THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

CASE NO.: ICTR-98-44A-T

THE PROSECUTOR
OF THE TRIBUNAL

AGAINST

JUVÈNAL KAJELIJELI

30 NOVEMBER 2001
1100H
MOTION

Before: Judge William H. Sekule, Presiding
Judge Winston Churchil Matanzima Maqutu
Judge Arlette Ramaroson

For the Registry:
Mr. John Kiyeyeu
Mr. Abraham Koshopa

For the Prosecution:
Mr. Ken Fleming
Ms. Ifeoma Ojemeni

For the Accused Kajelijeli:
Mr. Lennox Hinds
Mr. Nkeyi Bompaka

Court Reporters:
Ms. Kelly Allemang
Ms. Judith Kapatamoyo
Ms. Regina Limula

P R O C E E D I N G S

THE PRESIDENT:

Yes, the proceedings are called to order. Could the Registry introduce the case coming before the Trial Chamber this morning, please?

MR. KIYEYEU:

Thank you, Mr. President. Trial Chamber II of the International Criminal Tribunal for Rwanda, composed of Judge William H. Sekule, Presiding, Judge Winston Churchill Matanzima Maqutu and Judge Arlette Ramaroson is now sitting in open session today, Friday, the 30th of November, 2001, in order to consider the Prosecutor's motion for judicial notice pursuant to Rule 94 of the Rules of Procedure and Evidence filed on 26 of July, 2001, in the matter of the Prosecutor versus Juvènal Kajelijeli Case No. ICTR-98-44A-T.

Thank you, Mr. President.

THE PRESIDENT:

Yes, can we have the appearances of the parties, starting with the Prosecution, please?

MR. FLEMING:

If the Court pleases, I am Ken Fleming, senior trial attorney. I appear with Ms. Ojemeni, trial attorney.

THE PRESIDENT:

Thank you, learned counsel.

Can we also have the appearances of the Defence?

PROFESSOR HINDS:

Good morning, Your Honours. Lennox Hinds, representing Mr. Kajelijeli, assisted by Professor Bompaka and Emilien Dusabe, who is the interpreter.

MR. PRESIDENT:

Thank you, learned counsel.

Yes, Mr. Fleming.

MR. FLEMING:

Thank you, Your Honours. Your Honours, two propositions are immutable. One is that the Prosecution always bears the onus of proof and that beyond reasonable doubt. And, two, an accused is entitled to a trial with the application of the highest standards of law

applying to him. An accused has protections built into the Statute and nothing that I say can derogate from those two propositions. We don't interfere with those, we accept the burden that they impose.

However, in that context, I want to make -- we want to make a number of points. The first one is that the crimes with which this Court is dealing are remote, they are complex, and they are massive. In any domestic jurisdiction, if there is a single murder, it is a matter of great inquiry, and indeed, great expenditure of public funds. We are not here speaking of a single murder, we are here speaking of a crime, or crimes, I should say, that is so massive they almost pass beyond the degree of belief that we can bring to it.

The second point is that in that context it creates an enormous difficulty in both investigation and proof. Your Honours will now see why I stated at the outset that the

Prosecution continues to retain the burden of proof and that beyond reasonable doubt.

The third proposition is that the Statute has no coercive powers in it in respect of, for example, witnesses. All of the witnesses, ultimately, are voluntary. The coercive powers that the Court may have are enforced, ultimately, only by a complaint to the security council, which complaint might be dealt with a long time into the future. So the Statute under which this Court is set up does not have the normal coercive powers of a domestic jurisdiction.

Fourth, Your Honours, the indictments are sometimes necessarily complex, although we'd readily concede that some of our indictments are sometimes unnecessarily complex.

The fifth point that we make by way of this introduction is that the charges though, ultimately, are not terribly complex.

The sixth point, Your Honours, is this:

That we ask and can ask only that you judicially notice facts that are necessary for the purposes of the case. We are prepared to concede that in some of the applications that have previously been made, there have been requests to judicially noticed facts, which are not necessary to establish a particular crime. So any judicial notice must be purely for the purposes of establishing the existence of guilt or otherwise.

Now, Your Honours may immediately start thinking in terms of judicial notice in terms of things like the genocide; the fact that there was a genocide in Rwanda. We will come back to that in a little detail a little later on. Because, in fact, it's not something that we ask you to take judicial notice of, nor can we for the reasons that we'll give subsequently.

Your Honours, we have no intention of repeating anything in the written documents, but rather, our submissions will go to

providing, we would submit, the structure within which Your Honours can look at the requests within the documents and analyse those requests. I turn my attention then to the Statute itself, which is, of course, the only source of power.

Your Honours, in this Court, we are not speaking of domestic killing; we are not speaking of the peace and good order of a particular country, but we are talking of international peace. That is the fundamental platform upon which, and the only platform upon which the Statute can be constructed. The Prosecutions that occur in this Trial Chamber are in the context of the Statute. There is no other source of power. There is only the Statute. And we can, for example, see by Article 1 that this Tribunal shall have the power to prosecute persons responsible for serious violations of international humanitarian law and so on. It is the Statute, then, which gives rise to every other power that Your Honours have, including the rule-making power under which

Rule 95 appears.

MR. PRESIDENT:

Ninety-four.

MR. FLEMING:

Thank you, Your Honour. Ninety-four, you're perfectly right.

Your Honours are selected for your functions in this Court because you're eminently qualified for that function. The qualifications don't only include specific qualifications within your own jurisdictions, but qualifications expanding beyond that. That demonstrates, as does the balance of the Statute, that the things that we are talking about here are outside of a domestic jurisdiction. They are broader than the domestic jurisdiction. Article 14 is the rule-making power for evidence. Article 14 provides that rules can be made, and when they are made, of course, there is no ultra vires issue, they are within power. They must, of course, correspond with the dictates of the Statute. They can't go beyond that.

Article 19 ensures a fair trial for an accused with full respect for the rights of the accused. Those rights, though, because they are derived -- I'm sorry, because the jurisdiction is derived from the Statute, those rights are contained within the Statute and they can be seen in Article 20.

The Rules then made under the Statute and made in the context of international humanitarian law, international peace, made in the context of a very complex and remote and massive crime, deal with the manner in which the trials should be conducted. And the thesis that we put forward to Your Honours today is that the rules turn many of the traditional notions that we know on their head, and I'll come to those very soon. The early rules, we would submit, assists us in obtaining cooperation from states and so on. However, ultimately we're dependent upon the goodwill and cooperation of states wherever they may be.

Your Honours, one of the propositions which is of concern in all of this is that if those of us who come from the common law look at our rules, the fundamental proposition is that the best evidence must be introduced to the Court. Here, there is a significant change from the normal propositions that we find in our traditional jurisdictions, especially the common law jurisdiction. Because of the remoteness of the crime, because of the difficulty and complexity of investigation, there may not be what we consider to be the best evidence available. Now, Your Honours must keep in mind what we said at the outset that the Prosecution still bears the onus of proof, that the accused is entitled to all of the protections, but those protections are to be found within the structures of the Statute and the rules. It is the Statute and then the rules to which we must turn constantly.

Can I then turn, Your Honours, specifically, to Rule 89. Rule 89 is the first rule in respect of the rules of evidence, the

general provisions. Paragraph (a) states the proposition simply that the Rules set out in this section shall govern the conduct of the trials and they are, of course, rules made within the context of the Statute. Sub-rule (b) provides that in cases not provided for in this section, a Chamber shall apply rules of evidence, which will best favour a fair determination of the matter before it and our continent with the spirit of the Statute and the general principles of law. A very important qualification, of course, upon open sluther in respect of any evidence going into court; however, which will best favour a fair determination of the matter. Sub-rule (c) is this, and it is sub-rule (c) which introduces the most significant change from any jurisdiction, probably with which we are familiar prior to coming here. "A Chamber may admit any relevant evidence, which it deems to have probative value."

Your Honours, this turns on its head any traditional notion of admissibility of evidence. The simple propositions, and I'll

turn to a couple of authorities in a moment, the simple propositions for which we can tender these, admissibility in the common law, has always been a question of law. Relevance has been a question for the fact finding Tribunal. Admissibility, if we can break it down to a trial by jury, admissibility is a question for the judge. Relevance can sometimes be a question for the judge, but it's also a question for the jury. But just pausing there for a moment and going on, it is relevant evidence, which it deems to have probative value. The probative worth of evidence was always a question for the jury.

So what sub-rule (c) of Rule 89 says is that the Chamber may, discretionarily, admit any relevant evidence which it deems to have probative value. The fundamental concept of admissibility, as we understand it, especially in the common law, has disappeared. And Your Honours are free of the cramped confines of the rules that have grown up over a long time which sometimes

produce an awkward and unfortunate consequence in matters of proof.

Your Honours, I want to, for this purpose, just read a couple of short quotes. First from Fipson, and this is the Fipson On Evidence, the 13th Edition, and this is taken from paragraph 6-03. "Relevancy being founded on logic and human experience and admissibility on law, which may change in different jurisdictions and periods, the two theories do not wholly coincide." That's what I was saying before about relevance sometimes being a judge issue and sometimes being a jury issue. Admissibility, however, is always a judge issue.

The 4th Edition, Cross on Evidence, at paragraph 1570 says this -- and this is paragraph headed, "Relevance and Admissibility." "Although there are no real exceptions to this rule, the existence of important exceptions to the rule that all sufficiently relevant evidence is admissible, renders it essential to draw a

sharp distinction between the relevancy and the admissibility of evidence. The former is a concept arrived at logically from experience, that is the relevancy, and its applicability can be tested by logical process. It is not primarily dependent on rules of law."

"The admissibility of evidence, on the other hand, depends first on the concept of relevancy and of a sufficiently high degree. And, second, on the fact that the evidence tendered does not infringe on any of the exclusionary rules that may be applicable to it." To quote Wigmore, "Admissibility signifies that the particular fact is relevant and something more. That it has also satisfied all the auxiliary tests and extrinsic policies."

Your Honours, there is no concept of a legal admissibility within these rules except that set out in Rule 89. So we go to the Statute and we go to the rules made under the

Statute. And Your Honours have the right to admit evidence, and that is the only reference to any concept of admissibility, to admit evidence that's relevant and it deems to have probative value. Probative value, of course, as I said before, is a jury question. One will look in vain to find a legal definition of probative. Perhaps we have to go back to its roots, probatio meaning "proof." So we find if we apply some sort of definition to probative, a Trial Chamber may admit any relevant evidence, which it deems to prove the facts. The point that we make is this: This Trial Chamber is not constrained by domestic rules, but it is constrained by the mandate under the Statute.

Now, Your Honour, we've taken a little time to go through that foundation proposition. One then looks carefully for any further great pronouncement in respect of evidence, and it wisely, the drafters of the rules have left it a very wide proposition and they have confidence in doing so because of

the way in which the Rules are drawn and the experience of the judicial office holders within these Tribunals, because not only is there a domestic experience, but there is also an experience going beyond that into the realms of this area of law, international humanitarian law, and International Criminal law.

Indeed Your Honours are freed from the constraints of a domestic jurisdiction and Your Honours now have to provide a new legal framework and are providing a new legal framework within which these matters can be determined. I speak with no great authority in respect of the civil law jurisdiction, however, the more I understand of it, the more I learn of it. While the processes may in some respects be different, they nevertheless remain, in some respects, the same. There mightn't be an initial constraint upon the receipt of material by an investigating judge, but the dossier is formed and material is included in that dossier.

Can we then turn to Rule 94, in particular. Because Rule 94 then is interpreted not as we would interpret it within a common law jurisdiction, but significantly differently, and the first point we make in respect of that is to say that the common law jurisdiction has all of the constraints on the admissibility of evidence attached to it. This jurisdiction has the constraint that the evidence is relevant and probative. So it is in that context then that we interpret the Rules in respect of judicial notice.

When we look at the origins of judicial notice within the common law, we note some interesting characteristics about it. First, Your Honours, judges may take judicial notice of facts. Second, in the common law, those facts are so notorious or clearly established that evidence of their existence is unnecessary. So first, it's discretionary. And, second, they must be so notorious or clearly established that

evidence of existence is unnecessary.

The limitations placed upon judicial notice within, for example, a common law system is, as I have just said, it's discretionary. Second, it's within the rules relating to the admissibility of evidence with all of the confines upon that. And third, just because a matter is proven in one case, it cannot be taken judicial notice of in another. And that's one of the greatest fundamental differences in the proposition in common law and the proposition here.

Common law always made a distinction between relying one's own knowledge, a judge relying on one's own knowledge and the fact that something is notorious. Going to Rule 94, we note these differences: In sub-rule (a) "a Trial Chamber shall not require proof of facts of common knowledge, but shall take judicial notice thereof." The first difference is that while it's discretionary in the common law, it is, in fact, mandatory in Rule 94(a). 94(b) is different because

it relates to adjudicated facts or documentary evidence from other proceedings. That is permissive. That is a judge may -- the Trial Chamber may decide to take judicial notice of adjudicated facts and documentary evidence from other proceedings.

The second difference is that the common law said that the matters, the facts, must be so notorious, the rule provides, sub-rule (a), that they are matters of common knowledge, vastly different concepts. The common law, when we go to (b), whilst there is a permissive "may" in (b) then relates to adjudicated facts. The common law said you could never take judicial notice of adjudicated facts. Sub-rule (b) says you may.

So, Your Honours, the points of distinction ultimately are first. You are interpreting Rule 94 outside of the context of the traditional admissibility of rules, admissibility of evidence rules. You are interpreting it in the context of this

Statute and the mandate that is given by this Statute and the Rules created under this Statute. So you are free from the constraints of domestic jurisdictions to take into account matters which may be common knowledge. More than that, you shall take into account, matters that are common knowledge, and then you may take into account adjudicated facts and so on.

Your Honours, the final point that we make about Rule 94, and especially (b) is that you can take account of the matters relating to the matter at issue in the current proceedings and that is the in final line of 94(b). We said at the outset that the only reason to take judicial notice of anything is because it goes to the proof of the matter before you and the proof of the matter before you is sometimes narrower than what we think it is.

I said I would come back to the proposition in respect of genocide. I will do so in a moment.

Having highlighted those distinctions, Your Honours, I want to turn our attention to the Prosecutor against Ntakirutimana, which was a decision on judicial notice of adjudicated facts handed down by Trial Chamber I on the 22nd of November 2001. In paragraph -- and I have some comments to make about this decision, which, in our submission, may well assist Your Honours to reach at least in one particular, a different conclusion. Paragraph 27 points out the distinction between Rule 94(a) and 94(b); that is, they say unlike 94(a), 94(b) is discretionary. That's a proposition that we have already pressed upon Your Honours that 94(a) is not discretionary, but you shall take notice of facts of common knowledge.

They say that the purpose -- I shall read precisely from paragraph 27 -- "In this connection, the Chamber recalls that the doctrine of judicial notice serves two purposes: judicial economy and consistency

of case law." Then they go on to say as we've been saying throughout. "These aims must be balanced against the fundamental right of an accused to a fair trial." Because, as they pointed out in paragraph 25, "We continue to bear the burden of proof," and of course, "the accused has a right to a fair trial."

With the greatest respect to that proposition that the purpose of judicial notice is judicial economy and consistency in decision-making, we would submit that the fundamental purpose of judicial notice is the receipt of evidence. And if we have any criticism of the decision in Ntakirutimana, it is that. The Court looked at their work and the purposes that judicial notice could be served in respect of the Court's work. In fact, the rule is one in respect of proof of facts. Now, when one looks at that, we would submit that there is a different complexion. If we consider for a moment that certainly one of the consequences of judicial notice is judicial economy, there

can be no doubt about that because we can save a lot of time. And, secondly, especially in respect of subparagraph (b), there will be a consistency in decision-making. Certainly they are consequences.

But the fundamental reason for Rule 94 is to aid the proof and admissibility of evidence. There you are, I have used that word "admissibility." I shouldn't have. It aids the proof and reception of evidence. So one must look at it from the perspective of both Prosection and Defence, because the rule applies equally to both as a tool by which you can receive evidence. And the receipt of evidence won't be encumbered with the traditional rules of admissibility. It will be encumbered only by the way in which the Rules say that you can receive evidence here; that is, if it's relevant and if it's probative. So what has happened in all of this is that the whole issue has been turned into a jury issue.

Your Honours must look at the probability of the evidence. I use the term "probability" as distinctive from "probativeness," or some other, because the probability and probativeness come from the same derivation. It's the probability of the evidence. It is the measuring of one fact against another, when if you compare them, one is likely to be true. So it's the probativeness, the probability of the evidence with which this Trial Chamber is concerned. So when we come to judicial notice, it is exercised within that framework. There are not the encumbrances upon that exist within a domestic jurisdiction.

And, finally, in respect of Ntakirutimana, paragraph 28 says, "In striking this balance, the Chamber will avoid taking judicial notice of facts that are subject of reasonable dispute." And there is a footnote to that, which takes us back to some earlier learning in respect of it. It says, "In support of this proposition, see the Prosecutor against Sikaricha," a

decision on the 27th of September 2000, where the Trial Chamber said, "Considering that the Trial Chamber can only take judicial notice of facts that are not the subject of reasonable dispute, and that is appropriate for the Trial Chamber to take judicial notice of facts, which are agreed between the parties," and that's the footnote which is referred to. It goes on to say, "Such matters should not be settled by judicial notice, but should be determined on the merits after the parties have had the opportunity to submit evidence and arguments."

So the proposition in paragraph 28 is that if a fact is the subject of reasonable dispute, then it shouldn't be judicially noticed. On one interpretation of that, we have no dispute. For example, if it means that the existence of the fact is the subject of reasonable dispute, then, of course, it must be adjudicated. However, if it means that the parties simply dispute it, then we would submit that that is too narrow

an interpretation.

Just because the parties want to dispute a fact does not take it outside of the realm of judicial notice. If the parties want to dispute it, even though they want to dispute it, and it falls within that proposition that they are of common knowledge, then they can still be judicially noticed. If the existence of the facts are the subject of reasonable dispute, then, of course, it takes them outside of the proposition that the facts are of common knowledge, and therefore, they can't be judicially noticed.

Your Honours, the point that we make in respect of Ntakirutimana, and we embrace it in so many ways, that we have those two comments to make about it. The points are these. If it's seen as a tool in the receipt of the respect of evidence, it's going to be seen differently than if it's seen as a tool for judicial economy. If it's in receipt -- if it's a tool for the receipt of evidence, then it's something

which the parties are entitled to adopt. It's something that Your Honours shall apply. And the net result of that, of course, is that there is not the necessity to call evidence and to have cross-examination on it and so on, and there will be judicial economy. But the fundamental purpose of it is for the receipt of evidence. And the receipt of evidence is done in the context of the Rules and the Statute here, not any domestic jurisdiction and not any common law or any other notion of judicial notice wherever it might have originated.

So judicial notice here is to assist to receive evidence which is relevant and probative. And that's the first test, obviously, that Your Honours apply to any piece of evidence in this Court, including evidence received by way of judicial notice. Second, they are matters of common knowledge. And third, even though the parties might dispute the existence of the fact, if they are of common knowledge, then

Your Honours are entitled to take judicial notice of them.

We finish as we started. None of this is to derogate from the right of an accused to a fair trial to have all of his or her rights protected and none of it derogates from the duty of the Prosecutor to prove facts beyond reasonable doubt. But the difference for us, and for this Tribunal, is that we do so in the context of these rules and this Statute, and so we adduce evidence which does not have applied to it the intricate admissibility rules that we might import somewhere else, but rather has applied to it, the practical and the logical test at the end of the day of evidence, which is relevant and evidence which is probative.

Your Honours, we submit that in that framework then, Your Honours analyse the requests that we have made. And, as I said at the outset, we don't go through those requests, that has been before Your Honours for some time and we don't take that time.

Thank you, Your Honour.

MR. PRESIDENT:

Thank you, Mr. Fleming, learned counsel, for the Prosecution.

Yes, Professor Hinds.

PROFESSOR HINDS:

As we indicated yesterday, Your Honour, Professor Bompaka will begin and then I will take no more than fifteen minites.

MR. PRESIDENT:

Yes, you did indicate that.

Professor Bompaka, please. If you are speaking French, please, could you do it slowly enough to enable a comfortable translation be made so that we can follow your submission, Counsel?

PROFESSOR BOMPAKA:

My Lord, most obliged.

On the 26th of July, the Year 2001, the Prosecutor seized Trial Chamber II with a motion for judicial notice on the basis of Rule 89 of the Rules of Procedure and

Evidence.

Now on the basis of Rule 94, the Prosecutor asked the Trial Chamber to notice the facts moved in Annex 1 of its motion as being of common knowledge or as facts adjudicated upon in other cases in conformity with Rule 94(b). The Prosecutor said that the facts submitted in Annex A are of common knowledge and Rule 94 says that the Trial Chamber must notice judicially facts of common knowledge admitted in other cases before the Tribunal. The Trial Chamber should not, therefore, require proof of what is of common knowledge, but simply takes judicial notice of that.

Now, judicial notice, My Lords, is an exception to the principle according to which the burden of proof is incumbent upon the Prosecution. By pleading not guilty, the defendant, Kajelijeli, calls into question each of the elements of crime and charges brought against him and the burden of proof there is incumbent upon the

Prosecution. Even if the Prosecution sees it as complex because of time factors and the amount of time that separates us from the facts. The Prosecution is saying that the facts in Annex A are of common knowledge, or facts that have been adjudicated upon and established. Now, the analysis of that particular point, if necessary. Firstly, My Lords, between the 1st of January, and the 17th of July, 1994, Rwanda was a signatory to the convention on the suppression of genocide, and on the 12th of February, 1975, it adhered to it. Now this is clear and the motion for judicial notice by the Prosecutor could be admitted.

Now between the 1st of January and 17th of July, '94, Rwanda was a signatory of the Geneva Convention of 1994, since 1975 and adhered to the protocol, the additional protocol. And for the second point, therefore, the Defence Counsel sees no problem about Trial Chamber accepting and noticing it judicially.

Thirdly, at the time of the facts in the charges, the admissibility of such of Rwanda was as follows: (a) We had eleven préfectures, Butare, Byumba, Cyangugu, Gikongoro, Gisenyi, Gitarama, Kibungo, Kibuye, Kigali City, Kigali Rural and Ruhengeri. Now each préfecture was subdivided into communes, each commune was subdivided into secteurs. Each secteur was divided into cellules. Now the Defence has no problem about the Trial Chamber noticing it judicially, that is so far as point three is concerned.

Point four, between the 1st and 7th of July 1994, the office of the préfet was characterized as follows: The préfet represents executive power at préfectural level. The préfet is appointed by the president of the republic upon the recommendations based on the interior and carries out his duties under the minister's hierarchical authority. The prefet's authority covers the entire préfecture. As an administrator of the préfecture, the

préfet is responsible for ensuring peace, public law and order and the safety of people and property.

(Pages 1 to 32 by Kelly Allemang)

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PROFESSOR BOMPAKA:

The préfet has hierarchial authority of all civil servants, and all persons holding public office within the boundaries of the préfecture, including the bourgmestre and the conseillers of the sector.

Now 4(D) cannot, sir, be judiciary noticed because during the period under consideration, following the war imposed by the RPF, the préfet could not undertake his mission for keeping law and order in the area under his jurisdiction. For example in morning of the 7th of April 1994, RPF killed the Ruhengeri Préfet, Sylvain Sibalyanga, with all his family and many other civil servants of the country. Now, Judicial notice here cannot be admissible for 4(D).

Fifthly, My Lords, between the lst and the 17th of July 1994, the office of the bourgmestre was characterized by the following features. Let me just take you through (B) and (E). (B), he says the

bourgmestre was appointed and removed by the President of the Republic upon recommendation of the Minister of Interior, and he says the bourgmestre had policing duties in regard to maintaining public law and order.

Now, judicial notice here, as requested by the Prosecutor, cannot be admitted for 5(B), because subsequent to the arrival of the advent of multipartism in Rwanda, the bourgmestres was no longer appointed or removed by the President of the Republic. He was elected by the vital forces of the community. Now, by expatiating on the attributions of the bourgmestre in 5(E), the Prosecutor is trying to establish, by judicial notice, the responsibilities of the bourgmestre for the events of April to July 1994. Now, as far as peace is concerned, My Lord, Law and Order and the security of people and property, it is true that the bourgmestre must protect the population. He should shoulder his responsibilities in times of peace, but how could he do that?

How could he shoulder his responsibilities in times of war? Moreover the Prosecutor, we shouldn't forget that during that period the Defendant, Juvenale Kajelijeli, was not bourgmestre and even if he was bourgmestre he would not be in a position to face a population that is in anger because of the war initiated by the RPF. Following the killings by the RPF throughout the country and especially in the occupied areas and finally subsequent to the assassination of the President of the Republic, My Lords, the Prosecutor, I am sure, remembers that the bourgmestre had no means of facing the situation thus created. For example the bourgmestre of the commune of Kiningi, Gasana, Tambe, was assassinated wasn't he, by the RPF, with a businessman called Ntwihimabwe Elasit, who came from the city of Ruhengeri, where he had gone to warn the military authorities of the RPF invasion and that he was going to Nkumba, Kindao to warn the communal authorities so that the wars be kept at bay. Thus the Defence Counsel for Mr. Kajelijeli prays Chamber rejects

judicial notice for 5(B) and 5(E).

Now six, My Lords. Between 1st of January, 1994 and the 7th of July 1994, in Rwanda, there was an armed conflict not of International character. Now the question of the character of the war in Rwanda is not something we all agree about and we shall, My Lords, probably take a little time to expatiate on the issue concerning the internal nature of the war in Rwanda. The Prosecution is quoting paragraph 174 of the Akayesu judgment, and that is based on one statement of General Dallier, who said that the RPF and FARS were two armies that were fighting each other. And then the RPF had soldiers that were systematically deployed and put under the command of one commander, that is Paul Kagame and that the FPR and the RPF forces occupied different areas that was clearly marked. Now such a statement doesn't prove anything, as far as the country's conflict is concerned, My Lord. We all know, My Lords that Rwanda was a victim to aggression from Uganda. My Lords

many things show that countries like Burundi, Tanzania, Belgium and the United States of America played a cardinal role therein without which RPF could not have completed its war.

Now, the two international organisations, that is the World Bank and the International Monetary fund, controlled by the United States of America, did play a cardinal role, too, in the armed conflict in Rwanda. Uganda, sir, the war started from that neighbouring country of Rwanda, on the 26th of September 1990, Museveni told Kagami that it was time to signal the voice and we know that it was under those names that Museveni designated the aggressors of Rwanda. Without the intervention of Rwanda -- of Uganda sir, there would not have been any aggression. It was the determining intervention of Uganda that makes this war international in character. I would spare the pains for the references that are in the documents, My Lords. Burundi, since the sixties, My Lords, Burundi has always been

the sanctuary for the combatant, the Tutsi combatant that went into exile following the 1959 revolution, and many attacks that beset Rwanda were always supported by the authorities in Burundi, My Lords. And that was the same in the war in 1990, Burundi recruited, My Lords, it trained young Tutsi, Rwandans and Burundians, to strengthen the RPF. The Burundi government participated in the war by military support in arms and in men, My Lords. Tanzania, as soon as the eruption of hostilities, Mwanza, a city in Tanzania, became a centre of recruitment, a centre for transit, and a centre for training of the RPF soldiers before they went to the front. Belgium, My Lords, apart from the opening of the RPF office in Brussels, Belgium organised a conference on the 31st of May in Belgium. It was treason because RPF and some political parties signed up an agreement to corroborate. Belgium obstructed MRND from participating in that conference. Moreover, knowing that it was the RPF who had supplied money and tools to Uganda, Belgium refused to give

Rwanda the arms and ammunitions then they were paid for, in advance, much before the war, My Lords.

Now, as the main component of UNAMIR, Belgium was responsible for controlling goings and comings of people from Kigali and Burundi. It was responsible for security in the city of Kigali and it helped RPF, all the same, infiltrate four thousand fighters, four thousand fighters into the city of Kigali and a great many people throughout the country and they transported them from Mulindi and they transported missiles with them, the missiles that were meant to shoot down the Presidential plane. The Belgian contigent aided in the introduction of heavy weaponry into the city of Kigali.

The United States of America, My Lord, that super power also played a role, a very significant role, My Lords, in the aggressions against Rwanda. President Museveni, at the interest of that super power, it was through him that arms and

money went. The training of people, of soldiers, was also done under the supervision or the cover of Museveni. Kagami and his people, they were trained and they knew that they were going to attack from Uganda. United States knew because they were told in advance. When the war started, the budget for the Ugandan officials was increased up to four hundred thousand American dollars. In April 1994, the participation of the United States in the aggression was at its paroxysm. The International institutions -- the International financial institutions, the World Bank and International Monetary Fund these two institutions, My Lords, these are financial institutions, international financial institutions, the World Bank and IMF controlled by the United States played a significant role in the armed conflict in Rwanda My Lords. They participated in the war at two levels, by financing the war through loans or credit given to Uganda and two, by asphyxiating Rwanda, by refusing Rwanda any assistance, especially in terms

of structural adjustment program. Now the pressure of the World Bank was heightened during the Arusha negotiations, My Lord. They bought all the credits meant for Rwanda for as long as Arusha agreements are not signed. At the beginning of the 1994, the World Bank begun to suspend all loans to Rwanda for the pretext that the government was illegal. The RPF received assistance equal to assistance given to Rwanda for 27 years.

Number seven, My Lords, we do not have any comments on point seven. Let us move on to point eight. Now, the situation -- the following state of affairs, among others obtained in Rwanda between the 6th of April 1994 and the 17th of July 1994: (A) there were systematic and widespread attacks in Rwanda. These were organised against human beings in Rwanda all over the territory. The widespread or systematic attacks were directed against a civilian population, My Lords. The Widespread or systematic attacks were directed against a civilian population

on the following grounds: Political persuasion, Tutsi ethnic identification or racial origin; tutsi, in this case, so that the Prosecutor is not taking into account the real causes of the attack. That is the war inflicted upon Rwanda by the Rwandan Patriotic Front, and the death of the President of the Republic, on the 6th of April 1994. The Prosecutor does not explain who the authors of those are that attacked or those attacks were. He forgot to say or she forgot to say that the RPF infiltrated the entire country and they started war immediately after the death of the President of the Republic.

The Prosecutor is talking about attacks upon the Tutsi. What about the Tutsi who were killed? What about them? They were killed during that period and even before that period. Now, in the United Nations Report, of the 4th of October 1994, it said the expert commission also received from the UNHCR information containing evidence, Evidence of the systematic prosecution of

the Hutu by the RPF. It said this in cases, only, specifically in the month of September. Now we should also like to refer to the report of 9th of December 1994 on the human rights situation in Rwanda introduced by Mr. René Deni Signe, special rapporteur of the Human Rights Commission. Whereas the special rapporteur affirms the massacres of the Hutus by the RPF. It is clear, self-evident, that the Hutu and Twa were also victims in a considerable manner of the attacks of the RPF, even if the Prosecutor doesn't see so. This is the evidence of numerous violations in Rwanda. Now the truth, My Lord, is that, it is only the Tutsi that were not victims for war and the RPF, an armed Tutsi movement initiated all over so that naturally justice must be done without taking into consideration ethnic, ethnic belonging, ethnicities. What about the Hutus and the Twas that were killed by the RPF? Why the Prosecutor only concentrates on the Tutsi? So that, My Lords, the Prosecutor's motion here must be set aside.

Secondly, the generalized systematic attacks that occurred in Rwanda between the 6th of April, and the 17th of July, 1994, had the following characteristics. They targeted the Tutsi and moderate Hutus. They were organised, they were organised and planned by the Rwandan armed forces at the time and the political forces behind the Hutu power movements. They were essentially carried out by the Rwandan state security personnel, civilians, including the armed militia and other citizens, and I say the Prosecutor wants to establish the crime of genocide through judicial notice. The Prosecutor knows that Mr. Juvenale Kajelijeli is pleading not guilty. Not guilty. The burden of proof is incumbent upon the Prosecutor. It is the Prosecutor that must prove genocide, thus the motion for Judicial notice by the Prosecutor must be set side.

Thirdly, from late 1990 until July 1994 military personnel, members of the government, political leaders, civil servants, and other influential

personalities conspired among themselves and with others to work out a plan with the intent of exterminating the civilian Tutsi population, and eliminating the members of the opposition, My Lords.

Now, here the Prosecutor wants to establish against Kajelijeli, who is here, the crime of conspiracy. This is inadmissible because the Prosecutor is turning the burden of proof around. There's no doubt that by doing so the Prosecutor is violating the rights of the Prosecutor -- I mean of the Accused on the basis of Rule 24, which says that; "The Accused are entitled to a fair trial and with equal arms -- with a say in the same conditions as the Prosecutor's witnesses." The Prosecutor should prove the conspiracy, the time, the place, the people implicated, the contents and the purpose of the enterprise. The Prosecutor is saying that the Accused participated in the planning of the extermination of the Tutsi but she did not prove anything and, therefore, the Defence counsel calls upon

Trial Chamber II to set aside the Prosecution's motion for judicial notice on this point.

Now, eleven, the components of this plan consisted of, among other things, recourse to incitement of hatred and ethnic violence. The training of the militiamen, the distribution of weapons to the militiamen, the preparation of the lists of people to be killed. The Prosecutor takes the liberty of preparatory enunciating the elements of the plan. And she cannot prove the existence of that preparatory plan, that is hatred, ethnic violence, training, and distribution of weapons to militiamen, as well as the preparation of lists of people to be killed. Now these are serious facts, My Lords, that are charged to Kajelijeli and these cannot be established by judicial notice. The motion of the Prosecutor must be set aside, My Lord.

12. In executing the plan those involved organised, ordered and participated, indeed,

in the massacres perpetrated against the Tutsi and moderate Hutu population. Now, all these observations are all valid and the Prosecutor must prove her allegations so that her request for judicial notice must be set aside.

13, My Lords, incitement to ethnic hatred and violence was a fundamental part of the plan put in place. It was articulated before a general genocide by the elements of the FAR, the members of the government, and the members of the local authorities. Here again, My Lords, this is a charge against the Defendant Kajelijeli by acts or omission. He is responsible for incitement to ethnic hatred and violence according to the Prosecutor. That assertion by the Prosecutor must be proved. The Prosecutor must give us names. The elements of the FAR, the elements of the members of the government, and local authorities that conceived and elaborated this plan. He must tell us what each one of them did, the time that they did it, the time that they

developed the plan, the motion of the Prosecutor for a judicial notice should be set aside, My Lord.

Now 14. In order to ensure that when the time came the planned extermination wouldn't be carried out as planned. Those behind the extermination of the ORINFOR, they arranged for the MRND party affiliated militia and CDR party affiliated militia between an unarmed -- this is a very vague assertion of the Prosecutor. She must define what she means by the instigators of the plan. She must prove that there was need for training. She must prove that arms were supplied. The Defence prays that Chamber rejects the motion of the Prosecutor.

15, My Lords. Between the 6th of April 1994 and 17th of July 1994, the MRND and the CDR party affiliated militia, who were involved in the execution of the extermination, of the plan, were held and supported by the Rwandese armed forces and the government officials of the day. How can we accept

assertions from the Prosecutor? The prosecutor must give us the names of the Rwandese armed forces and names of the government officials that supported and directed the militia of the MRND and the CDR. The motion for judicial notice, My Lords, must be set aside here.

16. My Lords, in every prefecture, local civil leaders and military authorities and militiamen were not only espoused but also executed the plan of extermination. They called upon the civilian population to eliminate the enemy and its accomplices; "Distributed weapons to civilians and militiamen, gave orders to commit the massacres. Aided and abetted the massacres." Abetted the massacres, participated in the massacres, My Lord. Hereto, My Lords, there's a problem of the burden of proof. The Prosecutor must establish the evidence for these elements and I believe that this motion should possibly be set aside by the Chamber.

My Lords, as you now see, clearly, the facts established in annex (A) in the Prosecutor's motion and at all of common knowledge, My Lords, they are questionable, they are not unquestionable facts. Moreover, in any criminal act the burden of proof is the Prosecutor's. Since the session was started on the 7th of July 2001, and Prosecutor came to the Chamber with her witnesses. Why does she want to turn around the burden of proof, there's no doubt that by turning around the burden of proof, he was violating the rights of the accused. That is interrogation or get Prosecution witnesses interrogated and get the Defence witnesses also to be interrogated in the same conditions as the witnesses of the Prosecution. Rule 90 of the Rules of Procedure and Evidence says that the Chamber should hear witnesses in person unless it allows deposition on the basis of Rule 21. Thus the Defence counsel of Mr. Kajelijeli prays that we judiciary notice in annex (A), 1, 2, 3, (a); (b), (c), (e), 5(a), (c), (d) (f) and (7). On the other hand, the defence counsel of

Mr. Kajelijeli, My Lords, prays that Trial Chamber II of the International Criminal Tribunal for Rwanda follow the reasons expatiated not to notice; judicial notice in 4(d), 5(d) and (e), 6(a), 9. 10, 11, 12, 13, 14, 15, and 16. My Lords, I shall now turn to my lead counsel, for Defence of the complimentary intervention and conclusion. I thank you, My Lords.

MR. PRESIDENT:

Thank you, Professor Bompaka, learned counsel. Yes, Professor Hinds.

PROFESSOR HINDS:

Thank you, Your Honour. Permit me to make some observations on the Prosecutor's Motion for Judicial Notice within the 15 minutes that I have agreed upon and I am watching the time as you are.

Now, most of the 16 paragraphs outlined in appendix (a) that the Prosecutor urges upon this Trial Chamber to judiciary notice would irreparably damage the fundamental rights of the Defendant, not withstanding Mr. Fleming's assurances, because actions

speak louder than words. The burden of proof, the presumption of innocence, the rights to confrontation, these are internationally recognized principles of international law. Enshrined in the universal declaration of human rights and the International covenant on civil and political rights. Your Honours face Herculian task, if not an impossible task for which Nuremberg provides you with no guidance. At Nuremberg the Judges heard the evidence against all of the accused, deliberated and handed down their verdicts. They didn't face sequential trials, as you do, where you are making findings of facts and reaching conclusions of law in particular cases. All of the defendants who appear before you in each of these sequential trials are cloaked and protected by their fundamental rights. Presumption of innocence, burden of proof on the Prosecution to prove each and every element of the crime beyond a reasonable doubt. The Defendant has no burden. The right to confrontation, in sequential trials. Your

Honours make findings of facts under ultimate issues facing issues being litigated and facing the defendant at that particular time. Then in another trial, you are required, in order to protect the rights of the Defendants standing before you, to erase those findings and conclusions that you have reached to built, as it were, a Chinese wall. You are jurists and capable of doing it, but it is a Herculirian task. These are the Rules under which we are practicing in this seminary era, new era of international humanitarian law. Nuremberg provides us no guidance. You are supposed to be making findings, in sequential trials, without being influenced by prior findings. The Prosecutor now urges you and he suggests that you use rule 89(c) as the handle to just simply destroy that wall. He said you have the right, under these rules, now, to simply, as you see fit, if the evidence is relevant and if it is probative, to now use findings that you have made in other trials and even findings in other chambers as adjudicated facts. This is done under

theory of judicial economy and uniformity of decisions. You are to vitiate the very shields and protections enshrined in this under these rules and enshrined in articles 19 and 20 to assure due process. We strongly oppose the Prosecutor's request in the instant motion and we urge Your Honours to strictly construe Rules 94(a) and 94(b) and use the balancing test as set forth in the Prosecutor versus Simiki et al, which is a March 25th, 1999, ICTY decision which speaks to balancing between judicial economy and the rights of the accused to a fair Trial. At the onset, perhaps, it would be helpful to outline the facts to which there are no disputes between us and the Prosecutor's office. Unlike the facts in Ntakirutimana, in Kajelijeli there has been no request by the Prosecutor for admissions. So we didn't have that, but not withstanding, they want to make it very clear. I think Professor Bampoka has said it, but I want to, again, emphasize the point. There are certain facts that Mr. Kajelijeli believes, out of common knowledge

within the meaning of 84(A). Unlike Professor Bompaka, I am not going to take the time to read them, but I would refer to the paragraphs in appendix (a) of the Prosecutor so we are clear that we are not disputing those. Paragraph one in its entirety, paragraph two, in its entirety, paragraph three in its entirety, paragraph four with the caveat set out by Professor Bompaka with respect to the war situation within Ruhengeri, which, essentially, is on the front line of the attacks coming out of Uganda where we are talking about the responsibility and authority of the préfet. The préfet was limited, in terms of his authority, only to areas that were not occupied by RPF forces. And so, therefore, we say in principle there is the role of the office of the préfet that we do not oppose but with respect to the préfecture of Ruhengeri we take the position that that could not have been implemented as set out in the law.

Number 5. Five, with the exception of 5(b),

because, again, as Professor Bompaka pointed out, the office was not an office of appointment or nomination but an elected office, at the time period being noticed by the office of the Prosecutor.

And number 7, now we contend that the Prosecutor's motion seeks to have all, with respect to all of the other paragraphs. 16 paragraphs. They are seeking to have all essential elements to conviction established by judicial notice and thereby violating Mr. Kajelijeli's rights. The jurisprudence of this Tribunal has thankfully resisted these dangerous practices being urged by the Prosecutor and, if the Trial Chamber agree to this distortion of the note, of the notion of judicial notice, we are being observed throughout the world because we are on the cardinal edge of international humanitarian law. What we do today will be a mark on the face. We will be turning basic principles of protection on its head and, thankfully, the jurisprudence of this Tribunal has resisted the arguments being

made by the Prosecutor's office and no set of arguments under Rule 89(c) will make it any different in terms of the end results. There have been only two decisions pursuant to Rule 94(b), only two. In Semanza, in which the Trial Chamber III denied the motion, thankfully. In Ntakirutimana, again, Trial Chamber I denied the motion rightfully. The essential prose of the Prosecutor's arguments are based upon judicial economy and consistency of case law but the Trial Chamber in Ntakirutimana ruled, as we have argued in our submission, that these aims must be balanced against the fundamental rights of an accused to a fair trial, and again as we cited in Prosecutor versus Semliki, which is an ICTY case. In the instant motion, the Prosecutor relies heavily on Semanza. The facts that the Prosecutor wants the Chamber to take judicial notice in Semanza are substantially the same as in Kajelijeli and we have argued those in our brief and we are not going to go over that. In paragraphs 10 to 16 in the appendix (a), the Prosecutor argues that

from 1990 to July 1994, the military personnel, members of the government, political leaders, civil servants and other personalities conspired. We are dealing with a basic conspiracy that took place. Mr. Kajelijeli, he has been alleged to be a local person, a former mayor, involved in a conspiracy with a national person and they are now asking you to take judicial notice that a conspiracy existed. If you read carefully the paragraphs, as in Ntakirutimana, the Prosecution in Kajelijeli relies on the Kambanda sentencing judgement and Kambanda has been wrongly -- has been rightfully rejected. Kambanda proceeded from a guilty plea and not from a finding of fact beyond a reasonable doubt. Consequently, it cannot be considered a source of adjudicated facts, especially on a conspiracy count. In Ntakirutimana the Trial Chamber refused to take judicial notice of a widespread plan to commit genocide or exterminate Tutsis in Rwanda as a whole, has not been helpful to the facts in this specific case. That's the same

thing they are asking us to do here.

Similarly, the Prosecution, per trial, per Trial Chamber, to take judicial notice of this Trial Chamber to take judicial notice of facts pulled out in paragraphs 8 to 16 is not helpful to the ultimate issues of what took place in Ruhengeri. Now within the next three minutes that I have, let me just address the question of the international nature of the conflict. There's no question at all that there was a conflict, an armed conflict. So the only issue is whether it was internal or was it an international conflict, and our position is, as with respect to all of the contested issues, we are not dealing with pedantic questions. We are prepared to hold the Prosecution to their burden that they have on each of those. There were two parties to the conflict, the RPF and the government of Rwanda. The RPF had achieved belligerence status under international law. What does that mean, it means that they were not just bandits within a particular country and

therefore were involved in illegal acts as the government generally says in these situations. They have control of territory. They were in control of part of Mukingo, they were in control of Butare, Sayeru, Yambangali, Kidao, Kumba, Kiningi. As belligerents they were entitled to and received International materials. Very much like the ANC, very much like the MPLA, very much like FLERIMO. They received International recognition. They received aid very much like the PLO. The United Nations recognized the international threats towards this an, therefore Security Council passed resolutions in which they made it a military zone. Part of Ruhengeri was divided up. UN troops were assigned to monitor this. The OAU were assigned troops to monitor the cease fire. So this was not, as the Prosecutor argues, a national or internal conflict. Now it might be that other chambers in the past have, in fact, adjudicated this matter as an international conflict. I don't know and I don't want to cast any disparities with respect to the

confidence of other lawyers before this Tribunal. But we face, in each proceedings, the presumption of innocence and evidence. Rule 94 (B) says that it is discretionary as to whether or not a Trial Chamber would, in fact, adjudicate or would judicially notice adjudicated facts. So our contention, with respect to this point on the International nature of the conflict, is that we certainly intend to submit proof that the conflict was international in nature. Your Honour, for all of the reasons that I have set forth and I think I am right on target, we urgently request that this Chamber, as Trial Chamber I before you and as Trial Chamber III did, reject this proposition, this distortion of the Rules being urged upon you by the Prosecutor's office.

MR. PRESIDENT:

Thank you, learned counsel. Any response?

MR. FLEMING:

Thank you, Your Honour. I will be brief.

MR. PRESIDENT:

Yes, Mr. Fleming.

MR. FLEMING:

Your Honour, there is no distortion of the Rules. The Rules speak for themselves via the Rules. It is improper to characterize, as both of my learned friends attempted to, that this rule was an exception to the burden of proof. In fact this rule is an aid to the burden of proof. It's precisely the opposite to the characterization given by my learned friends when it's seen as an aid to the burden of proof, Your Honours can see it in its proper light. If, as we said about Ntakirutimana, it's seen as a matter of judicial economy then it misses its most important characteristic. And I thank My learned friends for reminding me that in fact it was the Prosecutor's office who, at least in part, put that proposition to the Trial Chamber. I don't embrace it at all because it is not a matter of judicial economy, it's a matter of an aid in proof of those responsibilities and the burden that the Prosecutor has. I am grateful to my learned friends also for the acknowledgments of those matters of which they have no

dispute. For the record, it is true that there wasn't a notice, as in other cases, to admit facts. I had a conversation with my learned friend about it and it was made abundantly clear that no admission would be made in respect of the facts before we filed this motion. That's precisely why we filed the motion.

Your Honours, I heard that one proposition before coming from our learned friends and that was this attempt to improperly characterize it as a reversal of Your Honour, of Your Honour's approach and we have, of course, cited that's simply not the case when one looks at the Rule in its proper context. There was, I think, a suggestion that the Rule was ultra vires. Article 24 that somehow or another it went beyond what was admissible and was inconsistent with Article 24. Nobody has argued that there's been no motion, there's been no attempt to impute Rule -- Article 24 at all. Secondly, there was a vague attempt to say that there was an internal

inconsistence in the rules and, therefore, Your Honours shouldn't follow them, that somehow or another 94 was inconsistent with the other Rules in respect of the receipt of evidence. It's not. And one can only say that if one improperly characterized it as a reversal of Your Honours approval, we make the proposition again that it's not a reversal of Your Honour's approval, at all, but rather it's in aid of that proof. And that's an important and fundamental plank in everything that we say. In none of these, Your Honours, my learned friend said that we sought to prove all of the element of the crime against his client. In none of this have we sought to implicate the involvement of Mr. Kajelijeli, nor is there anything going to eliminate elements involved in respect of Mr. Kajelijeli. These are matters outside of personal involvement and intent. I mentioned a couple of times previously a matter of genocide. We can illustrate it easily by this. Sometimes there's an inclination to say the genocide occurred and the judges should take judicial

notice of that. We don't subscribe to that, at all, because the only genocide that we can prosecute is the one exhibited by the intent of the individual. So it would be irrelevant for this court to take judicial notice of the fact that there are eight hundred thousand people killed or a million people killed or whatever. So we don't do that at any place, nor do we attempt to implicate the accused and any of his intent. What we do is to take those elements of the crimes and, indeed, they are carefully thought out and they are the elements of the crimes which Your Honours can take judicial notice of without interfering with the individual's right. So, defence is intent and defence is development in the process. So Your Honours, we have never sought to prove the case with judicial notice but rather those elements which we say are commonly known, those elements upon which adjudication has been made and not those involving him personally. So, Your Honours, we say that it is not a reversal of Your Honours, because when you look at the Rules,

themselves, they are the rules which control Your Honour's operation. They are general propositions as spelt by our learned friends, but it's the statute and the Rules which finally control this process and the Rules give Your Honours the right to do things that we wouldn't be able to do in ordinary domestic jurisdictions, and for a very good reason, and that's because of the immensity and the remoteness on the complexity of the crimes which are not dealt with within ordinary domestic jurisdictions. Thank you, Your Honours.

MR. PRESIDENT:

Thank you, learned counsel, Mr. Fleming, for the Prosecution.

PROFESSOR HINDS:

We are entitled to reply.

MR. PRESIDENT:

Well, No.

MR. FLEMING:

No.

PROFESSOR HINDS:

Yes, it is your motion.

MR. PRESIDENT:

Well, the procedure that has been obtained here is that the mover of the motion introduces the motion, the other party responds and he has a right of response, that has been the procedure.

PROFESSOR HINDS:

Okay.

MR. PRESIDENT:

Okay. We really want to thank you all of you for your submissions. We will adjourn these proceedings, we'll deliberate and when the decision is ready you will be notified. So these proceedings stand adjourn to Monday, 930 in the morning for the usual trial and proceedings.

(Court adjourned at 1255H)

(Pages 33 to 67 by Judith Kapatamoyo)

C E R T I F I C A T E

We, Kelly Allemang and Judith Kapatamoyo Official Court Reporters for the International Criminal Tribunal for Rwanda, do hereby certify that the foregoing proceedings in the above-entitled cause was taken at the time and place as stated; that it was taken in shorthand (Stenotype) and thereafter transcribed by computer and revised under our supervision and control; that the foregoing pages contain a true and correct transcription of the 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 no wise interested in the result of said cause.

_____(Pages 1 To 32)
Kelly Allemang

_____(Pages 33 To 67)
Judith Kapatamoyo