

1 THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA
2
3 CASE NO.: ICTR-98-44A-T THE PROSECUTOR
4 OF THE TRIBUNAL
5 AGAINST
6 JUVENAL KAJELIJELI

7 4 JULY 2001
8 0930H
9 TRIAL CONTINUED

10 Before:
11 Judge William H. Sekule, President,
12 Judge Winston C.M. Matanzima
13 Judge Arlette Ramaroson

14 For the Registry:
15 Mr. John Kiyeyeu
16 Mr. Abraham Koshopa

17 For the Prosecution:
18 Mr. Ken Fleming
19 Ms. Ifeoms Ojemeni
20 Ms. Melinda Pollard
21 Mr. Jayantha Jayasuruya

22 For the Accused Kajelijeli:
23 Professor Lennox Hinds
24 Professor Nkey Bompaka

25 Court Reporters:
Mr. Haruna Farage
Ms. Sithembiso Moyo
Ms. Judith Kapatamoyo
Mr. Rex Lear
Mr. Petrus Chijarira

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P R O C E E D I N G S

MR. PRESIDENT:

Yes, the proceedings are called to order.
Could the Registrar introduce the matter
coming before us this morning?

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, Wednesday,
the 4th of July 2001 for the commencement of
the trial in the matter of the Prosecutor
vs. Juvenal Kajelijeli, Case No.
ICTR-98-44A-T. Thank you, My Lords.

MR. PRESIDENT:

Thank you, Mr. Kiyeyeu. Can we have the
Counsel appearances starting with the
Prosecution, if you may?

MR. FLEMING:

Yes, as the Court please. I am Ken Fleming,
Senior Trial Attorney. I appear with
Ms. Ojemeni, Ms. Pollard, and Mr.

1 Jayasuruya, Trial Attorneys, and
2 Ms. Marotine, case manager. Thank you.

3 MR. PRESIDENT:

4 Yes. Thank you very much, Learned Counsel.
5 Yes, can we also have the appearances, you
6 know, for the Defence?

7 PROFESSOR HINDS:

8 Good morning, Your Honours. My name is
9 Lennox Hinds, and I am assisted by Professor
10 Bompaka, as we were yesterday and the day
11 before. But we have one addition,
12 Mr. Emilien Dusabe, the individual we have
13 spoken about, who has now come on board, and
14 is our interpreter for purposes of the
15 proceedings until our individual who has
16 been doing this before our investigator
17 obtains a visa. We expect him to be here
18 tomorrow from Zimbabwe.

19 MR. PRESIDENT:

20 Okay. Thank you, Learned Counsel. Yes,
21 Mr. Fleming.

22 MR. FLEMING:

23 Thank you, Your Honours. Do Your Honours
24 wish now to hear the opening in respect of
25 this trial?

1 MR. PRESIDENT:

2 Yes.

3 MR. FLEMING:

4 Thank you.

5 MR. PRESIDENT:

6 Unless there is anything else, otherwise we
7 are focused on that.

8 PROFESSOR HINDS:

9 Your Honour, I thought that we had reached
10 some agreement yesterday with respect to how
11 we would proceed. And my understanding is
12 that there are some pending matters namely,
13 some motions that are pending with respect
14 to discovery and we were going to deal with
15 those first.

16 MR. PRESIDENT:

17 And you are ready to take them up now?

18 PROFESSOR HINDS:

19 Oh, yes, that's what I indicated yesterday,
20 and I thought that's how we were going to
21 proceed.

22 MR. PRESIDENT:

23 Mr. Fleming.

24 MR. FLEMING:

25 Your Honour, I don't object how we proceed

1 provided we proceed.

2 MR. PRESIDENT:

3 We will proceed. Okay. We could start, the
4 Trial Chamber is ready to take it up, if you
5 are talking about the motions for what is
6 styled.

7 PROFESSOR HINDS:

8 Well, may I, Your Honour. There are issues
9 that relate to how we proceed.

10 MR. PRESIDENT:

11 Yes.

12 PROFESSOR HINDS:

13 All right. One, as I understand it, there
14 is a motion that has been made by
15 Mr. Nzeriryayo, in which he raises some
16 issues, I have not seen a decision with
17 respect to that. I think it imparts on how
18 we proceed with this particular matter,
19 whether or not, there will be someone from
20 his team involved et cetera. I don't know
21 what this Chamber has decided.

22 MR. PRESIDENT:

23 Which motion are you talking about?

24 PROFESSOR HINDS:

25 Mr. Nzeriryayo had made a motion.

1

2 MR. PRESIDENT:

3 Oh, there is a decision on that one.

4 PROFESSOR HINDS:

5 Oh. Okay, I was not provided with a
6 decision. But if the decision on that
7 motion is one in which it would affect how
8 we proceed, then that's out of the way.

9

10 The other issue that I want to deal with
11 relates to disclosures which impart on how
12 we proceed here. Yesterday, Your Honour,
13 you indicated that you will be familiar with
14 our motion to the Prosecutor's response and
15 our response to the Prosecutor's motion.
16 And I just want to set on the record where
17 we are at this point, and where the Defence
18 is looking for some response from the
19 Prosecutor. I had some discussions with
20 Mr. Fleming on some collateral issues
21 related to that day before yesterday, but
22 let me make just make the point.

23

24 We received disclosure statements, that is,
25 witness statements. And we requested from

1 the Prosecutor original, original either
2 statements that were made or any tapes that
3 perhaps were made of the interviews in the
4 original language. Whether the individual
5 was interviewed and spoke in Kinyarwanda or
6 spoke in French, or spoke in English, we
7 just wanted to know what the original
8 language was for each of the witnesses, and
9 we wanted a copy of the interviews in the
10 original language. We were told by the
11 Prosecutor's Office that, first of all,
12 there were no tape recordings. That the
13 interviews were done in which the
14 translations were simultaneously taken, in
15 fact, there were no notes. I do not even
16 know if there was a stenographer, but what I
17 was told was that there was no translation
18 from -- there was no recordings made in the
19 original language if it was Kinyarwanda, and
20 then there would have been a document or
21 tape of that, which then was translated.

22

23 So, the next question that we have was
24 whether or not, the -- if there was this
25 interview done, we wanted to know which of

1 the documents that we received would be the
2 documents that would be relied upon for
3 purposes of the proceedings. Because some
4 documents had signatures on them, others did
5 not. We were told that the documents that
6 were signed, were in fact the documents that
7 the Prosecutor considered to be the original
8 documents.

9
10 Now, we just want to be clear and for it to
11 be put on the record concerning what the
12 Prosecutor's position is with respect to
13 whether or not there are any documents, any
14 tapes, any transcripts in Kinyarwanda. And
15 I raised that because this Court knows, you
16 Judge Sekule knows, we dealt with the
17 question of tapes early in this trial. The
18 Prosecutor said to this Court there were no
19 tapes. They swore to it. They said over
20 and over, and then we found out later on, in
21 fact there were tapes, and the tapes were
22 some place else. I want to make sure that
23 we get the Prosecutor on the record, they
24 said there are no tapes. If it is, that is
25 fine.

1
2 The second issue we have raised. We have
3 indicated that in going through the witness
4 statements, when you compare the English and
5 the French in some cases on critical issues,
6 the versions are not the same. So, we have
7 said, tell us which statements that you
8 would be relying upon are the statements of
9 the witness. Because in looking at some of
10 these witness statements, we were not able
11 to decipher which was the statement of the
12 witness given, there were in some case
13 omissions, and in some cases there were
14 statements made that were not contained in
15 either the English or the French.

16
17 I had some preliminary discussions with the
18 Prosecutor's Office in this regard, but I
19 could not give them some details with
20 respect to that matter, only because our
21 investigator who compiled that information,
22 who is bilingual was in Zimbabwe. But I can
23 give at least one example on a critical
24 witness that we wanted to deal with. That
25 is a problem that only impacts as a

1 particular witness will take the stand. And
2 we perhaps can deal with this issue as we go
3 along on a witness by witness basis. But it
4 is an issue that is causing us some concern
5 because we need to know what is the
6 statement that we can rely upon from the
7 witness.

8
9 For example, there is a witness by the
10 pseudonym GBW, and in particular, there is
11 an unredacted statement of GBW of June 8 of
12 1999, and specifically, at page 1149, or as
13 stamped in the Prosecutor's page number
14 K01379 -- I don't know whether that's a 4 or
15 70, but it's 1149, which is in handwriting
16 at the top right-hand corner. And in the
17 French, it is 1152 handwriting in the
18 corner. This is the statement of GBW. The
19 last paragraph in English says, "After the
20 massacre, I hid in the bush around the
21 church where I suffered hunger and grief. I
22 wish for that, I ate grass and drank rain
23 water. By a miracle, a white Reverend
24 Sister found me and drove me in a car to
25 Kigali, where I remained until the arrival

1 of the Inkotanyi." What we have in the
2 French, the last paragraph, I would like to
3 have Mr. Dusabe read it. "Subsequently, a
4 vehicle belonging to the council got to the
5 place driven by Bagegeza, an Interahamwe,
6 who took away my mother by force with
7 corpses, other corpses to go and bury her
8 alive. I also saw another pick-up driven by
9 Muhunde, the driver of Kajelijeli." And
10 that's the end of quote.

11

12 Now, my problem is that I'm relying on the
13 English version. I don't really know what
14 is in the French version, which my client is
15 reading because he does not read any
16 English. So, the problem that we have and
17 that is why I'm saying that we need clarity
18 with respect to these inconsistencies.

19 Because I have been working on the basis
20 that what I have in English is exactly what
21 is in the French. And so, therefore, when I
22 am preparing to cross-examine a witness, I'm
23 assuming that what is stated in the English
24 is in fact what would be relied upon by us
25 in anticipation of the witness statements.

1 And so, I raised this issue, I raised this
2 when I was still in New York in my motion,
3 because I need to know from the Prosecutor
4 what statement that they are saying will be
5 the statement that the witness will be
6 making? Is it the French, is it the English
7 and which one? Let me proceed. The next
8 item.

9 MR. PRESIDENT:

10 Yes.

11 PROFESSOR HINDS:

12 The next item that I have raised relates to
13 Rule 68. And it's a peculiar situation
14 because we believe that the Prosecutor is
15 under a duty to provide information that
16 would be either exculpatory or may relate to
17 the credibility of any of their witnesses.
18 Now, they intend to call about four
19 convicts, individuals who are prisoners and
20 from Ruhengeri, individuals who have a sword
21 of Damocles hanging over their necks.
22 Individuals who may be even awaiting
23 sentences based upon whatever they say here.

24

25 Our position, and I think it is a reasonable

1 position, is that if there has been any
2 cooperation agreements between these
3 prisoners, the ICTR or the Government of
4 Rwanda in exchange for their testimony, we
5 are entitled to it. We are asking for it.
6 I have been told unofficially that -- from
7 Mr. Fleming, that they were not aware of any
8 such statements. I just simply repeating
9 the request and asking for that information,
10 if it exists, so that we be on the record.
11 Of course, it is very critical to us,
12 because our position is, it relates to the
13 issue of credibility of these witnesses in
14 the same vein. And we raised this issue in
15 another branch of our motion.
16
17 We requested copies of any trial testimony,
18 any plea agreements, any statements that
19 were made by these convicts during their
20 trial, because these are individuals who are
21 on trial, and if they mention our client at
22 all. We said to the Prosecutor, we would
23 like that information before these people
24 testify. I understand they may not even be
25 here and we have time to get that

1 information.

2 MR. PRESIDENT:

3 From where, Mr. Hinds?

4 PROFESSOR HINDS:

5 From where, meaning what?

6 MR. PRESIDENT:

7 From the Prosecutor? That information,
8 where do you expect to get it, from the
9 Prosecution or from --?

10 PROFESSOR HINDS:

11 Well, first of all --

12 MR. PRESIDENT:

13 That particular information?

14 PROFESSOR HINDS:

15 That information -- those are their
16 witnesses. They are individuals who in fact
17 have secured those witnesses.

18
19 Secondly, there is an agreement between the
20 Prosecutor's Office and the Government of
21 Rwanda. They have interviewed those
22 witnesses. They are thoroughly familiar
23 with the background of those witnesses.
24 Now, if they say to us, we don't have any of
25 this information, we certainly can tell you

1 how you may want to proceed to try to get
2 the information. We don't have the
3 information with respect to any of those
4 agreements et cetera, any trial transcripts,
5 they've been silent. They've said nothing
6 to us. They just ignored our request with
7 respect to each of those issues, and they
8 are important.

9
10 Okay, we happen to believe that the most
11 expeditious way of us proceeding forward
12 would be to go through the Prosecutor's
13 Office to try to get that information, as
14 opposed to us contacting the Government of
15 Kigali, where we have absolutely no
16 relationship with them. We know that the
17 Prosecutor's Office has a relationship, and
18 we are not asking the Prosecutor's Office to
19 get us general information. We are asking
20 the Prosecutor's Office to supply
21 information with respect to witnesses that
22 they are calling, their witnesses. And
23 that's why I expect minimally that they
24 would have information. But if they don't
25 have information, they certainly have the

1 conduit and the resources within which to at
2 least facilitate this. But in the first
3 instance, if they have the information, they
4 are obligated to provided it.
5
6 Finally, the Prosecutor in their response
7 suggest that we come look at their files.
8 They are confusing the issue. We have
9 absolutely no interest. We know that we
10 can, there may come a time when we may want
11 to look at their files, but if we wanted to
12 look at their files, we would ask them to
13 come look at their files. We have asked
14 them to disclose information if they have
15 it. If they don't have it, to tell us very
16 clearly, they don't have it, and
17 specifically, what they don't have. And if
18 they can facilitate us with respect, since
19 they have contacts with the Government of
20 Rwanda, especially in the connection with
21 these convicted witnesses whom they are
22 calling with respect to their plea -- if
23 they entered pleas, plea agreements that
24 they may have made, statements that they may
25 have made at trial. So, those are the

1 issues, and they impact only those witnesses
2 who will be testifying, and I don't think
3 that any of those people are scheduled
4 today. So, I don't think that that impact
5 us moving forward.

6 MR. PRESIDENT:

7 Yes.

8 PROFESSOR HINDS:

9 My job here is to protect my client, to
10 protect his interest, to make sure that due
11 process is served and to make sure that the
12 Prosecution provide information pursuant to
13 these rules.

14
15 Those are the preliminary issues, Your
16 Honour, that we wanted to raise with respect
17 to discovery. We are prepared to move
18 forward with our opening statements. We are
19 prepared to cross-examine witnesses, we are
20 prepared to go forward. But I will not
21 proceed if we are not dealing with the
22 Rules, the Regulations, the Procedures, and
23 making sure that what pending motions that
24 we have are dealt with, and is on the
25 record. And I think that is only fair.

1

2 MR. PRESIDENT:

3 Thank you. Thank you very much, Learned
4 Counsel. Mr. Fleming.

5 MR. FLEMING:

6 Thank you, Your Honours. Your Honours,
7 about the third or fourth time our learned
8 friend just raised these issues. And for
9 the third or fourth time, we repeat our
10 responses to him.

11

12 First, we have no statements that were taken
13 in Kinyarwanda. We have no tapes of any
14 statement that might have been taken in
15 Kinyarwanda. We have explained to this
16 Trial Chamber how the statements are taken,
17 and we simply don't want to repeat that. We
18 simply say we don't have those statements.

19

20 Second, in respect of disclosure, our
21 learned friend asked for many things, and
22 indeed, in his most recent motion, it's very
23 difficult to know precisely what he is
24 asking for. We responded as best we are
25 able to ascertain what was required. That

1 was the first of the propositions that they
2 wanted tapes, we have no tapes.

3
4 Second proposition is that they wanted any
5 agreement that we might have with Rwanda.
6 We have no agreement. We've told him that
7 on numerous occasions previously.

8
9 Third proposition, he wants material
10 pursuant to Rule 68 that we might -- that
11 might affect the credibility of one of their
12 witnesses or may be exculpatory. I repeat
13 again what we've repeated on many occasions,
14 the Prosecutor shall as soon as practicable
15 disclose to the Defence the existence of
16 evidence known to the Prosecutor, which in
17 any way tends to suggest the innocence or
18 mitigate the guilt of the Accused, or may
19 affect the credibility of Prosecution
20 evidence. I repeat again, we know of no
21 evidence that we have not disclosed, which
22 may affect the credibility of the
23 Prosecution witness or which might tend to
24 suggest the innocence or mitigate the guilt
25 of the Accused.

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We have no obligation to go to the authorities in Rwanda in respect of any material that they might have. And in any event, we have interviewed those people. Those issues relevant to this trial have been obtained and sent to our learned friends.

Your Honours, my learned friend makes much of his responsibility as Defence Counsel, and indeed it is an onerous responsibility. He has a client who is innocent until proven guilty, yet he stands in this Court and refers to four people in jail in Rwanda as convicts. Does he know if they had a trial? Does he know if they have ever been convicted? Apparently, there is a dichotomy in my learned friend's concept of justice. His client stands innocent until proven guilty, but any of our witnesses who might happen to be on remand awaiting a trial in Rwanda, are apparently convicts. And with the greatest respect, his emotive language achieves nothing before jurists. It might

1 be for a jury, but not before a jurist.
2 And so we are left with four people; one of
3 whom apparently has had a trial, but has not
4 yet been convicted, still awaiting a
5 verdict. Three who are on remand, we have
6 no intention of interfering with that
7 process in Rwanda, and nor would we allow it
8 to stand on the record that these people are
9 convicts who are our witnesses.
10
11 So, Your Honours, our response is simple;
12 our disclosure obligations are under Rules
13 66 and 68. If our learned friend wants
14 anything from any of our files which he
15 suggest will assist him in preparing his
16 case, we would provide it. We have made
17 that offer to him on numerous occasions. We
18 would provide it, and we would provide it
19 instantly. However, we do not have anything
20 that we know of which falls within the ambit
21 of our responsibility for disclosure. Of
22 course, most people don't -- most accused
23 don't want to come and look at anything,
24 because that triggers a reciprocal
25 obligation of disclosure, not have to show

1 us what they have got. So, they come to
2 court and they make a great show of the fact
3 that we won't cooperate, yet they can come
4 and say anything they like at any time they
5 wish, which they consider to be relevant to
6 the preparation of their case.

7
8 Your Honours, we have no more material that
9 we can show our learned friends. We will --
10 now that we know that there is perhaps a
11 discrepancy in the statement, we will look
12 at the translations and we will see whether
13 or not there is an error. Your Honours, I
14 asked our learned friends on Monday, if they
15 would in fact show us the discrepancies
16 about which they speak, today is the first
17 time that they have been prepared to
18 disclose the discrepancy, and of course in
19 court, for no doubt maximum effect.

20
21 However, now that we have at least one
22 discrepancy, we will look into it. If they
23 have other discrepancies that they would
24 like to bring to us, we would be more than
25 happy to look at them. We are, of course

1 dependent to ourselves upon the Language
2 Section and the official translation of
3 these things. I, like my learned friend,
4 will work in English from the English
5 version.

6
7 One other matter is left outstanding. It is
8 the signed statement which is of course the
9 official version of any language -- of any
10 statement. The signed statement. Any
11 translation has at the bottom of it
12 translated from whatever, and I think it
13 also has a date on it. So, it's quite easy
14 to discern which is the original, which is
15 the translation, one is signed, and the
16 other, isn't. One has translation on it,
17 the other hasn't. So, perhaps we could
18 leave that with our learned friends to work
19 that out for themselves. However, if there
20 are discrepancies that they can show to us,
21 then we would be delighted to see them and
22 go to Language Section and try to resolve
23 the issue as quickly as we can. Thank you,
24 Your Honours. We are anxious to proceed in
25 this as well.

1

2 MR. PRESIDENT:

3 Thank you, Mr. Fleming. Yes.

4 PROFESSOR HINDS:

5 I just need clarification on one point.

6 Because as Mr. Fleming has spoken on, now

7 I'm learning something.

8 MR. PRESIDENT:

9 Yes.

10 PROFESSOR HINDS:

11 Is he saying that where there is a statement
12 that has been signed, for example, as in
13 English, the signed statements means that
14 there has been no translations. Is that
15 what he is saying?

16 MR. FLEMING:

17 Your Honours, our learned friend has
18 received an original and a translation of
19 every single document that we have, which we
20 are using in this Court. Now, the signed
21 document is the original. The document
22 which goes with it, which has translation on
23 it, is the translation. I don't know that I
24 can be clearer from that.

25

1 PROFESSOR HINDS:

2 All right.

3 MR. PRESIDENT:

4 Thank you. Yes, Counsel.

5 PROFESSOR HINDS:

6 That clarifies it.

7 MR. PRESIDENT:

8 All right. And Mr. Hinds, you are aware of
9 the list of possible witnesses that might
10 come before the trial in the course of these
11 few days?

12 PROFESSOR HINDS:

13 I have a list of 15 witnesses. I have
14 spoken to Mr. Fleming. He has given me the
15 order. I assumed that that would be the
16 order. I'm told that there may be one
17 witness who might -- investigator who might
18 be interposed in-between them. We are
19 prepared to proceed on that basis subject to
20 the questions that I have raised about some
21 of these problems.

22 MR. PRESIDENT:

23 Okay. The Trial Chamber will deliberate and
24 give out its formal decision on this motion.
25 But since these matters as indicated from

1 the submissions of the parties, are not
2 likely to have impact on the beginning of
3 the trial, the trial will proceed, and a
4 decision will be given in the course of
5 time, but it will be as soon as possible, in
6 a day or two on these matters.

7

8 So, the proceedings with regard to the
9 motion have ended, we would now proceed with
10 the next stage, which is the beginning of
11 the trial. And Mr. Fleming, if you have any
12 statement to make in terms of Rule 84, you
13 may please proceed.

14 MR. FLEMING:

15 Thank you, Your Honours.

16

17 Your Honours, instead of the rise and rise
18 of a carpenter, we are going to hear about
19 the decline and decline of a carpenter. His
20 name is Juvenal Kajelijeli.

21

22 John Stewart Mill said in his work on
23 liberty: "The only purpose for which power
24 can be rightly exercised over any member of
25 a civilised community against his will, is

1 to prevent harm to others. His own good,
2 either physical or moral is not a sufficient
3 warrant."

4

5 The evidence in this case will disclose that
6 Juvenal Kajelijeli exercised power in a
7 wanton and undisciplined manner not for the
8 good of anybody, but rather for his own evil
9 purposes.

10

11 William Pitt, the elder in 1770, stated this
12 proposition: "Unlimited power is up to
13 corrupt to the minds of those who possessed
14 it."

15

16 The evidence in this case would show that
17 Juvenal Kajelijeli had unlimited power in
18 the small part of Rwanda, and he ran rampant
19 with that power.

20

21 Lord Acton in 1904 said: "Power tends to
22 corrupt, and absolute power corrupt
23 absolutely."

24

25 The evidence in this case would show that

1 Juvenal Kajelijeli, the Accused in this
2 case, exercised corrupt and absolute power
3 in a small area of Rwanda, and claimed the
4 lives of many, many people as a result.

5
6 Your Honours, there is no humane system on
7 the face of the earth who can and will
8 tolerate humanity -- inhumanity as we have
9 seen in Rwanda. A humane system is one
10 which balances rights, takes into account
11 all issues, and reaches a conclusion in
12 which citizens can experience peace and
13 liberty. The contrary occurred in Rwanda.
14 The contrast to humane society is a
15 tyrannical system which rules with brutality
16 and arbitrariness. The evidence in this
17 case will disclose that that is what
18 happened in Rwanda in 1994.

19
20 Your Honours, this Tribunal is here to
21 balance the issues between the rights of
22 individuals and the arbitrariness of power.
23 It's here to bring justice first to the
24 victims of a genocide, second, to Rwanda,
25 and third, to the world's community.

1
2 Juvenal Kajelijeli is charged with 11 counts
3 that we would come to in time. The charges
4 are before this Tribunal because they are of
5 such gravity and appalling dimension that
6 they ought to be before a Tribunal of this
7 sort. Any legitimate government provided
8 that they have given themselves the
9 jurisdiction to do so, may prosecute the
10 charges that we see here. Rwanda does so.
11 And it's perfectly entitled to do so. But
12 there are charges which transcend the
13 interest of a particular group or even a
14 particular nation, they extract from the
15 whole human community a sense of outrage
16 that they should be treated in a different
17 way. And they are here, because they are of
18 such gravity that the world says of them,
19 this is an international issue, this is an
20 issue belonging to the whole of the human
21 race. And so, Your Honours are here to
22 determine that.

23

24 Your Honours, the world is developing and
25 championing human rights. If that's the

1 case, then the world must bear the burden of
2 the enforcement of human rights on the
3 prosecution of the alleged abuses. Perhaps,
4 to the world, the process sometimes seems
5 slow and expensive, that we urge a patience
6 upon those who look on especially when the
7 highest order of human rights are being
8 observed within the confines of this
9 Tribunal. Those human rights are being
10 extended to this Accused.

11
12 Your Honour, if the world is developing a
13 sense of human rights then accountability
14 for breach of those human rights is the
15 reverse side of that concept. It is the
16 Trial Chamber's responsibility to exercise
17 the world view on what is, and what isn't,
18 an acceptable standard of human rights.
19 This Trial Chamber is responsible to make
20 accountable those who abuse those human
21 rights.

22
23 Your Honours, it is not the responsibility
24 of the Prosecutor to make accountable. The
25 responsibility of the Prosecutor is simply

1 this; to gather evidence, to present that
2 evidence to a judge in the first instance,
3 to ensure that there is sufficient evidence;
4 to have an indictment confirmed. And when a
5 Judge of this Tribunal is satisfied with
6 that, then to pursue a particular person
7 against whom there is cogent evidence. That
8 person is brought before this Tribunal, and
9 then from there their rights are protected,
10 not by the Prosecution, but rather by this
11 Court.

12
13 The Prosecution is conscious all of the time
14 of its obligations to an accused. Because
15 as our learned friend has already said
16 today, an accused is innocent until proven
17 guilty. We accept that, and we treat an
18 accused in that manner. So, Your Honour, we
19 bring an Accused to you, and we bring
20 evidence to you. It's not our
21 responsibility to ensure that a conviction
22 is obtained, but rather our responsibility
23 to ensure that the evidence is presented to
24 Your Honours, in the best possible way, in
25 the clearest possible way, so that Your

1 Honours can determine whether an accused has
2 or has not committed the offences with which
3 he or she is charged.

4
5 The Trial Chamber supervises the conduct of
6 the Prosecutor at all points. That is
7 becoming abundantly clear in this particular
8 case, where there have been numerous motions
9 and attacks upon what has happened to this
10 Accused, yet this Accused is here, not by
11 anything that the Prosecution has done, but
12 rather by determination of the Trial
13 Chambers.

14
15 Your Honours, the standard of proof is that
16 time on its standard of proof, beyond
17 reasonable doubt. The evidence which we
18 bring, we will submit establishes beyond
19 reasonable doubt that charges have been
20 proven.

21
22 Your Honours, we must deal with some
23 procedural issues. This Tribunal is a new
24 era, as is the Tribunal in the Hague, in
25 respect of the prosecution of breaches of

1 human rights and crimes against humanity.
2 There are rules established for the manner
3 in which this Tribunal is to proceed. Those
4 rules take into account the various
5 jurisdictions and systems of the world, and
6 they extract from those systems and
7 jurisdictions what we presumed, like
8 consider to be the best possible rule to
9 apply.

10

11 If there is one thing that we must say with
12 emphasis, it is this: We are not in any
13 national jurisdiction. No national
14 jurisdiction can bind this Tribunal. This
15 Tribunal is free to develop a jurisprudence
16 which is meant to enforce that standard of
17 human rights which the human community
18 expects. There are things within
19 jurisdictions, national jurisdictions which
20 will limit that. And so this Tribunal does
21 not have that limitation placed upon it.

22

23 However, the Rules do make provisions for
24 some issues, the first that I wanted to
25 discuss was proof beyond reasonable doubt.

1 That time on a proposition. The Rules make
2 provisions for the role of counsel,
3 especially, for the Defence. And the role
4 of counsel for the Defence is a vigorous
5 one, and we will never object to the
6 intellectual and the combatative vigour of
7 Counsel for the Defence. The Rules deal
8 with the reception of Evidence, and Your
9 Honours have an entitlement to receive
10 evidence which you might not have in a
11 national jurisdiction, but I will come to
12 that a little later.

13
14 The Rule provides for three Judges to sit
15 instead of a jury. And the Rules make
16 provision for the manner in which Your
17 Honours will deliberate in the cause of this
18 and every other trial.

19
20 Your Honours, can I come back to the
21 reception of evidence. Rule 89 is the
22 pivotal rule in respect of that. General
23 provisions, the Rules of Evidence set forth
24 in this section shall govern the proceedings
25 before the Chambers. No limitation upon

1 Your Honours, except the limitations placed
2 by the Rules of Evidence set forth in this
3 section. Importantly, the Rules then say
4 the Chambers shall not be bound by national
5 rules of evidence.

6
7 Your Honours, the best advice that I
8 received when I came here was that one must
9 jettison for a start all that I learned in
10 my national jurisdiction. I must then learn
11 a new discipline, the discipline of these
12 Rules, and then see how my national
13 jurisdiction can assist the interpretation
14 of these Rules. Unfortunately, too often
15 the reverse applies.

16
17 Your Honours are free from the confines of
18 national rules of evidence. However, you
19 are confined by the Rules that apply here.
20 "A Chamber indeed shall apply Rules of
21 Evidence which best favour a fair
22 determination of the matter before it, and
23 are consonants with the spirit of the
24 Statute, and the general principles of law."
25 The spirit of the Statute and the general

1 principles of law.

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The spirit of the Statute is to bring justice to the victims of genocide, to Rwanda, and to the human community. The spirit of the Rules also is that an accused is innocent until proven guilty. The spirit of the Rules is that the Prosecution must present evidence which at the end of the day when weighed, proves beyond reasonable doubt that an accused has committed a crime.

So, the spirit of the Rules protects both the victims and the accused. And Your Honours have that responsibility to always keep in balance the gravity of the crime, but the rights of the Accused throughout the whole of the trial. The general principles of law, the general principles of law are developed within the confines of these Rules. The general principles of law that we find of universal application. The general principles of law which best give effect to the intention of the Statute.

1 Your Honours, a Chamber may admit any
2 relevant evidence which it deems to have
3 probative value. And probative of course is
4 the operative term. It must have probative
5 value for it to be admissible. We would
6 endeavour, of course to present no evidence
7 which has no probative value. In that way,
8 Your Honours will have a trial which will
9 happen in the most efficient manner
10 possible.

11
12 However, Your Honours, in determining some
13 of these issues, Your Honours can and will
14 have regard from time to time for assistance
15 to the law which is being developed in many
16 jurisdictions. For example, how does one
17 exercise a discretion to admit evidence in a
18 particular instance? How does one actually
19 exercise the discretion to determine what is
20 probative and therefore admissible evidence,
21 and what is not probative? They are issues,
22 which no doubt will have us from time to
23 time going back into national jurisdictions.

24
25 However, the fundamental proposition is that

1 Your Honours are not bound by domestic or
2 national jurisdictions. And Your Honours
3 are to exercise your functions within the
4 spirit of the Statute and the general
5 principles of law.

6

7 (Pages 1 to 37 by H. Farage)

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1 1030H

2 MR. FLEMING:

3 Your Honours, the next proposition is that
4 there are -- there is no jury in this Court.
5 Your Honours have been elected by the world
6 community from amongst the world's jurists.
7 Your Honours exercise a function which is
8 both that of what we traditionally would see
9 a jury exercising, and that which we see
10 judges traditionally exercising in criminal
11 trials. Your Honours are the arbiters of
12 both fact and law.

13

14 Your Honours are not jurists -- Your Honours
15 are not members of the jury; Your Honours
16 are jurists and there is a significant
17 difference in that. The hyperbole which one
18 might find, the theoretics which one might
19 find before a jury have no place before this
20 Tribunal.

21

22 Your Honours will determine these cases upon
23 their facts and upon the legal propositions,
24 and not upon essence of theatre.

25

1 Your Honours, I come then to the charges
2 with which the accused here is charged.

3

4 First, Juvenal Kajelijeli is charged with
5 conspiracy to commit genocide.

6

7 Second, he is charged with genocide.

8

9 Third, he is charged with complicity to
10 commit genocide.

11

12 Fourth, he is charged with direct in public
13 incitement to genocide.

14

15 Fifth, he is charged with crimes against
16 humanity and specifically murder.

17

18 Sixth, he is charged with crimes against
19 humanity and particularly extermination.

20

21 Seventh, he is charged with crimes against
22 humanity, particularly rape.

23

24 Eighth, he is charged with crimes against
25 humanity, particularly persecution, on

1 racial, political, or religious grounds.

2

3 Ninth, he is charged with crimes against
4 humanity, other humane acts, pursuant to
5 Article 3(1) of the Statute.

6

7 Tenth, he is charged with serious violations
8 of Article 3, Common to the Geneva
9 Convention and Additional Protocol II, in
10 particular murder, as well as cruel
11 treatment and,

12

13 Eleventh, similarly but specifically rape.

14

15 Your Honours, the incidents with which we
16 are concerned in respect of this accused,
17 occurred over only three or four days.
18 President Habyarimana's plane was shot down
19 on the 6th.

20

21 On the 7th, there was a gathering of the
22 accused and of various other people in a
23 small market called Byangabo. The accused
24 there, early morning of the 7th, within 12
25 hours virtually of the President's plane

1 being shot down, had his troops mobilised
2 and told them: Let us exterminate them. Go
3 home and get your uniforms on, because you
4 have work to do. Go and kill and
5 exterminate the Tutsis; and they went to
6 work with the will in Busogo. Weapons were
7 sent, taken in the pick-up used by the
8 accused.

9
10 At the end of that, particularly bloody
11 episodes, beers were drunk and there was
12 congratulations all round, because they had
13 done a good job, but they hadn't finished
14 their job, they went out again and they did
15 some more murdering.

16
17 The 7th of April, the day after the
18 President's plane was shot down, roadblocks
19 were set up. And Kajelijeli came regularly
20 to the roadblocks to ensure that the work
21 was being conducted efficiently.

22
23 On the 9th of April, Tutsi families were
24 targeted. A woman and her five children
25 were killed in one incident, and there will

1 be clear and cogent evidence of that. Two
2 Tutsi children from another home were
3 killed. A Hutu husband was let free, if
4 anybody had any doubt at all as to the
5 intention of the accused, surely to kill a
6 Tutsi wife and five children but leave a
7 husband alive, who was a Hutu give some
8 indication from which we might draw an
9 inference as to what his intention was, but
10 we don't need to draw inferences; but we
11 have direct evidence.

12
13 The 8th of April, again the accused was seen
14 at roadblocks supervising, ensuring that the
15 work of killing was being done efficiently.

16
17 The 10th of April, he was seen at the
18 agricultural college at Busogo and having
19 delivered weapons there and handing out
20 weapons so that they could continue with
21 their killing. And so on and on the
22 evidence will go.

23
24 Your Honours, I won't spend time going over
25 all of the evidence because Your Honours

1 have that evidence, as does their learned
2 friend.

3
4 Your Honours, there are some matters of law
5 which we would like to draw to the attention
6 of the Trial Chamber. The incitement for
7 example, the charge of incitement must be a
8 direct -- there must be a direct incitement
9 and there must be a public incitement. It
10 is our submission that you will find that,
11 in the evidence of the first morning it must
12 directly provoke the perpetrators and I can
13 refer Your Honours to Akayesu. The decision
14 in Akayesu, for example at paragraph 556,
15 557 and 559; there must be a mens rea. There
16 must be an intent to directly prompt or
17 provoke the crime, again in Akayesu at
18 paragraph 557.

19 MR. PRESIDENT:

20 It's the Trial Chamber decision, I suppose?

21 MR. FLEMING:

22 I am sorry, Your Honour?

23 MR. PRESIDENT:

24 The Trial Chamber decision.

25

1 MR. FLEMING:

2 Yes, the Trial Chamber decision.

3 MR. PRESIDENT:

4 Because now we have two decisions.

5 MR. FLEMING:

6 Yes, but I don't think they touch some of
7 these -- it's just propositions that came
8 out of the trial.

9 MR. PRESIDENT:

10 No. Just be sure.

11 MR. FLEMING:

12 Thank you, Your Honour.

13 MR. PRESIDENT:

14 And of course also, we do not have the
15 evidence. You and the defence counsel may
16 have. We do not as yet. We have not heard
17 any evidence on this matter.

18 MR. FLEMING:

19 Thank you, Your Honour.

20 Please, Your Honour, I was referring in
21 fact, I am sorry, to the summary of the
22 evidence in the pre-trial brief. You
23 certainly do not have the witness statement.
24 I think we have discussed that.

25

1 MR. PRESIDENT:

2 We do have the summary certainly. Sorry for
3 the interruption, please.

4 MR. FLEMING:

5 Your Honours, there must be of course in
6 genocide, a special intent. This particular
7 development of the law is an interesting
8 development as between common law and civil
9 law; where the clearest and the best
10 proposition is being taken and applied to
11 this concept of genocide. So, there is a
12 specific intent, a *dolus specialis*. It is
13 our submission that this will be shown very
14 clearly. For example, when the accused gave
15 instructions to go out and kill the Tutsis.
16 When there was a response to that by the
17 Interahamwe, when they went off singing and,
18 excuse my Kinyarwandan accent,
19 "Tubatsembetsembe" -- Let us exterminate
20 them. Let us exterminate them.

21
22 Your Honours, there was over three days an
23 explosion of violence, which required the
24 mobilisation of many, many people to achieve
25 it. The *dolus specialis*, we will submit,

1 can also be inferred from the fact that this
2 occurred.

3
4 Your Honours, I come back to something that
5 we put on record yesterday and that is, the
6 responsibility under Article 6(3). We say
7 again that we do not pursue this accused
8 because he was a person in responsibility
9 within the civil government; because in
10 fact, he had been the bourgmestre of
11 Mukingo. He had been removed from that
12 position and he subsequently became the
13 bourgmestre again. However, we are not
14 interested in the time when he subsequently
15 became a bourgmestre. We are for historical
16 purposes interested in the time when he was
17 bourgmestre previously and when he
18 established the Interahamwe, the militia
19 group associated to the major political
20 party.

21
22 In 1991, there was an organization called
23 Amahindure, which I understand translated
24 means, a volcanic explosion. That
25 Amahindure was the establishment of the

1 Interahamwe, the youth wing which became the
2 militia attached to the Imarinde.

3
4 For historical purposes, some evidence will
5 be given of those days and how the
6 Interahamwe developed and were trained; how
7 the Interahamwe were then armed and
8 uniformed and they went from becoming a
9 youth movement to a militia, with the
10 potential to kill which we will disclose to
11 Your Honours in comprehensive evidence.

12
13 The responsibility pursuant to Article 6(3),
14 we submit, will be established by reference
15 to those facts and then precisely what
16 occurred. With this accused leading and
17 directing the murder and the rape and the
18 pillaging of property of those who had
19 recently been murdered and dividing the
20 properties up amongst various people.

21
22 Your Honours, the question of conspiracy
23 remains. That conspiracy, we submit, will
24 be established by reference to the
25 association that this accused had with

1 Nzirodera. We, of course, don't seek to
2 involve this accused in a conspiracy which
3 embraced the whole of Rwanda. We involve
4 this accused in a conspiracy which was given
5 effect to by conversation, by consultation
6 and then by action which occurred in this
7 man's home town, in this man's home region.

8
9 Nzirodera was a minister, and Your Honours
10 have ruled in respect of a motion by
11 Nzirodera, another accused as to whether or
12 not he would be entitled to be here,
13 entitled to cross-examine people. Your
14 Honours have ruled that he is not. It is
15 because we have submitted that Nzirodera is
16 not on trial here; but rather this accused
17 is on trial and one of the areas that we
18 will ventilate is this accused's association
19 with the minister of government Nzirodera
20 and the influence that they are able to
21 assert in this region, to bring about the
22 events that occurred.

23

24 For example, it was Nzirodera who obtained
25 the uniforms for the Interahamwe, that the

1 accused had been training and preparing for
2 the work they had to do. The accused was
3 well aware of the distribution of those
4 uniforms and the comment: Wear your
5 uniforms, carry your guns, go to work,
6 exterminate all the Tutsis remaining in the
7 commune. Evidence to be given by the
8 witness spelling pseudonym GAI. The same
9 person went to a meeting in 1993 and heard
10 both Nzirodera and Kajelijeli at the same
11 meeting recruiting for Interahamwe.

12
13 Shortly after that, a tree was planted
14 outside of Nzirodera's house and from then
15 on that is where the meetings of the
16 Interahamwe were held.

17
18 Your Honours, in respect of some issues,
19 there is particular concern from particular
20 groups in the community; and there I
21 specifically refer to the issues of sexual
22 violence.

23
24 It is the position of the Prosecutor that,
25 none of those influences affect our ultimate

1 responsibility to bring cases of cogent
2 evidence of sexual violence and rape. We do
3 so in this particular case and as I have
4 opened to you before and I will open again,
5 the evidence of one witness GDO, a mother,
6 and she tells of an incident where after the
7 killing started and I quote from her
8 statement "Those Interahamwe started
9 searching for Tutsis in our sector. They
10 found my daughter; they got her out of her
11 hiding place, raped her and killed her.
12 There were many of them aboard Kajelijeli's
13 red Toyota pick-up van. It was driven by the
14 latter. They arrived at about 4 a.m. My
15 daughter was in the same forest as we were;
16 but in the place which was about three
17 metres away from my hiding place.

18
19 As for Kajelijeli he was about 50 metres
20 from my hiding place. I could see him but I
21 do not recall the colour of his clothes. I
22 saw him and heard him give the following
23 order to the Interahamwe: "Search for the
24 girls, rape them and kill them later".

25

1 Your Honours, I pause there, because the
2 element of mental harm to people is a very
3 significant element in all of this; and I
4 repeat this particular statement not only
5 for the impact in respect of rape, but also
6 to bring to Your Honours' attention, how
7 these things can do mental harm to people
8 and affect them for the rest of their days.

9
10 The narrative goes on. "As a matter of fact
11 an Interahamwe discovered by daughter and
12 called out to others that he had just found
13 an inkotanyi; the other interahmwwe flocked
14 around and fished her out of the forest.

15
16 I did not see the Interahamwe undress my
17 daughter, but I saw her lying down with her
18 back, with the lower part of her body naked.
19 I saw the Interahamwe raping her. I cannot
20 say the number of the Interahamwe militia
21 men who raped her, because when they started
22 raping my daughter, another group also
23 discovered me.

24
25 This other group was amongst the attackers

1 and when they got there, the Interahamwe
2 split into two groups. One discovered and
3 raped my daughter, while the other continued
4 searching for refugees. When the interahmwwe
5 were raping my daughter, she cried for help,
6 and maybe that is why the other group found
7 me.

8
9 Your Honours, the terror to a mother in
10 those circumstances, and the harm to a
11 mother in those circumstances needs no more
12 expression than from the mother herself."

13
14 Your Honours, it is our submission that
15 there will be cogent evidence; evidence
16 beyond reasonable doubt against this accused
17 in respect of all counts, and we ask that
18 Your Honours consider the matter
19 accordingly. But of course, with the
20 reservation based upon the facts that we
21 must bring the evidence to a standard which
22 is beyond reasonable doubt; and of course
23 upon the basis that the accused remains
24 somebody who is innocent until he is proven
25 guilty.

1 Thank you, Your Honours.

2 MR. PRESIDENT:

3 Thank you, Mr. Fleming, learned counsel, for
4 your opening statement.

5

6 Mr. Hinds, in terms of Rule 84 of our rules
7 of Procedure and Evidence, of course the
8 Defence can also make a statement at this
9 stage if it so wishes. I don't know what is
10 the Defence's choice on this matter, now.

11 MR. HINDS:

12 Thank you, Your Honour. If it pleases the
13 Court. Mr. Juvenal Kajelijeli intends to
14 make an opening statement. It would be
15 about an hour, if the Court would like to
16 take a brief recess, we would accommodate
17 but I am prepared to proceed now.

18 MR. PRESIDENT:

19 I think we will take a 20-minutes break and
20 come back at 1110H to hear the statements of
21 the Defence which Mr. Hinds has indicated
22 would take about an hour. We will take a
23 break up to ten past eleven. Until then
24 these proceedings stand adjourned.

25 (Court recessed at 1050H)

1 (Court resumed at 1120H)

2 MR. PRESIDENT:

3 The proceedings are resumed.

4

5 Mr. Hinds, learned counsel, you can make
6 your statement in terms of Rule 84 of our
7 Rules of Procedure and Evidence.

8 MR. HINDS:

9 May it please the Court, Judge Sekule, Judge
10 Maqutu, Judge Ramaroson, Mr. Fleming, Ms.
11 Ojemeni, the rest of the Prosecutor's staff,
12 Professor Bompaka, Mr. Kajelijeli. Your
13 Honours, Mr. Kajelijeli stands accused of
14 the most serious crimes that any human being
15 can be charged with.

16

17 To ensure a fair trial, the ICTR adopted a
18 set of rules and procedures. At the
19 pinnacle of these Rules is Article 20(3) the
20 presumption of innocence. Therefore, Mr.
21 Kajelijeli stands before you and appears
22 before this Tribunal, clocked with the
23 presumption of innocence and that
24 presumption remains until the last bit of
25 evidence is introduced.

1 Mr. Fleming, has spoken to you today; but
2 all that Mr. Fleming has told you today,
3 none of it -- nothing is evidence. He has
4 summarised as he is required to under the
5 Rules, to tell you how he intends to meet
6 his burden of proof with respect to the
7 charges against my client; and he is
8 required to tell you how he will meet that
9 burden of proof, beyond a reasonable doubt
10 with respect to each 11 counts of the
11 indictment. And as this Tribunal knows,
12 that burden never shifts.

13
14 We have been told that the Prosecutor
15 intends to call between 12 to 15 witnesses;
16 four out of the 15 of those individuals are
17 persons who have been arrested. To the best
18 of our information, some are convicted, and
19 some individuals that are awaiting
20 sentences; some individuals have pleaded
21 guilty based upon the information that we
22 have. But there is one inescapable fact and
23 that is that, these are individuals who have
24 been called by the Prosecution to give
25 testimony against Mr. Kajelijeli and a fair

1 inference can be drawn with respect to their
2 motives. And so, therefore, these
3 witnesses' testimonies, the people who are
4 detainees, some who are convicts, some who
5 have pleaded guilty, must be looked at with
6 some circumspect. The other witnesses, who
7 are they? Where did they come from? How
8 reliable are they? Article 6(1) requires
9 the Prosecutor to offer competent and
10 legally admissible evidence to establish Mr.
11 Kajelijeli's individual responsibility to
12 their amended indictment.

13
14 The question is, how should we and how
15 should this Tribunal evaluate the
16 credibility of these witnesses? What tests
17 should be used? And, I am reminded of
18 former United States Supreme Court Justice
19 Robert H. Jackson who was a Chief American
20 Prosecutor at Nuremberg, that is, at the
21 International Military Tribunal at
22 Nuremberg, from which we draw precedent here
23 at the ICTR; and there is one thing that I
24 agree with what Mr. Fleming said this
25 morning; and that is that, we are, all of

1 us, the Prosecutors, the Defence bar, the
2 Judges, are embarked on a whole new area of
3 jurisprudence in the area of international
4 humanitarian law. And the whole world is
5 watching us. And what Justice Jackson said
6 is important and he said, we must never
7 forget that the record on which we judge
8 these defendants is a record on which
9 history will judge us tomorrow. And, he was
10 talking then about whom? He was talking
11 about the Nazis who were standing and
12 sitting in the dark. He said, to pass these
13 defendants a poison chalice is to put it to
14 our lips as well. The world watches us.

15
16 How did we arrive at this place at this
17 time? How did Mr. Kajelijeli end up in the
18 dark? I have not planned to make an opening
19 statement at this time. Judge Sekule, as
20 you know, I need that point when we started
21 the trial initially.

22
23 I decided to exercise our right to make an
24 opening statement now; because we have two
25 new judges who are on this Tribunal; and who

1 I believe at the initiation of this case
2 should be on the same page with all of us,
3 Prosecution, Defence and the Presiding
4 Judge.

5
6 Who is Juvenal Kajelijeli? He will take the
7 witness stand, and he will tell you in his
8 words. He has been described as, from the
9 Prosecutors' side as somebody who abused
10 power, who was a powerful individual in the
11 community; and he called it William Pitt,
12 John Stewart Mills, Lord Acton.

13
14 The fact of the matter is, as the Prosecutor
15 knows, Juvenal Kajelijeli within the meaning
16 of Article 6(3) was not an individual who
17 had any supervisory authority or
18 responsibility during the jurisdiction of
19 this Tribunal. He knows that. But what is
20 he attempting to do? He is saying that, "I
21 know that he was not the mayor during that
22 time period", but I think he had de facto
23 power. That was not the meaning -- not the
24 meaning; none of the legislative history
25 behind Article 6(3). It was designed

1 specifically to hold those individuals who
2 were in responsibilities, supervisory
3 responsibilities so that they could not say
4 that they were not responsible for the acts
5 of their agency under respondeat superior.

6

7 (Pages 38 to 59 by Sithembiso Moyo)

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1 1100H.

2 PROFESSOR HINDS:

3 Juv nal Kajelijeli will tell you that he
4 was born in Luwinzu commune. Now Luwinzu
5 is a cellule that is a commune of
6 Mukingo, in the prefecture of Ruhengeri

7

8 he is 50 years old. Born, December 26,
9 1951. He is a father. He has been
10 painted as someone who is just a tyrant.
11 He is a father of 13 children. His wives
12 and children are now in Rwanda.

13

14 He obtained his primary education in the
15 Busongo commune in Mukingo. Had
16 secondary education in Njeseseni. He had
17 training in Management and Accountancy.
18 And that's what he will tell you. He
19 worked as an accountant in the commune of
20 Nkuli between 1977 and 1980.

21

22 He was a member of the technical
23 commission of the commune of Nkuli from
24 1978 to 1987. He was a Vice President of
25 the Bank Populaire of the prefecture of

1 Ruhengeri and Ngisenyi. He was an
2 Accountant of the commune of Mukingo from
3 1980 to 1988. He was a mayor, or
4 Bourgemestre of Mukingo from 1988 to
5 1993. He was removed from office in
6 1993. From February of 1993 to June
7 1994, he was engaged as a private
8 businessman. From June 26th of 1994 for
9 about three weeks, until July -- mid July
10 of 1994, he was re-elected as mayor.
11 That is the only time during the
12 jurisdiction of this Tribunal that he was
13 mayor. Three weeks. No allegations that
14 we know of, that speaks to responsibility
15 within the meaning of Article 63 and
16 relates to that Article, when he was a
17 mayor, for three weeks.
18
19 Now we have heard about activities that
20 predate the jurisdiction of this
21 Tribunal, but Mr. Kajelijeli, when he
22 takes the stand he will tell you that he
23 was appointed a mayor in Mukingo in
24 dealing just in chronology of events in
25 1988, but then in 1990 while he was the

1 mayor, there was an attack by the FPR
2 against Rwanda, and that attack was in
3 the northwestern area of the country in
4 Ruhengeri

5
6 there was again another attack in January
7 26th of 1991. First it was October 1990.
8 There was an attack also in 1992. There
9 was an attack in 1993.

10

11 He will talk to you about the events that
12 took place prior to April 6th. The
13 events with respect to April 7th, because
14 we have nothing to hide. He will take
15 you throughout the time period from
16 January of 1994 to July -- mid July of
17 1994, when he, and hundreds of thousands
18 of other Hutus had to flee Rwanda and
19 take exile in Zaire. And he will talk to
20 you about the tens of thousands of people
21 who perished from malnutrition, disease
22 in the woods and jungles, refugee camps
23 in Congo, formerly known as Zaire. And
24 he will talk to you about how it came
25 that he left Congo and went to Congo

1 Brazzaville, and then to Benin where a
2 set of unfortunate circumstances evolved
3 that lead us to this place.

4
5 As Judge Sekule knows, from the very
6 first time that Mr. Kajelijeli appeared
7 before this Tribunal, he has protested
8 his innocence. From the very first time
9 that I have stood at this podium, I have
10 articulated this position. He, through
11 me, and he, himself directly has said
12 that his arrest was illegal and violated
13 the very Rules of this Tribunal, and
14 hence it was bogus. We contended then,
15 and we contend now that at the time of
16 Mr. Kajelijeli's arrest there was no
17 reliable information. In fact there was
18 no evidence that Mr. Kajelijeli had
19 committed any crimes within the
20 jurisdiction of the Tribunal. And that
21 issue will emerge and become extremely
22 relevant as we deal with the next witness
23 who will be called in this case, starting
24 within the next few minutes, hours, or
25 this afternoon. Why is this relevant

1 about how we got to this place and at
2 this time?

3
4 The Prosecutor in the first instance
5 explained that Mr. Kajelijeli just ended
6 up staying -- happened to be in the house
7 of a man for whom there was a warrant for
8 his arrest. They said that at that time
9 the air was sweeping across Africa
10 arresting a number of people for whom
11 they had warrants. They admit they had
12 no warrants for Kajelijeli. They didn't
13 even know who he was. When he was
14 confronted in the house of this man whom
15 he was taking refuge with, Joseph
16 Nzirorera for whom the Prosecutor had a
17 warrant, had evidence. They said to him,
18 "whom are you"? He said, "I am Juv nale
19 Kajelijeli." They said; "where are you
20 from?" He said, "I am from Rwanda."
21 "What commune?" "Mukingo." "What are you
22 doing here?" He said, "I am a refugee."
23 They said hold it.

24
25 To the Benin authorities. They said

1 before this Tribunal, they proceeded
2 pursuant to Rule 40, which provides the
3 Prosecutor with a right to request the
4 State to arrest the suspect, and hold
5 that person in custody. They held him
6 until an indictment was confirmed against
7 him on August 29th of 1998.

8
9 However, the issue was at the time of his
10 arrest, and we have been asking that
11 question going on two years. We now find
12 out what evidence they did have, and this
13 of course, is going to be a revelation to
14 this Tribunal. Because on June 5th or
15 June 6th, we said what evidence, what
16 reliable information. What information
17 do you have that caused you to arrest
18 this man and to hold him? And they said
19 we have information. In fact they sent a
20 letter to the Benin authorities saying
21 they have information.

22
23 Now we found out it's apparently clear
24 that the Prosecutor's Office had no
25 information except for the information

1 that they had. That day when they swept
2 across West Africa. Mr. Kajelijeli
3 unfortunately was seen at the home of a
4 friend, and therefore was presumed to be
5 what they called, a side-kick. Those are
6 the terms they used at this Tribunal. A
7 side-kick of a man whom the Prosecutor
8 had issued a warrant for, and an arrest
9 warrant for. He became a suspect by
10 association based upon the fact that he
11 was in somebody's house. That became the
12 reliable information. That is not the
13 standard of the Statute before this
14 Tribunal to arrest a person. Guilty by
15 association is not the standard. Being a
16 side-kick of someone is not the standard.
17 Being in the home of a suspect at the
18 time of the suspect's arrest is not the
19 standard. The standard under the Rules
20 is not that the Prosecutor can arrest any
21 person. They subsequently find a reason
22 why the arrest was justified as in this
23 case.

24

25 The standard is not the fact that

1 somebody can be arrested and then
2 evidence found later on to get an
3 indictment confirmed. And so Mr. Fleming
4 talks about Rules and safeguards and his
5 responsibility. The record of this case
6 stands and is abundantly clear with
7 respect to what was done and how this man
8 ended up here. In order to safeguard the
9 rights of individuals who are vulnerable
10 to arrest and detention such as refugee
11 Hutus in neighbouring African countries,
12 especially during the mass arrests that
13 took place through West Africa according
14 to the Prosecutor on June 5th of 1998.
15 The Rules of this ICTR explicitly
16 require that before arresting a person
17 the Prosecutor must possess certain
18 information. In this case from what we
19 have now, and what will become abundantly
20 clear from the time the next witness
21 takes the stand, no such information
22 existed. Who are these witnesses? Where
23 did they come from? These witnesses
24 confirm, Your Honours, our worst fears as
25 articulated by Justice Robert Jackson at

1 Nuremberg. The Prosecutor mislead the
2 authorities in Benin. Mislead the Trial
3 Chamber here, and therefore passed
4 Mr. Kajelijeli a poison chalice.

5
6 The evidence in this trial will show that
7 not a single one of the Prosecutor's 15
8 witnesses made any statement. Not one of
9 them were interviewed prior to June 5th
10 of 1998, when Mr. Kajelijeli was
11 arrested, not a single one of them. You
12 should inquire of these witnesses as each
13 one takes the stand. Yes, they brought
14 this man here and have said for the last,
15 at least two years that I have been here,
16 that they had information when they
17 arrested him. What information did they
18 have? What is even more insidious, not a
19 single one of these witnesses who will be
20 called, accused Mr. Kajelijeli in 1994,
21 when supposedly he committed crimes. Not
22 a single one of them in any of the
23 statements so far that we have been
24 given, say that in 1994 we told so-and-so
25 that Kajelijeli had done such and such.

1 None of them said anything to anyone in
2 1995, nor in 1996, nor in 1997, not a
3 single one of those witnesses made any
4 statements in January of 1998 even up to
5 June, of 1998. They arrested this man in
6 June of 1998 not a single statement.
7 When was the first statement made? We
8 now find out it was over 30 days after
9 Mr. Kajelijeli was arrested. Now what
10 is the relevance of all this that I am
11 talking about? How is it probative? The
12 issue is the credibility of the witnesses
13 and what the Prosecutor has said, what he
14 has said throughout this Tribunal since
15 with respect to Mr. Kajelijeli. We now
16 find out that the first witness statement
17 that was taken was 30 days after, at
18 least, the first witness who is being
19 introduced as a credible witness against
20 Mr. Kajelijeli, was taken at least 30
21 days after his illegal arrest. And so
22 what did we have going on here as we look
23 at the proofs. We have, and a man who
24 has been arrested without any evidence,
25 and then what happens? The Prosecutor

1 then begins running around, looking for a
2 reason. And so you then find out when
3 you look at the witness statements that
4 these witnesses were contacted by the
5 Prosecutor's office after Mr.
6 Kajelijeli's arrest. We are not
7 contending, Your Honours, that many of
8 the victims of this tragedy did not
9 experience violent acts. Our contention
10 is that not a single one of these
11 witnesses ever contacted the Prosecutor's
12 office prior to this man's arrests.
13 They, in fact went out with his name on a
14 list talking to people, trying to figure
15 out, can we -- how can we hold this man?
16 And this is a context under which we say
17 that you must evaluate the credibility of
18 these witnesses, and just ask them, when
19 were you first contacted. We know that
20 when Mr. Kajelijeli was arrested, I mean
21 the record is so clear, every time I
22 stood up here it was like ad nauseum with
23 us raising this particular issue. And
24 why do I raise it now at this stage? And
25 we will continue because of what Justice

1 Robert Jackson talked about, "the poison
2 chalice". The world is going to be
3 looking in on us and what we have done
4 and how we are doing it, and the question
5 of fairness and justice is apparent.

6
7 Now, but the Prosecutor has talked about
8 witnesses, and he has talked about the
9 evidence and proofs that they will
10 present. He has talked about starting
11 with their first witness, and yes, there
12 will be a witness who will testify later
13 on today, who will tell us that he was
14 living a double life. He was a
15 masquerade a Tutsi hiding and pretending
16 he was a Hutu. So we will listen to this
17 masquerade and listen to his testimony,
18 but we ask you to look at his
19 credibility, and to test his credibility
20 and weigh it against common sense.

21
22 Mr. Fleming has talked to you about rape
23 charges. I have seen your mic on, Your
24 Honour.

25 MR. PRESIDENT:

1 No, no. I just wanted to say that the
2 Trial Chamber certainly will be alive and
3 careful about all these matters. So you
4 need not to dwell on them. You have made
5 your point. We didn't want to interrupt
6 because as an open statement you can, and
7 we felt comfortable in the sense that
8 this is a matter not being heard with
9 juries around. So the Trial Chamber will
10 be alive to all these issues.

11 PROFESSOR HINDS:

12 Your Honour, I know at least that
13 Mr. Fleming took 20 minutes lecturing
14 this Trial Chamber, and I would not be so
15 audacious, lecturing you on what the
16 Rules are. Lecturing you about the area
17 of International Humanitarian Law.
18 Talking about jurisprudence, talking to
19 you about what your roles ought to be and
20 how you are to look at the evidence. I
21 didn't hear you once say to him, "no.
22 Mr. Fleming, we are experienced justices.
23 We know the Rule." And I was about to
24 make a comment on it but I felt that I
25 should not. But what am I talking about?

1 MR. PRESIDENT:

2 If you want --

3 PROFESSOR HINDS:

4 I am talking about the evidence.

5 MR. PRESIDENT:

6 If you want, you can continue, but just
7 to draw your attention indeed as we do to
8 anybody that at least the Trial Chamber
9 is alive on all these issues that are
10 going to be involved in this exercise.
11 You can draw the Trial Chamber's
12 attention at any length as you want, but
13 at least that is the position that we
14 have.

15 PROFESSOR HINDS:

16 Your Honour, I think that Mr. Kajelijeli
17 has -- has the right in terms of a fair
18 trial to in fact bring to the attention
19 of two new justices who are not hearing
20 this as you are. You were a member of
21 the bench, who heard rational arguments.
22 You ruled with respect to the
23 admissibility of the issue. You ruled on
24 this and so therefore, I am sure that you
25 are saying hey, I have heard this all.

1 The reason why I said from the very
2 beginning that I felt it important to
3 bring everyone up. There are two new
4 judges, who I am sure, are not aware of
5 any -- of what I am saying and I felt
6 that on my client's best interest they
7 ought to be aware, and if the court is
8 denying him the opportunity to do so then
9 I will stop now.

10 MR. PRESIDENT:

11 No, you can go on, but we wanted also to
12 draw your attention as you know, not that
13 we are stopping you, but you should bear
14 in mind also that the Trial Chamber will
15 certainly be very conscious about all
16 these issues all along.

17 PROFESSOR HINDS:

18 The Trial Chamber I am sure will be
19 aware, but I, as a defence counsel have a
20 duty, Your Honour to point out to you
21 these issues.

22 MR. PRESIDENT:

23 Please go on.

24 PROFESSOR HINDS:

25 And so therefore, I am trying now to, in

1 the opening statement -- in the opening
2 statement to discuss the context under
3 which this testimony ought to be looked
4 at, and I don't want to get into an
5 argument with the Trial Chamber. I will
6 just sit down rather than antagonizing
7 you because it will be to my client's
8 detriment.

9 MR. PRESIDENT:

10 Please go on.

11 PROFESSOR HINDS:

12 May I please proceed?

13 MR. PRESIDENT:

14 Please proceed.

15 PROFESSOR HINDS:

16 Thank you. Now we started talking about
17 the evaluation of these witnesses and I
18 brought all this out in order to deal
19 with the fact that we will have witnesses
20 who are coming on, and who will be
21 testifying. And the question is the
22 context under which we should be
23 evaluating his testimony. There is no
24 way that two new judges who are sitting
25 can in fact deal with the issue of when

1 these statements were made without an
2 understanding of what Mr. Kajelijeli has
3 been arguing for the last three years,
4 and so that is the reason why I decided
5 to raise this issue.

6
7 Now with respect to specific charges.
8 Mr. Fleming has told you about the rape
9 charges, and as the record of this
10 Tribunal shows, there were no factual
11 allegations that Mr. Kajelijeli was
12 involved in any rape. There was no issue
13 about rape when this man was arrested,
14 nothing. We brought a motion to separate
15 him from the other 9 or 10 defendants,
16 then he stood alone. The Prosecution
17 recognises that they didn't have any
18 evidence on this rape against them. They
19 amended the indictment, and we made the
20 many motions and arguments about it
21 concerning rape.

22
23 Why do I raise this? Because again look
24 at when the statements were made about
25 rape. There were four witnesses. The

1 first witness made an initial interview
2 in August of 1998. It was not until a
3 year later that, that witness now in
4 August of 1998, this witness was
5 interviewed. The witness said nothing
6 about rape with respect to
7 Mr. Kajelijeli. One year later, in 1999
8 the witness is interviewed again and
9 said, "but you didn't ask me anything
10 about rape concerning Kajelijeli and now
11 I want to tell you something." Then the
12 next three witnesses all of them gave
13 interviews in the year two thousand about
14 rape. Now this man is arrested when? In
15 1998. Now I, without trying to trespass
16 upon this Court's patience, I feel I am
17 duty bound to point out the issue of
18 credibility especially when Mr. Fleming
19 stood up and said what the Prosecutor's
20 responsibility was or is in terms of
21 presenting their evidence, in fairness.
22
23 Finally, on the conspiracy charge. The
24 Prosecutor is relying with respect to the
25 conspiracy charge on the same evidence.

1 The same type of evidence that they
2 relied upon to arrest Mr. Kajelijeli in
3 the first place, and what was that?
4 Being in the wrong place at the wrong
5 time. Being with someone who has been
6 charged with an offence. Guilty by
7 association is not a standard. Being a
8 psychic is not a standard to conspiracy.
9 Being seen at a meeting with someone is
10 not the test for conspiracy. Your
11 Honour, I have taken this time to set
12 forth the history of this matter and how
13 this man ended up here. It is important
14 as we look at the context in which these
15 witnesses should be evaluated. We hold
16 the Prosecutor to their burden which
17 never shifts, and we urge that this
18 Tribunal does so. Thank you.

19 MR. PRESIDENT:

20 Thank you very much learned Counsel for
21 your opening statement.

22

23 Yes, Mr. Fleming.

24 MR. FLEMING:

25 Thank you, Your Honours. We call the

1 first witness whose pseudonym is GBV.

2 MR. PRESIDENT:

3 Just a minute, G -- ?

4 MR. FLEMING:

5 Yes. "B" for brother.

6 MR. PRESIDENT:

7 "B" for brother, okay.

8 MR. FLEMING:

9 "V" for Victor.

10 MR. PRESIDENT:

11 Victor.

12 MR. FLEMING:

13 Thank you.

14 MR. PRESIDENT:

15 Thank you. Yes.

16 MR. FLEMING:

17 Your Honour, since he is a protected
18 witness so we ask if the arrangements
19 could be made for his entry.

20 MR. PRESIDENT:

21 Yes. Please could you swear in the
22 witness.

23

24 (WITNESS GBV DULY SWORN IN KINYARWANDA)

25

1 BY MR. PRESIDENT:

2 Yes, just a minute, Mr. Fleming.

3

4 Witness, you have just made a solemn
5 declaration. In case you are not
6 familiar with the manner in which your
7 evidence will be taken, we will explain
8 briefly the essential things. Questions
9 will be asked by the Prosecution as you
10 give your evidence in chief who are
11 seated on this side. Thereafter when
12 that is done the defence on this side
13 will also put questions to you in
14 cross-examination. The Judges sitting in
15 front of you may also ask you questions
16 as you testify in clarification, if they
17 may have such questions. If a question
18 put to you -- asked of you is not clear,
19 or you do not understand it, please say
20 so and it will be repeated or explained.
21 These are the few essential things we
22 wanted to tell you in case you are not
23 familiar with how your evidence may be
24 taken.

25

1 Mr. Fleming.

2

3 (EXAMINATION IN CHIEF OF WITNESS GBV)

4 BY MR. FLEMING:

5 Thank you, Your Honours.

6 Q. Witness could you please have a look at
7 this document. Does that document
8 contain your name?

9 MR. PRESIDENT:

10 Just a minute.

11 MR. FLEMING:

12 Sorry.

13 PROFESSOR HINDS:

14 Your Honour, I don't know what document
15 he is showing the witness. I think that
16 fundamentally before he shows the witness
17 any document that the Defence ought be
18 able to look at it so that we know what
19 he is presenting to the witness.

20 MR. PRESIDENT:

21 Yes, is the document familiar to the
22 Defence, and maybe you can draw the
23 attention to it.

24

25 MR. FLEMING:

1 Your Honour, the document contains purely
2 protected information to identify this
3 witness for the purposes of the Court.
4 He will identify the fact that his name
5 and details were on the document and then
6 I will hand it to the Court and ask that
7 it be sealed after my learned friend has
8 seen it.

9 MR. PRESIDENT:

10 Okay, do you follow?.

11 PROFESSOR HINDS:

12 I know what he is saying but how do I
13 know what he is handing the witness. I
14 mean fundamentally he either has to
15 present it to the Court. The bench
16 makes a decision with respect to this
17 matter but he has just walked up and
18 handed the witness the document. You
19 haven't seen it, we haven't seen it. He
20 says it's a protected document. How can
21 we proceed on this basis?

22 MR. FLEMING:

23 Your Honours, if I may respond. The
24 traditional method of tendering a
25 document to Court is to first have the

1 witness to identify it and then for it to
2 be shown to the other side before it's
3 finally delivered to the Court as an
4 exhibit, then my learned friend can make
5 any objections he wishes, to the
6 document. However, I simply want this
7 witness to identify the document.

8 MR. PRESIDENT:

9 Thank you. Yes, Mr. Hinds.

10 PROFESSOR HINDS:

11 I do not know whether that is an
12 Internationally recognized standard. I
13 certainly know that before the highest
14 Tribunals in the United States before any
15 document is handed to a witness the
16 document is shown to the defence and even
17 before the witness sees it, and the
18 reason for that is that if there is any
19 objection the witness is not contaminated
20 by seeing something and so if it is what
21 this particular document purports to be,
22 is in fact true even if the Prosecutor's
23 position is that they do not want the
24 defence to see, certainly the Court
25 should see it first to make sure that it

1 purports to be what it is, but just
2 simply handing the document to the
3 witness without the Defence knowing what
4 it is, without the Court knowing what it
5 is, and I am raising an objection with
6 respect to that procedure.

7 MR. FLEMING:

8 Your Honours, just once more, how is the
9 Court going to know what it is, unless
10 the witness has identified and told the
11 Court what it is. The Court doesn't
12 receive -- I think it's being described
13 in some place as a self-propelled
14 document. One which finds its way in,
15 somehow without a witness dealing with
16 it. I am simply asking the witness to
17 identify the document and before it's
18 tendered as any useful evidence it will
19 go to my learned friend for him to make
20 any objections to, and it will go to Your
21 Honours. Your Honours, no doubt in terms
22 of credibility will depend upon my
23 learned friend's cross-examining which I
24 am sure he is entitled to do. I have
25 additional copies but they won't be of

1 any value to you, Your Honours, because
2 you won't know what it is, until he has
3 identified it.

4 MR. PRESIDENT:

5 Because ultimately it is the --
6 ultimately if the document is to be put
7 into evidence it would depend on what the
8 witness has been able to identify but I
9 think it shouldn't be a problem. If you
10 can have the document shown and, you
11 know, and then move forward. And then
12 after that of course, subject to what you
13 have said that this is a -- it has got
14 protected information and if it goes into
15 evidence it will ultimately be filed on
16 us.

17 PROFESSOR HINDS:

18 Your Honours, we are all officers of the
19 Court. We have all been purview to
20 confidential and privileged information.
21 Actually it is not even an issue here.

22 MR. PRESIDENT:

23 Okay.

24

25

1 PROFESSOR HINDS:

2 The issue is whether or not it is proper
3 for him to put any document --

4 MR. PRESIDENT:

5 Could you show the document to learned
6 Counsel, so that we may proceed. Yes?

7 PROFESSOR HINDS:

8 We have no objection.

9 MR. PRESIDENT:

10 You have no objection. Could you
11 proceed.

12 MR. FLEMING:

13 Thank you, Your Honour.

14 MR. PRESIDENT:

15 Yes.

16 BY MR. FLEMING:

17 Q. Witness, would you look at the document
18 now please. And is that a document which
19 contains details of yourself, your name,
20 your date of birth, your sex, your
21 religion, your nationality, your
22 occupation, and your place of birth?

23 MR. PRESIDENT:

24 Yes.

25

1 THE WITNESS:

2 I notice that my identity is correct and
3 complete.

4 MR. PRESIDENT:

5 Yes.

6 MR. FLEMING:

7 Thank you, Your Honours. Your Honours, I
8 tender that document and ask that it be
9 sealed because that is protected
10 information which could identify this
11 witness.

12 MR. PRESIDENT:

13 Mr. Hinds, any objection to that?

14 PROFESSOR HINDS:

15 No objection.

16 MR. PRESIDENT:

17 No objection. Can we -- the said
18 document -- let us have a look at it as
19 well.

20 MR. FLEMING:

21 Thank you. That's precisely why we
22 tendered it to you, Your Honours.

23 MR. PRESIDENT:

24 Yes. So may the document, the said
25 document with those particular

1 information about this witness be
2 admitted as an exhibit in this case.
3 This will be Prosecution Exhibit number
4 -- ? Which number will that be?

5 MR. FLEMING:

6 Prosecution one, Your Honour.

7 PROFESSOR HINDS:

8 May I make a comment, Your Honour?

9 MR. PRESIDENT:

10 Yes, please.

11 PROFESSOR HINDS:

12 Just, Your Honour -- I think that the
13 Court can look at the document, and it's
14 self-evident by looking at what it is.
15 The document speaks for itself. I didn't
16 think there is any big secret about it.

17 MR. PRESIDENT:

18 Well, because a record that is going to
19 be made available to many other sources
20 and ideally at least where a protected
21 witness is involved, not to the Defence
22 of course, but to the rest of the --

23 PROFESSOR HINDS.

24 No, there is no issue about sealing it
25 but the question about -- it's a

1 self-evident document, big secret about a
2 CV.

3 MR. PRESIDENT:

4 Okay. Yes, let it be admitted as Exhibit
5 P-1. And Mr. Fleming, you said it should
6 be sealed?

7

8 (PROSECUTION EXHIBIT P-1 ADMITTED)

9 MR. FLEMING:

10 Yes, Your Honour, I ask that it be
11 sealed.

12 MR. PRESIDENT:

13 Yes.

14 MR. KIYEYEU:

15 Taken note, My Lord.

16 MR. FLEMING:

17 And the only secret about the document is
18 the identity and identifying details.

19 MR. PRESIDENT:

20 Yes, please proceed.

21 MR. FLEMING:

22 Q. Thank you, Your Honours. Witness, would
23 you please tell the Court if you know the
24 Accused, Mr. Kajelijeli?

25 A. Yes, I know him.

- 1 Q. How long have you known him?
- 2 A. I have known the Accused Kajelijeli since
- 3 1974.
- 4 Q. Where did you first meet Mr. Kajelijeli?
- 5 A. When I met him for the first time in
- 6 1974, he was working with the priests.
- 7 He was a carpenter in Busongo. Let me
- 8 spell Busogo. B-U-S-O-G-O.
- 9 Q. What was your occupation then?
- 10 A. At the time I was still a young child. I
- 11 was also working for the priests as a
- 12 gardener.
- 13 Q. Have you known Mr. Kajelijeli
- 14 continuously since 1974?
- 15 A. Yes, I have known him since then, since
- 16 1974.
- 17 Q. Have you lived in the same commune since
- 18 1974?
- 19 A. At some point I moved to another commune.
- 20 Q. The communes in which you have lived are
- 21 they close to where Mr. Kajelijeli has
- 22 always lived?
- 23 A. I don't think I quite understood the
- 24 question. Are you, or was your question
- 25 referring to 1974 or 1994?

- 1 Q. From 1974 until 1994.
- 2 A. So I should then correct myself. Since
- 3 1974 right up to 1994 I did not move from
- 4 my commune in which I was residing. I
- 5 changed the commune in 1994 when I had to
- 6 seek refugee somewhere.
- 7 Q. All right, and is your commune near the
- 8 place where Mr. Kajelijeli lived from
- 9 1974 until 1994?
- 10 A. In actual fact it was the same commune.
- 11 It's just that these were different
- 12 sectors.
- 13 Q. Thank you. Do you know Joseph Nzirorera?
- 14 A. I also know him.
- 15 Q. When did you first know Joseph Nzirorera?
- 16 A. I knew him for the first time when he was
- 17 Minister. I don't recall the year but it
- 18 was from the '81 et cetera.
- 19 Q. Are you, or were you involved before 1994
- 20 in politics?
- 21 A. No.
- 22 Q. Did you at any time attend any meetings
- 23 of the political party known as the MRND?
- 24 A. As a result of the fact that where I was
- 25 living and most of those residing there

1 were members of the MRND. So they had to
2 participate in each meeting. It was an
3 order.

4 Q. Who gave that order?

5 A. The order was issued by the Bourgmestre
6 and then conveyed right up to the
7 conseiller and to members of the cellule.
8 In turn they were the ones who told the
9 population that it was necessary to
10 attend the meetings.

11 Q. What particular Bourgmestre are you
12 speaking about when you said that the
13 order was given by the Bourgmestre?

14 A. The Bourgmestre who was in office at the
15 time was Kajelijeli.

16 Q. Can you tell us now what time you are
17 speaking about. About what year was this
18 happening?

19 A. These meetings in connection with
20 political parties started from 1992 and
21 went on.

22 Q. When did the Accused Mr. Kajelijeli
23 become the Bourgmestre in Mukingo?

24 A. He occupied the position of Bourgmestre
25 from 1988 to 1993 at or about the month

1 of April.

2 Q. When you went to meetings of the MRND was
3 Mr. Kajelijeli present?

4 A. He was often present at the meetings.
5 Often he was the one who chaired the
6 meetings until the President of MRND was
7 appointed, and even at that time he was
8 present and he often took the floor
9 during the meetings.

10 Q. When you say the President of the MRND
11 was appointed, to whom are you referring?

12 A. As Kajelijeli was Bourgmestre at the time
13 and the legislation in force did not
14 allow for an accumulation of positions.
15 In other words the Bourgmestre and
16 President of the MRND, it was necessary
17 for Niyoyita Gendamaseni to be appointed
18 as President of MRND. Let me spell
19 Niyoyita. N-I-Y-I-O-Y-I-T-A, Niyoyita
20 Gendamaseni.

21 Q. Even when Mr. Niyoyita was the President
22 of the MRND what parts did Mr. Kajelijeli
23 play in the meetings of the MRND?

24 A. Kajelijeli participated in all the
25 meetings. He was never absent from any

1 meeting. In actual fact power, real
2 power was held by Kajelijeli. Niyioyita
3 was -- could be considered as a mere --
4 as a figure-head, a mere figure-head.

5 Q. You said really power, would you tell us
6 what you describe as the really power and
7 how it became obvious if it was a really
8 power?

9 A. When I said really power, that is he held
10 really power. Because whatever he wanted
11 done in the commune was done. There was
12 no objection to his desires.

13 Q. Was Mr. Nzirorera involved in the MRND?

14 A. Yes.

15 Q. Have you seen Mr. Nzirorera at any of the
16 MRND meetings that you have just
17 described?

18 A. It wasn't often that he attended meetings
19 at that level. He came quite often to
20 these meetings at a higher level. That
21 is at the prefectural level. As for
22 meetings at the commune, at the level of
23 the commune I think I saw him twice
24 attending the meetings.

25 Q. Did you attend any meetings yourself at

1 the prefectural level?

2 A. I attended one meeting at the prefectural
3 level, once, when the population were
4 urged to do so, and as I told you it is
5 an order.

6 Q. Can you tell us when that was?

7 A. I do not recall either the month or the
8 date.

9 Q. Can you tell us what was discussed at the
10 meeting?

11 A. The meeting discussed sensitization among
12 the population. They were being told
13 that they should not become members of
14 any other party and that they had to
15 fight against what was called, or the
16 persons who were called Inyenzi. Let me
17 spell Inyenzi. I-N-Y-E-N-Z-I, Inyenzi.

18 Q. Does Inyenzi describe something, that
19 name describe something?

20 A. Inyenzi was meant to refer to the Tutsi.

21 Q. And was Inyenzi the name of an insect, or
22 animal, or something?

23 A. In actual fact it was a name used in
24 referring to those who attacked the
25 country, the Inkotanyis but as an

1 extension that name was used in referring
2 to Tutsis in general.

3 Q. Did you ever hear Nzirorera speak of
4 Kajelijeli at any of these meetings that
5 you attended?

6 A. No, he didn't talk about him because he
7 himself was present at the meetings.

8 Q. Do you know what the Interahamwe is?

9 A. The word Interahamwe means young people
10 strong, vigorous, recruited among the
11 people, and who were given military
12 training.

13 Q. Was the Interahamwe associated with the
14 political party?

15 A. They belonged to the MRND party.

16 Q. Was there an Interahamwe branch in
17 Mukingo?

18 A. Yes, there was an Interahamwe branch in
19 Mukingo.

20 Q. Are you able to say when the Interahamwe
21 branch was first formed in Mukingo?

22 A. That branch was formed in about 1993.

23 Q. Who was responsible for the branch of the
24 Interahamwe in Mukingo?

25 A. Regarding those in charge of that branch

1 now each sector had someone in charge.

2 And at the communal level it was

3 Kajelijeli who was in charge.

4 Q. Would you describe to us how the sectors
5 and the prefecture level and so on, work?

6 And I don't mean just in respect of
7 Interahamwe but administratively.

8 A. In what way?

9 THE INTERPRETER:

10 The witness would like to know in what
11 context?

12 MR. FLEMING:

13 Q. All right, I am sorry. I didn't make it
14 clear. In the administration of Rwanda
15 there is a pr fet. Would you describe to
16 us what the pr fet is?

17 A. One of the duties performed by the pr fet
18 is to hear the claims or petitions from
19 various communes that constitute the
20 prefecture.

21 Q. How many communes were there in the
22 prefecture in which you lived?

23 A. There were 16 communes.

24 Q. Was then the Bourgmestre the next person
25 lower than the pr fet responsible for an

1 area?

2 A. You are talking about the Bourgmestre?

3 The Bourgmestre was in charge of the
4 administration of the commune.

5 Q. Is the commune then broken down into
6 smaller groups?

7 A. Yes, a commune is subdivided into
8 sectors.

9 Q. And are then sectors subdivided?

10 A. Yes, the sectors are subdivided into
11 smaller groups called cellules.

12 Q. So as Bourgmestre of Mukingo for how many
13 sectors was Mr. Kajelijeli responsible
14 for whilst he was Bourgmestre?

15 A. He was responsible for the eight sectors
16 that made up a commune.

17 Q. Can we then go back to the Interahamwe.
18 The Interahamwe for whom the Bourgmestre
19 was responsible in Mukingo, where did it
20 draw its members from?

21 A. Each sector had its group of Interahamwe
22 but there was a group of Interahamwe
23 leaders who were at the disposal of the
24 Bourgmestre whenever the need arose.

25 Q. How do you know that Mr. Kajelijeli was

1 responsible for the Interahamwe in
2 Mukingo?

3 A. I know it because at that time it was
4 Kajelijeli who was the authority.
5 Furthermore, personally, I was a member
6 of the committee of the cellule where I
7 lived.

8 Q. Did you ever hear Kajelijeli introduced
9 in any capacity in respect of the
10 Interahamwe?

11 A. Yes, during one of the meetings which
12 held at the commune he introduced the
13 Interahamwe. Besides there were
14 receptions organised for the Interahamwe
15 at specific places.

16 Q. Was Nzirorera ever present at any such
17 occasion?

18 A. Yes, he was present most of the time
19 because the Interahamwe were received
20 either in his home, or at the bar of his
21 younger brother. His younger brother was
22 called Ntamakemwa. I will spell that
23 N-T-A-M-A-K-E-M-W-A. Ntamakemwa.

24 Q. And where was that bar?

25 A. The bar was very close to Nzirorera's

1 residence.

2 Q. Where was Nziropera's residence in
3 respect to Kajelijeli's residence?

4 A. Nziropera's residence was in the Busogo
5 sector while Kajelijeli's residence was
6 in the Rwinzovu sector. I will spell
7 Rwinzovu. R-W-I-N-Z-O-V-U.

8 Q. Did Kajelijeli have a bar?

9 A. Yes, indeed he had a bar located at a
10 commercial centre. At a place called
11 Dyangabo. I will spell that,
12 D-Y-A-N-G-A-B-O.

13 Q. Was that in a market-place by the same
14 name. Would you say. I am sorry, I have
15 misunderstood something. What was the
16 bar called?

17 A. The bar did not have a name.

18 Q. Did you see Kajelijeli there from time to
19 time?

20 A. I used to see him time and again when I
21 passed by that specific place. In fact
22 it was his home and he used to be there
23 whenever he came from work.

24 Q. Were there any other notable group of
25 people who would drink at that bar?

1 A. Are you talking about Kajelijeli's bar?

2 Q. Yes.

3 A. Kajelijeli's bar was not yet well known
4 in the area. It had just been built or
5 opened and people like Nzirodera and
6 others used to meet at either, at his
7 place or the mother's house.

8 Q. Where did the Interahamwe meet?

9 A. The Interahamwe used to meet in areas
10 that I have already, or places that I
11 have already mentioned. Namely the
12 Dyangabo bar, or Nzirodera's residence.
13 As for Kajelijeli's bar, it was not yet
14 well known, or famous.

15
16 I would like to specify that I lived far
17 away from Kajelijeli's bar, so much so
18 that I was not aware of what was
19 happening there every day.

20 Q. Did the Interahamwe have a uniform?

21 A. Initially the Interahamwe had a uniform
22 made from kitenge fabric. On the
23 uniform was written MRND. Later on, but
24 for a very short while, I saw them wear a
25 military uniform.

1 Q. What do you mean by later on? What time
2 are we talking about now?

3 A. I am referring to the period during which
4 the genocide occurred. That is to say in
5 1994.

6 MR. PRESIDENT:

7 Yes. Mr. Fleming, maybe this is an
8 opportune moment, we stop here.

9 MR. FLEMING:

10 Thank you, Your Honour.

11 MR. PRESIDENT:

12 We will take a break and come back --
13 resume these proceedings at three o'clock
14 this afternoon. So until then these
15 proceedings stand adjourned.

16

17 1300H

18 (Pages 60 to 102 by J. Kapatamoyo)

19

20

21

22

23

24

25

1 1500H

2 MR. PRESIDENT:

3 Yes. The proceedings are called to order.

4 We'll continue with the testimony of the

5 witness in examination-in-chief, Mr.

6 Fleming.

7 PROFESSOR HINDS:

8 Your Honour, may I; just one moment?

9 MR. PRESIDENT:

10 Yes, please.

11 PROFESSOR HINDS:

12 Your Honour, I'm not familiar with the

13 procedures of this Tribunal, with respect to

14 when a witness is in the middle of testimony

15 and we have to break. I didn't hear the

16 Court give any instructions and I just

17 wondered whether or not there are

18 instructions given to the witness that the

19 witness is still under oath and should not,

20 in fact, discuss their testimony with

21 anyone. I didn't hear those instructions.

22 I don't know if they are given, but, just

23 for my own edification, I wanted to know

24 whether or not there is such a rule with

25 respect to instructing the witnesses.

1 MR. PRESIDENT:

2 Well, again, as we just started, it's a
3 broad practices that can be brought in, you
4 know, from various experiences. We
5 normally, at the beginning of the day, for
6 example, the witness will always be
7 reminded, the following day that he's still
8 under oath and that he will continue to give
9 evidence under the solemn declaration that
10 he has made or made the previous day. But
11 that kind of instruction is never given, but
12 there's no harm in doing it because it's
13 useful. We can combine a number of
14 experiences as, you now, the rules permit.

15 PROFESSOR HINDS:

16 Well, Your Honour, this specific instruction
17 that I was addressing was the question of
18 not discussing the testimony, for obvious
19 reasons, because we do not want to
20 contaminate the witness.

21 MR. PRESIDENT:

22 Yes.

23

24 Okay, Mr. Fleming.

25 MR. FLEMING:

1 Thank you, Your Honours.

2

3 EXAMINATION-IN-CHIEF (continued)

4 BY MR. FLEMING:

5 Q. Witness, the question that I asked --

6 MR. PRESIDENT:

7 Yes.

8 BY MR. FLEMING:

9 Q. -- just before lunch, related to the
10 Interahamwe having uniforms. And you told
11 us that they developed a uniform or you saw
12 them in a military-type uniform just at the
13 time the genocide started.

14

15 Now, I want to start asking you questions,
16 then, from then.

17

18 Do you recall the early part of April 1994?
19 A. At about the beginning of the month of April
20 1994, I remember, among other things, on the
21 7th of April, that was the day following the
22 death of President Habyarimana, I saw
23 Kajelijeli talking to the Interahamwe and
24 they started killing.

25 Q. Can we be a little more specific? At what

- 1 time of the day did you see Kajelijeli
2 speaking to the Interahamwe?
- 3 A. I saw him talking to Interahamwe between
4 eight and nine o'clock.
- 5 Q. Whereabouts?
- 6 A. They were at the centre called Byangabo.
- 7 Q. How many Interahamwe were there, do you
8 think?
- 9 A. There were many. There were so many that I
10 cannot tell you -- that I cannot give you
11 any figure. I cannot tell you exactly how
12 many there were.
- 13 Q. Could you hear any discussion between
14 Kajelijeli and the Interahamwe?
- 15 A. I was at about 50 metres from those persons
16 and what I was able to hear Kajelijeli tell
17 them is that he asked them to go and dress
18 up and to start work.
- 19 Q. Did anybody say what the work was?
- 20 A. They knew what the work consisted of. It
21 meant killing and, indeed, they started with
22 a young man called Rukara. They killed him
23 immediately. I spell Rukara, R-U-K-A-R-A,
24 Rukara.
- 25 Q. How soon, after the comment that they had to

1 go home and put their uniforms on because
2 they had work to do, was Rukara killed?

3 A. Some of the Interahamwe left and the others
4 stayed. It is those who stayed on the spot
5 who started killing.

6 Q. Was Kajelijeli present, when they started
7 killing?

8 A. He was present.

9 Q. How far away from the place where they were
10 killing were you?

11 A. From the place where they were and where the
12 killings were going on, there was a distance
13 of about 30 metres. Earlier on we talked of
14 the bar which was there, the others went to
15 kill but they knew where they were.

16 Q. Did you see any Interahamwe come back with
17 their uniforms on?

18 A. At that time I left the place, because I was
19 afraid. Subsequently, I saw the Interahamwe
20 a little bit above, when they went to kill
21 other persons. At that place there were
22 many people to be killed.

23 Q. Can we go back to the man who was killed,
24 that you saw being killed? What weapons
25 were being used to kill him?

1 A. A club was used. A club with nails on was
2 used.

3 Q. Did you see anybody carrying weapons that
4 morning?

5 A. I saw the vehicle in which Kajelijeli was.
6 I also saw guns.

7 Q. Where did you see the guns?

8 A. I saw them in the vehicle.

9 Q. Did you see people leaving the Byangabo
10 market area?

11 PROFESSOR HINDS:

12 Your Honour, I have resisted making any
13 objections while Mr. Fleming has been
14 speaking, but we have been dealing with very
15 sensitive areas. He's leading this witness.
16 The witness ought to be asked to describe
17 what he saw instead of him leading the
18 witness. And he has done this since this
19 morning, but I did not interject, because I
20 thought he was just taking the witness
21 through some background information. But we
22 are now getting into a point where the
23 witness is being led and I think it is
24 improper for this to continue.

25 MR. PRESIDENT:

1 Yes, Mr. Fleming, avoid leading questions.
2 I think the last question was leading, if
3 you can avoid any leading questions.

4 MR. FLEMING:

5 Your Honours, with the greatest respect, may
6 I defend the last question?

7 MR. PRESIDENT:

8 Yes.

9 MR. FLEMING:

10 I don't understand in what way it was
11 leading. A leading question is, "You killed
12 so-and-so, didn't you? Yes." Because I'm
13 suggesting the answer.

14

15 With respect, it isn't a leading question to
16 say, "Did you see something else?" Or,
17 "Were there Interahamwe present that day?"
18 Because the answer can be yes or no. And I
19 have to establish whether there are
20 Interahamwe, for example, present that day
21 before I can ask the next question. They
22 aren't leading questions.

23 MR. PRESIDENT:

24 Yes, but did you see anybody carrying
25 weapons on that morning?" Of course, it is

1 very close and in an area that is
2 particularly important, I think that, to me,
3 would be leading to us, you know, that would
4 be leading.

5 MR. FLEMING:

6 I'm sorry, Your Honour, the question that I
7 asked, "Did you see any other weapons that
8 day?"

9 MR. PRESIDENT:

10 "Did you see any other people"? I think
11 that's what I got.

12 PROFESSOR HINDS:

13 He said, Your Honour, "Did you see anyone
14 carrying weapons." Because he wanted to
15 direct this witness to testify concerning
16 weapons in a car. He knows what he's doing
17 and he knows it's wrong.

18 MR. FLEMING:

19 With respect, your Honour, I don't concede
20 that that's a leading question. That
21 certainly is directing the witness's
22 attention to an area, but it's up to the
23 witness, then, to answer yes or no. And to
24 present a question in that form isn't a
25 leading question.

1 MR. PRESIDENT:

2 Did you see -- can you phrase it different,
3 at least to avoid that type of
4 (unintelligible), particularly in areas that
5 are particularly important.

6 MR. FLEMING:

7 Thank you, Your Honour.

8 BY MR. FLEMING:

9 Q. That day, the time that we were talking
10 about, about the morning of the 7th, you
11 described how you saw these people in the
12 Byangabo business area at the market.
13 You've also described to us how one group
14 went away and were -- they came back, sorry,
15 dressed in uniform, and the other group --

16 PROFESSOR HINDS:

17 Exception, Your Honour, here counsel, and
18 counsel is certainly experienced enough that
19 he should not be characterising this
20 witness's testimony. It is in the record.
21 He can simply say, "You previously
22 testified, now can you tell us," wherever he
23 wants to go. But he is now going over the
24 testimony of the witness and my recollection
25 is not necessarily what his recollection is,

1 with respect to the testimony. So, why is
2 he going over the testimony when he can
3 simply move the witness forward?

4 MR. PRESIDENT:

5 Yes, Mr. Fleming.

6 MR. FLEMING:

7 Thank you, Your Honour. I was simply trying
8 to give the witness a starting point, again.
9 I'm not trying to characterise the testimony
10 in any way.

11 MR. PRESIDENT:

12 Go ahead.

13 MR. FLEMING:

14 Thank you, Your Honour.

15 BY MR. FLEMING:

16 Q. All right, you told us how you saw
17 Interahamwe in two groups that morning. One
18 group, you've told us, came back in uniform.
19 The other group, you've told us, were
20 involved in something that you've already
21 described.

22

23 Now, you've also told us about a vehicle.
24 Would you describe the vehicles that you saw
25 that day, please, that morning, to be

- 1 specific?
- 2 A. It was a Hilux Toyota which belonged to the
3 commune.
- 4 Q. Who was driving that vehicle?
- 5 A. It was Kajelijeli who was driving the
6 vehicle.
- 7 Q. Do you remember what colour the vehicle was?
- 8 A. The vehicle was red.
- 9 Q. Did you see anything else in the vehicle?
- 10 A. There were guns in the vehicle.
- 11 Q. Where were those -- sorry.
- 12 A. There were, also, of course, Interahamwe in
13 the vehicle.
- 14 Q. Do you recall how many Interahamwe were in
15 the vehicle?
- 16 A. No, I do not quite remember the number of
17 the Interahamwe who were in the vehicle.
- 18 Q. How did you recognise them as being
19 Interahamwe?
- 20 A. It is because of the uniform they were
21 wearing.
- 22 Q. Would you describe that uniform for us,
23 please?
- 24 A. It was a military uniform.
- 25 Q. Did you see that vehicle drive away?

- 1 A. The vehicle went past where we were. We
2 were climbing up, there were very many.
3 There were also Interahamwe.
- 4 Q. In which direction was the vehicle
5 travelling?
- 6 A. The vehicle was heading towards the Busogo
7 parish at the place called Rwankere. I spell
8 Busogo, B-U-S-O-G-O. I spell Rwankere
9 R-W-A-N-K-E-R-E.
- 10 Q. What did you, then, do?
- 11 A. I continued on my way. I returned, because
12 I noticed that they had started killing, so
13 I feared I would be killed.
- 14 Q. You said you noticed that they had started
15 killing. Did you see that happen?
- 16 A. I had just seen Rukara being killed and, a
17 little bit further on, where there were many
18 Tutsi, when, in particular, they arrived at
19 the home of a certain Rutatinya, they
20 started killing people. I spell Rutatinya,
21 R-U-T-A-T-I-N-Y-A, Rutatinya.
- 22 Q. Did you see that with your own eyes?
- 23 A. Yes.
- 24 Q. Who was present during that killing?
- 25 A. The Interahamwe and the leaders, including

1 Kajelijeli, were present.

2 Q. Did you hear anything that was said on that
3 day at that time?

4 A. When Kajelijeli arrived on the spot, since
5 the members or the people of that area lived
6 on both sides of the road, he asked the
7 attackers or rather he told the attackers
8 that some of them should go to the right and
9 others to the left and immediately a girl
10 was killed.

11 Q. How far away from Kajelijeli was the girl
12 who was killed?

13 A. It was practically on the same spot. I
14 wouldn't say that there was any distance.

15 Q. How was the woman
16 being killed?

17 A. She was also killed with a club.

18 Q. Were any of the other Interahamwe armed in
19 any way?

20 A. Some of the Interahamwe were armed with
21 machetes and guns, because such weapons had
22 already been distributed. They were also
23 armed with clubs.

24 Q. Did you see, with your own eyes, the weapons
25 being distributed?

- 1 A. When they arrived, at the point where we
2 were, everybody was in possession of their
3 weapon.
- 4 Q. What did you, then, do? How long did you
5 stay at the place for?
- 6 A. I left that place. I tried to go away
7 stealthily and I got home in order to flee.
- 8 Q. Before you left, how many people did you see
9 killed that day?
- 10 A. I witnessed only the killing of that one
11 person and, when I left, the assailants had
12 entered into the various houses that were
13 there. I was also afraid.
- 14 Q. What is your ethnic origin?
- 15 A. I am Tutsi.
- 16 Q. Are you married?
- 17 A. Yes.
- 18 Q. What is the ethnic origin of your wife?
- 19 A. She is Hutu.
- 20 Q. Did you have an identification badge?
- 21 A. Yes. I had an identity card and the ethnic
22 group mentioned on that identity card was
23 Hutu.
- 24 Q. Did it concern you that you were wrongly
25 described on your identity card?

1 A. Quite early, at the beginning of the
2 killings, I was not very much afraid. It
3 was only when the killings intensified,
4 subsequently, in 1994, when I became very
5 afraid. But even with the ethnic group Hutu
6 mentioned on my ID card I was still afraid.

7 Q. Why were you still afraid?

8 A. I was aware of the fact that I was Tutsi. I
9 was also aware of the fact that some people
10 could recognise me and, consequently, kill
11 me.

12 Q. The area that you first went to that
13 particular day, what people lived there?
14 Who were they? What were their names?

15 A. Which place are you referring to, more
16 precisely?

17 Q. The place where you first went that morning
18 and saw the woman being killed, that you've
19 already described?

20 A. I immediately returned home.

21 Q. I'm sorry, you have misunderstood. The
22 place where you went to and you saw the
23 people -- sorry, the woman that you've
24 described being killed, what was the name of
25 that place and who lived there?

1 A. That area is located between the Rwankere
2 area and Busogo. The area is divided by a
3 road, which crosses the two areas. On the
4 two sides of the road you have Tutsis living
5 there.

6 Q. Did you see, after you left that area,
7 anything further happen that day?

8 A. On the way, as I was heading towards my
9 home, before I even reached home, I heard
10 the explosions of grenades and gunshots. It
11 was explosions or rather the explosions and
12 gunshots came from the area near the Busogo
13 parish where Tutsis lived. To be more
14 precise they came from a certain Munyemvano.
15 I spell Munyemvano M-U-N-Y-E-M-V-A-N-O.

16 Q. Do you recall the following day?

17 A. In the morning of the 8th an old woman
18 called Asteri Kankinda was killed. I spell
19 Kankinda, K-A-N-K-I-N-D-A.

20 Q. Did you see that with your own eyes or were
21 you told that?

22 A. I was witness to that incident. I was very
23 close to the place where the incident took
24 place. I was hiding, because if I were seen
25 I would be killed.

- 1 Q. And where did that incident take place?
- 2 A. The incident took place in the Nyabirehe
- 3 locality. I spell Nyabirehe,
- 4 N-Y-A-B-I-R-E-H-E.
- 5 Q. Did you see who killed the old lady?
- 6 A. Yes. Some of the murderers of that old
- 7 woman are currently in detention.
- 8 Q. Would you be able to give us the names of
- 9 those people that you saw in killing that
- 10 old lady?
- 11 A. Among the killers of that old woman I would
- 12 name Munyanziza, Aloys. I spell
- 13 M-U-N-Y-A-N-Z-I-Z-A. Habiyaremye. I spell
- 14 Habiyaremye, H-A-B-I-Y-A-R-E-M-Y-E. Gitwari
- 15 G-I-T-W-A-R-I, Rugomboka, R-U-G-O-M-B-O-K-A
- 16 and Ahorukomeye A-H-O-R-U-K-O-M-E-Y-E.
- 17 There were others who have not yet been
- 18 arrested and others died.
- 19 Q. How were those people dressed that day?
- 20 A. The persons were wearing civilian clothes.
- 21 As a matter of fact, they came from
- 22 Nyabintare area. As concerns those who were
- 23 wearing a uniform, I was not able to see
- 24 them clearly, because I was hiding.
- 25 Q. Those who were wearing a uniform, what

1 uniform was it?

2 A. They were wearing a military uniform. In
3 fact, they are people whom I have already
4 mentioned. On that morning they came up
5 from Nyabirehe area and came to Rwankeri
6 (phonetic) to carry out killings.

7 Q. What sort of military uniform was it?

8 A. It was a military uniform of the Rwandan
9 army of the time, that is the uniform of the
10 former FAR, the Rwandan Armed Forces
11 uniform.

12 Q. Now, on that day, did you see or hear
13 anything else, that's the 8th of April?

14 A. As I testified today, those who went on the
15 vehicles were going to the Musumba locality,
16 specifically to a place known as Rukarare
17 Mkuli commune in order to carry out
18 killings. Let me spell Musumba
19 M-U-S-U-M-B-A. Rukarare, let me spell,
20 R-U-K-A-R-A-R-E. And Mkuli I'm spelling,
21 M-K-U-L-I.

22 Q. Would you describe to us what you saw going
23 in that direction?

24 A. What I saw was that I saw vehicles that
25 morning that were going up from the Busogo

1 locality in the direction of Mkuli to carry
2 out killings, as I had testified earlier.
3 It was on the way back that that group
4 joined others who were at the place where
5 the old man was killed, indeed, to kill the
6 old woman.

7 Q. Did you recognise any of the vehicles
8 travelling towards that place that you
9 described?

10 A. Among the vehicles, I was able to recognise
11 a vehicle belonging to the commune, the
12 vehicle belonging to the Busogo school,
13 abbreviated ESTB; then the vehicle of a
14 certain Mtimakemya who was the younger
15 brother of Nziroera. Let me spell his name,
16 M-T-I-M-A-K-E-M-Y-A. I also recognised the
17 vehicle of Baheza, Ezeras (phonetic)
18 B-A-H-E-Z-A. I also recognised the two
19 vehicles belonging to the priest and one
20 vehicle that belonged to the sisters.

21
22 The three vehicles that I mentioned, at the
23 very end, were designated or used by the
24 Interahamwe.

25

1 Let me further state that those three
2 vehicles I saw, or those vehicles I also saw
3 the day before, it was a type of escort.
4 They were moving, it's a huge column of
5 vehicles, a convoy, sorry, a huge column of
6 vehicles, as if they were going to some
7 feast.

8 Q. The first vehicle that you described, what
9 colour was that?

10 A. The vehicle belonging to the commune and the
11 one belonging to the Busogo school, ESTV,
12 were both red in colour.

13 Q. What sort of vehicle was the vehicle
14 belonging to the commune?

15 A. The commune vehicle and that of the Busogo
16 school, the ESTV, were Toyota Hilux models.

17 Q. Were you able to see who was driving the
18 vehicle belonging to the commune that day?

19 A. Since I was about a kilometre away when I
20 saw them, I wasn't able to recognise the
21 person driving the vehicle.

22 Q. Had you seen that vehicle driven regularly
23 by anybody in particular, prior to this?

24 A. It was customary for Kajelijeli to be behind
25 the steering of that vehicle. The first

1 vehicle belonging to the commune was driven
2 by him in his capacity as bourgmestre. The
3 second vehicle, belonging to the Busogo
4 school, ESTV, was driven by him as the
5 accountant of that school. It was a private
6 school. It was a school belonging to
7 parents or to relatives.

8 Q. Did you hear or see anything more that day,
9 that is the 8th of April?

10 A. Due to the fact that as from then, I went
11 into hiding, in other words I was hiding, I
12 was able to hear some other thing being told
13 by people who were talking about the manner
14 in which they were killing people.

15 Q. We don't want to hear what somebody else
16 told you, but rather we want to hear what
17 you, yourself, saw. You understand the
18 difference I'm trying to make?

19 A. The events, which I witnessed, over which I
20 was an eyewitness, which I told you earlier
21 about here. As for the events that occurred
22 subsequently, I was in hiding. I did not
23 see those events, personally. I could,
24 maybe, talk definitely about the period from
25 1991 to 1993 since, at the time, I was not

1 in hiding. However, as for the events of
2 1994, I have completed testifying as to the
3 event that I, personally, witnessed.

4 1600H

5 (Pages 103 to 124 by Rex Lear)

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1 1600H

2 Q. What did you then do?

3 A. I was in hiding throughout that period up
4 until the time when the Inkotanyi took over
5 the country, and then that was at the time
6 that I came out of my hiding place.

7 Q. Can you go back just over a couple of
8 things? You described the place that you
9 went to, where you saw the woman that was
10 killed, then you left there quickly. Did
11 you personally know the people who lived
12 there?

13 A. Yes, I knew most of those who lived in that
14 area.

15 Q. When did you return to your home area?

16 A. Do you want to talk about the date of the
17 7th, or the specific moment when the war
18 ended?

19 Q. No, I am sorry. After the war ended that
20 you described just a few moments ago when
21 the people came and took over the country.
22 How long after that was it that you returned
23 home?

24 A. I went back to my home two weeks after the
25 taking over of the country by those I

1 referred to, because, let me specify that,
2 those or where I was hiding and those who
3 were there went on exile to Zaire, and so
4 with me. I went with them to Zaire. So I
5 went home to my place from Zaire.

6 Q. Now, the people who were living in the area
7 that you have described to us before where
8 you saw the woman killed, have you seen any
9 of those people since you returned to your
10 own home, to your own place?

11 A. Yes, for some of them, indeed, I went back
12 same as some of the inhabitants who were in
13 the area where that woman was killed.
14 Others remained in Zaire.

15 Q. The first man that you saw being killed in
16 the Byangabo market area, do you know what
17 ethnic origin he was?

18 A. He was Tutsi.

19 Q. Now, I want you to go back a little bit in
20 time. You said to me, that you could talk
21 about matters in years before the genocide
22 occurred. If we can get back to 1991 --

23 MR. PRESIDENT:

24 Yes, Counsel?

25

1 PROFESSOR HINDS:

2 I know that Mr. Fleming expected me to rise.
3 I don't know whether or not he wanted just
4 to rest a while he raised the issue, but,
5 Your Honour, we would like showing, with
6 respect to the nature of the proofs before
7 this witness testifies with respect to 1991.

8

9 Our objection, of course, with respect to in
10 limine limiting the scope of this testimony
11 is because we know that the rulings of this
12 Chamber and other Chambers with respect to
13 any evidence of any crimes that were
14 committed prior to the jurisdiction of this
15 Tribunal is inadmissible for purposes of
16 proof in the guilt of the defendant in --
17 under the jurisdiction -- the temporal
18 jurisdiction of the Tribunal except on the
19 issue of conspiracy where the Courts have
20 allowed evidence of acts or meetings that
21 occurred before the temporal jurisdiction.
22 I don't know where -- I suspect where Mr.
23 Fleming is going because I have read the
24 witness statements and if he is about to
25 elucidate any testimony with respect to any

1 acts that are allegedly criminal in nature
2 alleged to Mr. Kajelijeli in 1991, in 1990,
3 in 1993, any time prior to 1994, we are
4 objecting and I think that there should be
5 some showing of where he is going, what he
6 intends to elicit before we proceed.

7 MR. PRESIDENT:

8 Thank you, Counsel. Yes, Mr. Fleming?

9 MR. FLEMING:

10 Thank you, Your Honours. Your Honours, we
11 can see it, of course at the outset, that
12 the temporal jurisdiction is 1994. We also
13 can see it that we can't prove the guilt of
14 Mr. Kajelijeli by reference to anything --
15 an event that occurred before 1994, except
16 in narrow circumstances, and I accept what
17 my Learned Friend said about, that is, in
18 respect of conspiracy. I can refer Your
19 Honours, to some of the authorities, if
20 necessary. I suspect, it is not necessary
21 to refer you to the authorities.

22

23 Specifically, I am going back now to cover a
24 period of time where associations developed
25 between Nzirorera and Interahamwe and

1 Kajelijeli. And it is specifically going to
2 the issue of conspiracy.

3
4 Now, we can, in fact, of course, adduce
5 evidence outside of the temporal
6 jurisdiction for two reasons, one; for
7 background information, and I am certainly
8 not adducing evidence of any prior crime
9 simply to produce background evidence. I
10 don't wish to produce evidence of a prior
11 crime. I am attempting to build an
12 association in respect of the particular
13 issue of conspiracy.

14 MR. PRESIDENT:

15 Thank you.

16 PROFESSOR HINDS:

17 Your Honour, this witness has testified that
18 Interahamwe in Mukingo was formed in 1993.
19 So, I don't know where he is going back in
20 1991, because I think that is area that he
21 is preceding in, and so I mean, even based
22 upon his theory where he talks about the
23 formation of the Interahamwe, and so on, and
24 the conspiracy in such formation between
25 Nzirorera and Kajelijeli, testimony as I

1 have recorded it, is from this witness that
2 the Interahamwe branch in that commune was
3 formed in Mukingo in 1993. So what is the
4 relevance of us going back to 1991?

5 MR. PRESIDENT:

6 Yes, Learned Counsel, I think -- you want to
7 respond to that?

8 MR. FLEMING:

9 I can say simply that the relevance of going
10 back to 1991 is to commence to build an
11 association between Nzirorera and
12 Kajelijeli.

13 PROFESSOR HINDS:

14 I don't have any objection to that if we are
15 going to get to any acts of alleged
16 violence. We are not going to be dealing
17 with expanding the scope of this trial to
18 deal with the war that occurred during that
19 time period and I don't know whether or not
20 this Chamber wants us now to broaden, at
21 least, from the Defence side, where we are
22 going with this trial. I thought this trial
23 was of January of 1994 to December of 1994.
24 If we begin to deal with events that took
25 place in 1991, as such, we then will be

1 dealing with a different charge, certainly,
2 between that period.

3 MR. PRESIDENT:

4 Yes. It appears, I think, from both sides,
5 that there is no serious dispute with regard
6 to the legal position regarding making
7 reference to events prior to 1994 for
8 context or in the manner that has been
9 outlined.

10

11 As to whether or not the matter will be
12 dealt with in the manner, and the Learned
13 Counsel for the Defence has just said,
14 maybe, what the Trial Chamber can say, let
15 us hear it because we cannot make a ruling,
16 an abstract, but I think Mr. Fleming, on
17 behalf of the Prosecution, has explained the
18 reasons behind, why they want to go back to
19 prior to 1991, within the premises of
20 context, and what have you. There is no
21 specific, you know, that has been mentioned
22 by Mr. Fleming, in that regard.

23 PROFESSOR HINDS:

24 Your Honour, I have said I am quite familiar
25 with the rulings on the question of

1 conspiracy.

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17 MR. PRESIDENT:

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24 MR. FLEMING:

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Thank you, Your Honours. I shall be

1 extraordinarily careful not to introduce any
2 prejudicial material and I will not be
3 referring to previous acts of violence.
4 What I will be referring to is the context
5 in which the Accused developed an
6 association with Nziropera relevant to the
7 conspiracy and then the association with
8 Nziropera and the Interahamwe to build up
9 the picture in respect of the conspiracy.

10 MR. PRESIDENT:

11 Yes. Please go ahead.

12 BY MR. FLEMING:

13 I thank you, Your Honour.

14 Q. Witness, in the period of time, say from
15 1991 to 1994, would you describe to us what
16 you saw of the association between the
17 Accused Kajelijeli and the Minister
18 Nziropera?

19 THE INTERPRETER:

20 Witness asks that the question be repeated.
21 Could it be reformulated?

22 Q. Witness, let us take from about 1991 through
23 until 1994, would you tell us whether or not
24 you saw Nziropera and Kajelijeli together
25 during that period of time leading up to the

1 7th of April 1994? Perhaps I should be more
2 specific, leading up to the 1st of January
3 1994?

4 A. Nziropera and Kajelijeli, well, it was
5 customary for them to be together during
6 meetings or at the residence of Nziropera
7 and that is why, when Nziropera wanted to
8 carry out something within the commune, he
9 went through Kajelijeli.

10 Q. Would you then describe first please,
11 whether or not there was any association
12 between Kajelijeli and Nziropera and the
13 Interahamwe?

14 A. I don't quite understand. Would you want me
15 to give you testimony that would show you
16 that Nziropera and Kajelijeli were related
17 or that they engaged in common activities?

18 Q. It is not for me to answer that as much as I
19 would like to.

20 MR. PRESIDENT:

21 Could you rephrase your question, Mr.
22 Fleming?

23

24 MR. FLEMING:

25 Thank you, Your Honour, I will. Perhaps it

1 is going backwards that has created a
2 problem.

3 Q. All right. I want you to go back in your
4 mind to the period of time where you told us
5 previously that the Interahamwe were, I
6 think, formed about 1993. Would you tell us
7 who was instrumental in forming the
8 Interahamwe?

9 A. When you look at the matter closely, it was
10 Nzirorera who was instrumental in the
11 formation of the Interahamwe. He was a
12 high-ranking personality and he had the
13 financial resources.

14
15 As for Kajelijeli, his role was to look for
16 and recruit the young men who would become
17 Interahamwe and he was distributing monies
18 to those young people, monies from Nzirorera
19 for -- during feasts or the purchase of
20 weapons used by the Interahamwe.

21 Q. Now, can you tell us how you know what you
22 just said or it is something you know
23 yourself or is it something you just heard
24 from other sources?

25 A. First of all, let me say that I know that it

1 is Nzirorera who was instrumental because
2 during the meetings, I know that he was the
3 one issuing orders.

4
5 As for the distribution of money and
6 equipment, of course, I wasn't there during
7 the distribution, but the Interahamwe
8 themselves talked about it.

9 MR. FLEMING:

10 All right. Thank you, Your Honours. That
11 is the evidence-in-chief for this Witness.
12 Excuse me for a moment.

13 Q. You told us earlier that you have known
14 Kajelijeli over a long period of time, could
15 you still identify Kajelijeli?

16 A. Yes, I would recognize him.

17 Q. Is he present in this Court, today?

18 A. Yes, he is present.

19 Q. Could you please identify him for us?

20 A. Yes, that is him sitting on that side. He
21 is sitting behind that old man.

22 MR. PRESIDENT:

23 Which side?

24 THE WITNESS:

25 He is sitting behind that old man.

1 BY MR. FLEMING:

2 Q. Shall I be unkind as to ask for the
3 identification of the old man, so that we
4 can identify the Accused?

5 MR. PRESIDENT:

6 Yes, I think any --

7 PROFESSOR HINDS:

8 No problem, as indicated, this is the old
9 man indicated of my client. I think my
10 client has been so identified.

11 MR. PRESIDENT:

12 I think it can be noted that the witness
13 identified the Accused in the courtroom.

14 MR. FLEMING:

15 Thank you, Your Honour. That is the
16 evidence-in-chief of this witness.

17 MR. PRESIDENT:

18 Thank you, Mr. Fleming. Perhaps, before we
19 start with the cross-examination by the
20 Learned Counsel for the Defence, this might
21 be the opportune moment to take a short
22 break for 20 minutes. We will come back at
23 twenty to five. We normally go up to 6.00.
24 Of course we might discuss much later how we
25 want to work in this particular case.

1 PROFESSOR HINDS:

2 Your Honour, quite frankly, I have been
3 sitting here, and I guess I can take the
4 advantage of my age at this point.

5 MR. PRESIDENT:

6 Yes.

7 PROFESSOR HINDS:

8 I have been sitting here almost freezing to
9 death because at first, I wanted the air
10 conditioner on, and then I have been sitting
11 here and I am almost frozen. It would much
12 be to our benefit and I think the Court, for
13 us to begin our cross-examination in the
14 morning as opposed to beginning at 5:00 and
15 I would be in a much better position to
16 proceed.

17 MR. PRESIDENT:

18 Mr. Fleming, that is formal submission from
19 the Defence. They want to start their
20 defence -- that they want to start their
21 cross-examination tomorrow morning.

22 MR. FLEMING:

23 Your Honour, the same immediate appeal to
24 that while they are freezing down at that
25 end, there is no air-conditioning here and

1 apparently there has been a lot of hot air
2 here. So we are decidedly uncomfortable but
3 we prefer what Your Honours first suggested,
4 that is, there be a 20 minute break and then
5 we come back for cross-examination. We are
6 not anxious to lose too much time.

7 MR. PRESIDENT:

8 Mr. Fleming, we lost quite a bit of time.
9 Every minute counts, but unless you feel
10 particularly not ready, may be, we would
11 prefer -- how much --

12 PROFESSOR HINDS:

13 I have indicated our preference. I have
14 indicated the fact of my discomfort but if
15 you want to go forward, I will do so under
16 the situation, but it would not be in the
17 best interests and I have said that and I
18 would think that we would operate within
19 those limits.

20 MR. PRESIDENT:

21 Okay. Thank you. Well, we will adjourn
22 these proceedings till tomorrow at 9.30 in
23 the morning, when we will come back and
24 start the cross-examination of the witness.
25 If you can tell the witness that we will

1 adjourn these proceedings until tomorrow
2 morning and when he will come back and start
3 cross-examination. He needs not discuss
4 these -- his testimony with anybody else
5 outside the courtroom and he will be here
6 again tomorrow. So until tomorrow at 9.30.
7 These proceedings stand adjourned.

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9 (Pages 125 to 140)

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11 Court adjourned at 1635H

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We, Haruna Farage, Sithembiso Moyo, Judith Kapatamoyo, Rex Lear and Petrus Chijarira, 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.

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14

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.

15

.....
Haruna Farage Pages .1... To .37...

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Sithembiso Moyo Pages ..38.. To .59...

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Judith Kapatamoyo Pages .60.. To .102...

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Rex Lear Pages..103...To..124..

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Petrus Chijarira Pages..125..To.140....

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