

THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

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

THE PROSECUTOR
OF THE TRIBUNAL

v.

AUGUSTIN NDINDILIYIMANA
FRANÇOIS-XAVIER NZUWONEMEYE
INNOCENT SAGAHUTU
AUGUSTIN BIZIMUNGU

FRIDAY, 13 OCTOBER 2006
0910H
CONTINUED TRIAL

Before the Judges:

Joseph Asoka de Silva, Presiding
Taghrid Hikmet
Seon Ki Park

For the Registry:

Mr. John Kiyeyeu
Mr. Abraham Koshopa

For the Prosecution:

Mr. Ciré Aly Bâ
Ms. Alayne Frankson-Wallace
Mr. Moussa Sefon
Mr. Segun Jegede
Ms. Felistas Mushi
Mr. Abubacarr Tambadou
Mr. Lloyd Strickland

For the Accused Augustin Ndindiliyimana:

Mr. Christopher Black

For the Accused François-Xavier Nzuwonemeye:

Mr. Charles Taku
Mr. Hamuli Rety

For the Accused Innocent Sagahutu:

Mr. Fabien Segatwa
Mr. Seydou Doumbia

For the Accused Augustin Bizimungu:

Mr. Gilles St-Laurent
Mr. Ronald MacDonald

Court Reporters:

Ms. Priscilla Trillo
Ms. Regina Limula

I N D E XWITNESSFor the Prosecution:

ALISON DES FORGES

Cross-examination by Mr. Black (*continued*) 2

P R O C E E D I N G S

MR. PRESIDENT:

Good morning, ladies and gentlemen, the Court is in session.

Appearances as before.

Before Mr. Black continues, I would like to hand over a judgement to you of the court of appeals, Appeals Chamber, which has accepted the limitations placed on cross-examination. And here is a judgement which there were six accused, and one-sixth of the time of Prosecutor is given to each, which had been approved. So this will be of some assistance in understanding the imposition of the time frames.

Here, give to them.

MR. BLACK:

I appreciate that, Mr. President, but I still maintain my position that artificial limitations like that are not fair. But thank you for this answer, anyway.

MR. PRESIDENT:

Please give copies to others also.

Yes, I will give you one.

MR. DOUMBIA:

Mr. President, I wish to point out that the lead counsel will be joining us soonest. You noticed Mr. Sagahutu is not present for reasons which are not unknown to you. Thank you.

MR. PRESIDENT:

Thank you.

Yes, Mr. Black, you may start now.

MR. BLACK:

Well, I will be happy to inform you and Dr. Des Forges, that I don't want to fight with her anymore. I am sure she will appreciate that more than you. So I think we can get her out of here very early.

MR. PRESIDENT:

I, too, also appreciate that.

MR. BLACK:

I just want to say something -- I just want to make it clear that when I was reading the various documents concerning statements by various officials about General Ndindiliyimana, and the terms "extremists" and "moderate" are used, I agree with her that those terms are not really -- don't reflect reality on the ground. I am just using those terms because that's how those documents were written,

1 in those terms. So I don't accept that classification, but just that they were written that way.

2 ALISON DES FORGES,

3 CROSS-EXAMINATION (*continued*)

4 BY MR. BLACK:

5 Q. Dr. Des Forges, I just want to go back --

6 MR. ST-LAURENT:

7 May I interrupt for a few seconds, Mr. President?

8
9 I'm aware -- the problem is I have a motion to file, and it will be very brief. As Mr. Black has said in
10 the course of the cross-examination yesterday, he made mention -- or, he quoted Dallaire, in which
11 mention is made of extremists or moderates. The purpose of Mr. Black was to point out that Dallaire
12 did not refer to his client in the same manner, and it is not, as it were, support -- or adhere to what is
13 said. But that is the problem for me, and I seek your guidance for the future. And the question I put
14 myself is the following: First of all, the statement made by Dallaire has not been referred to in the
15 course of the evidence-in-chief or examination-in-chief. It was not even raised in the course of my
16 own cross-examination of this witness; and, Dallaire, the author of such a statement, has not testified
17 with respect to those assertions, and there is no indication that he will be testifying in that regard. My
18 cross-examination having come to an end, I cannot go back on the basis or the quotations made by
19 Mr. Dallaire.

20
21 It creates a problem, because this could be prejudicial to my client, that kind of assertion. How can I
22 advance my arguments to show that there is some distinction with respect to the qualification made
23 by Dallaire and that it was unfounded, or it was a mention that was guided by some sort of
24 manipulation, or some propaganda that he is unable to support or would be to the advantage of the
25 victors.

26
27 Of course, I trust you, sir. I trust you, Honourable Judges. But how can I be sure that such a
28 statement will not affect your reasoning or your thinking, consciously or unconsciously? In other
29 words, that kind of quotation, that kind of statement -- well, how do I counter it? How do I challenge it
30 and even advance my own position? But there is even more than that. It can happen that in the
31 course of a cross-examination that is being conducted by one of the counsel in -- of a co-accused
32 here, that is, matters that have not been raised in evidence and I have not reacted to it and haven't
33 had the opportunity to check -- so how do we challenge that, and what would be the prejudicial effects
34 which might occur in the case of such a witness?

35
36 I suggest to you, Mr. President, to reassure us, on the one hand, because quite a number of other
37 matters which I could have used -- and I am saying that you duly note that that kind of quotation or

references do not, in any manner, contribute to any evidence against my client, in view of the fact that they are quoted in the course of the trial as part of the cross-examination on the part of another accused.

And I would like the Court to further note that, in the case of a cross-examination which is being conducted by counsel for an accused, evidence that might be prejudicial to a co-accused, should not be admitted in evidence, unless, of course, such evidence is properly established and challenged in the course of another cross-examination. I do believe that that kind of consideration is quite important, same as for any other co-accused in this trial. So I am filing a dual motion, and I would ask you -- or request you to grant it.

Thank you.

MR. MACDONALD:

I haven't spoken very much in the last few weeks, to give you my -- my perspective to this jargon of "extremist" and "moderate".

MR. PRESIDENT:

Well, Counsel (*microphones overlapping*) ... do not fear that we will not take that into consideration, the comments that --

MR. MACDONALD:

I thank you very much, Your Honour, but these -- these terms or --

MR. PRESIDENT:

If the witness comes here and says that, of course, we will have to consider it because that will give you an opportunity to ask that witness on what basis they're classified.

MR. MACDONALD:

Right. But our position is very brief -- in a nutshell, Your Honour, our position is that -- that we strongly oppose and object to these labels of "moderate" and -- and "extremist". As far as we're concerned, this jargon is useless, it's restrictive and simplistic, and, basically, it suggests that from 1990 to 1994, if one lived in Rwanda, you were either considered as a moderate or an extremist. There was no, as we say in French, *demi-mesure*. You were one or the other. And, moreover, if one stood his ground, and that's -- that's my -- my main concern -- if one stood his ground and refused to cooperate with the RPF, he was automatically labelled as an extremist, and that's -- that is, to say the least, very strong and, again, very restrictive, and that's why we're strongly opposed to these words.

MR. BÂ:

Mr. President, it is prolonging this cross-examination. The fears expressed by lead counsel were enough, and there was no purpose for such fears. Quotations of an author could be used as proof of guilt on the part of someone, I mean, particularly in a trial of genocide. Your fears are unfounded. They are baseless, in fact. They need not to have been raised.

1 MR. RETY:

2 Mr. President, Your Honours, you will recall yesterday that my excellent lead counsel, Counsel Taku,
3 addressed the objection raised today and the motion being argued today by my late -- learned
4 colleague Gilles St-Laurent. In that regard, I do recall the -- what he is suggesting is the wiser
5 solution. And we're asking that what was said with respect to the link between Bagosora and the
6 reconnaissance battalion, that your Chamber consider that such allegations not be upheld by
7 yourselves. I would even go further and ask that this be excluded or struck from the record, because
8 it has no relevance to the trial or the case of the person under cross-examination.

9
10 Now, I rely, in this respect, on 82(A), Rule 82(A) of the Rules of -- it says: "In the case of a joint trial,
11 each accused will be tried as if it is a single trial or an individual trial." You will recall, Mr. President,
12 Your Honours, in the case of cross-examination, each of the co-accused will submit its -- his -- his
13 own case, and such evidence is not shown to the others. And we consider in our minds that each
14 person leads his or her own trial or case as if it was an individual case.

15
16 And when matters are brought before you without us being given the opportunity to check or
17 cross-examine or even test such evidence, the cross-examination cannot -- or, can only be viewed
18 against its relevance to the indictment; and that is the reason why we are asking you in order to spare
19 your time and to spare us the possibility of carrying out a cross-examination, we would want you to
20 clearly state that the link between the bat -- the reconnaissance battalion and Colonel Bagosora, that
21 that link would not be considered by your Chamber. That is our sole request, and we thank you.

22 MR. PRESIDENT:

23 Well, Counsel, but I think we have given our assurance to Mr. Taku that we will consider his request
24 and we will give an appropriate answer to that. And the matters that others have raised, I think most
25 of these matters can be resolved among yourselves, but these are being -- if you demarcate the areas
26 in which you are going to cross-examine the witness, I think this can be easily solved. So I think from
27 now on, let's at least try to confine your cross-examination in relation to the client concerned.

28
29 Yes, Mr. Black, you can start now.

30 MR BLACK:

31 Okay.

32 BY MR. BLACK:

33 Q. Dr. Des Forges, I regret that we ended up on a negative note yesterday. Sometimes my style
34 depresses people.

35
36 I just want to put to you one last thing about your thesis, before we go back to
37 General Ndindiliyimana. I want you to read you something and ask your comment on that. It's a

testimony by Colonel Vincent, who was then military attache, an intelligence officer, at the Belgian embassy during the events in Kigali and later became head of Belgian army intelligence before he retired. And on the 7th of March 1997, he was giving testimony before the Belgian senate and he said this: "I've never received any serious indications with respect to genocide" --

MR. PRESIDENT:

Mr. Black, do you have any reference -- reference number to that document?

MR. BLACK:

Okay. It's dated March 7th, 1997, page 127 of -- of the commission of the Belgian senate.

BY MR. BLACK:

Q. Okay. He continues: "I believe the genocide was an exhibition of the sadness of a people that is destabilised by a whole series of factors. First of all, the huge population pressure compelled most of the population to live below the vital minimum. The cost of coffee and tea have dropped or collapsed. Public finances have become fragile, and the IMF and the World Bank have come and imposed their structural assistance programme or plan. And that has brought about a lot of suffering and led to the displacement of 900,000 people.

"In 1994, there was drought in the south, and then there was democratisation that was introduced, which is not adapted to the circumstances and to this type of society, because the political parties are founded on nothing and they only reinforce the splits in society or the cleavages in society. In the meantime, it is the so-called journalists who engage in writing their magazines or produce their magazines.

"As for the Arusha Accords, they have merely strengthened or reinforced suspicion or wariness among the ethnic groups, suspicion further exasperated (*sic*) by murders -- or, the murder of Mr. Ndadaye. Finally, the most important factor, in my opinion, is the murder of Habyarimana. He was respected. He had the system under control. This made it possible to limit previous massacres, which triggered the genocide, if one may say so, because there was a massacre of the Hutus."

On page 129, he ends up, after some discussion about this: "My personal view -- my personal view is that it was collective madness of a genuine or real explosion, and also Rwanda is a huge village where everyone knows everyone else. So, it was, therefore, not necessary to have a list in order to commit genocide."

So what is your comment on that, because it goes against your thesis that there was a plan necessary for people to kill others in the circumstances they did?

A. Vincent was a military officer, not a historian. His opinion was based upon his own impressions, not upon a study of documents or testimony, and some of those impressions were wrong. We have

1 demonstrated quite conclusively before this Court that the pattern of violence did not conform to an
2 explosion of violence, of collective folly, but, rather, that it was targeted, controlled, directed in many
3 aspects.

4
5 This is not to deny that there was an element of independent action within each local community as
6 people -- the powerful people in that community, selected which persons to attack and potentially
7 which persons to protect. It's important to recognise that that autonomy did exist at the local -- but the
8 organisation, the legitimacy given to the idea of killing Tutsi, the making Tutsi outcasts beyond the
9 legal system, all of that was the result of direction from political and military leaders, who knew or
10 should have known full well what they were doing. There is no way that you can make the pattern of
11 violence, the actual dates of killings, correspond to the kind of theory that Vincent is apparently
12 persuaded of. And had he had the opportunity to spend ten years studying the historical evidence, I
13 assume he would have come to a different conclusion.

14 Q. Well, I've spoken to Colonel Vincent personally, and he still maintains that position. And he's aware of
15 all goings on of this Tribunal, and his opinion is the same. So shouldn't his opinion carry some
16 weight, or it shouldn't be taken into consideration by historians as one factor to consider?

17 A. First of all, I do not know that his opinion is the same. We have only your word for that.

18 Q. Well, are you calling me a liar? I tell you that is what he says.

19 A. I say simply that I have no other source to verify that with. And, second of all, I have no knowledge
20 whether or not he has carried on an extensive study. Perhaps he simply held to his original idea
21 without the examining any further evidence.

22 Q. Okay. But, nevertheless, since he was a retired chief of Belgian army intelligence and he must be
23 aware of a lot of things, doesn't his opinion carry some weight; wouldn't you think?

24 A. His opinion should be accorded the weight due to the opinion of a military officer who has not
25 attempted to carry out extensive study of the subject, and I would say that's relatively little, and I
26 assume that the Court is prepared to make that judgement, as well.

27 Q. All right. Now, there's -- just now going back to General Ndindiliyimana, madam, we can proceed
28 pretty quickly. I just wanted you -- you agreed, yesterday, that some gendarmes committed crimes;
29 others saved people. I just want to read to you something and see if that could assist you in backing
30 up the positive part of that for me. And he is saying from a book by Jean Ndulimana, who was a
31 priest in the Catholic church at that time -- in a book church called *L'église catholique dans le malaise*.
32 It is the Duver (*phonetic*) edition, and on page 111 of that book -- sorry, I don't have a copy.

33 A. I'd like to see a copy. I think we need to return to that practice of -- of letting me see the copy.

34 Q. Okay. Well, let me read it first just to get it onto the record because I need to do that. Then I'll give it
35 to you. He says this: "I will never forget the support extended to us by the gendarmes of Cyangugu
36 during the genocide in 1994. We had hardly been created on the initiative, that is, *l'association des*
37 *miséricordieux* in the parish. When the parish had 5,000 refugees in the stadium and when we

1 wanted to move them out of the status of refugees, who were being sought so as to move them to the
2 other side into Zaire through Lake Kivu and River Ruzizi, one turned to some of the gendarmes who
3 were guarding the refugees.
4

5 "When the assailants were there, their behaviour was striking -- surprising. In the discussions with
6 them, one noticed -- or, observed that these gendarmes were trained in matters of society in an
7 advanced manner. It was easy to calm them down when they had engaged in dialogue. That is what
8 we expect of gendarmes. That is what we expect of the gendarmes. That is what we expect of
9 gendarmes and the soldiers of the Rwandan Patriotic Army, RPA. A lot of them already demonstrate
10 qualities of -- or, accommodation and skill of being nice and helpful. I would like that such talents or
11 skills take it over -- take precedence over any others which could come into the fore unavoidably.
12 This kind of education or humane-oriented education should be encouraged."
13

14 I can give that to you to read, if you like.

15 MR. BLACK:

16 Registry.

17 THE WITNESS:

18 Thank you. Yes. Well, this doesn't really advance us very far, does it, beyond what I have already
19 said? But, in any case, I think it's important to read the paragraph preceding, which also gives the
20 other side of the picture.

21 BY MR. BLACK:

22 Q. Uh-huh.

23 A. And it is on page 111 of this same book *Rwanda: L'église catholique dans la malaise*, in paragraph B,
24 *Les militaires*; paragraph B.1.1, *objective principale la sécurité*. And I cite: "In civilised countries,
25 policemen and soldiers are people who, first of all, maintain -- provide security to persons and
26 property. And especially in the case of the genocide, these people actually happened to be looters
27 and killers, for the most part. There were a few exceptions, of course, and some were victims of their
28 professional -- professionalism. They experienced" --

29 MR. JEGEDE:

30 We are having trouble following you. You're -- if you can take it again.

31 MR. PRESIDENT:

32 Slowly.

33 MR. JEGEDE:

34 Slowly, this time.

35 THE WITNESS:

36 I am sorry. I thought the interpreters had a copy.
37

1 THE ENGLISH INTERPRETER:

2 No, we don't, and I'd asked Mr. Black for one.

3 THE WITNESS:

4 "In civilised countries, policemen and soldiers are people who, first of all, secure people and property.
5 In our country, especially during the genocide, they were looters and killers, for the most part. There
6 were a few exceptions, and some were victims of their own professionalism. They -- the soldiers and
7 gendarmes were sometimes killed during the genocide, because they were feeding the people they
8 had hidden. Elsewhere, those who sought assistance would speak to the police normally, but in our
9 country, these security officers were always violent, brutal and sowed terror. 'Policemen' was
10 synonym for truncheon; 'soldier' was synonym for gun or grenade. But when we were lucky enough
11 to come across a good gendarme or a good soldier, we realised that they are like anybody else, that
12 they were perfectly logical, very kind and indisputably humane."

13
14 So I think it's important to see the entire picture here. He is saying exactly the same thing as I have
15 said, namely, there were gendarmes who actively participated, who incited violence, who killed, who
16 raped, who pillaged; there were also some, who, to their credit, saved lives and did not engage in
17 such behaviour. And Cyangugu, the place where he was located, the -- the author of this document,
18 was, indeed, one part of the country where certain gendarmes were known to have followed a correct
19 policy and to have saved lives.

20 BY MR. BLACK:

21 Q. Thank you. Now, did you see, in your research, a document called the *Report de la commission*
22 *political administrative sur les troubles dans les préfectures de Gisenyi, Ruhengeri and Kibuye*, dated
23 3rd of April 1993, issued by a commission headed by Dr. Augustin Iyamuremeye? That's
24 I-Y-A-M-U-R-E-M-Y-E (*sic*).

25 A. Yes.

26 Q. Okay. And in that -- I'm just going to refer to their references to the gendarmerie, of course. Were
27 you aware that in that they cite on the date of January 22nd, 1993, they say that -- they talk about --
28 they say this: "The gendarmes who would intervene in Satinsyi *commune*, and they were taken
29 hostage by a group of people who had been gathered by the president of the *Interahamwe* at the
30 Giciye, G-I-C-I-Y-E, *communal* office". And also on 23rd of January, "about 300 people attacked the
31 displaced people at the Nyabibirazi centre in Kanama *commune*. The intervention of gendarmerie
32 troops dispersed these administrators". So it is S-A-T-I-S-N-Y-I (*sic*).

33
34 That on the 24th of January, they say: "In Gasake", G-A-S-A-K-E, "a crowd of -- or mob of more than
35 one million" -- I'm sorry -- "1,000 attacked Kabayingo Hill, which was occupied by displaced persons.
36 A gendarmerie element -- team's intervention was not well taken by the crowd. After two grenades
37 were launched to no end -- to no effect, Warrant Officer Munyatarama gave the order to open fire and

1 kill 600 people -- six other people."

2
3 26th of January, talking about a confrontation between the population in Nyakabanda -- between the
4 population of Nyakabanda and Satinsyi -- Satinsyi, they say, "A platoon of gendarmes went down to
5 the location and cooled things down." And also that "clashes between the population of Kibilira and
6 Bulinga-achumi (*phonetic*) attempt to massacre Tutsi refugees at Muramba parish. The national
7 gendarmerie stationed there repulsed the crowds gathered, who were armed with clubs and spears."
8 And finally --

9 MR. PRESIDENT:

10 Counsel, it was not clear to me where -- when this was.

11 MR. BLACK:

12 As of January 1993 -- (*inaudible*) days in January 1993.

13 BY MR. BLACK:

14 Q. All right. So wouldn't that indicate again the gendarmerie, at least, tried as best they could in
15 certain -- in these instances that I have cited at least tried to protect Tutsi refugees and do what they
16 could to control attacks on people?

17 MR. JEGEDE:

18 Your Honours, before madam answers that question, to make for consistency, we should provide the
19 document. It is because if an expert is before the Court, to assist the Court in understanding the
20 evidence, I think we should give her the opportunity to look at the document.

21 MR. PRESIDENT:

22 We'll see her reaction. If she wants it, she can ask for it. Otherwise --

23 MR. BLACK:

24 I'm not going to give it to her. This document is quite lengthy. I'm just citing the references --

25 MR. PRESIDENT:

26 Abraham.

27
28 You want to look at the document to comment on it all?

29 THE WITNESS:

30 Yes, please.

31 MR. PRESIDENT:

32 Okay.

33 MR. BLACK:

34 I don't want to give the document.

35 THE WITNESS:

36 In fact, I might even suggest that in the future, to speed the reading and the pronunciation of
37 Kinyarwanda names that I be the reader. If counsel would like to just ask me to read certain

1 passages, I will attempt to read them correctly, and I think it would advance much more quickly.

2 That's what the usual procedure is in other courtrooms.

3 MR. BLACK:

4 I'd just like an answer to my question. The things I cited to you --

5 MR. JEGEDE:

6 Your Honours, it's clear from the last reading that there is some dishonesty involved in the -- in the
7 procedure. We don't -- we are not going to sit here -- I am not going to stand here and have Mr. Black
8 proceed in the manner which he -- he wants to proceed -- do some selective reading, put those
9 selective parts to the witness to comment on, and hiding the other part of the story. That's not what
10 counsel should do.

11 MR. BLACK:

12 If you accuse me one more time of being dishonest, I'm going to come over there and do something
13 to you --

14 MR. PRESIDENT:

15 Well, Counsel, I think -- I think --

16 MR. BLACK:

17 -- or I'll see you outside, Mr. Jegede.

18 MR. PRESIDENT:

19 Mr. Black, I think if you don't give the --

20 MR. BLACK:

21 Well, he can't accuse me of being dishonest in doing that. That's just -- that's an affront to my
22 reputation. My word is my bond. Without that, I'm nothing. I've been a counsel for almost 30 years,
23 and nobody's ever accused me of being dishonest before, and my reputation depends on my word. I
24 will not put up with that.

25 MR. MACDONALD:

26 Your Honours, I have to back Mr. -- Mr. Black on this. We -- you have assisted these personal attacks
27 from the other side since the beginning of this trial, and I understand quite correctly the -- the position
28 of Mr. Black. Nobody is interested here in being attacked and having his integrity put in question. We
29 don't do it with them. Why should they do it with us?

30 MR. PRESIDENT:

31 Counsel --

32 MR. MACDONALD:

33 That's a pattern --

34 MR. PRESIDENT:

35 I understood it this way: That if you don't give that document, that might lead to the conclusion that it
36 is done with dishonesty.

1 MR. MACDONALD:

2 Well, it's not because -- Mr. Black is in the position where he cross-examines, he has the right to say,
3 "Okay, I'm going to paraphrase what this author says, this author says, 'X, Y, Z'". Well, how could you
4 -- how could you ask -- how could Mrs. Des Forges ask him to provide anything? It's from his head,
5 but Mr. Black has the courtesy to read it directly from the text, but he has no obligation,
6 Your Honour -- and I am assured of that -- he has no obligation to give this text to the witness
7 unless --

8 MR. PRESIDENT:

9 If he has no obligation, Counsel, the witness also can say, "I'm not going to comment on that".

10 MR. MACDONALD:

11 Well, she has to comment on that. This is her job. That's the reason she is here. And one another
12 thing about Mrs. Des Forges, and it's the manipulative language she uses in answering these
13 questions. I was just waiting for her to answer one of her next questions. But she says that "Well,
14 we've strongly demonstrated before this Court". She said that on many occasions yesterday, and I
15 think that it's -- it's quite manipulative on her part. She's trying to convey her point by using this
16 language towards the Court.

17 MR. PRESIDENT:

18 Well, Counsel, you must also realise that she has testified in about ten cases.

19 MR. MACDONALD:

20 I don't care what she --

21 MR. PRESIDENT:

22 That is what she says, so she is entitled to say, "Well, I have demonstrated."

23 MR. MACDONALD:

24 Well, how can -- no. An expert could give an opinion with respect to certain facts, certain events.
25 She cannot give her opinion to this Court as to the weight that should be attached to her testimony.
26 This is what she saying to you: "I've strongly established before this Court." This is what she's
27 saying, and it's quite manipulative. And it's illegal, and she knows that, because she has the
28 experience, as you say. She's testified here on many occasions. She's laughing again.

29 MR. PRESIDENT:

30 Okay.

31 MR. JEGEDE:

32 Your Honours --

33 MR. PRESIDENT:

34 We'll proceed now. We will see.

35
36 Yes, Mr. Black, what is your position now? Why can't you just give it to her --
37

1 MR. BLACK:

2 I'm not just going to be sitting here. I want to get out of here by lunchtime. This is a lengthy
3 document, a report on the entire events. I am only referring to where they refer to gendarmes. That
4 is what interests my client. I don't have to give her this document. Do I -- when I refer to Dallaire, do I
5 have to -- when I make a quote from Dallaire, then give her the entire 500-page book to read here?
6 No, we've never done that. That's not done in any trial I've ever been in. She can say to me, "Based
7 on what you told me, that would indicate this. But I don't know what else is in the document." That's
8 fine. And she can produce the document if she wants, and they can produce in reply. She's seen it.
9 If they've got something else in here, I got this from them. It's got a K number. If they're saying I am
10 being dishonest, they can bring it back in reply. That is their job, and then they can say, "You know
11 what? Mr. Black didn't pull out this, did he? Didn't say that, did he? Can you comment on that?"
12 That's their role. I don't have to do that.

13 MR. PRESIDENT:

14 Well, Counsel --

15 MR. BLACK:

16 I'm not going to give --

17 MR. PRESIDENT:

18 -- the other aspect also, if you read something and invite her to comment on it, she should know in
19 what context that has been written.

20 MR. BLACK:

21 Well, she knows. She knows this document. I asked her, "Do you know this document?" She said,
22 "Yes, I'm aware of it." So she's --

23 MR. PRESIDENT:

24 She has read it. We don't know when.

25 MR. BLACK:

26 It doesn't matter when she's aware of it.

27 MR. PRESIDENT:

28 Well, if you put the question to her, we will listen.

29 MR. JEGEDE:

30 Your Honours, I would just ask Your Honours to draw the necessary inference from this -- from this
31 conduct, which it is unconscionable and it is something that ought to be condemned. We are here --
32 we're all here to serve the cause of justice, and not to -- to do an ambush, to conduct a trial by
33 ambush. And they are also -- they have the obligation, and the obligation with weighs heavily on
34 them to -- to make sure that -- on the truth in controversy -- the truth before Your Honours, is put
35 completely before Your Honours. We are not here to say -- to show one side of the story and hide the
36 other, and that's why we've disclosed all the documents in our possession to them. Even the
37 documents that we have not used, they have, and they've used those documents to -- to prove their

1 case. So why are they now selectively doing things that would not -- that will hide the truth before
2 Your Honours? We are not here to do that. He has said that he has never done certain things
3 before, but I'm saying that this is his first case in this Tribunal. And there are rules that he should
4 respect when he is conducting a case before this Tribunal. Those rules are established, and they
5 have been consistently followed in other cases. Why can't we follow the same rules in this case?
6

7 Your Honours, you -- you run this Court. You have to make the rules in this court. No one makes the
8 rules for you. You are to interpret the rules and tell us what you do. And whatever the interpretation
9 of those rules are, are binding on both parties, both the Prosecution and the Defence.

10 MR. PRESIDENT:

11 Yes, Counsel.

12 MR. BLACK:

13 I don't have to reply to that. That's just nonsense. I don't have to supply them with ammunition, my
14 cross-examination -- and it's always this way, as you know, Mr. President. You're a common-law
15 lawyer -- I bring out the best points. I am not hiding anything here because she knows the document.
16 The only mention of gendarmes in this document is in what I've read. That's it. And if he calls me a
17 liar one more time, I'm going to see him after lunch, because you won't sanction him, obviously.

18 MR. PRESIDENT:

19 Yes, Counsel. You can put the question to the witness.

20 BY MR. BLACK:

21 Q. So, ma'am, just on what I read to you -- Dr. Des Forges, are you there?

22 A. You know, I -- I prefer not to participate in proceedings that sink to this level. I really am very sorry to
23 have to say --

24 Q. If you do that, they are going to have to strike your entire testimony.

25 A. I am aware of that, Counsel. And I think the Court would have to weigh it very seriously whether it
26 wants me to walk out of here right now.

27 Q. Well, that is for you -- for you to decide.

28 MR. PRESIDENT:

29 Well, Counsel, I have told you not to argue with the witness.

30 MR. BLACK:

31 I am not. I am just giving her the legal position. She can walk out of here --

32 MR. PRESIDENT:

33 She says that she doesn't want to get involved in this riff-raff, yeah.

34 BY MR. BLACK:

35 Q. What I've cited to you, does not -- doesn't that indicate that the gendarmerie were trying to assist
36 civilians as best they could, at least in that -- that instance in January 1993?
37

1 MR. JEGEDE:

2 Your Honours, the witness has said she wants the document.

3 MR. PRESIDENT:

4 Well, Counsel. We will see the witness's reaction.

5 Witness, do you want to answer that question without looking at the document?

6 THE WITNESS:

7 Your Honour, I have testified in ten trials. In every one of those trials, I have been accorded the
8 courtesy of being able to examine a document before I commented on it. That has also been the
9 case, I might I point out, in this trial, with the exception of yesterday, when I mistakenly agreed to
10 comment on certain things without requesting the opportunity to ask examine them. I now recognise
11 that that was a serious error, and I do not intend to repeat it.

12 MR. BLACK:

13 Well, I'm not giving her the whole argument. I referred to the sections which are important.

14 MR. PRESIDENT:

15 Well, Counsel, if you're not giving them, you can take the answer she has given, and she is not going
16 to comment on it.

17 MR. BLACK:

18 So she's refusing to answer?

19 MR. PRESIDENT:

20 Well, she is refusing to answer because she can't see the document.

21 MR. BLACK:

22 All right. Well, that's is fine. When it comes to my purpose, it's in the record.

23 BY MR. BLACK:

24 Q. I'm going to present something else. Did you know that General Ndindiliyimana -- his personal
25 secretary and most of his escorts were Tutsis, Tutsi officers, throughout that period?

26 A. I would have no way of knowing the ethnic origin of General Ndindiliyimana's staff.

27 Q. All right. Well, we got a witness called ANC from the Prosecution who was a member of his escort,
28 who testified to that effect. Would that, again, alleviate or go towards alleviating, somewhat, concerns
29 you may have -- remaining concerns you may have about him?

30 A. First of all, I have not seen that testimony.

31 Q. Well, I am telling you about the testimony. It is from ANC.

32 MR. BÂ:

33 What you're saying is untrue. Witness ANC said he did not know the ethnic origin of those people.

34 That is what Witness ANC said.

35 BY MR. BLACK:

36 Q. Further, Witness ANC --

37

1 MR. JEGEDE:

2 Your Honours, if he has that transcript, he should read from it. This is a demonstration of -- I won't -- I
3 don't want to use the same word I have used again, so that he doesn't bring a machete across the --
4 across the aisle. But I will just say that we cannot proceed in this manner, when you just pull facts
5 from the hat and put it to the witness without substantiating it.

6 MR. PRESIDENT:

7 Yes, Counsel. They dispute the fact that that witness stated that. So in that case, you have to
8 produce something to substantiate.

9 MR. BLACK:

10 Well, we filed already -- sorry -- as an exhibit during that witness's testimony ID -- sorry -- ID29, a
11 letter from the minister of the interior at that time, Mr. Karemera commenting on the fact -- in a letter to
12 General Ndindiliyimana, commenting on the fact that he's chosen a Tutsi officer as -- as a private
13 secretary and that his personal escort was dominated by Tutsis and that they were concerned by that
14 for his safety, because he might be -- well, who knows? I can show this letter. And the witness did
15 confirm, to my memory, that most of his escort were Tutsis.

16 MR. BÂ:

17 Mr. Black, once again, it is not true. The witness did not confirm that most members of the escort
18 were Tutsi. He said he did not know their ethnicity. If you want to prove the contrary, show us the
19 transcript.

20 MR. BLACK:

21 That's not for Jegede. That's for Dr. Des Forges. They've already seen this, ID29, Mr. Registrar.
22 Just give it to Dr. Des Forges, please.

23 MR. PRESIDENT:

24 This is the ID document. You have it here.

25 THE WITNESS:

26 Thank you.

27 MR. BLACK:

28 The relevant passage is on the second page.

29 MR. PRESIDENT:

30 I would like to know the date of that.

31 THE WITNESS:

32 Your Honour, it's the 26th of April 1994, written from Gitarama.

33 MR. PRESIDENT:

34 What is it that you want to -- Mr. Black? Mr. Black?

35 MR. BLACK:

36 Sorry.

1 MR. PRESIDENT:

2 What do you want her to do with this?

3 MR. BLACK:

4 When she's finished reading it, I'd like to ask her to comment on the contents.

5 MR. PRESIDENT:

6 I think she has read it.

7 MR. BLACK:

8 I think she's still perusing it.

9 THE WITNESS:

10 It's a very interesting document.

11 BY MR. BLACK:

12 Q. So -- all right. The fact it's written contemporaneously and not in anticipation of any proceedings like
13 this indicates its veracity. So doesn't that indicate that the fact that he has a Tutsi escort advising
14 him or warning him -- or, they're concerned about again, that indicate that General Ndindiliyimana had
15 no animosity toward Tutsis, no -- no purpose in harming them? Isn't that one indication also?

16 A. I think it's a very interesting letter for understanding the situation of General Ndindiliyimana.

17 Edouard Karemera, who wrote this letter, was not then a member of government. He had no official
18 standing whatsoever. He was, however, one of the leaders of the MRND party and -- to such an
19 extent that he had recently made an inspection tour of the north-west in the company of the minister
20 of defence to look at the situation of killings in the north-west. So that gives you a sense of who
21 Karemera was. He has written to the general concerning a meeting that was held, apparently, the
22 day before and in which -- I believe this is the -- a meeting which we have been already referred to in
23 this Chamber -- where Ndindiliyimana -- and I think at that point in the company of Rusatira -- went to
24 the government to say the killing should be stopped. And so Karemera writes to Ndindiliyimana the
25 next day and says, "I didn't want to" -- well, perhaps if I read and quote directly because I think it's --
26 it's very important.

27

28 In French: "I did not want" -- he's speaking of -- "some personal -- some personal information" --
29 some information which he would have mentioned the night before, and then he goes on to say -- "I
30 did not want to expose it in the presence of your colleague yesterday so as not to embarrass you for
31 no purpose, if ever they were founded". I didn't want to mention this last night in front of your
32 collaborator, in front of your colleague, in case the information should actually be true.

33

34 And then follows the information where he says several things, but the thing most relevant to
35 General Ndindiliyimana that counsel has raised is at paragraph 3 where he says: "It would appear
36 that you have selected a Tutsi officer as your secretary and that your personal escort is predominantly
37 Tutsi. Even some of the members of that escort are embarrassed themselves; however, they do not

1 dare to speak to you about it and yet they are no less concerned for your security and their own
2 because of the Tutsi elements. They are uncertain". They also "reprimand" -- and I think that's not
3 too strong a word -- reprimand General Ndindiliyimana for bringing policemen, gendarmes, under his
4 command to the government centre to protect the government, the same gendarmes who had been
5 part of the guard for the former prime minister and the prime minister-designate.

6
7 And the second point is to suggest to General Ndindiliyimana that the RPF is exploiting regional
8 divisions in the army and that, somehow or other, Ndindiliyimana has something to do with this. He's
9 become a symbol, and that he should, in fact, mobilise the officers more obviously in support of the
10 current government.

11
12 And then the fourth paragraph is a little vaguer. I'm not quite sure what it refers to, but I would read
13 this clearly as a threat, as a very threatening letter, to General Ndindiliyimana saying, "You need to
14 get on board with the programme. You need to stop the representations you've been making to us.
15 You need to more publicly demonstrate your support for what's going on, and you need to do
16 something about these people who were supposed to be Tutsi who are part of your personal staff".
17 So I think it's important to appreciate the pressure that was being brought to bear by a person who
18 has no official responsibility, but who is an extraordinarily powerful figure at this time.

19 Q. Okay. Thank you. Wasn't Karemera minister on the 25th of April?

20 A. He was not. He was named on the 25th of May. And I would also underline for the Court that he
21 says, "These accusations are made about you". Now, we have no clue whether these accusations
22 are true or not, from what he says, in other words, the presence of Tutsi in his personal staff. That
23 could have been, from the point of view of Karemera, simply a useful false accusation to bring against
24 him. It shows the tenor of the times. "You are guilty if you have Tutsi in your staff".

25 Q. Okay. Thank you. Now, that witness also confirmed that during this time he was using the escort for
26 General Ndindiliyimana in the first few days of April after the shoot-down of the plane, that
27 General Ndindiliyimana took into his house from, I think, Kicukiro area, a couple of priests and
28 37 orphaned Tutsi children and protected them in his house for several days before he could find a
29 way to get them to safety in the Gitarama area. That would also indicate, again, wouldn't it, that
30 General Ndindiliyimana had no intention of harming Tutsis and only intended to protect them as best
31 he could? And that's a Prosecution witness who confirmed that. It's ANC. It's the transcript of 30th of
32 May this year.

33 A. As I have said previously, I am not aware of the content of his testimony, but I do know from other
34 information that General Ndindiliyimana saved the lives of a number of people. I cannot attest to the
35 exact number or the nature or where they came from, but I am sure that he did, in fact, save lives. I
36 think we have discussed that already.

37 Q. But you weren't aware of this incident where he saved 37 orphaned Tutsi children and a couple of

1 priests, Tutsi priests? You weren't aware of that before?

2 A. I knew that he had taken people in his house. I did not know the number or the nature of those
3 persons.

4 Q. All right. I just want to read you something else, and then I'm going to go to one final document
5 before I terminate my questioning of you. I have a note here that Luc Marchal wrote a book, *Rwanda,*
6 *la descente aux enfers*. Have you seen a copy of that book by Luc Marchal?

7 A. I believe not.

8 Q. Okay.

9 A. I have seen some things he has written, but I think I have not seen that book.

10 Q. What I'd like to show you is a copy of a note he wrote to General Dallaire -- I mean, to
11 General Ndindiliyimana on the -- he sent him a copy of the book. I wonder if you could read that note
12 for the record -- so we could put it on the record instead of me reading it in my bad French. I could
13 probably read it for you, perhaps, because some words are hard to read.

14 MR. PRESIDENT:

15 When was that book written?

16 MR. BLACK:

17 Published -- publication date? Sorry -- 2003.

18 BY MR. BLACK:

19 Q. There may be some words truncated on the photocopy.

20 A. Yeah.

21 Q. Let me give you a better and maybe -- my copy says, "Augustin, the vagaries of history have
22 prompted our cooperation in a task which might have brought about peace, serenity and prosperity to
23 your country. Unfortunately, that was not the case. I do appreciate your commitment to the process
24 of peace, and I wish to so testify in this book. Both of us have learnt to understand what descent into
25 hell means or signifies. Let this brotherhood in adversity provide you with the required force -- or,
26 strength to deal with it. With my sincere friendship, resist and die or bite -- resist and bite,
27 Luc Marchal".

28
29 I just put that to you because, again, since Luc Marchal was an important figure in those events, at
30 least for the first week or so after the shoot-down of the plane and before, doesn't that indicate that,
31 again, General Ndindiliyimana was seen at least by this officer as somebody who was trying to attain
32 peace and was not the type of man to engage in -- in harming people?

33 A. I'm sure that Marchal was sincerely convinced of these things. He also left Rwanda on the 19th of
34 April. I don't know how closely he followed the situation after that time.

35 Q. I agree. Thank you. Now, I don't have -- because we ended on a sour note yesterday, I don't know if
36 you've had the chance or if you took that commission -- the refugee commission's decision with you to
37 read last night. Did you have a chance to read it at all?

1 A. I did.

2 Q. Okay. Thank you. I just want to -- I don't want to discuss the entire document, but I want to go
3 through some points. The first few pages just outline -- the first page outlines, in fact, the statutory
4 basis for the commission. And then it goes into a summary of his testimony -- and the interpreters
5 have copies. And then it cites the evidence of people complaining about him. That's on page 5. And
6 then they go into the evidence in his favour. Now, at the end of the decision, on page 11, they say
7 this -- this is on page 11, at the bottom of the page, the very bottom of the page -- "Given the status of
8 information available, there is no serious reason to think that the applicant might have committed
9 deliberately -- deliberated encouraged or willfully tolerated crimes against humanity, crime -- war
10 crimes" --

11 THE ENGLISH INTERPRETER:

12 Well, he says he doesn't understand anything of what Mr. Black is reading --

13 MR. BÂ:

14 -- because I don't understand anything at all. I thought you were speaking English.

15 MR. JEGEDE:

16 Your Honours, I think the best solution would be to hand the document over to the witness.

17 MR. BLACK:

18 She's got it.

19 MR. PRESIDENT:

20 She has it.

21 MR. JEGEDE:

22 Tell her what portions of the document to read for better understanding.

23 MR. BLACK:

24 Well, I'll read it again because it's -- well, it's not that bad. The interpreters are getting it.

25 MR. PRESIDENT:

26 The accent.

27 MR. BLACK:

28 It's not that bad. I don't know why Mr. Bâ can't.

29

30 Mr. Bâ, be patient.

31 BY MR. BLACK:

32 Q. "That on the basis of available information, there are no serious grounds to think that the applicant
33 might have committed or deliberately encouraged or willfully tolerated the crimes against humanity,
34 war crimes, or other conduct as mentioned in Article 1FA of the Geneva Convention."

35

36 Now, in the decision, they cite Colonel Marchal, Joseph Matata, Filip Reyntjens, Colonel Vincent in his
37 defence, do they not -- François Nsabimana, Alain Debruer (*phonetic*), all who testified in his favour;

correct?

A. That is correct.

Q. And in the document they also indicate that the two persons testifying against him and raising, basically, the same accusations before this Tribunal seem to -- they don't put much weight or much credibility toward what they're saying? Is that fair?

A. That is correct.

Q. And they cite Dr. Reyntjens, for instance, complaining that these two persons extracted texts from his book and -- taken them out of context and distorted what he said; correct?

A. Actually, I think that he -- his complaint is that the board, which made the previous decision, had done that. I don't think he raised that to the account of the persons who brought the complaint.

Q. Okay. And that on page 6, they say the following -- at the bottom of the page, with regard -- and this is Professor Reyntjens' testimony about General Ndindiliyimana, he says -- or, they quote Reyntjens or cite Reyntjens this way: "Now, regarding the applicant, he states that the latter definitely -- was definitely not a party to the structure that planned the genocide or organised the genocide and that he had no information with respect to his participation or his involvement in the massacres; that, according to him, the applicant had formulated a strategy, one of survival, same as a lot of other civilian and military officials, who, at best, could be blamed for lacking courage in objecting to the genocide, while adding some did so, but that lead to their death."

And on page 7: "That in a discussion with the officials of the commission's secretariat, on the 25th of July 1996, he made mention of a fact that goes against the accusation of being passive regarding -- or towards Hutu extremists, which accusation was levelled against the applicant, namely, that the applicant had decided on the 5th of April 1994 to embark or to carry out a new operation to search for cached arms or arms caches" -- sorry -- "in an area that fully occupied or under *Interahamwe* control, which decision would clearly attract the hostility of the radicals."

"But he wanted to draw the attention of the commission to a strategy of slander orchestrated by the Rwandan authorities against officials or personalities who were not in support of the RPF position, that this appears to be the case in a number of European countries and reflected in the form of slanderous campaigns through the media or by setting up trade unions of informers in Rwanda itself, but also by some other more radical measures, such as murders and abductions, including even in foreign countries. But in that regard he urges for greatest caution to be exercised with respect to information provided by the CR -- DDR (*sic*), which he described not as a genuine human rights movement, but as a political organisation close to the RPR -- RPF, that in the event he were to go back to Rwanda, the applicant might risk an unfair trial and, in all likelihood, disappear."

(Pages 1 to 20 by Priscilla Trillo)

1 1022H

2 MR. PRESIDENT:

3 Mr. Black --

4 MR. BLACK:

5 Yes, sir?

6 MR. PRESIDENT:

7 -- underlining Professor Reyntjens comments, he also speaks about the plan, but excludes
8 Ndindiliyimana from that.

9 MR. BLACK:

10 Yes, correct. At that point, Professor Reyntjens had that view, but he will come here and his views
11 have been changed somewhat and modified, so I don't think he holds that view now. But that was
12 how -- that was his view at the time, yes, and he will be coming here to testify for
13 General Ndindiliyimana and will explain how he knows these things. But, again, what
14 Professor Reyntjens says indicates two things:

15 BY MR. BLACK:

16 Q. Doctor, I suggest to you that, (a) He wasn't part of any such alleged plan, which we, of course, we
17 deny. Anyway; he wasn't part of it if it ever did exist. But also that there is a campaign -- or, he
18 suggests there's a campaign -- a dishonest campaign against the general for political motivations.
19 Do you think that's possible that -- that's what motivated -- do you have any comment on
20 that motivation for the attacks against General Ndindiliyimana?

21 A. Well, there are several comments that need to be made here. First of all, you have read the decision
22 of the commission saying that there is no serious reason to believe that the claimant, that is,
23 General Ndindiliyimana, would have committed, voluntarily encouraged or consciously tolerated
24 crimes against humanity and so on and so forth. It is important to point out that this decision was
25 made upon the basis of faulty information provided by the general, apparently, provided because
26 among the sources cited, I do not see anyone who might have provided that information other than
27 the general, and that is on page 3, in the middle of the page where it reads, and I cite: "That following
28 that offensive, the gendarmerie being also responsible for defending the territory in the event of
29 hostilities, came under the command of the general staff of the army, that he himself maintained or
30 kept the responsibility for law and order maintenance outside combat zones, with other officers of the
31 gendarmerie who were not involved in the battle which represents some 100 men in Kigali, and some
32 100 again for the rest of the country."

33
34 This information is wrong.

35 MR. JEGEDE:

36 Okay, madam, for the benefit of the interpreters, if you are doing further reading, please do it slowly.
37

1 THE WITNESS:

2 The -- earlier, in the same statement on the prior page, at the top of page two, again, apparently on
3 the basis of the information from General Ndindiliyimana, the size of the gendarmerie is given as
4 6,000 men. I believe the number more ordinarily used is 7,000, but, in any case, 6,000 to 7,000.
5 During the genocide, there were two transfers of gendarmes to the battle front, one from Kibuye, one
6 from Butare. Each approximately 100 to 150 men. That meant, let's say, 300 -- let's say, we take a
7 minimum figure of 6,000, and, I believe, it was more likely 6,000, that still lives well over 5,000 troops
8 under the command of General Ndindiliyimana. And so, this information upon which the board
9 reached its conclusion was wrong information, and I think that needs to be taken into account. It's
10 also important to know that according to General Ndindiliyimana's information before this board, it was
11 Colonel Bagosora who was in charge, basically, at the end of the meeting, on the night of the 6th of
12 April, which indeed is one reason why I was so surprised yesterday, to hear counsel suggest that the
13 army had, in fact, agreed to support the prime minister because, of course, Colonel Bagosora, if he
14 has acknowledged to be in charge of the situation, has made it very clear in his testimony that he
15 certainly, under no circumstances, accepted the authority of the prime minister.

16
17 As for Professor Reyntjens' comments, these were made in 1998. At that time he was not aware of
18 the documents -- well, he was not aware of some of the documents which I have discussed before
19 this court, and I do believe his position has changed, but I believe that it has changed in the direction
20 of being more convinced rather than less, about the existence of some form of prior organisation. In
21 terms of counsel's final question about, "Was there a campaign to falsely accuse or to denigrate."

22
23 General Ndindiliyimana, I think it is clear that in the aftermath of the genocide, there had been many
24 false accusations made, and not all of them officially inspired. There had been many false
25 accusations made for personal reasons, but I do not know that that is the case here.

26 BY MR. BLACK:

27 Q. But you say it's 5,000 left, but you know most of those commandoes passed through the orders of
28 Major Delame, and the rest came under the disposition of commanders of *bourgmestres* and *préfets*.
29 So, General Ndindiliyimana will testify that he was, in fact, left only -- well that is what his testimony
30 will be, and that is what the evidence will be, to confirm this.

31
32 You have several other witnesses in here, Joseph Matata, for instance, who says he went to Rwanda
33 afterward and he made investigations, confirmed nothing against the general, and it is curious -- it has
34 been curious to all of us, during this Trial recently -- I think everybody in this Tribunal knows that none
35 of the officers below General Ndindiliyimana, in the chain of command, G1, G2, G3, G4, or any other
36 officer subordinate to him, have been charged, in fact, many of them have, up until recently, been
37 promoted to the rank of general or colonels in Rwanda -- and, that the RPF absorbed -- wanted to

1 take over the reigns of power in July 1994; kept the gendarmerie intact and kept most of the officers in
2 the gendarmerie to serve under their command. Which would indicate, would it not, that the RPF at
3 least did not feel that the gendarmerie, as an organisation, and most of the officers were involved in
4 anything which would lead the RPF to conclude that they had been engaged in any activities which
5 were crimes -- which were criminal activities?

6 MR. BÂ:

7 Counsel Black, please be complete in providing your information. You need to say, "the Munyakazi
8 has been locked up since then." Habyarabatuma has also been jailed, Cyiza ... (*inaudible*) they are
9 no longer here with us, they are dead, so that you are as exhaustive as possible with your
10 information.

11 MR. BLACK:

12 I said, Mr. Bâ, that he led the staff until recently, but you don't listen because you just want to throw in
13 your little propaganda pieces.

14 BY MR. BLACK:

15 Q. Up until recently, that was the case, isn't it, that not only did Matata, Marchal, Alan Brewer (*phonetic*)
16 and the others -- state that the general was not involved in any criminal activity, there is no indication
17 in any research they did that he was involved in any criminal activity, but further, that no one under his
18 command has ever been charged by this Tribunal, until the last few months in Rwanda, none of these
19 were charged in Rwanda, in fact, they were promoted to higher ranks in the last 10 years, except the
20 recent - Munyakazi, which, I suggest, was a political affair. But for 10 years all those officers were
21 promoted, which would indicate, I suggest to you, that since the RPF took over the gendarmerie as a
22 unit and kept most the staff and offices, that they did not consider the gendarmerie as an organisation
23 to be a criminal organisation, or the officers in there to be criminals. Isn't that a fair statement or isn't
24 that consistent to that position?

25 A. The RPF has integrated soldiers in the regular army as well, including a colonel from the presidential
26 guard.

27 Q. That is right.

28 A. Does that not mean that they conclude that the presidential guard was not involved in the genocide
29 activities?

30 Q. Well, that is the difference because the RPA became the arm of Rwanda and has absorbed into it, it
31 has accepted into it ex-officers of the FAR, but the gendarmerie is different. They had no
32 gendarmerie, they kept -- they just took over the gendarmerie organisation, kept the same staff and
33 just took over the direction, and kept all the officers, and most of them were promoted to the ranks up
34 to general, which will indicate they do not see gendarmerie as an organisation which was involved in
35 criminal activities or those officers who would have been his subordinate officers, who would have
36 been involved in criminal activities, which means that he couldn't have been involved in that too; isn't
37 that consistent?

1 A. Counsel, I do not see this as logical in the least, nor do I believe your facts are accurate. Some of
2 those officers were retained, but certainly not all of them. I am not sure how many, but I think less
3 than the majority were retained, and the institution, the fact that the institution was retained, rather
4 than immediately dissolved, I think it's a reflection of political considerations rather than anything else.
5 The government has had to balance many different interests and justice, unfortunately, it is often not
6 a priority.

7 Q. Let me put this to you: Do you not know that the chief of operations -- the G4 officer is now working at
8 the Tribunal, Mr. Nzanufera -- Nzazufura, and he would be in charge of logistics, fuel supplies,
9 weaponry, arms, and so on, to the troops. He is now working here at the Tribunal. So, if the Tribunal
10 sees it fit to -- the Prosecutor sees it fit to employ him and not charge him, even though he would
11 have been in charge of distributions of weapons, arms, missions skills, uniforms and food and so on,
12 that they also regard, since they have not charged him -- would that not indicate that he was not
13 engaged in any criminal activities?

14 A. I do not see this as a logical conclusion.

15 Q. You don't know -- why do you think the Prosecution services would knowingly employ a *genocidaire* to
16 assist them, and he was the head of logistics G4 section of the gendarmerie?

17 A. I did not say that, nor did I ever say that every army officer or every gendarme at whatever rank, was
18 guilty. It is possible that some are more guilty than others. It is certain that some are more guilty than
19 others, and one does not conclude from the status of one person, the guilty of another. I have never
20 heard of that kind of conclusion in any legal, judicial or even historical context that: "Because X is not
21 prosecuted, Y, therefore, he is not guilty." I do not see the logic in that.

22 Q. Well, since he was in charge of the distribution of weapons, fuel, ammunition and so on, in order for
23 the gendarmerie to operate, since the prosecution services deemed it fit to employ him, and,
24 therefore, a security check on him, that since he was not engaged in criminal activities, therefore, his
25 superiors could not have been, in respect of logistics, at least?

26 A. I have answered amply. Let us not waste any more time.

27 Q. Well, I am still going to press on it. If he is not accused and cannot be accused of distributing arms to
28 the *Interahamwe*, which would be a crime, to kill Tutsis, if he is not considered, so, it is so with his
29 boss. He is also not guilty, correct? Would that not follow?

30 A. No, not in any logic that I am familiar with.

31 Q. Well, I think it does follow. All right. Anyway, the general conclusion of this, it is not -- isn't it true also
32 that in the decision -- that although they do take into account the testimony of
33 General Ndindiliyimana, they state that he gave his testimony in such a convincing and detailed
34 manner, that it was very compelling in essence?

35 A. I am sure that it was compelling, however, we have seen that in at least two major -- at least one
36 major respect, it was inaccurate.

37 Q. Well, we just don't agree with you on that, about those numbers. But it is fine, we can just argue

about that later, but his testimony will be that he is correct and you are not correct.

All right, thank you. I have no further questions. Thank you very much.

MR. PRESIDENT:

Thank you, Counsel. Mr. Doumbia, it is your turn now.

MR. DOUMBIA:

Thank you.

MR. PRESIDENT:

If you want, we can come back after five minutes.

MR. DOUMBIA:

Well, I will bow to the decision of the Court. But you will agree with me that I hadn't envisaged this kind of development so much so that it could address the Court or deal with this matter for the rest of the day, it will be in a disorganised manner. I wouldn't prefer to move on dead leaves. What I mean is, I would like to go forward only, and, therefore, I would want Madam Des Forges to read a number of the documents so that we would be able to move speedily, rather than for me to start looking through those documents with her now at the same time. That is why I would be most happy to put all these things in order, and to make them available, those that would be absolutely necessary at the time of resumption, so that when we really start, we would, at the very least, move speedily. And it is for that reason that I would like to request that you please allow me to start this cross-examination on Monday. So that I can be a lot more efficient, but if I -- if you must have me start now, I will. I have no problem.

MR. BLACK:

I probably caught my learned friend by surprise. Anyway, I expected that to be a long time. It may be a fair request. What I could do is file these 5,000 documents -- okay, my assistant says Monday is better. So -- so, maybe all I could do is file say --

MR. PRESIDENT:

Yes, Mr. Doumbia, what are the documents that you have to hand over to this witness?

Mr. Black, if you have documents you could tabulate them and bring them on Monday. That is what I have told the others.

Yes, Mr. Doumbia, what are the documents that you have to hand over to this witness? If you have, hand them over to this witness so that she can read them leisurely.

MR. DOUMBIA:

Yes, Mr. President, this could be done now, but as I am here, I don't have those documents with me. So my suggestion is to forward them to Madam Des Forges today, I mean those that are absolutely necessary, so she will have the opportunity to read them and we can move as is proper.

1 MR. PRESIDENT:

2 I am sorry. I thought that you were having all the documents there. So, in that case, when will you --
3 at what time will you be giving the documents to the witness for her to read?

4 MR. DOUMBIA:

5 I think that could be today. I think they close at 2:00 p.m. and I think that could be done at about or
6 around 2:00 p.m.

7 MR. PRESIDENT:

8 How are you going to do it? Can you arrange for somebody to collect the documents to hand over to
9 the witness?

10 MR. BÂ:

11 So, are you going to have an appointment at the restaurant or something?

12 MR. DOUMBIA:

13 That may enable me to arrange a deal with Madam Des Forges.

14 MR. PRESIDENT:

15 Yes, madam, you heard what counsel said. So in order to assist him, I think it is better if you start on
16 Monday. I know that time is very precious for you and for all of us, but anyway ---

17 THE WITNESS:

18 It has been two years since it has been anticipated that I will be cross-examined -- not to be unkind,
19 but every moment counts.

20 MR. PRESIDENT:

21 Court is adjourned until Monday.

22
23 So, we will adjourn Court until 9:00 on Monday, but we will be sitting in the 4th courtroom, I think --
24 4th floor -- 4th floor, on Monday.

25 *(Court adjourned at 1055)*

26 *(Pages 21 to 26 by Regina Limula)*

C E R T I F I C A T E

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

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

Priscilla Trillo

Regina Limula