayishema in the forest,
17 this would suppose that Kayishema did not stay
18 on the road near the vehicle as the other
19 witnesses said.

20
21 The witness confirms that he saw the vehicle,
22 and this is contrary to what other testimonies
23 stated. He says, "I saw many vehicles, but I
24 could not recognize the vehicle in which he
25 arrived." Come on.

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"I saw him when he was very close to me, very close to the place where I was in the forest."

3

4

"At what distance?" "There was a distance."

5

6

This is an answer familiar to us, but from the courtroom point of view this is not abnormal.

7

8

The answer is interesting. He said, "There was a considerable distance, but it was not a

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10

considerable distance." So, it's a considerable distance, but it's not a

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considerable distance. So, what was it? This is surprising.

13

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Later on, we would know what he meant. He said

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16

it was twenty meters. So, he was twenty meters away, and this apparently enabled him to see

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Kayishema and to affirm that Kayishema was

19

shooting and that Kayishema climbed on the hill

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and that he saw him and that he was twenty

21

meters away.

22

23

This witness we could perceive it and you could

24

guess with what I have told you, we could

25

perceive his contradictions. This witness is

not credible. In his written statement, we

1 have annexed the written statements of his
2 testimonies of 14, 15, and 16. This witness
3 confirmed before your tribunal that Kayishema
4 was leaving the assailants that he shot, that
5 he climbed on the hill. This same witness had
6 answered during his statements that the Gitesi
7 group was led by prefect Kayishema, that he
8 recognized Kayishema himself. But during the
9 attacks of the Muyira hill, there were people
10 who came from Gitesi. So, I think that he was
11 among those persons.

12
13 When he was cross-examined, he said, "The
14 Gitesi group was directed or led by the
15 prefect. I recognized him myself." He's very
16 assertive here. Whereas, in his written
17 statement he said that on that day the most
18 senior officials were present, the officials I
19 recognized were leading the group mentioned.
20 And here he did not mention Kayishema as one of
21 those leading the attacks.

22
23 He simply stated that -- well, in his written
24 statement he stated that he saw Kayishema
25 leading the Gitesi group.

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1

2 And lastly --

3 MR. PRESIDENT:

4 Mr. Moriceau, what was that -- what was the
5 exhibit number of that statement, if you have
6 it?

7 MR. MORICEAU:

8 There are three, 14, 15, and 16.

9 MR. PRESIDENT:

10 Statements?

11 MR. MORICEAU:

12 Yes. Yes, that's correct.

13 MR. PRESIDENT:

14 Exhibit 14, you say, the first one?

15 MR. MORICEAU:

16 So, Exhibits 14, 15, and 16.

17 MR. PRESIDENT:

18 Thank you.

19 MR. MORICEAU:

20 Yes. Indeed during his testimony he said that
21 he thought Kayishema was leading the Giseti
22 group, but when he was asked a question on all
23 the assailants and the leadership of the
24 assailants, he did not mention Kayishema. You
25 could see this if you read the transcripts and

1 the contradictions of his testimony.

2

3 Now, with regard to the dates, and here I would
4 say that I can better understand this witness
5 who confuses the dates of meetings and the
6 years, because after having told us, talked to
7 us about the dates of the attacks, to the
8 investigator he specified, "Yes. I do not know
9 the exact date, but it was in the month of
10 May." In an answer closer to the facts to the
11 investigator who asked him the question -- who
12 asked him the dates of the attacks, he told
13 that investigator, "I do not remember." So, it
14 was in the month of May.

15

16 Now, when he is told -- when his recollection
17 came back, well, he said -- he was asked, "You
18 told the investigators that you did not
19 remember the dates. How do you explain that
20 you remember the dates today?" Well, he said
21 the question was not asked him. This is a
22 familiar answer.

23

24 He even goes further and states, "Perfectly I
25 remember the date, but I was not asked the

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1 question, so I didn't have to say the date."

2

3 Your Honours, you will see the questions asked
4 by the investigator. The investigator asked
5 him, and he did tell the investigator that he
6 did not remember the date. It is not that he
7 was not asked the question. He was, in fact,
8 asked the date when that happened. He did not
9 remember. But before the court he remembered
10 precisely the attacks of 13 and 14 May.

11

12 I will now move on to Witness EE. This
13 witness, Witness EE, gives us information that
14 contradicts what has been said by other
15 witnesses because he said there was great calm
16 in the month of May. He is a witness from
17 Muyira, Muyira hill, and I will refer you to a
18 certain number of improbabilities that my
19 learned colleague, Ferran, referred to
20 already. When he is asked who were the leaders
21 of the attacks, he said in answer, "There was a
22 burgomaster known as Kanisius (phonetic), and
23 the burgomaster of Gishyita." And he does not
24 mention Kayishema during his examination before
25 your tribunal.

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And, once again, he came here to remember and invoke what he saw. He had -- not to remember what he saw, but to state that Kayishema was there. When he was asked, "Did you see Kayishema?" unfortunately his answer was not that expected by the prosecutor. "I did not see Kayishema myself. I heard people say that he was present." And later on he says, "I did not see him personally." And the witness was in a location on the road. He said he was about twenty meters away from the road, close to the vehicles and he says, tells you that "I did not see Kayishema. I heard it said." Here is a witness for whom the distance of twenty meters that he indicates to us contradicts the assertions made by himself and other witnesses.

This is useful, a very important element in the contradictions in human testimony. He is just a few meters away from the road, and he says, "I did not see Kayishema."

Witness II, this witness indicated that he saw

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1 Kayishema only once. He had seen Kayishema
2 only once when -- during the commissioning of
3 the mayor of Gishyita. There is something
4 curious about this, rather strange about this
5 witness because he talks about the famous
6 meeting that held on the 13th or 14th of May.
7 And he said later there were about a hundred
8 assailants. And to explain that he saw
9 Kayishema, he said that he was close by. And
10 he went on to say, Your Honours, at page 107 of
11 his cross-examination, that he was within five
12 or ten meters of Kayishema. There were
13 hundreds of people around Kayishema, and he was
14 five meters away to assert that he saw him.
15 And he confirmed this in two pages of the
16 cross. He confirms this distance, and he said
17 that after the meeting in question Kayishema
18 took -- took his car away and left.

19
20 I must say that other witnesses who are
21 recounted, who narrated this scene, said that
22 Kayishema stayed on. And so, which one do we
23 believe? The ones who said that Kayishema went
24 up the hill, stayed on the spot, or those who
25 said that Kayishema left the place?

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There, again, this is very interesting. We have a witness who to justify that he saw my client says he saw him either early in the morning or early in the afternoon. So, he was, if I understand, going there every day for two months, sometimes in the morning, sometimes in the afternoon. How can this witness always see him? Because he was always there, always in the right place, always there at the right time, he claims, as you have heard. Yes, I continue to confirm. Were you there to see him? I remember that sometimes he would come in the morning, sometimes in the afternoon.

This is an extraordinary witness, and I think that effectively we would have liked the defence to have such witnesses who would have given such a testimony because I remember that sometimes the -- we tended to doubt the defence witnesses who are too close to the accused. And in the cross he confirmed that he did not change his location, he was a little below the road. I was hiding in a field just close by. I cannot estimate, but it was a place from

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1 which I could see him. And he was there. I
2 was in the bush quite close to the road, quite
3 close to the road.

4
5 So, for the 14th he says that he saw Kayishema
6 on that day, he was standing up, and that he
7 was just within a stone's throw from where he
8 was. That is not far off, just a few meters,
9 and that he was there and he was able to see
10 Kayishema fire upon the husband of his aunt.
11 And thereupon there is a whole story about the
12 background of what happened. He no longer
13 remembered the date. At one time it was from
14 the 14th April to 14th May. And at some other
15 time the distances are extremely close. And
16 what appears to be less and less credible is
17 when he asserts that it was Kayishema who fired
18 upon the husband of his aunt, there was a
19 multitude quite around. How could he that at
20 that time individualize and say it was the
21 bullet of Kayishema's gun? I think this
22 demonstrates the little credibility that should
23 be attached to this witness's testimony, who
24 amongst ten -- ten -- one hundred thousand
25 bullets that are fired by Kayishema.

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We now move on they Witness UU, and I want to make another remark about this witness who will appear at other occasions and who passed through Bisesero and asserted that he saw Kayishema once. He saw him, and I'm going to read it because it is quite strange. "I saw him once on the peak of Mbura. "And what was he doing at Mbura?" "He was sitting at the top of Mbura, and he was drinking beer. And he indicated the place where people were." I think that he is quite strange, a witness who saw Dr. Kayishema in Bisesero on a hill drinking beer. He did not see him in any case during an attack, and this is quite surprising.

I would now move on to Witness CC whom we are going to deal with again when we come to the grotto. He is the survivor of the grotto event. This one did not know Kayishema. He did not know him, and doesn't know him, and he heard that Kayishema's vehicle had left without the Interahamwe. That is how I knew, got to know that it was Kayishema. He heard that Kayishema's vehicle was going to leave without

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1 the Interahamwe. Therefore, it must be a very
2 large vehicle if all Interahamwe have to put in
3 as indicated. He did not know Kayishema and
4 the only thing he knew of Kayishema was his
5 car, which he confirmed several times during
6 the examination in chief and during the cross.
7 And when he was asked, "Now, this vehicle that
8 allowed you to know that it was Kayishema's
9 vehicle, therefore, that Kayishema was there,"
10 now he was incapable of saying what was the
11 vehicle color. "I did not notice -- I didn't
12 note." Well, at page 103 of the transcripts of
13 15 October, he said, "I knew it because his
14 vehicle was there," but he didn't know the
15 vehicle of Kayishema.

16
17 But he supposed this, of course, with the fact
18 that he heard. He said that by people who said
19 that they knew Kayishema. I think that those
20 people knew him and they were the people who
21 said that he was around.

22
23 Mr. President, Your Honours, you have now noted
24 a number of witnesses that we have dealt with
25 and the conformity of the hearsay evidence

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1 through, for instance, the vehicle without
2 mentioning the physical person. This witness
3 does not know -- without mentioning the
4 individual, this person does not know the
5 individual and he gives extremely false
6 information. Amongst them it was said --
7 amongst the assailants it was said there were
8 presidential guard elements, which is not
9 true. The attack of 20th April is in total
10 contradiction with the account given by other
11 witnesses who have said there was no attack on
12 that date. And I think that there again we
13 have to take with a grain of salt the statement
14 made by Witness CC.

15

16 He confused dates and between the 14th May and
17 the 14th of April because he said that the
18 major, the really outstanding attack on
19 Bisesero took place on the 14th of April, and
20 we know that is not so.

21

22 I will now move on to Witness MM. I would like
23 to remind you that this is the witness cited by
24 my learned colleague, Besnier, who told us
25 about the conditions in which they corroborated

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1 with other witnesses in the witness's house.
2 And I remind you that it was very difficult for
3 us to him to tell us the truth. This witness
4 was, therefore, at Jurwe, therefore, quite
5 close to Muyira. And he indicated that the
6 assaults started about four or five o'clock in
7 the morning -- in the night. That's the only
8 witness who memorized the fact that the attacks
9 of 13, 14 May took place at five o'clock in the
10 morning when it was still dark. He said he saw
11 Kayishema only once before the events,
12 therefore, to recognize him during the
13 installation ceremony of the burgomaster of
14 Gishyita. He said that Kayishema was not armed
15 and to convince us of the fact that Kayishema
16 was present and that he heard him give orders,
17 he said that, "He was quite close to me, but I
18 cannot say how many meters lay between us."
19 And once again we have a witness that said that
20 he was just quite close to Kayishema.
21
22 And in this regard there are contradictions
23 with regard -- with respect to the vehicle
24 because when he was asked, "Now, did you see
25 Dr. Kayishema arrive with soldiers by car?" He

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1 said, "Yes. They stopped on the road and I
2 immediately fled off." But he did not see
3 other vehicles. Here, again, is a witness who
4 apparently is quite close, who alleges to have
5 seen everything during the major attacks of 13
6 and 14 May, and he says he did not see other
7 vehicles. It's, therefore, a little surprising
8 on his part. He confirmed, by the way, that in
9 this connection he did not see Kayishema
10 carrying a weapon and that he had never seen
11 him carrying an arm or a gun, and that -- but
12 he was never able to say how many meters away
13 he was from Kayishema.

14
15 I will now move on to an extremely rapid
16 witness, because we're going to see him
17 elsewhere. That is Witness BB who did not know
18 Kayishema.

19 MR. PRESIDENT:

20 What witness?

21 MR. MORICEAU:

22 BB.

23 MR. PRESIDENT:

24 Yes, please.

25 MR. MORICEAU:

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1 So, Witness BB did not know Kayishema. He had
2 never seen him speak. And, again, it was other
3 people who told him that Kayishema was around.
4 That was a witness who was just on the road or
5 nearby to the point that he was able to hear
6 conversation. "I was hiding quite close to the
7 road." "How many times," the question was put
8 to him, "did you hear this conversation?" "I
9 heard it several times." This is quite strange
10 once more, witnesses who can come
11 systematically to within a few meters of their
12 assailants, and who do it on several occasions
13 at the risk of their lives, just to be able to
14 come here and assert that they heard what
15 Kayishema said, or what he allegedly said
16 without even knowing who the man was,
17 Kayishema.

18
19 I would now like to move on to Witness Z who
20 asserts there were daily attacks.

21 MR. PRESIDENT:

22 Unless Witness Z is not very long, this might
23 be an opportunity moment for us to stop for the
24 lunch break. And when we come back, you can
25 get started on this witness.

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1 MR. MORICEAU:

2 Yes, Mr. President.

3 MR. PRESIDENT:

4 Witness Z?

5 MR. MORICEAU:

6 Z, Mr. President.

7 MR. PRESIDENT:

8 Yes. Perhaps before we take the lunch break, I
9 wish to inform counsels that this afternoon we
10 may have an initial appearance. And if it
11 comes up, then we, in turn, the program that we
12 started at 5:00 p.m. So that we have -- we try
13 as much as possible to have the afternoon time
14 for the hearing of this case to continue.

15

16 I'm told there are a few things that have been
17 looked into, but should it be the case that the
18 hearing will go on, then we will take it up at
19 5:00 this afternoon.

20

21 Secondly, on Monday we will not have a hearing
22 because one of our -- one of the judges has a
23 commitment. So, we will resume our work on
24 Tuesday. I'm mentioning this in advance so
25 that all of us can program our work.

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We will otherwise adjourn these proceedings
till three o'clock this afternoon. Until three
o'clock these proceedings stand adjourned.

(Recess.)

(Pgs. 70-103 by S. Kohn, Reporter.)

1 MR. PRESIDENT:

2 Yes, the proceedings are resumed. We will
3 continue with the oral presentation of the
4 defence of Clement Kayishema.

5

6 Mr. Moriceau, you had just started talking about
7 Witness Z when we took the lunch break. You may
8 continue from there.

9 MR. MORICEAU:

10 Thank you, Mr. President. Thank you, your
11 Honours. Yes, indeed we will be examining
12 Witness Z, Witness Z who is someone who gave
13 evidence that contradicts the evidence of other
14 witnesses.

15

16 He asserted that attacks took place every day in
17 Bisesero. His assertions on assailants were
18 also contradictory because he went as far as
19 talking about the Presidential Guard to form
20 themselves in Bisesero and we know that
21 historically this is inaccurate.

22

23 This witness is interesting because he gives an
24 explanation, an explanation regarding what I
25 said yesterday on the psychological crowd.

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1 He said that these attacks were basically
2 organized by assailants who wanted to steal
3 cattle, who, therefore, did not accept to leave,
4 to leave without looting, and that, of course,
5 on that occasion there was fighting, there were
6 skirmishes which led, as we know, to deaths.

7
8 This witness tells us in his questioning that
9 the assailants wanted to steal cattle and that
10 they shared the cattle among themselves. He
11 repeats this moreover in his testimony of 14
12 October 1997. He also said that these
13 assailants came to loot harvest in -- or crops
14 in Bisesero.

15
16 In answer to a question that was put to him --
17 and it is quite interesting to note that once
18 again a witness asserts, the witness asserts
19 that Kayishema was on the site -- he said that,
20 "I saw Kayishema's vehicle" and when he was
21 asked more precise questions he said that, I
22 recognized him because he resembles members of
23 his families -- of his family. Sorry.

24
25 You would agree that to say that you know

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1 somebody or you recognize somebody on the basis
2 of his resemblance with members of his family is
3 surprising but this is what the witness said,
4 that he saw Kayishema on the site because he
5 resembles members of his family.

6
7 In fact, he does not know Kayishema. Neither
8 does he know Kayishema's vehicle, which,
9 according to him, enabled him to identify the
10 presence of Mr. Kayishema. When he was asked
11 the question, "Do you know Kayishema's vehicle?"
12 he answered, "No."

13
14 In addition, the witness also talks on what I
15 was discussing this morning, the distinguishing
16 symbols of the assailants depending on their
17 origin.

18
19 In this regard the witness said he was too far
20 to see but when he was urged on to give more
21 explanations we note that once again he was not
22 able -- since he was on the hill he was not from
23 that distance able to recognize the vehicles and
24 this enables us, therefore, to discard this
25 testimony because of the distance at which he

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1 was and, on the other hand, because since he did
2 not know Kayishema before the events he could
3 not -- he could only -- he could only identify
4 him because he claims he knew members of his
5 family.

6

7 I will now move on to Witness JJ who was on top
8 of the hill of Muyiro, Witness JJ.

9 MR. PRESIDENT:

10 JJ?

11 MR. MORICEAU:

12 Yes, that's correct, Mr. President.

13

14 This witness, when he was asked the important
15 question of -- as to whether he knew Dr.
16 Kayishema before 1994, he answered that he
17 participated in meetings, the usual meetings
18 that other witnesses talked to us about, but
19 when he was asked questions on the meetings he
20 was not able to give us any information.

21

22 He -- according to this witness, he saw
23 Kayishema only twice but, of course, the two
24 occasions were the 13th and 14th of May, 1994.
25 This witness undertakes or makes a

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1 demonstration of identification of the
2 assailants, their distinguishing marks.

3
4 This witness is particularly precise because he
5 goes as far as -- contrary to the case of other
6 witnesses whom we had here were incapable of
7 telling us the hours or the specific time, this
8 witness did not hesitate to tell us exactly the
9 minute when he saw when the assailants arrived;
10 that is, at 9:20.

11
12 Now, with regard to the distinguishing marks of
13 the assailants, it is difficult once again to
14 believe this witness because his testimony is
15 not coherent. He tells us that the assailants
16 came from far and wide, that they came from
17 various prefectures and communes, that he heard
18 Kayishema once again from a distance, a distance
19 that gives one the impression that their hearing
20 is very, very acute.

21
22 So he says that he saw Kayishema divide the
23 assailants in groups depending on their origin.
24 He said that some of the assailants came from
25 far away. And one hardly understands how this

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1 witness could see Kayishema divide the
2 assailants into groups at the time they had to
3 attack whereas it is assumed whereas in theory
4 the distinguishing marks or symbols of these
5 assailants would have been given them at the
6 time when they were leaving from their place of
7 residence.

8
9 The witness went on to tell us -- and here I do
10 not know on what basis he could be so
11 assertive. He went on to tell us that Kayishema
12 was transporting assailants from Ruhengeri and
13 Gisenyi.

14
15 How does he come about knowing this? He was
16 unable to tell us during the cross-examination.
17 This is an allegation which, according to him,
18 should not be the subject of doubt.

19
20 This witness, as I said, sees everything, hears
21 everything and he is so precise. In Page 123 of
22 the cross-examination he said it is Kayishema
23 who determined the uniforms that the assailants
24 had to wear in order to be able to distinguish
25 them and he said it was at 9:20.

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1 Mr. President, your Honours, this is the only
2 witness who gave us such precision as to time.
3 He even went as far as determining the time
4 frame from 9:05 to 9:20.

5

6 On 13 May he did not see Kayishema climb up the
7 hill and this is contrary -- I would like to
8 recall this is contrary to what the previous
9 witnesses said.

10

11 On the contrary, he saw Kayishema waiting near
12 the vehicles for several hours, static without
13 moving. At this point in time the witness is
14 near enough to hear the orders given by Dr.
15 Kayishema. Once again he is there, present to
16 see the soldiers surrounding Kayishema.

17

18 I would like to recall that some witnesses in
19 this regard did not tell us that there were
20 soldiers who remained still for several hours
21 near Kayishema. In this regard Witnesses FF --
22 Witness FF said that Kayishema stayed alone.
23 This enabled this witness moreover to identify
24 the bullet shot by Clement Kayishema.

25

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1 So where does this witness find himself? Where
2 is this witness? He is not where the others
3 are. He is always in the brush and always very
4 close to Clement Kayishema.

5

6 He was asked the question, "Where were you found
7 in relation to Clement Kayishema?" And he
8 answered, "I was hidden in a bush very close to
9 the assailants."

10

11 Now, the problem of distance, as I mentioned
12 yesterday -- the problem of distance, in my
13 opinion, is very essential with regard to
14 testimonies. Distances are important. When you
15 assert that from hundreds of meters you can
16 recognize someone's face, I would refer you once
17 again to the photographs shot of the site.

18

19 We can see that the road is far; the road can
20 hardly be distinguished. Maybe a few vehicles
21 can be seen or spot. But from such a distance
22 to recognize Clement Kayishema is indeed too
23 much.

24

25 Now, throughout the cross-examination of this

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1 witness, the cross-examination of this witness
2 will revolve around this issue of distance.
3 Sometimes he tells us that he is very close, in
4 a brush nearby, and then he tells -- on Page 44
5 of the cross-examination he says they were about
6 three hundred meters and in the
7 cross-examination he reduces the distance to one
8 hundred twenty meters, one hundred twenty meters
9 maybe. But how can he in a multitude of
10 thousands of assailants, as he said, how can he
11 once again recognize Clement Kayishema which as
12 no witness told us was not on scaffolding or the
13 roof of his house to talk to the assailants? It
14 is, therefore, materially impossible to see,
15 for him to have seen Kayishema.

16

17 Here again this witness is interesting. In
18 light of other testimonies that we heard, how
19 does he know that Kayishema is the organizer?
20 Well, simply because, according to him, he tells
21 us -- on Page 88 of the cross-examination, he
22 tells us that during these events Kayishema was
23 in Kibuye, he never left Kibuye. How does he
24 know that?

25

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1 Well, that remains a mystery. It is an
2 allegation once again which is of no importance
3 as regards credibility. Like other witnesses,
4 he deduces that if Clement Kayishema is a
5 prefect, then necessarily he must be the leader
6 of everything that is happening in his
7 prefecture. Therefore, he is the leader of the
8 assailants. This is a deduction which is not
9 reasonable, which is not serious.

10

11 Mr. President, your Honours, I have finished
12 with the witnesses of Bisesero.

13

14 I have examined separately the cave. Here we
15 have often talked of the cave. I would draw the
16 attention of the Tribunal to Prosecution Exhibit
17 304. This is a photograph -- 306, 306, sorry,
18 306.

19

20 This photograph is interesting because it shows
21 us the place where there is a general view,
22 where the cave is found, and we notice that
23 indeed there is some kind of empty space around
24 the grotto or cave. In fact, this cave or
25 grotto is a pit, a horizontal pit or hole, and

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1 around it, over an area of about ten meters or
2 hundreds of meters, there is some vegetation and
3 this would be of some importance later on.

4

5 Now, I was tackling the issue of the cave from a
6 slightly different angle. Rather than take the
7 witnesses one by one I will be taking them per
8 event. I will be taking the three essential
9 witnesses with regard to the cave.

10

11 First of all, to show you, to show you, in order
12 to show you the inconsistencies in the
13 testimonies of these three witnesses first with
14 regard to the date of the attack on the cave or
15 grotto, at the beginning of his testimony
16 Witness W tells us that, that at the beginning
17 of the month of May -- incidentally, Mr.
18 President, during that cross-examination you
19 asked a question. It would appear that there
20 was a clear difficulty for this witness to
21 determine the date. In fact, he does not recall
22 the date, but like some other witnesses as the
23 examination went on his recollection
24 resurfaced. That is quite surprising. And he
25 was now focusing not the beginning of May but,

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1 rather, the 23rd of May and once again he is
2 assertive. He says that the cave or grotto was
3 closed on the 23rd of May, cross-examination of
4 W 6 October 1997, Page 96.

5
6 This is important, Mr. President, your Honours,
7 because Witness HH, who is another witness, told
8 us that the attack at the cave -- and he gave us
9 a lot of details to which I will come back to
10 later -- that the cave attack took place when
11 the French troops of the Turquoise Operation
12 were already in Kibuye and we know that
13 historically the French arrived at the end of
14 June. So henceforth with regard to the date,
15 there is a serious problem of consistency with
16 regard to the testimony given by these two
17 witnesses.

18
19 Then later on and with regard precisely to the
20 precision, precision on this date for Witness
21 HH, Witness HH tells us again contradicting --
22 in the full contradiction he says that he heard
23 assailants say that it was necessary to take
24 care of the cave after having killed the Tutsis
25 around because Kayishema had asked the French

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1 for two more days, for two more days.

2

3 For what reason? For what reason? Well, the
4 reason apparently was to enable Kayishema to
5 exterminate those who were around the cave and
6 this once again appears hardly serious knowing
7 that it is hardly believable that the French
8 would have granted Kayishema two days in order
9 to carry out the extermination of the Tutsis
10 around the cave. This is in the
11 cross-examination of 16 February 1998, Page 90.

12

13 Now, the entry into the cave, what does it look
14 like? We have a photograph that was brought by
15 the investigators. Witness W gave us a
16 description which I would consider consistent.

17

18 On the contrary, HH is confused in his
19 explanations. He talks of one entrance, two
20 entrances to caves. In fact, we did not
21 understand anything and will not understand
22 anything in his explanations, explanations
23 regarding the same cave or pit.

24

25 As regards the presence of Kayishema, W, Witness

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1 W and HH contradict one another. Witness W says
2 Kayishema was present and that he shot and HH
3 says, no, Kayishema did not have a weapon and
4 did not shoot. According to W, the attack is
5 directed by Kayishema. Kayishema is alleged to
6 be very close to the pit, very close to the
7 cave. And according to HH, he was behaving like
8 a leader.

9
10 We would see that, first of all, considering the
11 configuration of the site, which we saw, indeed
12 if Kayishema is very close to the cave the
13 terrain is relatively flat or even but if there
14 are ten thousand assailants, as Witness HH tells
15 us, once again where is HH located? In order to
16 be able to see how could he recognize Kayishema
17 among ten thousand people?

18
19 I think from experience if you, if you are in a
20 crowd, whatever it be your location in that
21 crowd, if you lost sight of someone with whom
22 you were you could imagine how much time you
23 need to find that person. So imagine this
24 witness standing several hundreds of meters away
25 hidden in order not to be seen and who is yet

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1 able to identify Dr. Kayishema.

2

3 HH in his statement -- after precisions on this
4 recognition, HH stated that Kayishema was there
5 but that the question was not put to him and
6 when he was asked, Why did you not tell us what
7 you are telling us and in particular with
8 reference to the presence of Kayishema, indeed
9 in his written statement, testimony, he did not
10 say at that point in time Kayishema was at that
11 spot, at that place. Still usual familiar
12 answer, he said, "I gave him answers depending
13 on the questions that he put to me."

14

15 Mr. President, your Honours, I will make the
16 same observation that I have made on several
17 other occasions. Knowing that investigators
18 building a file against Kayishema, how can one
19 believe that when those investigators were
20 asking him a question on the leaders of the
21 assailants, how would the investigators not ask
22 about the presence of Kayishema?

23

24 The assailants -- HH tells us the assailants
25 came in a vehicle. Apparently HH has many

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1 things to tell us. But how did Kayishema come
2 in a vehicle? We don't know anything about that
3 because the cave, the cave in question is found
4 at a distance of twenty minutes' walk, twenty
5 minutes' walk from the nearest road, twenty
6 minutes' walk from the nearest road, and this,
7 in fact, for someone who is walking normally
8 without being too much in a hurry, this
9 represents approximately or a minimum of two
10 kilometers. How can he know, he who is hidden,
11 he who is there in order to oversee what is
12 happening or, rather, to watch what is
13 happening, how can he know that the assailants
14 came in a vehicle?

15
16 Here again we find ourselves in contradiction
17 regarding the facts. The facts, you know them.
18 These people sought refuge in the cave. They
19 were apparently able to go into the cave for
20 several days or even several weeks in order to
21 hide there.

22
23 There are inconsistencies and contradictions
24 between the testimony -- in the testimonies of
25 the witnesses. One of them, one of the

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1 witnesses tells us that the assailants, some of
2 whom were Hutus, some of them were Hutus of the
3 region knew perfectly the cave and that they
4 came on several occasions, that they shot into
5 the cave but that the bullets apparently because
6 of the shape of the cave did not hit the people
7 who had taken refuge in the cave and that,
8 therefore, it is only one day in the month of
9 June that they decided to come and exterminate
10 the people in the cave. And at this point there
11 is clear flagrant contradiction because Witness
12 W tells us that in the final analysis it is a
13 child, a child who apparently discovered the
14 existence of the cave and the child is alleged
15 to have shouted to the assailants that they are
16 there, or something like that, and that
17 immediately the assailants came and shot and in
18 the absence of any result from the acknowledged
19 shooting the idea of, the idea or, rather, the
20 assailants came up with the idea of sealing the
21 cave and putting fire on it so as to suffocate
22 the refugees in the cave. Therefore, here you
23 have a flagrant contradiction, a flagrant
24 contradiction because, on the one hand, you have
25 assailants who came several times before and, on

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1 the other hand, well, the assailants came after
2 this child called them and immediately put
3 themselves to the task and in the course of the
4 day they sealed the entrance into the cave.

5

6 So we can see a contradiction, a contradiction
7 especially as Witness CC, another witness, the
8 survivor, Witness CC has a different version of
9 the facts regarding this point.

10

11 Another contradiction concerning the three
12 witnesses, a number of -- is on the number of
13 refugees. For W there were one hundred people
14 in the cave. For Witness HH there were five
15 hundred people. For Witness CC there were two
16 hundred.

17

18 Now, HH, who is always very well informed, says
19 that every day there we counted them because
20 people came in the morning and went out in the
21 evening and since there was no lighting in the
22 cave, the cave is about one hundred or maybe
23 eighty meters long, it is dark inside the cave
24 and so that people should not be forgotten they
25 were counted.

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1 The difficulty about this counting theory is
2 that this is not narrated by Witness CC and
3 Witness CC should have known so perfectly
4 because he was one of those who sought refuge in
5 the cave.

6
7 As concerns the hour of the attack, once again
8 there is flagrant contradiction. One of them
9 tells us that the attack began at 9 o'clock.
10 Another one tells us that the attack began at
11 2:00 P.M. Moreover, HH tells us that he was
12 sent away by the assailants and that when he
13 returned in the afternoon at 2:00 P.M. that he
14 found the assailants with Kayishema as their
15 leader, Kayishema sitting on the grass in the
16 area, and that he was waiting. We do not know
17 what he may have been waiting for. And there
18 are some point of time, point in time both of
19 them tell us that the assailants stood up and
20 started looking for wood in order to put wood at
21 the entrance of the cave as we know.

22
23 The number of assailants once again is not the
24 same but this is detail. W tells us that there
25 were six thousand and HH tells us -- well,

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1 initially he does not remember the number of
2 assailants and he tells us after -- in the
3 course of additional information he tells us
4 that there were ten thousand assailants.

5
6 This is important. This is important. KK in
7 the final analysis, the question is was he there
8 or not. Of course, as far as we are concerned,
9 we are of the opinion that this is not serious.
10 The inconsistencies and improbabilities lead us
11 to say that Kayishema obviously was not there.

12
13 In this regard we have CC who is inside the cave
14 and who tells us that he was at the entrance to
15 the cave, very close, and I heard the assailants
16 speak, I heard the assailants say that they were
17 going to put the cave on fire, that they had to
18 hurry, and because they were saying that it was
19 necessary to hurry that he realized that
20 Kayishema was there.

21
22 Was Kayishema there near the cave to give
23 orders? And in that case we do not see why the
24 assailants would have made such statement,
25 statements heard by Witness CC.

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1 Considering the distances, the distances where
2 the two witnesses outside the cave are found, we
3 would not know anything about these distances in
4 precise manner.

5

6 Several questions, many questions were asked.
7 We heard the witness tell us that he was in a
8 bush sometimes at five minutes' walk, sometimes
9 at one hundred fifty meters, sometimes at
10 fifteen meters around a potato farm because he
11 tells us that there was a small potato farm that
12 he was running.

13

14 In short, there is no consistency regarding the
15 distances and this witness, if at all he was
16 there, was indeed very far. And do you imagine
17 that thousands of assailants found in such a
18 small space looking for firewood, do you think
19 such assailants, those assailants would not have
20 found him if the witness in question was only
21 ten or fifteen meters from the cave? I think
22 this, these elements once again enable us to
23 demonstrate the lack of credibility of the
24 testimony.

25

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1 We also have a fact which is contradictory
2 regarding the person who set the cave on fire.
3 According to Witness W, it is Kayishema himself,
4 yet he is the leader, but apparently he
5 personally put fire on the cave.

6
7 HH tells us that it is a certain Boniface, it is
8 a certain Boniface who put the cave on fire.
9 And immediately I remind you, I recall or remind
10 you, according to this witness, there was no --
11 these assailants were not sitting down or,
12 rather, they were sitting down. Waiting for
13 what we do not know.

14
15 Lastly and I think I will end with a
16 contradiction regarding the -- how the events
17 took place.

18
19 CC is found near the entrance and he witnessed
20 these events because he is the only survivor and
21 CC, when he tells us that fire was put on the
22 cave that he could no longer come out, that
23 people inside the cave were choking, he said
24 that he came out of the cave only three days
25 after.

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1 Now, in the face of this inconsistent --
2 inconsistency with what the other witnesses said
3 who state that once the assailants put the cave
4 on fire, that once they made sure that, once the
5 assailants made sure that the smoke was enough
6 to suffocate people that they left in the
7 evening. But CC tells us that he stayed for
8 three days whereas HH and W tell us, and in
9 particular W tell us, that immediately after the
10 departure of the assailants they went to take
11 away the grass and the wood that was burning as
12 well as the earth that was there to create
13 smoke, that they took this away. But CC tells
14 us and repeats and confirms -- in fact, this is
15 a considerable inconsistency. CC tells us that
16 he stayed in the cave for three days. He says
17 that, "I was the one in the cave and I know for
18 how long I stayed there."

19
20 Now, I will conclude on another inconsistency, a
21 curious inconsistency. When the prosecutor
22 asked W whether W knew the name of the child who
23 discovered the cave, apparently who alerted the
24 assailants, W gave the name of the survivor.

25

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1 Your Honours, in the face of these
2 inconsistencies regarding the cave, whom should
3 we believe? Whom can we believe? Do you have
4 enough elements, enough information to show that
5 Dr. Kayishema on that day was at the cave?

6
7 I affirm that you have no evidence that would
8 enable you to rely on any witness because,
9 considering their inconsistencies, you may be
10 compelled to base your decision on the testimony
11 of one of the witnesses, but yet all of them
12 have shown that their testimonies do not have
13 any probative value.

14
15 I will now move on to the third aspect of my
16 contribution, Mr. President. Because Bisesero
17 is a site but it is also part and parcel of the
18 general problems that were experienced by Kibuye
19 prefecture over the periods spanning April to
20 July 1994, within the framework of the defence
21 of alibi and within also the framework of the
22 defence against the charges brought against Dr.
23 Kayishema on his behavior and on what he is
24 alleged to have done during this period to
25 participate in the crimes he is charged with, we

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1 have at this time a certain number of documents
2 and you have heard witnesses, whether they were
3 expert witnesses or prosecution or defence
4 witnesses.

5

6 You heard Dr. Kayishema himself, who took the
7 witness box before your Tribunal. And, of
8 course, this part of my pleadings is linked to
9 general aspects rather than to the precise
10 matter of defence of alibi, yet the prosecution
11 would like to demonstrate that through the
12 institution of the prefecture Dr. Kayishema, Dr.
13 Clement Kayishema organized the extermination of
14 the Tutsi who were in Bisesero and in particular
15 by the facts that I have reminded you of, and I
16 think this is not disputed since the prosecutor,
17 the prosecution has not given any cite, any fact
18 or any other evidence besides, perhaps, a
19 certain kind of relationship between facts which
20 are built around no evidence at all,
21 everything, in fact, revolves around the problem
22 of Bisesero and the reorganization of the
23 prefecture of Kibuye.

24

25 Knowing that from the 27th of April 1994 we can

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1 consider that Kibuye prefecture was calmer or
2 even peaceful except, for instance, the area of
3 Bisesero and this is the problem of the
4 prosecution. The onus of proof lies with the
5 prosecution to demonstrate that there was a real
6 deployment of civil defence, that there was
7 double-talk, and the prosecutor wants to
8 convince you by offering or tendering a certain
9 number of documents, letters, telegrams,
10 messages, reports, which are very few indeed.
11 And I am now going to come back to what I said
12 yesterday about the paucity of the documents.
13 Whereas we are dealing with an organized
14 prefecture with an apparently solid
15 administration, the prosecutor gives us a few
16 documents. Of course, they are sorted and
17 because we realize that the reports that are
18 mentioned are not tendered here and
19 unfortunately Dr. Kayishema had left the
20 prefecture and we ourselves could not go to the
21 prefecture, since we did not go to the
22 prefecture we could not bring forth any
23 documents to counter the arguments of the
24 prosecutor.
25 Indeed through this civil defence they want to

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1 prove to us that it was used, that this civil
2 self-defence was used by Clement Kayishema as
3 prefect and that, you know, these documents that
4 are tendered are proof.

5

6 Civil defence in Rwanda, we have talked about it
7 like a concept which should be expounded upon in
8 1991, which surfaced in 1991 for the first time
9 in Rwanda, and we should remember, Mr.

10 President, your Honours, that this motion, this
11 concept of civil defence in 1991 concerned only
12 the north and the areas which in 1991 were
13 undergoing a sort of destabilization because of
14 foreign invasion.

15

16 There never had been any civil defence. There
17 was no -- there had never been any concept of
18 civil defence in Kibuye prior to April 1994.

19 But were there -- were there -- how was it --
20 how was this civil defence organized in 1994?
21 That is the question.

22

23 And contrary to what -- the claims made by
24 certain reports, although it might have been
25 indicated, and I think that these were the words

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1 of Professor Degni-Segui who recognized that
2 civil defence at the beginning functioned like
3 civil defence, in other words, made up of
4 civilians, essentially civilians within the
5 framework of the maintenance of law and order,
6 indeed these experts, and I think that Dr.
7 Guichaoua also indicated it, there were in other
8 areas some sort of civil defence organized, he
9 said, but it was never indicated -- it was never
10 said that this existed in Kibuye.

11
12 So civil defence, now, what does it originate
13 from if I may say so in Kibuye? The starting
14 point of civil defence is a letter which was
15 written by the prime minister; that is, the
16 initial letter of 27 April 1994.

17
18 Dr. Clement Kayishema was -- transmitted this
19 letter which organized civil protection. That
20 is, it is entitled, "Civil Protection" and which
21 gave a certain number of ideas for the
22 preparation and establishment of this civil
23 defence. This letter was forwarded to the
24 bourgmestres by Clement Kayishema, by a circular
25 of 30 April 1994.

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25

It is important, Mr. President, because since we are going to play on words I would say so, because there is going to be a play on the meaning of words, it is important to have a good picture of this as Dr. Kayishema very freely and openly reminded us during his hearing.

This civil protection, therefore, is born and it is executed through the letter, within the framework of the letter of 27 April.

First there is a letter of Kayishema to the bourgmestres in order precisely to restore peace within the framework of the implementation of the directives although this is not the very exact words. We will see this letter, this letter of the prime minister.

This letter, you saw it. It was discussed and it specified the conditions. They were discussed and you can -- you know and you were able to note that this letter is open. There is no double-talk or no double-speak, no coding, no coded language inside this letter which was

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1 forwarded, transmitted to the bourgmestres by
2 the prefect very naturally without any comments
3 whatsoever and so within very simple conditions
4 and it allowed very simple conditions for the
5 formation of this civil defence and it is
6 noteworthy that, as Dr. Kayishema indicated to
7 us, people of good behavior and credible people
8 and people who are not participating in the
9 killings are to be chosen and that is why the
10 bourgmestres apparently did not implement
11 initially the directives contained in that
12 letter.

13
14 Before I go on to the chronology and
15 particularly to enlighten matters as clearly as
16 possible within this prefecture, you have a
17 letter first that comes from the prosecutor of 5
18 May 1994 which took up a lot of our time and now
19 I'm going to tackle these words which seem to
20 have double meanings, the word work or travail.

21 MR. PRESIDENT:

22 Can you state the exhibit numbers for ease of
23 reference at a later stage of these documents if
24 you may.

25 MR. MORICEAU:

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1 I do so, Mr. President. I look for it. I will
2 look for them because I do not have it right
3 before me. I think it is 53.

4 MR. PRESIDENT:

5 It will be good for the transcripts which will
6 have to be examined at a later stage. 50 --

7 MR. MORICEAU:

8 53, 53.

9 MR. PRESIDENT:

10 Which one is that? One of May, the one of May?

11 MR. MORICEAU:

12 May, 5 May. There are many letters dated 5 May
13 1994, Mr. President. The exhibit is 53. This
14 letter took up a lot of our time since it
15 contained the word travail, work, which was
16 interpreted by the prosecution to mean in -- to
17 mean to kill in 1994.

18

19 I am obliged to say that this letter indeed in
20 the final analysis did not refer to that at all
21 and that a prosecution witness questioned on the
22 meaning that he gave to that letter, Witness R
23 of 1st October 1997 answered as follows and we
24 know, of course, about the -- that this witness
25 is protected but we know that he is somebody who

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1 knows what he is talking about.

2

3 In Rwanda when they talk about the term kurura
4 they meant kill, work could mean kill especially
5 when it was -- when it meant killing Tutsi. It
6 had become almost a customary practice. The
7 people understood it to mean that but I do not
8 interpret the terms used in this letter in this
9 manner.

10

11 This is a prosecution witness who questioned on
12 several repeatedly, and I remember that Judge
13 Ostrovsky also put questions to him, confirmed
14 that in that letter they were talking indeed
15 about work because precisely within the
16 prefecture of Kibuye after the bloody events of
17 April there were a lot of things to be redone,
18 there was a lot of work to be done and work to
19 be -- to ensure that people could have food to
20 eat so that the prefecture could be brought
21 back -- so that there could be some renovation
22 done within the prefecture, things that were
23 broken down and so on and so forth. And we are
24 going to see later that this concerned a lot of
25 things, especially the public services that have

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1 been interrupted by the events.

2

3 Then we would move on chronologically to the
4 meeting of 10 May and this is important because
5 this is the direct path to the defence of alibi
6 about the presence on the site of Dr.

7 Kayishema. On the 10th of May the new prefects
8 who was appointed arrived in Kibuye and they
9 were presented to the people on the 13th of --
10 13 May 1994. This is confirmed, of course, by
11 the logical unfolding of facts.

12

13 The subprefects arrived. They were new. Dr.
14 Kayishema even explained that some of them did
15 not have their identity papers. They had to
16 assume their duties, which they did, on the 11th
17 of May and on 13 of May they had to be obviously
18 presented naturally to the people. This also is
19 seen in the diary which we have at page -- on
20 the date of 13 May and you will see that in the
21 diary the meeting of 10 May is -- the arrival of
22 10 May is indicated, the assumption of duty by
23 the subprefects is indicated on the 11th of May,
24 and on the 13th of May there is a presentation
25 of these subprefects to the people.

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1

2

How then can Dr. Kayishema be -- could Dr.

3

Kayishema be on the 13th of May at Muyiro,

4

kilometers away, as some witnesses said who

5

thought they saw him that day?

6

7

But you also have the testimony of Witness DP.

8

Witness DP says to us -- and everybody knows it

9

here DP is the spouse of Dr. Kayishema. She

10

said that there was a schedule that Dr.

11

Kayishema had for that day with nothing

12

extraordinary, a routine schedule.

13

14

Dr. Kayishema had the habit of going to his

15

workplace, in the morning driving his wife to

16

her place of work about fifteen minutes away

17

from their place of abode, and Mrs. Kayishema

18

tells us that, according to Rwandese law, a

19

woman who has just had a child has sometime

20

within the day to breast-feed that child and that

21

breast-feeding within the framework of her work,

22

of Mrs. Kayishema's, was done at the end of the

23

morning, toward the end of the morning, and that

24

that day, as often, Dr. Kayishema went to pick

25

up his wife about 11 o'clock before going back

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1 home to have lunch.

2

3 This is confirmed by witnesses. This is a
4 habit. And in this connection I think that the
5 alibi of Dr. Kayishema is as solid as a rock
6 because many elements, much, many elements in
7 the case file allow us to confirm that on the
8 13th of May he did -- he could not, he did not
9 have the time nor the means to go, to travel to
10 Muyiro, Muyiro as you have been told a while
11 ago, which is several kilometers away to -- he
12 could not go there and come back and much less
13 still participate in the killings.

14

15 Therefore, therein we have a perfectly
16 established alibi, perfectly established by
17 these elements, one, historical by the fact that
18 there is no contestation of the fact that the
19 subprefects who have presented on that day, not
20 contested by the fact that the diary mentions
21 the arrival of these subprefects and the
22 testimony given by Mrs. Kayishema himself.

23

24 Now, with regard to May 14, another day of
25 killing when Dr. Kayishema allegedly was at

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1 Muyiro, we should remember that on that day
2 there was a prefectorial security council that
3 was supposed to be held together in the presence
4 of the minister of defence and I would like to
5 say here and sustain, maintain this, that these
6 are elements -- this is information that
7 solidifies the alibi of Dr. Kayishema and to go
8 beyond simple alibi in regard to the killings of
9 Muyiro during this meeting with the minister of
10 defence it was asked -- additional forces were
11 requested in light of the serious problems that
12 were presented by the region -- by Kibuye area
13 and particularly by the Bisesero area.

14
15 Now we move on to another exhibit, 337, another
16 exhibit which is 337. It is a document dated 5
17 May once more 1994 and this one is a letter
18 addressed by Dr. Kayishema to the minister of
19 the interior.

20
21 This letter, it seems to me, is very interesting
22 because when we read it and when -- if we do not
23 interpret it with the double meaning that the
24 prosecutor would like to attribute to it, it
25 indeed, it indeed narrates exactly the situation

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1 and in no way can it be given two meanings. It
2 tells us that calm had been virtually restored
3 in Kibuye prefecture since 5 April and that
4 there was still a small area of insecurity
5 within the Bisesero area lying in the border
6 between Gisovu and Gishyita communes.

7
8 This letter is a kind of report of what is
9 happening from 5 -- by the 5th of May 1994 in
10 the prefecture and it is interesting because it
11 reminds us of the fact that there were state
12 services, prefectorial services that could not
13 resume work on either because the personnel,
14 some members of personnel are dead, had
15 disappeared or because of other difficulties and
16 this ties up with the contents of the letter of
17 5 May which I have just mentioned wherein the
18 counsel wanted to revive the machinery so as to
19 revive thereby the administrative and economic
20 mechanism, and without having to look for hidden
21 meanings it tells us very simply that there had
22 been a resurgence of climate, of settlement of
23 scores among the people and because some people
24 were taking advantage of this climate of
25 insecurity to renew old disputes and it also

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1 said that there was difficulties in supervision
2 because it did not -- the prefecture did not
3 have the necessary gendarmes to do so.

4
5 And it is interesting to see the state of this
6 prefecture as depicted in this letter. It says
7 that the legal department was issuing, was
8 issuing orders to recuperate the public property
9 and would know lastly because some witnesses did
10 come here to say so, that the state servant
11 or -- yes, state civil servants had not been
12 paid and there was also a shortage of fuel. Of
13 course, this did not help problems of
14 communication.

15
16 Your Honours, I think this document is clear.
17 It does not have any hidden meanings and it does
18 not at no point whatsoever make mention of
19 political, military, or whatever kind of
20 activity that might allow one to think that
21 there could have been some intentions or some
22 kind of report sent by Dr. Kayishema to the
23 minister of the interior on some kind of
24 derailment of the civil defence.

25 We will now move on to the 16th -- to May 16

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1 when we have the --

2 MR. PRESIDENT:

3 Mr. Moriceau, perhaps we will stop here. We
4 will take a twenty minutes' break, come back at
5 4:20, go on to 5:00, and then as it was
6 indicated this afternoon we adjourn and take up
7 another matter which is supposed to start at
8 5:00 P.M.

9

10 So until 4:20 these proceedings stand
11 adjourned.

12 (Recess was taken at 1600.)

13 (Pages 104-142 reported by M. Young.)

14

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1 (Recess)

2 MR. PRESIDENT:

3 Yes, Mr. Moriceau, you may now continue.

4 MR. MORICEAU:

5 Thank you, Mr. President.

6 I was talking about the interim president
7 of the Republic, the visit of 16 May,
8 1994. On that occasion the discussion
9 was on the thanks which, according to the
10 prosecution, gave the impression that the
11 thanks came from good activity, that the
12 thanks were intended for the good
13 activities, the good acts of Mr.
14 Kayishema concerning the killings. In
15 reality, Dr. Kayishema explained to you
16 that the thanks were purely protocol and
17 that in this connection the president of
18 the Republic said that the pacification,
19 the peace operation, which was taken root
20 over the last several weeks in Kibuye,
21 was effective except in the case of
22 Bisesero.
23 In this regard, as far as Bisesero was
24 concerned, at the time, the area of
25 Bisesero still remained a problem area on

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1 16 of May, and Kayishema, I believe in
2 his testimony, did not hide the
3 difficulties that he faced in carrying
4 out pacification or peace operation to
5 ensure that the difficulties in Bisesero
6 were brought to an end.
7 He indicated that they were able, to us,
8 the Tutsis were still available but they
9 were hiding. Kayishema confirmed that
10 there were many evil doers, many cases of
11 looting, that there were problems of
12 misunderstanding between the Hutus and
13 Tutsis in amongst family members that
14 there were cases of reprisals and this is
15 confirmed by a number of witnesses,
16 Witness DV, DL and DN. These reprisals
17 were inevitable after the events that
18 took place in Kibuye. They were also
19 inevitable because the situation in
20 Bisesero had become more radical, because
21 Tutsis had taken refuge in Bisesero. By
22 the same token, because of these
23 misunderstandings, the Hutus living in
24 Bisesero had been excluded. In fact
25 there were many farmers living in

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1 Bisesero, these farmers had been
2 expelled, they wanted to come in order to
3 repossess their property.

4 Certainly this situation, certainly this
5 situation increased skirmishes, increased
6 conflicts, and therefore the maintenance
7 of crises situation that was particularly
8 serious, as we know.

9 Dr. Kayishema did not refute the fact
10 that he received information on this
11 permanent and persistent attacks in this
12 region, particularly information
13 regarding the area of Gisovu and
14 Gishyita.

15 Kayishema could not bring peace to this
16 region at that moment, he was not able to
17 restore calm to the area.

18 We should not forget, and I restate the
19 point, I restate the point, that over and
20 above local problems, problems of,
21 problems between neighborhoods, problems
22 of looting and problems of ethnicity.

23 There were difficulties faced by
24 displaced persons.

25 Do not forget that there was a

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1 considerable influx of displaced persons,
2 people displaced as a result of war and
3 who sought refuge in Kibuye and more
4 particularly in Bisesero.
5 Such a situation could not, as we'll see
6 later on, such a situation could not but
7 lead to an increase of the crises,
8 thousands and thousands of people, in
9 fact about one million people are said to
10 have passed through this region and these
11 people had to feed, had to have food, and
12 we know in this regard that in May, 1994,
13 harvest, the harvest was not good and the
14 harvest was stolen and in the final
15 analysis you didn't have much food to
16 feed these tens of thousands of people
17 who were passing through this
18 prefecture.
19 That situation, for vital reasons, could
20 not, as we said, but aggravate this
21 tension in the area at that moment.
22 It is at this time that the letter from
23 the minister of interior arrived, a
24 letter of 27 May, 25 May, 1994,
25 Prosecution Exhibit 54.

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1 This letter is a letter, it's a long
2 letter, a long letter which comprises on,
3 from the minister, which comprises
4 directives from the minister, the
5 minister of the interior, directives
6 relating to civil defence.

7 This letter, in its preamble, directly
8 refers to the letter which I quoted
9 earlier on, the letter of 27 April, 1994,
10 and the letter from the minister of the
11 interior, it's intended to be the
12 implementation of the prime minister's
13 directives concerning the self
14 organization of civil defence. This
15 letter comprises a number of chapters
16 which, according to the minister of
17 interior, had to be implemented in order
18 to enable the civil defence operation to
19 be organized.

20 This letter has been the subject of a lot
21 of commentaries during the questioning of
22 Mr. Kayishema and I think these comments
23 should be linked to the realities of the
24 text and, once again, we should not read
25 in the text what it does not say.

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1 What we know is that this document
2 comprises a number of conditions or many
3 conditions regarding the implementation
4 of the civil defence operation.
5 The directive from the minister of the
6 interior were not implemented and Dr.
7 Kayishema told you this, he affirmed this
8 and in no manner, whatsoever, did the
9 prosecutor prove that the specific
10 provisions, which he interpreted, were
11 implemented.
12 In fact, the letter of 25 was intended to
13 give practical guidelines on civil
14 defence and it comprised contradictory,
15 contradictory information, information
16 that was not the same as the letter of 27
17 April.
18 Furthermore it enunciated principals
19 regarding, regarding the implementation
20 of the civil defence and Dr. Kayishema
21 told you that those conditions could not
22 or should not have been implemented,
23 because they could have aggravated the
24 situation.
25 Dr. Kayishema told you that the

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1 directives were a direct or were intended
2 for the prefects and that as far as he
3 was concerned he did not implement the
4 directive because it was not applicable
5 and we're going to see why.

6 And also because the directive could not
7 be applied because some chapters lacked
8 clarity and some instructions were
9 lacking, the instructions never came.
10 Indeed, there were self ambiguities in
11 the letter and the prosecutor did point
12 them out, ambiguities, he pointed them
13 out, and submitted them against
14 Kayishema's defence.

15 We should know that Dr. Kayishema did not
16 decide on his own not to execute the
17 directive. The security council of the
18 prefecture of Kibuye refused to implement
19 the measures contained in the directive.
20 Indeed, it was necessary to make an
21 assessment of the local authorities and
22 Dr. Kayishema told you that he was aware,
23 Dr. Kayishema told you that he was aware
24 of the fact that in the assessment of
25 these local authorities and their

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1 identification of the same authorities
2 there were serious difficulties in that
3 some of the authorities in question could
4 pose some problems.

5 In fact, Dr. Kayishema told you that he
6 was not sure, he was not sure of the
7 cooperation of some local authorities.
8 He was all the more less sure as he was
9 going to Gisovu where, at that time, the
10 situation was difficult.

11 Dr. Kayishema says on page 79 of his
12 testimony that he was not able to obtain
13 information that should have enabled him
14 to take a decision, I would say an
15 appropriate decision.

16 And we learn, on the other hand, that
17 this letter of 27th May, that some
18 bourgmestres obtained this letter
19 fraudulently, as Dr. Kayishema says in
20 his testimony.

21 Dr. Kayishema was then aware that if the
22 directive, as such, were implemented, it
23 would be disastrous, it will lead to a
24 disastrous situation because it would
25 make it possible for people to be armed

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1 and thus for the situation to become, to
2 be aggravated.

3 Dr. Kayishema explained that the concept
4 of security, then, which concerned civil
5 defence, was a whole and that civil
6 defence mechanism could not be set up
7 with civilians who could not be
8 controlled without military support for
9 training and to harness all of this.

10 Dr. Kayishema clearly says, in answer to
11 questions put to him by the prosecution,
12 Dr. Kayishema demonstrate, tries to
13 demonstrate that through the
14 implementation of this directive, it was
15 envisaged that a considerable number of
16 soldiers would be brought in for
17 guidance, that the soldiers will be
18 there, a military presence was
19 necessary.

20 Dr. Kayishema confirmed what's happened
21 and I think unfolding of events supports
22 this. The contribution of soldiers and
23 gendarmes was not available to allow for
24 this guidance to ensure that civilians
25 would not do just anything and that the

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1 training will not go off target, off the
2 mark.

3 Dr. Kayishema told us that he could not
4 launch this civil defence operation
5 unless there was the necessary support,
6 necessary guidance in order to avoid new
7 cases of violence by the soldiers.

8 I think this was an answer to a question
9 during the cross-examination, he stated
10 that it was not, the idea was not to
11 militarize, as some people thought, it
12 was not the idea of bringing in an armed
13 force in order to exterminate the people
14 of Bisesero.

15 Training sessions did not take place
16 because there were no soldiers to carry
17 out the training and the training could
18 be carried out only by soldiers who knew
19 how to manipulate the arms.

20 He affirmed this, he said the training
21 didn't take place, it could not have
22 taken place and nothing shows the
23 contrary.

24 And why, Dr. Kayishema provides the
25 answer. He says that the effects of a

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1 disaster of April had been seen and that
2 under such circumstances trying to give
3 arms to any civilian without having the
4 certainty, the assurance the civilians to
5 whom weapons were going to be given were
6 indeed motivated by good intentions, that
7 such a situation would be-- amount to a
8 considerable risk he did not want to take
9 the risk and that is why when he realized
10 that some bourgmestres had, on the basis
11 of this directive, set up civil defence,
12 a doubtful civil defence, which, indeed,
13 could lead to undesirable consequences.
14 Dr. Kayishema took the initiative of
15 preventing the bourgmestres from setting
16 up the civil defence operation or at
17 least implementing the directive from the
18 minister of the interior.
19 No further instruction came to supplement
20 the directive. In this connection you
21 would note and in regard to the questions
22 that were asked, you would note that
23 there was no intelligence service in the
24 prefecture of Kibuye. There was no
25 network, nothing had been done in Kibuye

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1 along these lines and Dr. Kayishema
2 confirmed this.
3 There was an important point in this
4 letter and that was pointed out by the
5 prosecution and the point is that at some
6 moment there was talk of an ideology to
7 be followed.
8 We affirm, and the prosecution has not
9 provided any counter evidence, we affirm
10 that there was no instruction regarding
11 any ideology to be followed and to be
12 implemented.
13 The prosecution tried to link this so as
14 to prove the dual meaning of this letter,
15 the letter from the minister of the
16 interior. According to the prosecution
17 the letter was, the directive in the
18 letter was implemented by the prefet. It
19 has never been proven here, it has never
20 been proven here by the prosecution, that
21 was ideological training, ideological
22 guidance and any specific ideological
23 guidance concerning the extermination of
24 Tutsis in Kibuye or in Bisesero and, in
25 particular, in the context of activities

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1 organized or coordinated by the prefet.
2 Now this brings us to the agenda 31 May,
3 1994, visit of the minister of justice,
4 visit of the minister of justice. In
5 this regard I would ascribe to what Mr.
6 Ferran said yesterday, how can Kayishema
7 be reproached for the poor functioning of
8 justice and legal or judicial organs, he
9 was not in charge of justice or judicial
10 organs. He could not do anything about
11 them. He could not have any serious
12 impact on judicial activities.
13 It is obvious that there were cases of
14 arrest but it is also clear that
15 convictions, penalties were not meted out
16 rapidly and under proper conditions and
17 this is due to the fact that judicial
18 activities in Kibuye had come to a
19 complete standstill and we've had
20 evidence to this effect, evidence given
21 by defence witness, which, as you recall,
22 was working closely with the judiciary.
23 He said that he was not able to go back
24 to his work.
25 Move on to Prosecution Exhibit 340 of 2

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1 June, 1994, this is a message from the
2 Prefet Kayishema to the ministry of the
3 interior. This letter, once again,
4 doesn't have a dual meaning, cannot be
5 interpreted differently.

6 I think this message, this message
7 describes the situation, which is a
8 disturbing situation. Indeed there are
9 continuous attacks, we are told by the
10 prefet, attacks directed against the
11 goods transport, the prefet talks about
12 many displaced persons who caused several
13 problems, the settlement of political
14 scores and various rumors, nothing of
15 this refers to any form of dual activity
16 or an activity which could be interpreted
17 variously, as the prosecution claim
18 purports to prove.

19 In fact this letter shows the, well, we
20 are far away from the interethnic
21 problem, but much closer to looting and
22 banditry, the population comprising
23 mainly bandits, they wanted to have loot
24 and these bandits did not hesitate to
25 attack Kayishema, himself, by being

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1 violent towards him.

2 On 2 June, 1994, following this message,

3 a message in which Dr. Kayishema is

4 asking for more forces, since the

5 situation was becoming more grievous,

6 more serious, because of displaced

7 persons and because the attacks in

8 Bisesero were not abetting Dr. Kayishema

9 asked for more soldiers in order to carry

10 out the protection of civilians.

11 We should not also forget. When we are

12 talking about displaced persons, that

13 among these displaced persons there were

14 many reserve soldiers who therefore know

15 how to use weapons who probably even kept

16 some weapons with them and who were

17 attacking. Moreover, Mr. President, your

18 Honours, in a number of cases, as I said

19 yesterday, there was confusion, some

20 were, some witnesses felt that these

21 soldiers were regular soldiers whereas

22 they were -- people had deserted the

23 armies, they were fugitives.

24 On this occasion we go back to the

25 unfolding of the historical events. This

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1 is the beginning, apparently, of the
2 renewal or the rebirth of the settlement
3 of political scores.
4 The situation would become more and more
5 difficult in this regard because we
6 should recall the provisional government,
7 at the end of June, was coming to the end
8 of its mandate and the political campaign
9 was going to resume in full swing. Once
10 again, this aggravated the situation.
11 With regard to the agenda, the prosecutor
12 mentioned that the meeting with the
13 minister of the interior concerning civil
14 defence, but the meeting was canceled and
15 it was requested that all the meetings,
16 which had taken place during that lapse
17 of time and which were mentioned in the
18 agenda, did, indeed, take place, that
19 they were held by the prefet.
20 Certainly Dr. Kayishema answered that all
21 the meetings took place under his
22 chairmanship. I think this appears
23 obvious in this time of crises.
24 This brings me to a telegram, an
25 important telegram, because the telegram,

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1 during your hearing, led to considerable
2 difficulties, difficulties regarding the
3 terms used.

4 Exhibit 294. This is a telegram of 12th
5 June, 1994. I take the sentence which
6 obviously made it possible which enabled
7 the prosecution to give a different
8 meaning.

9 "For security of Bisesero like that of
10 Gishyita the population of the region is
11 determined to scour the area in the
12 context of civil defence operation" and
13 the writer continues that "in the context
14 of this operation a number of weapons
15 would be necessary".

16 Now this document, one of the rare
17 documents submitted by the prosecution,
18 enabled the latter to invent a wholesale
19 strategy or strategy to derail the civil
20 defence operation.

21 First of all using the word scouring or
22 ratissage which led to considerable
23 translation difficulties here and also
24 with regard to the expression in the
25 context of civil defence, dans le cadre

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1 de la defence civile in French.

2 We annex to the defence brief, annex
3 extracts from three French dictionaries
4 on the word ratissage in French. These
5 dictionaries are reference dictionaries
6 and each of the dictionaries tells you
7 that the word ratissage is a term which,
8 indeed, is used by soldiers. This does
9 not mean cleaning, because the English
10 translation apparently used the word
11 cleaning. Clean up or cleaning is, clean
12 up is not the translation, but in combing
13 one can clean up, but it is not in the
14 sense of total eradication or cleaning
15 up.

16 The meaning given to the military term,
17 and you will see it in the annex to the
18 brief which you have, Mr. President, your
19 Honours. The translation of ratissage,
20 the meaning of the word ratissage, in
21 French, I will cite it to you, Mr.
22 President, we have the Petit Le Robert
23 dictionary that indicates in military
24 term in the field that means methodically
25 search or comb.

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1 Hachette French language, Hachette
2 dictionary says the same thing about the
3 military meaning is to explore,
4 minutiously, an area with a fine tooth
5 comb by the military or the police.
6 On the Larousse Encyclopedia says that
7 the term means to pursue and capture
8 through methodical search of an area of
9 infiltrators in that area.
10 And this should be situated in this
11 context.
12 The context is to go and recuperate the
13 arms, which are the source of
14 difficulties in Bisesero.
15 That is the problem.
16 Ratissage, comb, means this is a image --
17 this means to use a rake, you know, to
18 use imagery from gardening. This is a
19 rake is an instrument that is used for
20 collecting leaves.
21 In the image of rake, it is not combing
22 or cleaning with a sponge, and not with a
23 broom, either, this is searching an area
24 in order to recuperate, to retrieve arms,
25 in order to ensure that attacks do not

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1 continue.

2 MR. PRESIDENT:

3 That's the only meaning of that word, or
4 your, you're saying interpretation of
5 that word?

6 MR. MORICEAU:

7 Quite so Mr. President.

8 MR. PRESIDENT:

9 What is it, what is the meaning or that
10 is in the context of military terms?

11 MR. MORICEAU:

12 No, the word ratissage, Mr. President,
13 has a real meaning. It's used in
14 gardening and it has a figurative
15 meaning. The figurative meaning is to
16 search with precision, search, look
17 everywhere, turn upside down, leave no
18 stone untouched, unturned, but precisely,
19 in this context, as explained to you by
20 Mr. Kayishema, the aim was not to kill
21 all in evidence of Bisesero, the aim was
22 to go to Bisesero with enough soldiers or
23 military force to look for arms. But
24 because of the numbers, do not forget
25 this, of people in Bisesero, because of

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1 this influx of displaced persons,
2 personnel was needed. But you have
3 another part of this, a second part of
4 this telegram. There was -- also they
5 were lending the wrong intention to the
6 meaning. They were misinterpreting the
7 meaning.

8 MR. PRESIDENT:

9 Who were misinterpreting?

10 MR. MORICEAU:

11 In the telegram, the prosecution wanted
12 to demonstrate, by this telegram, that,
13 in fact, there were military forces, they
14 were going to completely eradicate, no
15 more, no less, the region of the Bisesero
16 area and they add to this the derailment
17 of the operation by playing on the words
18 within the framework of civil defence and
19 I have read the transcript to you. We
20 have here several pages, according to
21 which, which show -- in which it was
22 specified that in French, within the
23 framework of means in connection with, in
24 relation, but the term does not mean with
25 the objective of or in order to.

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1 MR. PRESIDENT:

2 Just a minute. We understand it might
3 not mean that, but at least I'm trying to
4 understand is what is the ordinary
5 meaning of that word, because I recall we
6 were given some meaning, why is it over
7 strengthened, if that is the contention you
8 are giving, to that word, that's
9 different but differences can be made
10 between a factual setting and what you
11 would like to invite the trial chamber to
12 consider and probably hold.
13 These are two different things, you see,
14 so let us get this clear and I think, I'm
15 raising this because I think it is
16 important in our submission, which we are
17 following very closely, that where the
18 case is one of interpretation, where the
19 case is one of contention that from the
20 point of view of the defence or the
21 prosecution this is the position, that's
22 all right.
23 But there should be, that's okay, but
24 there should be a clear difference
25 between the factual setting from the

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1 evidential aspect, that is important,
2 because in the whole part the letter
3 states. Just as I drew your attention
4 yesterday, Mr. Moriceau, when you were
5 talking about somebody, doctor, who is
6 this, Dr. Ruzindana. For sure Dr.
7 Ruzindana is not a witness in this case
8 nor is his evidence, for example. I'm
9 just giving you an illustration. So you
10 can make reference, perhaps, by
11 illustration but you must be clear to
12 state that this man is not a witness,
13 there's no evidence of this kind. He
14 hasn't given evidence before this trial
15 chamber so that context must be
16 understood.
17 Any way Judge Ostrovsky is a French
18 speaking, he may help.

19 JUDGE OSTROVSKY:

20 Maybe it is another question, but it is
21 aiming, it is going the same direction.
22 If the intention was to search for
23 weapons, as you say, why, then, why ask
24 for weapons? Because they ask for
25 ammunition; grenades, and guns were not

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1 necessary under the circumstances.
2 If they wanted to search high heaven to
3 recuperate weapons or to kill them, then
4 it was necessary to have ammunition,
5 because they must turn -- they must
6 ransack everything and kill and find them
7 and kill them. So when you said that
8 they were going to look for weapons in
9 the area then why look for grenades and
10 guns, etcetera?

11 MR. MORICEAU:

12 I'm going to answer you, Mr. President,
13 your Honours. This document was tendered
14 by the prosecutor and it is in French and
15 we have noticed that it was, it had been
16 interpreted particularly in English and
17 that it was given a different meaning
18 with the malicious intention by the
19 prosecutor that was, indeed, trying to
20 use this term to say or to prove that it
21 meant clean up, because that was a term
22 that was used in the English version.
23 As far as we are concerned, we are
24 saying, we give the French meaning
25 because the French ratissage is a

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1 military term world recognized by three
2 French dictionaries.

3 The problem that you raise, your Honour,
4 Judge Ostrovsky, now, if it was only to
5 search for weapons in Bisesero, in the
6 Bisesero area, then why look for out
7 ammunition as well?

8 Mr. President, your Honours, for the
9 situation purposes, the quantities
10 requested are ridiculous, in fact if they
11 wanted to send a whole army with the aim
12 of killing all of these people, because
13 we are told that there were 20,000 and
14 more, so you can see in the quantities in
15 this telegram, this is only to dissuade.
16 You can cannot go to into an area where
17 there are psychological crowds, incessant
18 attacks bandits of all types who are
19 exterminating poor farmers. You cannot
20 go in there with an organized operation
21 to recuperate the weapons. You cannot go
22 there without having yourself a certain
23 minimum of weaponry to dissuade those
24 people. This is a dissuasive minimum
25 when look at other quantities, it is a

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1 minimum, in fact because we had to have,
2 indeed we had to have sufficient number
3 of soldiers who are, who are used to the
4 combing of areas. This is what Dr.
5 Kayishema is saying, he's saying this is
6 a term that I could not have used because
7 I do not know it. It is a military term
8 and it is the gendarmerie that asked me
9 to put that term in there, this military
10 term, specifically because we should
11 remember what is said, what Batonnier
12 Ferran said yesterday, because it is the
13 head of the gendarmerie who has the duty
14 of assessing needs, as well as the
15 meanings of one operation. And this
16 operation represented such a scope and
17 extent that -- a scope that was much more
18 extensive and required the authorization
19 of the minister of defence responsible
20 for the army. And we know that this
21 authorization was not given, in spite of
22 the gendarmerie, the Commandant Guibalt
23 who said, here are the terms that should
24 be used, militarily speaking, in order to
25 have this reinforcement and to do what we

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1 have to do, namely to go and recuperate
2 weapons from Bisesero. So it was the
3 gendarmes who, at this security council
4 of 9 June, it was at this occasion that
5 this telegram was drafted in the presence
6 of the gendarmerie commander, because the
7 prefect doesn't have the means, except
8 those of requisition, and it was the head
9 of the gendarmerie who said how the
10 requisition should be filled.

11 MR. PRESIDENT:

12 Yeah, okay, thank you, Mr. Moriceau.
13 Maybe one, one small observation that we
14 all -- we believe that other parties
15 pleading before the trial chamber are
16 doing that to advance the cause of
17 justice and if there is anybody, any
18 party going about maliciously then I
19 think the trial chamber should be invited
20 to note that one. So I hope words have
21 meaning and should be carefully used.
22 So we will stop here. We were discussing
23 Exhibit 340, Mr. Moriceau. We'll stop
24 here because we've got to take up another
25 matter, the initial appearance of one of

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1 the accused, as I said this afternoon.
2 We will adjourn these proceedings to
3 Tuesday at 9:30 for the reasons I
4 indicated this afternoon.
5 After the adjournment of the case we'll
6 take a short break, just to enable the
7 change of counsels and perhaps some of
8 the staff who may have to leave and then
9 come back for the initial appearance.
10 So until 9:30 on Tuesday, next week these
11 proceedings stand adjourned.
12 (Pages 143 - 170 by R. Lear)

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We, Melinda Walker, Marilyn Young, Sally Kohn & Rex Lear, Official Court Reporters for the International Criminal Tribunal for Rwanda, do hereby certify that we took the foregoing proceedings in the above-entitled cause and were recorded at the time and place as stated; that they were thereafter transcribed by computer under our supervision and control; that the foregoing pages contain a true and correct transcription of said proceedings to the best of my 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.

Melinda Walker

Sally Kohn

Marilyn Young

Rex Lear
Official Court Reporters - ICTR

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