

1 THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

2

3 CASE NO.: 98-44A-I

THE PROSECUTOR
OF THE TRIBUNAL

4

5 AGAINST

6

JUVENAL KAJELIJELI

7

12 DECEMBER 2000

8

1530H

DEFENCE MOTION

9

10

Before: Judge Laity Kama, Presiding
Judge William H. Sekule
Judge Mehemt Güney

11

12

13

Registry:

Mr. John Kiyeyeu

14

Courtroom Assistant:

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Mr. Edward Matemanga

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For the Prosecution:

17

Ms. Carla Del Ponte

Ms. Ifeoma Ojemini

18

Mr. Don Webster

Mr. Jayantha Jayasuriya

19

For the Defendant:

20

Mr. Lennox Hinds

21

22

Court Reporters:

Ms. Geraldine O'Loughlin

23

Ms. Shannon Fleming

24

25

1 1330H

2 MR. PRESIDENT:

3 The session is open. As we said this
4 morning, we decided to come back here at
5 3 o'clock to listen to Counsel Hinds,
6 Defence Counsel, and we decided that his
7 submissions were going to be in the form of
8 a motion, a motion in which he is drawing
9 the attention of the Chamber to the changes
10 that the Prosecution had made in the
11 indictment, whereas that the Chamber ordered
12 them to simply separate the indictment and
13 to make it more specific to Kajelijeli.

14

15 Mr. Hinds will, therefore, tell the Chamber
16 how, in his opinion, the Prosecutor has
17 brought new charges against his client. We,
18 therefore, give the floor to Mr. Hinds.
19 Mr. Hinds, you have the floor.

20 MR. HINDS:

21 Thank you very much. Judge Kama, earlier
22 this morning we presented arguments why we
23 felt that the Prosecutor had indeed violated
24 this Court's July 6th order, both granting
25 Mr. Kajelijeli's motion for a separate trial

1 and for severance; and we cited examples.

2

3 More specifically, we pointed out that in
4 Count 7 of the indictment, of the new
5 indictment, Mr. Kajelijeli has been charged
6 with crimes against humanity, and in
7 particular the crime of rape. It is true
8 that Mr. Kajelijeli was charged identically
9 in Count No. 7 in the indictment that was
10 confirmed by Judge Pillay.

11

12 The gravamen of our statement, where we are
13 saying that there are new charges, is that
14 in the indictment that was confirmed on
15 July 29th, 1998, there are no allegations,
16 no specific allegations with respect to
17 Mr. Kajelijeli in that regard.

18

19 However, if we look at paragraph 5 in the
20 new indictment, which the Prosecutor
21 assesses is a concise statement of facts and
22 events in Ruhengeri's prefecture with
23 respect to Mr. Kajelijeli, they specifically
24 allege that between April and July of 1994
25 that many Tutsi women and men and children

1 were attacked, abducted and raped, and that
2 the Accused commanded, supervised, organised
3 and participated.

4
5 In paragraph 5.5 they make the allegation
6 that Mr. Kajelijeli ordered and witnessed
7 the raping and other sexual assaults on
8 Tutsi females, and at all times material to
9 the indictment he was a person of authority
10 with respect to at least stopping this from
11 occurring.

12
13 If you look at the indictment that was
14 confirmed in July of 1998 -- I'm sorry, in
15 August of 1998, August 29th, by Judge
16 Pillay, there are no specific allegations
17 that Mr. Kajelijeli attacked, abducted,
18 raped or participated in a rape of anybody.

19
20 But this cannot just be looked at in
21 isolation. It must be looked at in respect
22 to the statements that were provided to us
23 supporting these new charges. And these
24 statements allege the most horrific types of
25 crimes, where women were raped, using

1 instruments such as sticks. This is a
2 horrible situation. For the first time we
3 are -- I'm faced with that, having never
4 seen any allegations with respect to that,
5 not in connection with my client.

6
7 And so we, by way of example, are showing
8 those statements. Certainly, we have
9 pointed out that there are allegations that
10 Mr. Kajelijeli was involved in inciting, at
11 rallies, individuals to commit genocide.
12 That has not been, in fact, laid out at all
13 in any of the allegations or statements
14 contained in the prior confirmed indictment.

15
16 There are allegations that Mr. Kajelijeli
17 distributed weapons, was involved in the
18 distribution of weapons. That was not
19 contained in the confirmed indictment of
20 August 1998.

21
22 When you look at the allegations contained
23 in the indictment, the confirmed indictment
24 that was confirmed by Judge Pillay, with
25 respect to acts that were committed in

1 Ruhengeri in particular, you see and you
2 compare the allegations contained in the new
3 indictment, where we are specifically
4 looking at what Mr. Kajelijeli allegedly
5 did, this is where we see, we are facing, we
6 believe, a new indictment. And what the
7 Prosecutor, in fact, did was, recognising
8 when she looked at the confirmed indictment
9 and decided that in order to comply with
10 this Court's order, which specifically said
11 that the Prosecutor was to file a separate
12 indictment pertaining only to Juvenal
13 Kajelijeli from the existing confirmed
14 indictment, from the existing confirmed
15 indictment.

16
17 On looking at the confirmed indictment and
18 separating out Kajelijeli, it was clear that
19 whatever allegations that were contained in
20 this indictment, the confirmed indictment,
21 were insufficient to support any allegations
22 in a new indictment, supporting 11 counts.
23 And, therefore, they then proceeded to
24 assemble new allegations contained in the
25 new indictment and supported by the

1 41 witness statements.

2

3 And our contention, Your Honours, is that
4 the Defence now is faced essentially with
5 preparing for a new defence of a new
6 indictment, because over the past 22 months
7 we were dealing with preparing to defend
8 Mr. Kajelijeli against an indictment with
9 specific allegations that, in fact, defined
10 or described what he did in concert with
11 others, but what he did.

12

13 When we looked at that indictment we saw
14 that there were no specific allegations
15 sufficient to support the charges against
16 him with respect to most of the counts.
17 That is why we brought a motion for
18 severance and for separate trial. There was
19 no other reason; that is the reason.
20 Because we saw when you looked at the
21 indictment and you looked at the allegations
22 there wasn't enough there to support the
23 charges. And that is true.

24

25

1 Now, the Prosecutor proceeds and presents us
2 with a new indictment, but reformulated, we
3 say, not under this Court's order to submit
4 a new indictment consistent with the
5 confirmed indictment, but with new
6 allegations, new allegations unseen. And we
7 are asking either that this Trial Chamber
8 order the Prosecutor to, in fact, confirm
9 the new indictment consistent with your
10 order, or in the alternative allow
11 Mr. Kajelijeli to plead to the new
12 indictment, and then we proceed from there.

13
14 Our position with respect to many of the
15 allegations, they are beyond the
16 jurisdiction of this Tribunal. They are
17 allegations of acts that occurred in 1990,
18 1991 and so on. So we know that they are
19 beyond the scope and jurisdiction of this
20 Tribunal, which is contained within the
21 witness statements that, at least what we
22 understand they intend to proffer that
23 testimony at a trial.

24
25

1 Now, we also want to point out to the Court
2 with respect to the proposed trial date --
3 and I don't know if the Court wants me to go
4 into that, but it's tied in. May I? Okay.

5
6 I came here today to deal with the issue of
7 readiness to start a trial. The issues that
8 I raised with respect to being faced with
9 new charges relate to the question of
10 whether or not we could reasonably within
11 10 weeks prepare a trial that would defend
12 Mr. Kajelijeli and it is in that context
13 that I raised the issue of us being faced
14 for the first time with these new charges.

15
16 But there are other complicating factors
17 beyond the Prosecutor's control that this
18 Court ought to be aware of that makes it
19 impossible for us to proceed under the
20 timetable that the Court envisions. The
21 Court, I'm sure, has received a copy of a
22 letter that I received from co-counsel, who
23 has left the United States and is now
24 involved in a proceeding in Northern
25 Ireland.

1 That has greatly distressed and concerned me
2 because, unlike most other Defence teams, I
3 am faced with a situation where I cannot
4 communicate with my client. He speaks one
5 language, I speak another. So, therefore, I
6 have assembled a Defence team with bilingual
7 capability. Many of the bilingual
8 individuals who are investigators cannot
9 travel to Rwanda because they are Rwandese.
10 There are obvious problems, so therefore, I
11 had been relying upon co-counsel, who is
12 fluent in French, to accompany me to do the
13 necessary investigations in Rwanda.

14
15 We had planned to have at least one round of
16 investigations completed by August, but
17 since we were faced with a new indictment
18 and we realised that we would be given new
19 statements -- and incidently the statements
20 that we have received, those 41 statements,
21 most, if not all of them, we have not seen
22 before. They were not produced by
23 Mr. Webster and if they were, there may have
24 been one or two, but they certainly were not
25 significant.

1 We now have a situation of being presented
2 with this information where we delayed
3 conducting our investigation in Rwanda and
4 now are faced with co-counsel being away for
5 the next six months. It is impossible for
6 me to proceed under these circumstances.

7
8 There are other problems that I have that
9 I'm trying to remedy at this precise
10 situation -- this precise date. We are now
11 hiring a bilingual person to be in New York
12 with me so at least I can communicate with
13 my client. He writes to me in French and
14 documents are just piling on my desk because
15 I have no-one to translate them. This is
16 not a problem of the Prosecutor's Office.
17 This is a problem that the Defence team is
18 having which is interfering with our ability
19 to proceed. With respect to the latter
20 issue, it's an aggravating factor, but I
21 expect to have that remedied before I leave
22 here in the next couple of days.

23
24 But the problem with co-counsel and the
25 problem with the investigation in Rwanda is

1 a daunting problem. And so, therefore, for
2 me to be able to solve that we need
3 sufficient time. We cannot proceed with
4 this matter and provide justice to
5 Mr. Kajelijeli if we are to try this case in
6 less than six months, the minimum time that
7 is needed.

8
9 And, so, the Court has asked me to reduce
10 some thoughts to writing. I've tried to do
11 that without any staff, and I know I
12 probably ran maybe about 10 or 15 minutes
13 late, but you have a document in front of
14 you; and excuse any of the typographicals
15 that you may find in there. Thank you.

16 MR. PRESIDENT:

17 Mr. Hinds, I thank you. In order that you
18 stated that you were ready for a trial on
19 the basis of the original indictment, when
20 you came here you said you realised that it
21 was not the original indictment but an
22 indictment containing new counts. That is
23 the reason why you stated that not to allow
24 your client to plead on the new counts will
25 be unfair and inequitable. You said that

1 you were ready to argue on the basis of the
2 former indictment; am I correct?

3 MR. HINDS:

4 Absolutely correct, Your Honour.

5 MR. PRESIDENT:

6 Yes. Thank you very much.

7 MS. OJEMINI:

8 Your Honour, listening to my learned friend
9 speak to you this afternoon --

10 JUDGE GÜNEY:

11 Could you speak a little louder, please?

12 MS. OJEMINI:

13 Listening to my learned friend address you
14 on issues that are ordering him in respect
15 of this matter this afternoon, one wonders
16 why he cannot come out straight to say that
17 he is not in a position to go on with trial
18 in January; because he has catalogued all
19 the problems he's having now and as a result
20 of that it's obvious that he's not in a
21 position to go on with the trial. So, I
22 think what he's doing is more or less using
23 -- what he's doing is a calculated attempt
24 to delay justice in this matter, and I will
25 implore him to please proceed with trial

1 since he has also confirmed that he's ready
2 to go on with trial.

3
4 Having said that, what I will say is that
5 the issues he raised in respect of the
6 separate indictment that we filed, in
7 compliance with your order of 6th July this
8 year, we have addressed all the issues this
9 morning. But suffice that to say, that I
10 will just highlight a few comments on the
11 issues he raised.

12
13 Having said that, I'll draw your attention
14 to the relevant paragraphs in the original
15 indictment in support of our position that
16 we complied fully with your order to sever
17 all the allegations in the old indictment
18 against the Accused and incorporated in the
19 new -- in the separate indictment that we
20 filed, and that we did not introduce any new
21 charge in the count. We have maintained the
22 11 counts as charged in the original
23 indictment. And what we merely did was to
24 specify the allegations that are against
25 him, and then it's unfortunate that he's not

1 even appreciative of what we've done by
2 simplifying the defence of his client by at
3 least giving him -- furnishing him enough
4 information that will give him the link
5 between his actions and the charges we have
6 in the new -- I mean, the separate
7 indictment.

8
9 However, in paragraph 12 of his motion
10 before you, and also in response to the
11 issues he raised as regards the new
12 indictment, in support of his allegation
13 that the separate indictment contains new
14 charges, I would like to draw your attention
15 -- I would like to speak on each issue by
16 drawing your attention in the relevant -- I
17 mean, clauses in the old -- I mean, original
18 indictment.

19
20 The first issue is the issue of incitement.
21 In order not to bore you I will try to be as
22 brief as possible. I refer you to
23 paragraph 5.4 of the old -- I mean, original
24 indictment. And like I said in the morning,
25 we generalised all the allegations against

1 the six co-accused that he acted in concert
2 with.

3
4 In paragraph 5.4 we mentioned -- it's very
5 clear that he was involved, the Accused was
6 involved in the incitement that took place
7 in Rwanda. And if I may -- if I may read
8 it, it says: "The incitement to ethnic
9 hatred and violence was a fundamental part
10 of the plan put in place. It was
11 articulated, before and during the genocide,
12 by elements of the FAR on the one hand and
13 by members of the government and local
14 authorities in the other", and it falls
15 under the local authorities.

16
17 And also, if I may refer you to 5.11. In
18 the both the original indictment and the new
19 one we described him as a leader of MRND,
20 and in 5.11 we also mentioned what the
21 leaders of MRND did in respect of the
22 incitement. So either he's participated in
23 inciting the people, as mentioned in the
24 indictment, and he was regarded as an
25 influential personality and so -- we've in

1 the new indictment we've merely specified
2 his role in that incitement.

3
4 Then the third issue is -- that also extends
5 to propaganda. And then he informed you
6 that there was no way in the original
7 indictment where mention was made of
8 training and supply of weapons as regards
9 this participation in respect of that. I
10 will refer you to paragraph 1.9 (sic) in the
11 original indictment, and his name was
12 specifically mentioned there. And with your
13 kind permission I will read it.

14
15 "Furthermore, as early as 1993, Joseph
16 Nzirorera and Juvenal Kajelijeli organised
17 and supervised the creation and the training
18 of a group of Interahamwe-MRND militia in
19 their native commune of Mukingo" Ruhengeri.

20 JUDGE SEKULE:

21 Which paragraph?

22 MS. OJEMINI:

23 Paragraph 5.19

24

25

1 MR. HINDS:
2 Excuse me, Counsel. I'm not sure what
3 paragraph you just read.
4 MS. OJEMINI:
5 The original indictment.
6 MR. HINDS:
7 One point?
8 MS. OJEMINI:
9 One nine.
10 MR. HINDS:
11 1.9?
12 MS. OJEMINI:
13 1.19 (sic).
14 MR. HINDS:
15 Oh! 1.19.
16 MS. OJEMINI:
17 It's under "Training of the Militia Groups".
18 It's under -- we've mentioned the activities
19 of each of the Accused, generalised the
20 activities of all of the accused in this
21 original indictment, of which the Accused is
22 one of them. So in -- I mean, in the
23 separate indictment we merely particularised
24 his own acts, as ordered by this Honourable
25 Tribunal.

1 I will also refer you to 5.24 which also
2 talks about the training of the militiamen.
3 Likewise 5.29, 5.27, and I have stated in
4 the new -- I mean, the separate indictment,
5 we mentioned that the Accused had special
6 relationship with Joseph Nzirorera, and in
7 the statements that we have so far -- we
8 have disclosed there is ample evidence to
9 show, or to buttress this assertion. So
10 everything that relates basically to, in
11 respect of training in Ruhengeri, mentioned
12 under the "Training of the Militia" also
13 concerns the Accused. So it's not a new
14 charge that we've introduced. Neither have
15 we introduced any new element or evidence
16 different from what we have in the original
17 indictment.

18
19 Then coming to the issue of rape, the crime
20 against humanity, I will refer Your Honours
21 to paragraph 6.54. I refer you to --
22 particular reference to 6.85. I'll come
23 back to this later. 6.85 and six -- yes,
24 6.85.

25

1 We mentioned here -- with your kind
2 permission: "As from 7 April, Juvenal
3 Kajelijeli organised, supervised and
4 participated in attacks by Interahamwe-MRND
5 on the Tutsis from Mukingo commune and from
6 the neighbouring areas".

7
8 What we've merely done in the separate
9 indictment was to now mentioned the
10 components of the attacks. And in 6.101 we
11 generalised the sexual assault. And with
12 your kind permission I will read again:
13 "During the events referred to in this
14 indictment, rapes, sexual assaults and
15 other crimes of a sexual nature were widely
16 and notoriously committed throughout Rwanda.
17 These crimes were perpetrated by, among
18 others, militiamen including
19 Interahamwe-MRND", of which the Accused was
20 leader, "soldiers and gendarmes against the
21 Tutsi population, in particular the Tutsi
22 population, in particular Tutsi women and
23 girls".

24

25

1 And paragraph five point -- in the separate
2 indictment, the paragraph that my learned
3 friend mentioned is in all fours with what I
4 have just read out. He also made mention of
5 abduction, that it was never mentioned
6 anywhere in the original indictment. May I
7 then refer Your Honours to paragraph 6.56.
8 And I also read: "From April to July 1994,
9 in all the regions of the country, members
10 of the Tutsi population who were fleeing
11 from the massacres on their hills sought
12 refuge in locations they thought would be
13 safe, often on the recommendation of the
14 local civil and military authorities. In
15 many of these places, despite the promise
16 that they would be protected by the local
17 civil and military authorities, the refugees
18 were attacked, abducted and massacred, often
19 on the orders or with the complicity of
20 those same authorities" of which the Accused
21 was one of them.

22

23 So, Your Honours, I believe my learned
24 friend is first and foremost an officer of
25 this Tribunal and should represent facts the

1 way they are.

2

3 Another issue is the issue of the
4 41 statements which he said were not
5 disclosed to him initially. Well,
6 Your Honours, we complied with the relevant
7 Rule, which is Rule 66, 66(A)(ii), which
8 mandates us to disclose whatever statements
9 of the witnesses we will be calling at trial
10 within 60 days before the trial. So we
11 complied duly with that.

12

13 We also complied with the provision of --
14 the same Rule, (i), as regards the documents
15 in respect of -- that we used for -- the
16 supporting material that we used for the
17 indictment, we also complied with that. So,
18 we at the earliest opportunity that offers
19 itself we were able to, you know, meet up
20 with the requirement of this Rule. So, he
21 cannot be heard to say that we did not
22 furnish those or disclose those documents,
23 we did not furnish him on time with the
24 relevant documents in support of our own
25 case.

1 In conclusion, Your Honours, I will say that
2 we did not file or disclose any new charges
3 in the separate indictment, that will
4 warrant a new plea by the Accused and that
5 we've -- since we've made full disclosure as
6 required by -- as required under 73bis for
7 -- as a preliminary to trial, there -- the
8 trial -- there shouldn't be any impediment
9 to the trial date fixed for 22nd January
10 next year. And it is our position that the
11 trial should proceed as planned. Thank you.

12 MR. PRESIDENT:

13 Thank you, madam. Judge Sekule, you have
14 the floor.

15 JUDGE SEKULE:

16 Thank you, Judge Kama. Thank you, Counsel.
17 I have followed your submissions, Counsel,
18 in response to the submissions by the
19 Defence, and if I followed correctly, you're
20 saying that nothing has changed and that the
21 direction of the Trial Chamber has been
22 fully met and new no new elements have been
23 introduced.

24

25

1 But could you help me, Counsel. If when you
2 look, just by way of example, if you look at
3 what you said to have happened in Ruhengeri
4 in the original indictment, which I
5 understand starts from page 65, if I'm not
6 mistaken, running on to page 66, and then
7 you have Ruhengeri in the new amended -- in
8 the new indictment. Not amended, I'm sorry.
9 If you look at the roles the Accused is
10 supposed to have said to have done, alleged
11 to have done in the original text, in the
12 original indictment, and the roles the
13 Accused is alleged to have done in your, in
14 the new -- not new, in the separate
15 indictment, don't you think, Counsel, there
16 are some elements that need a bit of
17 explanation? You know, because they are
18 forecast on Ruhengeri. Take the rape case
19 for example, the rape situation, that has
20 been referred to by both parties. If you
21 look at the allegations -- I have followed
22 the various parts you have mentioned, but we
23 are addressing specifics -- where would you
24 find the kind of allegations that now appear
25 in the separate indictment as pertains to

1 the Accused person?

2 MS. OJEMINI:

3 Thank you, Your Honour.

4 JUDGE SEKULE:

5 That is one. Secondly, it is possible in
6 the course of things you may have come up
7 with new evidence that could justify that
8 kind of thing. But then would that be
9 justified in going across to a new
10 formulation, and if so, would that also
11 amount to really carrying the spirit and
12 letter of the decision of the Trial Chamber?
13 Thank you. Could you enlighten me, please?

14 MS. OJEMINI:

15 Thank you, Your Honour. I would like to
16 respond to your last question first. One
17 thing is very clear, Your Honour. In
18 drafting an indictment in respect of a
19 person, an Accused, the style, the language
20 will definitely be different from when
21 you're drafting an indictment that involves
22 many people. Unless you want to have a book
23 as an indictment, when you are
24 particularising you are being specific on
25 the roles or actions that gave rise to the

1 charges you're proffering in the indictment.

2

3 So, what I will say is that the text, the
4 content, is the same as what we have in the
5 original indictment. The style might be
6 different, so the language might be
7 different, but in effect the gist of the --
8 or the gravamen of the indictment, of the
9 original indictment is what is represented
10 in this indictment, as ordered by
11 Your Lordships in your order. So all we did
12 -- there's no new element per se. There's
13 no new element. But what we have are the
14 particular acts of the Accused that were
15 mentioned scattered all over the indictment.
16 So, that's my response to the last question.
17 I don't know if that is clear now.

18 JUDGE SEKULE:

19 Yes, but we are talking about a specific
20 area now. I'm talking about Ruhengeri.
21 There could be a lot of, you know -- you
22 should touch here or there on rape or
23 whatever it is. But I just want you,
24 Counsel, to address the events that are said
25 to have happened in Ruhengeri and the roles

1 that the Accused is supposed to have played
2 in that area by looking at the original
3 indictment and the separate indictment, and
4 all the attributes that appear to be
5 discernable in the original indictment and
6 the attributes that also are discernable in
7 the separate indictment.

8
9 Do you think in the substance they are the
10 same? I'm not talking about the style and
11 what have you, but when you look at those
12 aspects, are they the same? Are there no
13 new elements, perhaps?

14 MS. OJEMINI:

15 Your Honour.

16 JUDGE SEKULE:

17 I gave rape as an example, which is specific
18 anyway, because in the original indictment
19 Ruhengeri is also being addressed. But I
20 used it as an example for you, if I could
21 perhaps make myself clear.

22 MS. OJEMINI:

23 Okay, Your Honour. In paragraph 6.85, which
24 talks about attacks, we were not specific in
25 the attack, though it specifically -- the

1 attacks took place in Ruhengeri, but the
2 components are now what we broke down. We
3 broke down the attack in the new -- I mean,
4 the separate indictment by mentioning some
5 charges that are not mentioned specifically
6 under Ruhengeri.

7
8 The attack incorporates the rape, the
9 massacre -- I mean, all the crimes that we
10 mentioned in the original indictment -- I
11 mean, under the specific -- under Ruhengeri.
12 What we repeated in the separate indictment
13 are components of 6.3, 6.4 -- I mean 6.84,
14 6.85 and 6.86. That's the activities of the
15 Interahamwe and then the Accused's specific
16 role as their leader, which we did not break
17 down under Ruhengeri in the original
18 indictment.

19
20 So, in effect what I'm saying is that we
21 maintained the substance of what we have in
22 the original indictment, the substantive
23 allegations against the Accused in the
24 specific paragraph that you just drew my
25 attention to.

1 JUDGE SEKULE:

2 Thank you.

3 MS. OJEMINI:

4 There's another issue. The first question,
5 does my response answer that too?

6 JUDGE SEKULE:

7 Yes.

8 MR. PRESIDENT:

9 The first question?

10 MS. OJEMINI:

11 The first question, I didn't quite get that.
12 The first question, I was just asking if I
13 had adequately addressed that too? You
14 asked me two questions, but I started by
15 responding to the second.

16 JUDGE SEKULE:

17 What happened to be the first?

18 MS. OJEMINI:

19 I think they are all the same.

20 MR. PRESIDENT:

21 Okay. I want only to ask one question about
22 the same paragraph in Ruhengeri. I notice
23 that in the indictment after the order of
24 the Trial Chamber you have in paragraph 5.4:
25 "These attackers, comprising the members of

1 the Police Communale, Gendarmerie Nationale
2 and Interahamwe", and so and so, and "under
3 the control of the Accused used guns". If I
4 compare paragraph 6.86 of the original
5 indictment, I don't find Police Communale,
6 gendarmerie. It's one. You use in this
7 "traditional weapons" and I saw now "guns".
8 You think that is the same?

9 MS. OJEMINI:

10 Yes, Your Honour.

11 MR. PRESIDENT:

12 It's the same?

13 MS. OJEMINI:

14 Yes.

15 MR. PRESIDENT:

16 For you, guns is traditional weapons?

17 MS. OJEMINI:

18 No. No, Your Honour.

19 MR. PRESIDENT:

20 You told me it's the same.

21 MS. OJEMINI:

22 No.

23 MR. PRESIDENT:

24 It's the same here. Also, you add here

25 Police Communale, gendarmerie. This is not

1 here.

2 MS. OJEMINI:

3 Can I explain this?

4 MR. PRESIDENT:

5 Let me give you my observation; after, you
6 reply. I finished my observation. You
7 reply now.

8 MS. OJEMINI:

9 You've finish, Your Honour?

10 MR. PRESIDENT:

11 You may go on.

12 MS. OJEMINI:

13 May I draw your attention to the description
14 of the Accused. In the introductory part,
15 under paragraph 3.6, we elaborated on who
16 were his subordinates. So it is a mere
17 repetition of that; the people under him
18 that he used.

19 MR. PRESIDENT:

20 No. That is not how I understood it. The
21 first portion is a general description of
22 the context. Now, you go on to more
23 specific areas: Cyangugu, Butare,
24 Ruhengeri. That is my question. So, don't
25 refer us to the more general section.

1 Ruhengeri, Cyangugu, Ruhengeri, what
2 happened? It's just a question I'm raising.
3 I'm not drawing any conclusion. Just to
4 point out the fact that things were not
5 exactly the same. You have the right of our
6 order.

7

8 MS. OJEMINI:

9 Your Honour, I still maintain that we
10 complied with your directive. Thank you.

11 MR. PRESIDENT:

12 Is all right. Let the Chamber decide.
13 Okay. Don Webster?

14 MR. WEBSTER:

15 I would just like to offer a few comments,
16 and that is directly in response to the
17 observations by Judge Sekule.

18

19 When you look at both indictments -- the
20 original indictment versus this new
21 indictment -- I think what you observe is
22 that the original indictment was an
23 indictment against six or seven people, and
24 everything was pleaded on an
25 acting-in-concert theory and it was

1 basically an indictment that drove home the
2 point of a national conspiracy that involved
3 the entire country of Rwanda. So the
4 actions of one of the Accused in Cyangugu
5 could be attributable to the actions of
6 another in Ruhengeri, and so on and so
7 forth. So it was a much more complex and
8 comprehensive legal text, and the
9 allegations of fact were imputed to each
10 person that was mentioned in the initial
11 pleading.

12
13 When we drafted, or submitted, a separate
14 indictment, which was ordered by the Court,
15 we could not simply go through the old
16 indictment and strike out every paragraph
17 that did not specifically mention the name
18 Juv nal Kajelijeli, because the whole
19 structure of thinking through the charges
20 and pleading the facts was different.

21
22 (Pages 1 to 32 by Geraldine O'Loughlin)

23
24
25

1 (1625H)

2 MR. WEBSTER:

3 (Continuing) We come before the Court today
4 as a result of a decision that this Court
5 made that we did not ask for. We came
6 before the Court requesting a larger case.
7 We had an indictment where there were eight
8 accused, an indictment where there were four
9 accused, and two separate indictments where
10 there were single accused; and we were
11 trying to put together even a larger
12 litigation, a larger case for this Court to
13 review. And the Court rejected that
14 request. And in rejecting that request, you
15 asked us to file a separate indictment for
16 one accused. Well, that changed the very
17 nature of pleading the case.

18
19 So with this new indictment, even though it
20 is focused specifically on Ruhengeri, the
21 thinking behind the charges is basically the
22 same. The defendant is still charged with
23 eleven counts. They are the same eleven
24 counts, but they are illustrated with
25 reference to the facts that are closer to

1 him in time and space, because he operated
2 in Ruhengeri.

3
4 When you look at the charges of Joseph
5 Nzirorera, the whole structure of the
6 original indictment puts Juv nal Kajelijeli
7 in close relationship to Joseph Nzirorera,
8 who is the president or the
9 secretary-general of the MRND, who was
10 acting in a national capacity. His actions
11 impacted upon every region that the MRND had
12 control of in Rwanda. So even though it
13 appears as if we are being much more
14 specific in this new indictment, the whole
15 theory behind the case, or the thrust of the
16 allegations against the accused, are the
17 same.

18
19 What I'll underscore is a point that I made
20 earlier this morning is that this indictment
21 is a much better indictment or a much better
22 instrument for both the Defence and the
23 Prosecution at this stage. It limits the
24 inquiry at trial. The Defence has a much
25 better idea of the specific facts that will

1 be led at trial and that will be attributed
2 to his client, and I think it facilitates
3 matters both for the Prosecution and for the
4 Defence and for the Court.

5

6 And we come here before you today to argue
7 over an issue that we really haven't
8 discussed in a very head-on fashion, which
9 is: Is the Defence ready for trial?

10 Mr. Hinds started off by saying it was
11 impossible for him to start before another
12 six months had passed. That has nothing to
13 do with whether this is an appropriate
14 indictment or whether we followed the
15 Court's instructions.

16

17 He started by saying that his co-counsel is
18 on trial. He didn't have a bilingual
19 language capacity on his Defence team. He
20 gave a whole litany of excuses, and then
21 segued into an argument about the
22 Prosecutor's complying with the Court's
23 order, when that has the least to do with
24 what is being asked of the Court today.

25

1 The Defence is simply asking this Court to
2 delay this trial for at least six months and
3 has trumped up a legal argument to support
4 the logistical problems that it has in being
5 ready for trial.

6
7 I'm asking the Court to focus on the legal
8 issue. Does the new indictment comply with
9 the Court's order? I would say, yes, it
10 does. Does the new indictment contain any
11 new charges? No, it doesn't. They are the
12 same eleven counts. All we have done is
13 given further particulars to focus the
14 issues for trial and to focus them narrowly
15 on this defendant, Juv nal Kajelijeli, and I
16 think that's in the interest of a speedy, a
17 more focused trial. And that is something
18 that the Prosecutor should be complimented
19 for, rather than -- it should not generate
20 an unfavourable ruling from this Court.

21
22 And on that basis, I will request that this
23 Court honour its commitment, or the
24 commitment it demanded from both parties,
25 which is to be ready for trial on the

1 22nd of January of next year. Thank you.

2 MR. PRESIDENT:

3 Madam Prosecutor.

4 MADAM DEL PONTE:

5 Thank you, Mr. President, Your Honours.

6 Just a few comments because I have been
7 following with rapt attention the
8 submissions that have been made. I'd like
9 to emphasise and, Mr. President, you also
10 did say this: That with the old indictment,
11 or the indictment we refer to as old,
12 Defence is ready to go to trial.

13 Now Defence tells us that this old
14 indictment had the same charges, but it had
15 a concise statement of the facts and that
16 there are additional descriptions, more
17 detailed descriptions.

18
19 Now, Mr. President, my question is: If they
20 are ready to go to trial with an indictment
21 having a summarised statement of facts, now
22 the new indictment that you have with
23 further -- more detailed description, does
24 that change the indictment for the accused?
25 Does that change his possibilities of

1 defending himself? That is the question.
2 The fact that before, in the original
3 indictment, it is an epistle, or the fact
4 that now it is an epistle, whereas in the
5 old one it was some other types of arms or
6 other types of weapons. So is the fact that
7 we are now talking about pistols, grenades,
8 and guns, does that change for the accused
9 and his counsel the knowledge of the facts
10 that underpin the charges? And we say, no;
11 absolutely not. It does not change
12 anything.

13
14 Counsel for Defence was highlighting the
15 charge of rape, whereas in the old -- we had
16 it in the old indictment. And in the new
17 indictment we were more descriptive, we
18 added more details, and that is because we
19 had only one accused.

20
21 Now the question is, the principal question
22 is, does that prevent the accused from
23 knowing the modalities of how the rape took
24 place? It took place. Question: Why is it
25 possible that on the basis of facts which

1 are summarised and generalised, they were
2 ready to go to trial, and that the same
3 facts which are better described into
4 further details, they are asking for six
5 months?

6
7 In fact, Mr. President, I simply do not
8 understand. And I just want to point out to
9 you, to the Court, the importance of this
10 jurisprudence, the extreme importance of
11 this jurisprudence, in the sense that the
12 facts described in the indictment need to be
13 specific in the details and we can only rely
14 on this, or only as Article 47 says. Or is
15 it sufficient to have a summary of the
16 statement of facts, or the material that
17 supports the indictment? Is that what makes
18 the difference? For us, that is very
19 important.

20
21 And we would like to say that nothing has
22 changed. Defence has the same information.
23 It does not have one additional piece of
24 information which changes the indictment.
25 The indictment remains the same. Thank you,

1 Mr. President.

2 MR. PRESIDENT:

3 You have the floor, Mr. Hinds.

4 MR. HINDS:

5 Thank you, Mr. President. I listened very
6 carefully to the Prosecutor's response to
7 the questions raised both by Judge Kama and
8 Judge Sekule. And the fact of the matter
9 is, when you look at the new indictment you
10 will see that there are nine paragraphs with
11 respect to Ruhengeri. Not a book; nine
12 paragraphs, and I agree with Mr. Webster,
13 that specifically sets out what
14 Mr. Kajelijeli allegedly did there.

15
16 If you look at the old indictment, the
17 confirmed indictment, there are two or three
18 paragraphs, but none of those paragraphs
19 allege that Mr. Kajelijeli participated in
20 rapes, ordered anyone to be raped or
21 witnessed any rapes that he did not stop.
22 Now, it did not take a tremendous amount of
23 creativity in writing. If the Prosecutor
24 wanted to, with some specificity, lay out
25 allegations with respect to Mr. Kajelijeli

1 of what he did in the commune or within the
2 community of Ruhengeri, nothing is stated
3 there. Now, I mean, but that is just one
4 example.

5
6 The Prosecutor cites paragraph 5.4 and 5.6
7 in the original indictment with respect to
8 speeches and incitement, and says that the
9 fact that Mr. Kajelijeli was not mentioned
10 in terms of his involvement of inciting
11 anyone to violence against Tutsis was
12 because he was included in a broader group
13 of individuals who were leaders. But if you
14 look at what they said more specifically, in
15 paragraphs 4.18 and 4. -- well, 4.18 in the
16 new indictment, they were very specific.
17 They said that there were meetings, speeches
18 were made, and that the accused,
19 Mr. Kajelijeli, and Joseph Nzirorera were
20 inciting the audience.

21
22 Now, our position, when we were preparing
23 the defence of the old indictment, was that
24 there were no allegations that in fact
25 specified Mr. Kajelijeli inciting anyone to

1 violence. And so, therefore, unless we were
2 given witness statements or some other
3 statements to counter that, our contention
4 is that there was no evidence linking
5 Mr. Kajelijeli with those particular
6 allegations.

7
8 She mentions 6.101 with respect to the old
9 indictment. 6.101 says that during the
10 events referred to, rapes and sexual
11 assaults and other crimes of a sexual nature
12 were widely and notoriously committed
13 throughout Rwanda. These crimes were
14 perpetrated by, among others, militiamen,
15 including Interahamwe, MRD [sic], soldiers
16 and gendarmes against Tutsi women. Where
17 does that give Mr. Kajelijeli notice that he
18 was accused?

19
20 But you cannot just simply look at the new
21 indictment without reading the statements
22 that were provided for us on the same day.
23 Here's a statement by someone identified as
24 GDR, who says -- and this was presented to
25 us, and I am just reading this by way of an

1 example of what was given to us and why I am
2 saying based upon these statements that were
3 given -- there are 41 witnesses. It is
4 impossible for us to move forward,
5 notwithstanding some of the technical issues
6 and legal issues that I have raised.

7
8 "I know Juv nal Kajelijeli well; he was a
9 former Mukingo commune mayor, a member of
10 the MRND party and responsible for the
11 Interahamwe in Mukingo. I have followed his
12 political activities in Ruhengeri Pr fecture
13 since 1990, when the war started. At that
14 time he was the bourgmestre of Mukingo
15 commune.

16
17 "He ordered my arrest on October 13, 1990.
18 I was detained at the gendarme brigade in
19 Ruhengeri with several members of my family,
20 amongst whom were" -- and this was excised
21 out.

22
23 "We were detained and tortured by the army.
24 After 24 hours a Prosecutor noted that I was
25 innocent and arranged for my release. My

1 relatives were detained for three days
2 before being released by said magistrate.

3
4 "On October 18, December 1990 [sic] Juv nal
5 Kajelijeli came to our residence accompanied
6 by soldiers. He knocked at the door and
7 ordered us to open. When we complied, the
8 armed men started torturing my family. That
9 day Kajelijeli himself ordered that attack
10 at each time the local population attacked
11 us. On that day Kajelijeli was determined
12 to do away with my family.

13
14 "I would like to mention on that day whilst
15 my relatives were being tortured, Kajelijeli
16 himself and Lieutenant Gazimba, President
17 Habyarimana's nephew, had set me aside and
18 raped me several times".

19
20 Now, I am -- and this is only one of 41
21 witness statements. There are some witness
22 statements in which there are allegations
23 that people were raped with broomsticks and
24 so on and so forth; horrendous crimes. And
25 for the Prosecutor to say that

1 Mr. Kajelijeli was on notice based upon
2 6.101, which simply said: "During the
3 events referred to in this indictment,
4 rapes, sexual assaults and other crimes of a
5 sexual nature were widely and notoriously
6 committed throughout Rwanda. These crimes
7 were perpetrated by, among others,
8 militiamen, including the Interahamwe, MRD,
9 soldiers and gendarmes against Tutsi
10 population and women". That that is the
11 same is simply unfair and untrue.

12
13 Mr. Kajelijeli is in no position to, in
14 fact, deal with defending himself. And when
15 you look at the old indictment, we saw that
16 there was no evidence, or certainly no
17 allegations specifically tying Kajelijeli to
18 any crimes of rape. And that is true with
19 respect to any of the acts that now are
20 being cited as occurring in Ruhengeri,
21 including inciting to commit genocide and so
22 on.

23
24 And that is why, Your Honour, we have said
25 that if this indictment was in conformity,

1 if we had seen an indictment in conformity
2 with what we thought this Trial Chamber's
3 orders were, we were prepared to try this
4 case, because we knew that most of the
5 counts would be thrown out because there was
6 no evidence to support it.

7
8 We now are faced with an indictment -- and I
9 agree with Mr. Webster that if we were given
10 this indictment to begin with 22 months ago,
11 we would have been ready to deal with this
12 indictment. It is a more concise
13 indictment. It specifically lays out
14 allegations with respect to Mr. Kajelijeli.
15 We are in a position to in fact conduct
16 specific investigations as to time, place,
17 events, etc. We have witness statements
18 that allegedly tie him to certain places,
19 times, etc., with respect to the specific
20 allegations. We could proceed on this basis
21 because there is enough specificity.

22
23 But going from what we were presented with
24 and what we in fact were prepared to defend
25 against over 22 months, with what was given

1 to my co-counsel on the 30th and what we
2 have proceeded with here, there is no way
3 that we can proceed.

4
5 Now it is true that I raised these issues in
6 the context of a pre-trial conference
7 scheduled by this Court. And I raised these
8 issues not in isolation with our contention
9 that we are not prepared to go forward, but
10 in conjunction with other concerns that we
11 have. The personal problems we have with
12 respect to my Defence team has nothing to do
13 with the Prosecutor, and it is just a
14 problem that we have at this point.

15
16 But there is an issue with respect to new
17 evidence that we say that we have just been
18 presented as of October 30th, which only
19 compounds and aggravates the other problems
20 that we have, which we probably could have
21 gotten around if we were faced with a pared
22 down indictment in conformity with this
23 Court's order of July 6th. Thank you.

24 MR. PRESIDENT:

25 Thank you, Mr. Hinds. Judge Güney.

1 JUDGE GÜNEY:

2 Professor Hinds, in your motion during your
3 submission you made reference to the
4 aggravating factors which are related to
5 organisational matters. And these
6 aggravating factors have existed since the
7 beginning, since you were assigned as a
8 counsel, I think.

9 MR. HINDS:

10 May I? Would you like me to respond?

11 JUDGE GÜNEY:

12 Yes, please.

13 MR. HINDS:

14 The aggravating factors that I mentioned are
15 factors that have been -- that have
16 developed within the last three to four
17 months. When I was assigned and took on
18 this particular matter, I realised that my
19 client spoke Kinyarwandan and some French,
20 but spoke no English. I knew that. We
21 organised a team which included -- all
22 members of my team were bilingual. And I
23 made sure of that, so that we would have
24 communication with the client and be able to
25 move forward.

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We had planned to conduct an investigation in Rwanda during the summer. In order to do that, I could not use the Rwandan investigators we had. We had one Rwandan investigator and one from my South Africa office. She has been here with you. The problem with her is that she has citizenship from Congo, from Zaire, and realised that would be an impossible situation since there was an undeclared war with Zaire and Rwanda for her to accompany me there. So, therefore, I couldn't use her.

The plan was then to use my co-counsel, and you have seen him, Richard Harvey; speaks French. We were planning to complete our investigation in August. But then we were informed by the Prosecutor's office, in my discussion with Mr. Webster, that there was going to be a new indictment. I spoke to him and he said, yes, and most likely we will have some new statements. Even in my communication with his office I indicated that we intended to postpone and put off our

1 trip to Rwanda so that we could obtain the
2 statements that we subsequently got and
3 would be in a position to confer with our
4 client.

5
6 We got the statements on October 30th. I
7 reviewed them about a week later. But then
8 Mr. Harvey had left the United States and
9 then wrote me a letter indicating that he
10 was taking this assignment, which created --
11 and would not be available to assist in what
12 we had planned in terms of the investigation
13 in Rwanda, even before I was given these 41
14 witness statements, and before we got the
15 new indictment.

16
17 Faced with this new situation, I now have to
18 conduct an extensive, or more extensive
19 investigation, based upon these 41 new
20 witness statements. The Prosecutor
21 indicated that they provided us with witness
22 statements. They should share with the
23 Court what they provided us with. This is
24 what we got on the 30th. What we got in
25 terms of supporting witness statements to

1 support the confirming indictment before
2 Judge Pillay were four or five pages, if
3 that many.

4
5 So the problem that we have is a problem
6 that has just happened since this summer, a
7 problem with -- just staffing problems,
8 compounded by what we were presented in
9 October, which then made it totally
10 impossible for us to proceed to try this
11 case with these new allegations that we are
12 faced with.

13
14 And, of course, the Prosecutor says that if
15 I was able to read in-between the lines, I
16 could see what was happening. Mr. Webster
17 agrees with our position, and that is, the
18 theory of the Prosecutor's case was
19 bootstrapping. The Prosecutor initially
20 planned a theory of tying Mr. Kajelijeli in
21 with others and, therefore, felt there
22 wasn't any need to deal with any specificity
23 with respect to him. They were specific
24 with respect to others on the issue of
25 inciting. They were specific with respect

1 to others, with respect to passing out
2 weapons and clothing and uniforms and so on.
3 But as to him, there was no mention.

4
5 Now, we have to take an indictment and any
6 of the supporting statements and affidavits
7 that they provide to us as forming the basis
8 upon which the Prosecutor is moving forward
9 with their case and upon which the Defence
10 will prepare a defence. This is how I have
11 tried cases in many jurisdictions over 30
12 years. The Prosecutor presents an
13 indictment setting forth the allegations;
14 the Defence defends against that.

15
16 Mr. Webster is correct concerning bill of
17 particulars. We requested more specific
18 information, and they provided us whatever
19 they intended to rely upon. And that was
20 then the basis of us bringing a motion for
21 severance. It was only based upon what we
22 saw in the indictment.

23 JUDGE GÜNEY:

24 But what you have just said does not justify
25 the aggravating factors as you describe

1 aggravating factors in your motion,
2 paragraph 19. There are three aggravating
3 factors. They didn't become aggravating
4 factors because, let's suppose that the
5 Prosecution made a new indictment without
6 taking into account the Chamber orders.
7 Let's suppose. The fact is that you need
8 such facility and services, whatever
9 circumstances it would be. And it is not
10 easier to understand then, so you were
11 assigned for the last 22 months and you
12 couldn't settle some organisational matters.
13 And it is going to affect the trial that we
14 already provisionally scheduled for January.
15 This is the point.

16 MR. HINDS:

17 I don't think that, Judge Güney, you are
18 getting the point. What I have said is that
19 the Prosecutor on October 30th presented us
20 with a new set of allegations supported by
21 41 witness statements that we had never seen
22 before supporting these new allegations.
23 That's number one.

24

25 What compounds the problem is that even in

1 moving to conduct an investigation with
2 respect to these matters, we now have these
3 organisational problems, which I have to put
4 before you because they cannot be resolved.
5 And you cannot say, Mr. Hinds, that's your
6 problem. Whether or not you are able to
7 proceed or not, we're going forward.
8 Mr. Kajelijeli does the best he can. We are
9 saying that that is unfair. But it is
10 compounded by what was done, we think, in
11 violation of what your order was as we
12 interpreted it.

13
14 Now, you may disagree with my
15 characterisation of what in fact the
16 Prosecutor did that they may in fact have
17 complied. But even if they have complied,
18 we were presented four weeks ago -- six
19 weeks ago with this indictment with what we
20 say are new charges and with 41 new witness
21 statements. That is the point that I am
22 saying was an aggravating, an aggravating
23 factor.

24
25 But the bottom line is that I am not

1 prepared, and we are not prepared to proceed
2 on the 22nd.

3 JUDGE GÜNEY:

4 What is the earliest date that you are
5 prepared to proceed?

6 MR. HINDS:

7 Six months.

8 JUDGE GÜNEY:

9 Six months?

10 MR. HINDS:

11 Six months.

12 MR. PRESIDENT:

13 Mr. Hinds, the answers you have just given
14 means that you are anticipating the decision
15 of the Tribunal and that whatever the
16 decision of the Tribunal you need six
17 months. Is that what I got clearly?

18 MR. HINDS:

19 I don't know what the decision of the
20 Tribunal is. But Judge Güney asked me a
21 direct question, and I thought that I had a
22 responsibility in responding directly to
23 him. He asked me: How much time do you
24 need? And I answered that I don't know what
25 this Trial Chamber would decide, but the

1 amount of time I need is what I responded
2 to. He says: How much time do you need?

3 MR. PRESIDENT:

4 Yes. I should like to -- I was raising this
5 question because I wanted to recall that you
6 had said in your motion, in your motion --
7 can you hear the translation? Can you hear
8 the translation now?

9 MR. HINDS:

10 I didn't turn it on.

11 MR. PRESIDENT:

12 You have translation now?

13 MR. HINDS:

14 Yes.

15 MR. PRESIDENT:

16 You'd said you had brought in an alternative
17 in your motion that either Chamber takes it
18 that, in fact, it is a matter of new
19 charges, in which case the Chamber would
20 have to go along with Rule 50; in other
21 words, allow the accused another appearance
22 on the new charges and that will
23 consequently allow you to file.

24

25 Mr. Prosecutor, may I conclude my statement?

1

2

So that that was the alternative. The

3

second alternative was that you are saying

4

that unless the Chamber orders the

5

Prosecution to conform with the confirmed

6

indictment. Now, if by any chance that was

7

the case, in other words, the Chamber tells

8

the Prosecutor to abide verbatim by the

9

original indictment, so that we are, in that

10

case, in a situation in which you are ready

11

to proceed with trial. Now, under those

12

circumstances, will you ask still for six

13

months? This is the question.

14

MR. HINDS:

15

I would not ask for six months. Let me

16

explain. The count dealing with rape and

17

crimes against humanity would be thrown out.

18

The count dealing with -- I am just giving

19

you what my view is based upon the evidence

20

in the old -- based upon the evidence in

21

this indictment that I, in fact, have

22

prepared, that I had prepared for 22 months

23

for. I studied this indictment very

24

carefully. And I knew that based upon the

25

information provided to me and the Defence

1 by the Prosecution's office, that they had
2 no evidence to support the allegations
3 against Mr. Kajelijeli. That is why we
4 brought the motion for severance.

5
6 When we got the motion for severance, we
7 were happy. When we saw your order ordering
8 them to separate him out in the indictment,
9 we were happy. When we were given this
10 document, we were unhappy, because we then
11 realised that we had new charges, as far as
12 we were concerned.

13 MR. PRESIDENT:

14 I understand very well. I told you there
15 were two situations. One: The Trial
16 Chamber considers that in fact there are new
17 charges. And in this case two solutions.
18 One: We comply with Article 50, on the new
19 charges, and time for you to file a motion
20 on the new charges. That is one solution.
21 The Chamber tells the Prosecution: No, it
22 is not what we order you; please copy
23 verbatim the original indictment. In this
24 case you are in the first situation. You
25 are ready. Do you confirm that?

1 MR. HINDS:

2 Yes. One point: If they conform --
3 withdrawn. If they produce the new
4 indictment that conforms with your order,
5 all of these witness statements, most of
6 them out.

7 MR. PRESIDENT:

8 No.

9 MR. HINDS:

10 All I am saying is when I talk about
11 readiness, it's readiness within a context
12 of what evidence exists in this indictment
13 to support -- to support the counts that are
14 set forth. Now if they are providing
15 evidence that we have not seen before, we
16 have then to take the sufficient time to
17 defend against those.

18
19 You see, so I am saying that when I came
20 here, that I would be prepared to proceed
21 immediately if they had conformed the
22 indictment to what was filed on July 29th of
23 1998. But it would not include these
24 allegations of rape, specific allegations as
25 to him. If they are proceeding with that

1 and this Court allows it, we of course need
2 the time, the additional time to conduct the
3 investigation. That is the point I am
4 making. I am not sure I am making myself
5 clear, Your Honour.

6 MR. PRESIDENT:

7 I understand you. The only problem is that
8 in your position you cannot order again the
9 Prosecution to comply with your order: I am
10 ready to go to trial, is one condition.
11 They are setting aside witness statements
12 that you received concerning the new
13 allegations.

14 MR. HINDS:

15 You were speaking in English so I --

16 MR. PRESIDENT:

17 Unfortunately, I cannot continue in English.
18 I try sometimes.

19 MR. HINDS:

20 All right. I will keep this on.

21 MR. PRESIDENT:

22 If I understand you clearly, you are ready
23 to go to trial if the Prosecutor strictly
24 abides by the order that we handed down.
25 But of course, we will not take into account

1 the 41 witness statements that you received
2 and, according to you the support of the new
3 allegations. Is that right?

4 MR. HINDS:

5 Correct.

6 MR. PRESIDENT:

7 I give the floor to Judge Sekule.

8 JUDGE SEKULE:

9 In fact you have said essentially my
10 concern, because my understanding of
11 Professor Hinds was that I was beginning to
12 wonder whether parties can decide to end up
13 a matter before trial, because matters of
14 evidence perhaps would be determined in the
15 course of the trial. The Trial Chamber has
16 not had any and has no idea -- at least I
17 don't have an idea -- about what these
18 statements are.

19
20 If there is any matter that will have been
21 litigated upon at the trial, and at the end
22 of that or in the course of that, that's
23 when some of the things you are talking
24 about could possibly happen.

25

1 So I cannot see how, whatever description, I
2 mean, the indictment we are to proceed with,
3 that you will have that kind of firm
4 position that a particular, a particular
5 count or so will have to be withdrawn. That
6 I don't seem to understand. I think at this
7 stage you are not talking about matters of
8 evidence. That might be the hope of the
9 parties, but the mere -- at the stage of an
10 indictment I don't think we can go that far.

11

12 So I just wanted to make sure that we don't
13 put in things that may be relevant at some
14 stage and which may not be so relevant at
15 this stage.

16 MR. HINDS:

17 Judge Sekule, you are absolutely correct,
18 and I stand corrected. What I meant to say
19 is that if we have the eleven counts of the
20 indictment that were confirmed by
21 Judge Pillay and that now the Prosecutor's
22 office is preparing a new indictment in
23 conformity with that, I am saying that these
24 witness statements amount to new evidence
25 under the new indictment. And the problem

1 is if we proceed on that basis, I would not
2 be in a position to proceed because I have
3 to investigate these new allegations.

4
5 My view of the evidence as presented so far
6 by the indictment and the supporting
7 affidavits they provided for us are that
8 there is no or little evidence to support
9 many of the counts. And you are right that
10 if after they present their case and in a
11 motion to dismiss, without us even going
12 forward, the Chamber will make a decision as
13 to whether or not there was sufficient
14 evidence to support the charges on the
15 Prosecution's case.

16
17 But I -- maybe I misspoke ahead of time and
18 thinking that the Prosecutor in their
19 discretion could decide whether or not they
20 will proceed on some of these counts.

21 MR. WEBSTER:

22 I have a few comments to make just to
23 clarify the record. First of all, I would
24 like to remind the Court of how we got to
25 this position. There had been a number of

1 pre-trial hearings before this Chamber, none
2 of which address the issue of defects in
3 form of the indictment. If Mr. Hinds has a
4 problem with the original indictment and he
5 claims there was no evidence in the
6 indictment or allegations in the indictment
7 to support the charges, that motion should
8 have been brought within 60 days of receipt
9 of the supporting materials.

10

11 The initial appearance on this case was back
12 on the 7th of April of last year. He keeps
13 harping on 22 months of being familiar with
14 the indictment or having the indictment.
15 For the last 22 months or for at least 18 of
16 those months, he has had an opportunity to
17 file a motion for defects in the form of the
18 indictment, which he has never done.

19

20 Every time he or Mr. Harvey has come to this
21 court they have pleaded over and over again
22 on the issue of defect in the form of the
23 indictment without raising that specific
24 motion. That motion was time-barred. He
25 could not get to those issues, and he has

1 restated those issues every time he has
2 addressed this Court on the joinder issue or
3 on the severance issue.

4
5 We are not here today to decide the merits
6 of the original indictment. This Court
7 delivered an order. The Prosecutor complied
8 with that order. The indictment that is
9 before this Court is the separate indictment
10 against Juv nal Kajelijeli. And any
11 problems or deficiencies he recognises in
12 the original indictment is an issue he has
13 waived. He waived it over 18 months ago.

14
15 Secondly, in terms of conversations that I
16 have had with Mr. Hinds, my recollection is
17 that with respect to this separate
18 indictment, this is an instrument that he
19 has had since August of this year. We keep
20 bandying about October 30th. On October
21 30th, a correction to the original separate
22 indictment was filed. But the separate
23 indictment that was filed in compliance with
24 the Court's order, I believe, was filed with
25 this Court sometime in August.

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So he's had at least three months to contest this issue, yet he comes to a pre-trial conference and raises these issues for the first time. You've had over three months to address this issue in writing and to go this Court.

Secondly, with respect, going back to that original indictment, at no point have I ever represented that Mr. Kajelijeli was bootstrapped to any of the defendants. The whole theory of that first indictment was that there was a president of the MRND on an indictment, Mathieu Ndirumpatse, the secretary-general of the MRND, a minister of the interior, and Mr. Kajelijeli, who was formerly a bourgmestre in Mukingo. The whole theory of that indictment was that there was a national conspiracy that extended from the central government through the MRND political party apparatus and down to the level of the bourgmestre where Mr. Kajelijeli committed rapes and various atrocities in Mukingo commune.

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2

There is nothing that suggests

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bootstrapping. That has never been my

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representation and it simply distorts every

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conversation I have had on this matter to

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suggest that I agree with the Defence

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position, which is completely erroneous.

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For either indictment, the original

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indictment or the separate indictment, they

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are both supported by 41 witness statements.

12

The case would be the same whether we went

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to trial on the basis of the original

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indictment or on the separate indictment.

15

The issues before this Court are

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straightforward. Do we start trial in

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compliance or do we allow the Defence to

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exploit erroneous or fallacious legal

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arguments to delay the procedures of this

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court? I believe that's all I have to

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submit on that point.

22

23

With respect to you, Judge Kama, I believe I

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tried to get your attention on a number of

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occasions. I recognise clearly that

1 Judge Sekule had seen that I was trying to
2 get the Court's attention, as well as
3 Judge Güney. I think that your rebuke to me
4 was inappropriate. I simply was trying to
5 be respectful to get your attention. I did
6 not interrupt you and I meant no disrespect
7 to the Court. And that I think would be
8 clear. Thank you.

9 MR. PRESIDENT:

10 Now, I don't have -- I'm not in the habit of
11 exchanging words. There is one thing I
12 don't accept, and I do not accept people
13 doing to judges or various parties here. In
14 my indication from my own jurisdiction, when
15 somebody is speaking, one listens to one.
16 One can answer later on, but one does not
17 interrupt one. This is why I said that I
18 did not want to be interrupted. I wouldn't
19 do that. Thank you.

20

21 Now I should give the floor to Mr. Hinds. I
22 think you should be as brief as possible
23 because we should deliberate. One minute
24 you have.

25

1 MR. HINDS:

2 Your Honour, I would waive any comment I
3 would make if I would be trespassing on the
4 Court's patience. I just want to respond to
5 Mr. Webster's comments concerning the
6 original indictment. We did not move to
7 challenge the original indictment. And
8 quite frankly, our approach was to move for
9 a severance of Mr. Kajelijeli based upon
10 what we saw to be weaknesses in this
11 indictment.

12
13 We certainly did not -- in terms of our
14 theory of our defence, that was not our
15 intention at all. I only point out the
16 original indictment because this Court's
17 order was to have the Prosecutor file a new
18 indictment in conformity with the old. And
19 so therefore we have to compare the old with
20 the new. And that is the only reason why I
21 was making the comparison.

22 MR. PRESIDENT:

23 Thank you, Mr. Hinds.

24

25 Now, the Chamber has heard all the parties

1 and will now withdraw to deliberate to come
2 back with a decision, latest at 6:00. If
3 possible, we come back earlier, but I
4 believe that the deadline should be 6:00.
5 It is possible that we come back earlier, so
6 please be available. We shall now rise.

7 (Court recessed at 1615H)

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1 (Court commenced at 1851H)

2 D E C I S I O N

3 MR. PRESIDENT:

4 The hearing is called to order. The Chamber
5 has deliberated and adopted a decision. The
6 decision is in English. I shall therefore
7 have it read by Judge Güney, who knows
8 English better than me.

9

10 Judge Güney, you have the floor.

11 JUDGE GÜNEY:

12 Thank you, Mr. President. The decision
13 reads as follows: After having deliberated,
14 having carefully reviewed the original
15 indictment confirmed on the 29th August
16 1998, and the separate indictment filed by
17 the Prosecutor on the 25th October 2000, the
18 Trial Chamber considers that the separate
19 indictment of 25th October 2000 did not
20 fully comply with the actual directions
21 given by the Chamber in its decision of
22 6 July 2000.

23

24 The Trial Chamber holds that the differences
25 between the original indictment and the

1 separate indictment could lead the accused
2 to believe that new charges have been added
3 against him, notably with respect to the
4 account of the events at Ruhengeri and to
5 the allegations of rape.

6
7 The Trial Chamber consequently orders the
8 Prosecutor to fully comply with the decision
9 of 6 July 2000, and therefore, to file in
10 French and in English a new separate
11 indictment pertaining only to the accused
12 Juv nal Kajelijeli from the existing
13 confirmed indictment. The separate
14 indictment should be in the same order and
15 in the same manner as the original
16 indictment.

17
18 The Trial Chamber further orders the
19 Prosecutor to file the said separate
20 indictment by Monday, 18 December 2000, at
21 the close of business in both languages.

22
23 In these conditions, noting firstly that the
24 charges will not have changed as compared
25 with the original indictment of the

1 29 August 1998, and secondly, that the
2 Prosecutor completed disclosure pursuant to
3 Rule 66 on 30 October 2000, the Trial
4 Chamber considers that the timeframes
5 scheduled for trial should remain as
6 initially decided; namely, that the trial on
7 the merits will start on the 22nd January
8 2001.

9
10 In this regard, the Trial Chamber directs
11 the Prosecutor to file a pretrial brief
12 conforming with all requirements set out in
13 Rule 73bis(B)(i), (iv) and (v) by Monday,
14 8 January 2001, at the close of business.

15
16 Done in Arusha, on this Tuesday, 12 December
17 2000, and unanimously decided.

18
19 Thank you, Mr. President.

20 MR. PRESIDENT:

21 Thank you, Judge Güney. It is so decided,
22 and we shall now rise.

23 (Court adjourned at 1857H)

24 (Pages 33 to 73 by S Fleming)

25

1 C E R T I F I C A T E

2

3 We, Geraldine O'Loughlin and Shannon
4 Fleming, Official Court Reporters for the International
5 Criminal Tribunal for Rwanda, do hereby certify that the
6 foregoing proceedings in the above-entitled cause were
7 taken at the time and place as stated; that it was taken
8 in shorthand (stenotype) and thereafter transcribed by
9 computer under our supervision and control; that the
10 foregoing pages contain a true and correct transcription
11 of said proceedings to the best of our ability and
12 understanding.

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

17

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19 Geraldine O'Loughlin (1 to 32)

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21 Shannon Fleming (33 to 73)

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