

1 THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA
2
3 CASE NO.: ICTR-98-44A-T THE PROSECUTOR
4 OF THE TRIBUNAL
5
6 AGAINST
7
8 JUVÉNAL KAJELIJELI
9
10 15 MARCH 2001
11 0930H
12 TRIAL CONTINUES
13
14 Before: Judge Laïty Kama, Presiding
15 Judge William H. Sekule
16 Judge Mehmet Güney
17
18 Trial Chamber Coordinator:
19 Ms. Cécile Aptel
20
21 Courtroom Officer:
22 Mr. John Kiyeyeu
23
24 Courtroom Assistant:
25 Mr. Abraham Koshopa
26
27 For the Prosecution:
28 Mr. Ken Fleming
29 Ms. Ifeoma Ojemeni
30 Mr. Jayantha Jayasuriya
31
32 For the Defendant:
33 Professor Lennox A. Hinds
34
35 Court Reporters:
36 Ms. Verna Butler
37 Ms. Geraldine O'Loughlin

I N D E X

For the Prosecution

Mr. Lucassen

Cross-examination by Mr. Hinds 3

Re-examination by Mr. Fleming 23

Decision 55

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Prosecution Exhibit No. 2 59

Prosecution Exhibit No. 3 59

Prosecution Exhibit No. 4 59

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

2 MR. PRESIDENT:

3 The Court now resumes its sitting.

4 Registrar.

5 MR. KIYEYEU:

6 Mr. President, Trial Chamber II of the
7 International Criminal Tribunal for Rwanda,
8 composed of Judge Laïty Kama, presiding,
9 Judge William H. Sekule and Judge Mehmet
10 Güney, is now sitting in open session today,
11 Thursday, the 15th of March 2001, for the
12 continued trial in the matter of The
13 Prosecutor v. Kajelijeli, Case
14 No. ICTR-98-44A-T. Most obliged, My Lords.

15 MR. PRESIDENT:

16 For the record, can I ask the parties to
17 proceed according to custom by appearing.

18 MR. FLEMING:

19 If Your Honour pleases, I am Mr. Ken
20 Fleming, senior trial attorney. I appear
21 with Ms. Ojemeni and Mr. Jayasuriya, trial
22 attorneys.

23 MR. PRESIDENT:

24 Thank you, Prosecutor.

25

1 MR. HINDS:

2 May it please the Court, Lennox Hinds
3 representing Mr. Kajelijeli, and I am
4 assisted by Miss Lilian Sepulveda.

5 MR. PRESIDENT:

6 Thank you very much.

7
8 Professor Hinds, the issue was for you this
9 morning to cross-examine, if need be, the
10 investigator who was brought by the
11 Prosecutor. Are you ready to cross-examine
12 the investigator?

13 MR. HINDS:

14 Your Honour, we have a few questions we
15 would like to put to the investigator for
16 the Prosecutor, and then we will make an
17 application to the Court with respect to
18 Prosecutor's Exhibits 1 through 4.
19
20 So, whenever the --

21 MR. PRESIDENT:

22 Don't worry, he will appear.
23
24 Mr. Tony Lucassen, you are appearing as the
25 investigator brought by the Prosecutor who

1 examined you the last time we sat. Today,
2 it will be the turn of the Defence to
3 cross-examine you. Are you ready?

4 THE WITNESS:

5 Yes, sir. I'm ready.

6 MR. HINDS:

7 Thank you, Your Honour.

8 C R O S S - E X A M I N A T I O N

9 BY MR. HINDS:

10 Q. Mr. Lucassen, my name is Lennox Hinds and I
11 represent Mr. Kajelijeli. You testified on
12 Tuesday that you were employed by the ICTR
13 for a little over two years, is that
14 correct?

15 A. That's correct, in the sense that my
16 contract as an employee with ICTR is
17 currently, I think, a year and a half, and
18 before that I had a current (sic) with my
19 government from Holland, and I worked for
20 ICTR during eight months.

21 Q. But your total employment, you testified,
22 exceeds two years; is that correct, with the
23 ICTR?

24 A. That is correct.

25 Q. I will be posing several questions to you.

- 1 I'd like you to listen very carefully to my
2 questions and just answer those questions
3 and nothing more. Do you understand that?
- 4 A. I understand that.
- 5 Q. Okay. Now, with respect to your employment
6 by the ICTR, you testified that your only
7 knowledge of Mr. Kajelijeli, or about this
8 case, began in January of this year; is that
9 correct?
- 10 A. That's correct.
- 11 Q. And you were assigned by the Prosecutor's
12 Office; is that correct?
- 13 A. That is correct.
- 14 Q. And you worked for the Prosecutor; is that
15 correct?
- 16 A. That is correct.
- 17 Q. And part of your responsibility was to
18 gather evidence to support the indictment
19 against Mr. Kajelijeli; is that correct?
- 20 A. My orders were more specific than that.
- 21 Q. Were your orders to take some photographs in
22 the area of Ruhengeri?
- 23 A. That is correct.
- 24 Q. Were your orders to take some photographs to
25 support the indictment of Mr. Kajelijeli?

- 1 A. I suppose so.
- 2 Q. Now, you were informed, were you not, that I
- 3 was in Ruhengeri the week before you
- 4 travelled there? You knew that, didn't you?
- 5 A. I heard that.
- 6 Q. And you knew that I went to certain
- 7 locations in Ruhengeri, didn't you?
- 8 A. I suppose so, yes.
- 9 Q. Well, you were guided in your activities in
- 10 Ruhengeri by certain individuals who were
- 11 familiar with that area; isn't that correct?
- 12 A. That is correct.
- 13 Q. And you were informed that I went to certain
- 14 locations, weren't you?
- 15 A. Um, in fact, I was not. I heard that you
- 16 had been there and, having heard that you
- 17 had been there, I supposed you had been to
- 18 certain locations. I don't know to which
- 19 locations you had been and nobody informed
- 20 me on that.
- 21 Q. Okay. You had no personal knowledge with
- 22 respect to events and activities that may
- 23 have taken place in any of the locations
- 24 that you photographed; is that correct?
- 25 A. Well, of course, during my photographing and

1 sketching, I don't think --

2 Q. Mr. Lucassen, please, so that we could get

3 along here: I have asked you a specific

4 question. I'd like you to answer that

5 question, please. Would you like me to

6 repeat it?

7 A. Yes, please.

8 Q. Okay. The question, sir, is: Did you have

9 any personal knowledge with respect to any

10 event that took place in any of the

11 locations that you photographed during 1994?

12 A. The question is too extreme to answer it

13 with no.

14 Q. Were you in Ruhengeri in 1994?

15 A. No, I was not.

16 Q. Did you see any events that took place in

17 Ruhengeri in 1994?

18 A. No; I did not.

19 Q. All right. So, you have no personal

20 knowledge of what occurred there in 1994, do

21 you?

22 A. In that sense, I have not.

23 Q. So, you relied upon what people told you

24 took place in those locations that you took

25 photographs of; is that correct?

- 1 A. What I heard and what I saw, yes.
- 2 Q. You didn't see everything that occurred in
- 3 1994, did you?
- 4 A. That is correct.
- 5 Q. So, you relied upon what people told you as
- 6 you took photographs and made your sketches;
- 7 isn't that correct?
- 8 A. As far as this was not contrary to what I
- 9 saw, yes.
- 10 Q. Okay. Now, turning to -- and could we have
- 11 the witness presented exhibits, Prosecutor's
- 12 Exhibits 1 through 4 for identification,
- 13 please? Do you have the exhibits in front
- 14 of you now, sir?
- 15 A. Yes, I do.
- 16 Q. I would like you to turn to Prosecutor's
- 17 Exhibit 1, which is the maps. What were
- 18 your assignments, sir, with respect to these
- 19 maps?
- 20 A. I was asked to get maps from UN archives of
- 21 Ruhengeri and certain communes within
- 22 Ruhengeri.
- 23 Q. Were you asked to get the most accurate
- 24 maps?
- 25 Withdraw. Let me put the question to you a

1 different way: Based upon your -- what you
2 say were your instructions to get maps, did
3 you endeavour to get the most accurate maps?

4 A. I suppose these maps are accurate. We have
5 maps on a larger scale.

6 Q. Was there some reason why you decided not to
7 get maps that showed more detail of the
8 area? Do you understand the question?

9 A. Yes. I understand the question. There is
10 another map of another scale, which is used
11 in one of the sketches, more or less. This
12 is not in use because there's just one map.
13 We found no way to make copies of it. It is
14 big, and most of it is not relevant.

15 MR. HINDS:

16 May I have a document marked, Your Honours,
17 Defendant's Exhibit 1 for identification?
18 May I approach?

19 BY MR. HINDS:

20 Q. Mr. Lucassen, I show you what has been now
21 marked at Defendant's Exhibit 1 for
22 identification and ask you if you have ever
23 seen that map. Don't look at my notations
24 on it.

25 A. Well, of course, parts of it are relevant

1 and I have not --

2 Q. Mr. Lucassen, please. I have asked you one

3 question and I'd like you to answer that:

4 Have you ever seen that map; yes or no?

5 A. I think the one I saw is a different one.

6 Q. Okay. Now, that you are looking at

7 Defendant's Exhibit 1, do you know whether

8 or not that map is available from the UNDP?

9 A. To my knowledge, it is not.

10 Q. What if I told you I got that from the UNDP

11 the week before you got there? What would

12 your response to that be?

13 A. It's possible.

14 MR. PRESIDENT:

15 Mr. Hinds, now, you intend to use that map

16 as Defence Exhibit No. 1?

17 MR. HINDS:

18 That's correct, yes.

19 MR. PRESIDENT:

20 Is there any objection from the Prosecutor?

21 MR. FLEMING:

22 Quite to the contrary, Your Honours. I am

23 quite happy for him to have it tendered.

24 MR. PRESIDENT:

25 Very well then. That will be Defence

1 Exhibit No. 1 for identification.

2

3 You can continue, Professor Hinds.

4 MR. HINDS:

5 Thank you.

6 BY MR. HINDS:

7 Q. Now that you have an opportunity to examine

8 that map, do you have -- withdraw.

9

10 Now that you have had an opportunity to

11 examine the map, can you tell us whether or

12 not you believe this map has more detail

13 than what you have as your map of Ruhengeri

14 in Prosecutor's Exhibit 1?

15 A. Of course, but it covers a smaller area.

16 Q. With respect to the area in question -- that

17 is, the three communes in question -- does

18 it have more detail?

19 A. I think Kinigi commune is not on it, but

20 Mukingo and, wholly, it certainly has more

21 detail, yes.

22 Q. Now, turning to your -- that is, the

23 Prosecutor's Exhibit 1, with respect to

24 Mukingo commune, the specific map on Mukingo

25 commune. Can you turn to that, please? You

1 have it before you?

2 A. Yes, I do.

3 Q. Okay. Did you check with anyone with

4 respect to the accuracy of the secteurs that

5 were mentioned in that particular map?

6 A. Regarding the source of these maps, I did

7 not check their accuracy.

8 Q. Okay. So, you do not know whether or not

9 there are any errors in any of the secteurs;

10 is that correct?

11 A. That's correct.

12 Q. So, for example, you do not know, whether or

13 not Mukingo secteur is incorrect, and it

14 should be Muhingo (phonetic) secteur, do you

15 know?

16 A. I don't know.

17 Q. Now, turning to Prosecutor's Exhibit 2 and,

18 in particular, the legend that you prepared

19 of Mukingo and Nkuli: First of all, sir,

20 did you prepare this legend, or was it your

21 colleague who prepared it?

22 A. It was me who prepared it.

23 Q. Look at item No. 11, sir, which is the

24 Byangabo commune commercial centre. You do

25 not have any personal knowledge that that

1 centre was an Interahamwe office, do you?

2 A. No personal knowledge, no. I heard it.

3 Q. With respect to item 12, you have no

4 personal knowledge with respect to what

5 happened to that residence described as

6 "Nzirorera's residence", do you?

7 A. No personal knowledge, no.

8 Q. Okay. No. 13, which is the Nkuli communal

9 office. You have no personal knowledge, do

10 you, sir, with respect to whether any

11 roadblocks were placed on that tarmac, do

12 you?

13 A. I have no personal knowledge. My

14 sources are --

15 Q. I didn't ask you about your sources, sir.

16 A. Sorry.

17 Q. With respect to No. 17, you have no personal

18 knowledge with respect to any massacres or

19 mass graves that were attendant to that

20 location, do you?

21 A. No, I don't.

22 Q. No. 20, which is an agricultural area that

23 was shown to you by one of your sources:

24 You have no personal knowledge about killing

25 sites that were on that location, do you?

- 1 A. No, I don't.
- 2 Q. With respect to 22, do you have any personal
3 knowledge, sir, of any genocides that took
4 place between April -- or between January
5 of 1994 and December of 1994 in Ruhengeri?
- 6 A. No, I don't.
- 7 Q. Do you have any personal knowledge with
8 respect to any bodies that were exhumed from
9 that particular area?
- 10 A. No, I don't.
- 11 Q. Now, further down you have certain
12 commentary. Did you walk, sir, from -- I
13 want you now to go to your sketch. Did you
14 walk, sir, from location 5 to location 6?
- 15 A. My colleague did, yes.
- 16 Q. Did you walk? I am asking you whether you
17 walked.
- 18 A. No, I didn't.
- 19 Q. Did you walk from 4 to 6?
- 20 A. No, I didn't.
- 21 Q. Did you walk from 4 to 18?
- 22 A. No, I didn't.
- 23 Q. Did you walk from 5 to 18?
- 24 A. No, I didn't.
- 25 Q. Did you walk from 9 to 18?

- 1 A. No, I didn't.
- 2 Q. Did you walk from 11 to 20?
- 3 A. No, I didn't.
- 4 Q. Did you, in fact, walk from 17 to 13?
- 5 A. Correction: From 11 to 20, I did.
- 6 Q. All right. Did you walk from 17 to 13?
- 7 A. No. No, I didn't.
- 8 Q. Did you walk from 13 to 21?
- 9 A. No, I didn't.
- 10 Q. Did your colleague pace through the areas
- 11 that I have asked you about your personal
- 12 travail?
- 13 A. No, he didn't.
- 14 Q. I refer you to Prosecutor's Exhibit 3, for
- 15 identification, and first on your map. That
- 16 is your sketch, topographical view?
- 17 A. That's correct.
- 18 Q. Um. You indicated, sir, that you made
- 19 certain personal observations with respect
- 20 to item number 4; is that correct?
- 21 A. The Busogo church. I don't know what you
- 22 mean, sir.
- 23 Q. I am now on the sketch which is page
- 24 K0164875. Are you with me?
- 25 A. Yes.

- 1 Q. Are we on the same page?
- 2 A. Yes.
- 3 Q. Okay. Now look at location 4. Are you with
- 4 me?
- 5 A. Yes.
- 6 Q. Is location 4 the Busogo church?
- 7 A. That's correct.
- 8 Q. All right. And you said you made personal
- 9 observations; is that correct?
- 10 A. I saw buildings, yes.
- 11 Q. Did you see buildings that were the church,
- 12 that you described as a church?
- 13 A. I described it as a church, yes.
- 14 Q. Okay. Did you see the new construction on
- 15 that church?
- 16 A. I saw new constructions, yes.
- 17 Q. Okay. And where is that new construction
- 18 located on the topographical map?
- 19 A. On the topographical map, I made no
- 20 distinction between new constructions and
- 21 old constructions.
- 22 Q. Well, wasn't it new constructions of that
- 23 church going out perpendicular or parallel,
- 24 let's say to 5, which you call the nuns'
- 25 residence?

- 1 A. Um. The most clearly new construction that
2 I remember is, I think, what is marked here
3 as No. 3, which is not what you talk about
4 now.
- 5 Q. Wasn't there a wall being constructed, sir,
6 right at what would be the left-hand edge of
7 what you have as building 4, going all the
8 way back to what the -- the school?
- 9 A. It's possible. They were working there,
10 yes.
- 11 Q. Yes. You saw them in construction working,
12 didn't you?
- 13 A. I saw them constructing, yes.
- 14 Q. And you saw a big wall being constructed;
15 isn't that true?
- 16 A. I don't remember it more precisely than it
17 is marked here. In fact, the buildings
18 which are here behind the church, they were
19 working on it. It was not very clear to me.
- 20 Q. And wasn't that wall abutting or, in fact,
21 being part of the main structure, or you
22 didn't recall it at that time?
- 23 A. I didn't recall it.
- 24 Q. So, this sketch that you prepared, sir, may
25 not include a number of items that are

1 actually there; isn't that true?

2 A. That's true.

3 Q. Now, let's go to your legends of the Busogo

4 parish sketch; 9, for example. With respect

5 to 9, sir, you do not have personal

6 knowledge whether anyone was killed at the

7 nuns' house, do you?

8 A. No, sir.

9 Q. And nor do you have any personal knowledge

10 of whether any mass graves exist?

11 A. No, sir.

12 Q. Let's go to your photographs, which is

13 Prosecutor's Exhibit 4 for identification.

14 And I am asking you now, just for you to

15 look at the comments, your comments with

16 respect to the photographs. Now, are you at

17 the comments section?

18 A. Yes. I'm there.

19 Q. All right. Now, I want you to get your book

20 also with the actual photographs and I want

21 you to turn to 43, 44 and 45. Are you with

22 me?

23 A. Yes, sir.

24 Q. Okay. Forty-three, 44 and 45. What was the

25 information that you got with respect to the

- 1 identity of these structures?
- 2 A. It was told to me that it was Kajelijeli's
- 3 residence in Mukingo commune.
- 4 Q. All right. I have noted that, with respect
- 5 to other structures, you have indicated that
- 6 these structures were completely destroyed.
- 7 Did you have an opportunity to -- did you,
- 8 personally, take these photographs with
- 9 respect to Mr. Kajelijeli's residence?
- 10 A. Yes. I did.
- 11 Q. You were there?
- 12 A. Yah, I took them.
- 13 Q. And you saw that the structure was
- 14 destroyed; is that correct?
- 15 A. I saw that it is in this state, yes.
- 16 Q. Okay. But you reached no conclusion with
- 17 respect to whether or not it was destroyed?
- 18 A. I didn't add any conclusion to my comments
- 19 because I thought the situation was quite
- 20 clear.
- 21 Q. Was self-evident? You saw it was
- 22 self-evident; is that correct?
- 23 A. That's correct.
- 24 Q. And in your opinion, the photographs spoke
- 25 for themselves?

- 1 A. That's correct.
- 2 Q. No commentary was necessary?
- 3 A. That's correct.
- 4 Q. You didn't inquire what happened to
- 5 Mr. Kajelijeli's family?
- 6 A. I did not.
- 7 Q. You didn't inquire whether or not they were
- 8 living 11 people in one room in the back,
- 9 did you?
- 10 A. I didn't inquire. We met some people and it
- 11 was, more or less, confirmed that this was,
- 12 indeed, Kajelijeli's house; but I didn't
- 13 inquire, no.
- 14 Q. Given that the photographs speak for
- 15 themselves, why did you have commentary with
- 16 respect to other residences? Didn't the
- 17 photographs there speak for themselves?
- 18 A. I thought on some other photographs that
- 19 they did not speak for themselves.
- 20 Q. All right. As I look at 21, where you say
- 21 "These are the remains of the gate of the
- 22 house of Nzirorera's mother", and there's a
- 23 single gate standing there, nothing else.
- 24 Doesn't that speak for itself?
- 25 A. I thought it did not. I thought when

1 somebody was looking at the photograph he
2 would be wondering, "So where's the house?".
3 Q. There you are.
4 A. So that's why I added it.
5 Q. Let's go to 30. This is Nziropera's house,
6 under construction. Does it speak for
7 itself?
8 A. I added the words "under construction"
9 because it was not clear to me if somebody
10 looking at the photograph would think it is
11 under construction or whether it has been
12 destroyed.
13 Q. But you have no personal knowledge with
14 respect to any of these houses being
15 destroyed, do you?
16 A. I don't pretend to have.
17 Q. All right then. And you do not know
18 anything about whether or not these houses
19 were, in fact, even under construction.
20 A. That's why I write my source.
21 Q. Sir, I am saying you have no personal
22 knowledge; isn't that correct?
23 A. That's correct.
24 Q. And your job was to simply go out there and
25 take some photographs, wasn't it?

- 1 A. That's correct.
- 2 Q. Number 56 and number 55. Again here, sir,
- 3 you do not know from any personal knowledge
- 4 what happened at the Munya -- Munyemvano
- 5 compound -- I am having great difficulty
- 6 with these names, but I am struggling with
- 7 them -- do you?
- 8 A. No, I don't.
- 9 Q. Okay. And, similarly, with respect to 56;
- 10 isn't that true?
- 11 A. That's correct.
- 12 Q. Now, on 57, you do not know whether or not
- 13 there were any -- there was any mass grave
- 14 at that location, from personal knowledge,
- 15 do you?
- 16 A. No, I don't.
- 17 Q. And at No. 60, where you have "roadblocks
- 18 were set up", you don't have any personal
- 19 knowledge whether any roadblocks were set up
- 20 there, do you?
- 21 A. That's correct.
- 22 Q. Now, let's turn to No. 23. Was the
- 23 structure that you were photographing, sir,
- 24 an area that now shows clothing being dried,
- 25 or is it the building to the right of that

1 with no roof or windows or doors?

2 A. The building to the right and behind it.

3 Q. I see. Okay. And you learned that that

4 building belonged to who?

5 A. I learned that it belonged to

6 Mr. Kajelijeli, not as a residence but as a

7 building.

8 Q. No. 31, which shows what you describe as a

9 fence or a wall. That was the location of

10 Mr. Nzirorera's house, according to you; is

11 that correct?

12 A. That's correct.

13 Q. And nothing is standing there; is that

14 correct?

15 A. That's correct.

16 Q. Did your sources say what may have destroyed

17 these houses?

18 A. I did not ask them.

19 Q. It wasn't because you weren't concerned, was

20 it?

21 A. It was, at that moment, not my job to

22 investigate on that.

23 Q. Right. We have no questions for the

24 witness, except that I'd like to make an

25 application at this point, Your Honour.

1 MR. FLEMING:

2 Your Honours, may I re-examine before the
3 application is made?

4

5 Thank you, Your Honours.

6 R E - E X A M I N A T I O N

7 BY MR. FLEMING:

8 Q. Mr. Lucassen, in the documents that have
9 been referred to, have you described the
10 sources of information in respect of many of
11 the items that our learned friend has
12 referred to?

13 A. Yes. I have.

14 Q. Have you ever suggested to anybody, either
15 here in this court or in these documents,
16 that you, yourself, have personal knowledge
17 of the events in 1994?

18 A. No, I didn't.

19 Q. Would you explain what the role of an
20 investigator is in respect of a crime scene?
21 First, do you ever have personal knowledge
22 of the events before you go to a crime
23 scene?

24 A. That would be a very special coincidence.
25 Normally, when I go to a crime scene I have

1 not been present during the crime, and it is
2 very clear that in '94 I was not in Rwanda.
3 Q. And what was your role when you went to this
4 particular crime scene?
5 A. My role was to make sketches and photographs
6 of the area, I suppose with the purpose so
7 that later statements or declarations can be
8 understood better.
9 Q. All right. Now, can we go to some of the
10 particular items that our learned friend has
11 described; for example, the photograph which
12 is Exhibit 31. It seems to have a wall
13 around it, as you think he described?
14 A. That's correct.
15 Q. Now, I think you also described this as
16 being one of the premises which, in your
17 words -- how did you describe it? -- is
18 "completely destroyed". Is that the wording
19 that you used?
20 A. That's the wording that I used.
21 Q. So, when one looks in behind the wall, one
22 can see very little.
23 A. That's correct. There was very little.
24 Q. All right. Can we go then back to 43, 44
25 and 45; that photograph, that photograph and

- 1 that photograph. What remained behind the
2 wall in that instance?
- 3 A. There remained structures, even people were
4 around there.
- 5 Q. So, you described 31 as completely
6 destroyed, but you described 45 as a
7 view -- 43, 44 and 45 as view of
8 Kajelijeli's residence. Was it completely
9 destroyed?
- 10 A. No, it is not completely destroyed.
- 11 Q. Were there, in fact, people still living in
12 the house?
- 13 A. There were people around, and what I saw was
14 that they were studying there.
- 15 Q. All right. Have you clearly defined your
16 source of information in the document which
17 our learned friend has been
18 crossing-examining from today?
- 19 A. Yes, I did.
- 20 Q. Thank you, Your Honours. I have no further
21 questions.
- 22 MR. HINDS:
- 23 No questions of the witness. He can be
24 excused. I have an application to make
25 concerning exhibits.

1 MR. PRESIDENT:

2 Mr. Hinds, we want to hear your application.

3 MR. HINDS:

4 Thank you, Your Honour.

5

6 Your Honour, we object to the admissibility
7 of People's (sic) Exhibit 1 through 4, and
8 even for identification purposes, we believe
9 these documents have incurable defects.

10 First of all, if you look at each, the front
11 page of each of these documents,
12 Prosecutor's Exhibit 1, lists Mr. Kajelijeli
13 with Mr. Nzirorera. Prosecutor's Exhibit 2,
14 the same thing, 3 and 4.

15

16 Juvénal Kajelijeli stands here as a separate
17 Defendant charged with an 11-count
18 indictment. In -- under the conspiracy
19 count there is an allegation by the
20 Prosecutor and he -- in fact, Mr. Fleming in
21 his opening statement says that the
22 Prosecutor intends to link Mr. Kajelijeli
23 with Mr. Nzirorera. It is improper. It is
24 unfair and should not be allowed by this
25 Tribunal for the Prosecutor to have

1 documents listed Juvénal Kajelijeli, Joseph
2 Nzirodera as if these individuals are
3 co-defendants. Mr. Kajelijeli stands and
4 must be held accountable for allegations
5 (sic) that he presumably committed. We are
6 requesting that all of these documents that
7 have Joseph Nzirodera on them be stricken,
8 that his name be stricken and we just deal
9 with Mr. Kajelijeli. We don't really care
10 what files the Prosecutor has, or how they
11 have, in fact, organised their files. It is
12 of no concern to us whether they have
13 Kajelijeli and Nzirodera in one file
14 cabinet.

15
16 For purposes of this Tribunal, we believe it
17 is unfair. We believe it is unjust. We
18 believe it is designed to prejudice
19 Mr. Kajelijeli, to have him linked with the
20 documents of Juvénal Kajelijeli and Joseph
21 Nzirodera together.

22
23 So, our first application is to have
24 Mr. Nzirodera's name excised out.
25 This witness, Mr. Lucassen, has testified

1 that he has no personal knowledge and, in
2 fact, cites sources where he got
3 information, and those sources are listed
4 with respect to the commentary. We have no
5 objections to the photographs, themselves.
6 We have no objections to the sketches,
7 themselves.
8
9 We have objections to the specific
10 commentary that, in fact, adduces testimony
11 and ties testimony to these pages. At best,
12 the testimony that is included in the
13 commentary are hearsay. He readily admits
14 -- the Prosecutor readily admits he has no
15 personal knowledge. It certainly is subject
16 to connection when witnesses appear, but
17 those witnesses may not testify as the
18 Prosecutor thinks they will. This Tribunal
19 may not admit any of their testimony, may
20 admit part of it, or may admit parts that
21 are not even relevant and are on the
22 documents.
23
24 It is not only unfair to have the Tribunal
25 now looking and -- at this -- these

1 documents and reading them with the
2 commentary on them. In jurisdictions, in
3 common law jurisdictions where they have
4 juries, the documents are marked. The fact
5 finders are not even dealing with the
6 documents that are marked. This Tribunal
7 has the ability to separate out the law and
8 the facts.

9
10 But I am reminded by what Justice Jackson
11 said at Nuremberg, because I think it is
12 important as we proceed with the Rules that
13 we use and that we accept -- ensure justice
14 and fairness. Jackson said, "We must never
15 forget that the record on which we judge
16 these Defendants" -- this is in Nuremberg --
17 "is the record on which history will judge
18 us with tomorrow. To pass these Defendants"
19 -- and there were at that time 21 of them in
20 the dock -- "To pass these defendants a
21 poisoned chalice is to put it to our lips as
22 well".

23
24 I make this application, because it's the
25 first application that I'm making. It

1 speaks to the issue of whether or not this
2 Tribunal will allow hearsay and double
3 hearsay evidence to convict a man charged
4 with some of the most serious crimes that
5 anyone can face. If he is to stand, let him
6 stand based upon testimony that is subject
7 to cross-examination. And the Prosecutor
8 should not be allowed to put in documents,
9 assuming that this Tribunal will allow the
10 testimony in, before the Tribunal is able to
11 rule on admissibility or not.

12
13 This investigator went out to take
14 photographs. He's a photographer, among
15 other things. We should have these
16 photographs in with the mere description
17 enough to link the photographs to future
18 testimony. All of the other commentary
19 about "He can walk from this distance to
20 that distance" and so on, is completely
21 improper, completely improper.

22
23 And, so, we make the application, Your
24 Honour, first of all, with respect to the
25 linkages on the front pages of Joseph

1 Nzirorera, that should be excised out
2 leaving Mr. Kajelijeli; with respect to the
3 commentary on all of the exhibits with the
4 legends and so on, that those should be
5 excised by the Prosecutor.

6
7 We have no objections to the sources and
8 having them redacted and so on. We really
9 don't care. The photographs should be in,
10 the sketches in, with the descriptions
11 outside an attempt to elicit testimony and
12 attach them to the documents.

13 MR. PRESIDENT:

14 Thank you, Professor Hinds. Prosecutor?

15 MR. FLEMING:

16 Thank you, Your Honours.

17
18 Your Honours, we who have practised
19 extensively in the common law system, are
20 used to judges and juries. This application
21 would normally be made without the jury
22 present because nobody would want to poison
23 their minds or prejudice the way in which
24 they approach a problem. One of the
25 interesting things and one of the good

1 things about practising in this jurisdiction
2 is that we have a fusion of both common law
3 and civil law principles. Civil law judges
4 are used very much to different procedures
5 to what we are use to in common law, and I
6 may say, in this instance, thankfully so.
7 Because whilst we have jurors who act as
8 jury and jurists who act as the judges in
9 our system, here we are before three
10 jurists. There is no jury and, therefore,
11 an appeal based upon one that you would make
12 in respect of a jury is of no relevance here
13 whatsoever.
14
15 So this application that our learned friend
16 has made is made to three jurists. He
17 suggests, first, that Your Honours cannot
18 distinguish between who is on trial here and
19 who is the co-conspirator, Kajelijeli,
20 Juvénal, Nzirodera Joseph. Your Honours, I
21 am quite sure, can distinguish that it is
22 actually Mr. Kajelijeli on trial here and
23 not Mr. Nzirodera; however, Mr. Nzirodera is
24 inextricably interwoven in this case.
25 Quite frankly, we don't care if you want to

1 strike the name of Nzirorera off the front
2 page. It has no consequence to us
3 whatsoever; however, his name is there
4 because he is, in fact, a co-conspirator.
5
6 The second proposition is one relating to
7 evidence, hearsay, double hearsay and so on.
8 I am uncertain that there is any double
9 hearsay in anything that our learned friend
10 has established, and he hasn't brought out
11 fact that there is double hearsay anywhere.
12 So, at worst, we have hearsay. But it's not
13 hearsay standing alone; it's hearsay that is
14 acknowledged as hearsay
15
16 The second proposition is that these
17 documents are there for the purposes of
18 identification. That means that witnesses
19 will be called in due course who will look
20 at the documents and identify the particular
21 items in the documents, and they will be
22 witnesses who, for example, have lived
23 there; who were there during 1994. So, we
24 won't have to worry about whether or not an
25 investigator was there in 1994.

1

2

The sole purpose of bringing an

3

investigator, such as this, is to ensure

4

that there is some basic material that can

5

form some basis of information for

6

Your Honours to start building upon. The

7

basis of information is not necessarily the

8

descriptions that are there but, rather, the

9

items, themselves.

10

11

The descriptions are there to identify

12

clearly to this Court exactly where the

13

information came from and what that

14

information was. And my learned friend

15

might have cause to thank me for doing that

16

because I am sure in cross-examination, if

17

any of those witness come, he will be able

18

to cross-examine in respect of, first, the

19

source of information, because that person

20

is identified; and, second, the description

21

that was given.

22

23

But we turn to the Rules, Section 3, Rules

24

of Evidence, Rule 89, General

25

Provisions: "The rules of evidence set

1 forth in this Section shall govern the
2 proceedings before the Chambers. The
3 Chambers shall not be bound by national
4 rules of evidence."
5
6 Your Honours stand unfettered in respect of
7 the rules of evidence of a national
8 jurisdiction. And that can only be said to
9 be a good thing because, whilst those rules
10 might, in fact, be persuasive in respect of
11 what Your Honours have to do, Your Honours
12 have a broader commission than we might have
13 had, for example, in that common law
14 jurisdiction.
15 (Pages 1 to 35 to Verna Butler)
16
17
18
19
20
21
22
23
24
25

1 1030H

2 MR. FLEMING: (Continuing)

3 Perhaps this Rule is a rule incorporating
4 some of the civil law propositions in
5 respect of the admissibility of evidence.

6

7 But we move on:

8

9 "In cases not otherwise provided for in this
10 Section, a Chamber shall apply rules of
11 evidence which best favour a fair
12 determination of the matter before it and
13 are consonant with the spirit of the Statute
14 and the general principles of law."

15

16 The general principles of law espoused, no
17 doubt, in the Statute.

18

19 Your Honours have the obligation, the duty
20 to determine a case, obviously still, on the
21 best most probative evidence.

22

23 "(C) A Chamber may admit any relevant
24 evidence that it deems to have probative
25 value."

1 "Any relevant evidence which it deems to
2 have probative value". "Probative value" is
3 used in different jurisdictions and probably
4 in a different way. Hearsay evidence often
5 has probative value -- and the only reason
6 it's not considered in many common law
7 jurisdictions is there are rules excluding
8 hearsay evidence -- but it doesn't exclude
9 the fact that it has probative value.

10

11 Your Honours then have an interesting right,
12 an entitlement in (D) of Rule 89:

13

14 "A Chamber my request verification of the
15 authenticity of evidence obtained out of
16 court".

17

18 This evidence was obtained out of the court;
19 evidence in respect of it has been given in
20 court.

21

22 No doubt this comes from one of those great
23 practices in the civil jurisdiction where an
24 investigating judge has rights, and
25 Your Honours sit not only as judges as we

1 would understand them --

2 MR. PRESIDENT:

3 I am having difficulty.

4 MR. FLEMING:

5 Thank you, Your Honour. I'm sorry. I shall
6 slow down.

7
8 Not only do Your Honours sit here in the
9 tradition of the common law, but
10 Your Honours also sit here in the tradition
11 of the civil law. And so you have an
12 entitlement to make your own investigations
13 and to make your own inquiries in respect of
14 something. That, no doubt, is a protection
15 built into the Rules to ensure that, for
16 example, hearsay evidence is properly
17 authenticated at the end of the day.

18
19 Your Honours, thankfully, we aren't in the
20 straitjacket of many of the evidentiary
21 systems of the world. We have here a
22 liberty. But it is a liberty which, as I
23 accept from my learned friend, must be
24 conducted with great care. And we have
25 nothing but regard for the proposition that

1 he quoted from the man who became Justice
2 Jackson, subsequent to the Nuremberg trials.
3 Of course, Your Honours have a duty and
4 obligation to ensure a fair trial.

5
6 However, my learned friend's submissions are
7 premised, first, on the basis that
8 Your Honours can't fulfil that duty if the
9 sort of evidence goes in, in that you can't
10 identify the different elements -- for
11 example, what is hearsay, what isn't hearsay
12 -- and then give it appropriate probative
13 weight; and, second, that these documents
14 will be under verified for the duration of
15 the trial.

16
17 The simple proposition is that these
18 documents are offered complete with sources
19 of information so that Your Honours can
20 begin to weigh the probative value of them.
21 If, for example, we call X, who has made
22 commentary included in the document, and X
23 doesn't say that at all, Your Honours can
24 rightly say at the end of the day that piece
25 of information has no probative value, and

1 you will reject it, just as any fact-finding
2 body would reject it. That's one of
3 Your Honours' obligations: The fact-finding
4 obligation.

5

6 But Your Honours also are jurists who have a
7 judicial obligation; and that is to ensure
8 that probative evidence is received by the
9 Court.

10

11 It is our submission that the evidence is
12 probative; indeed, it will become more
13 probative at the end of the day if it's
14 verified. If it is not verified, then its
15 probative value will be very limited, and
16 Your Honours can reject it at that point.

17

18 So, Your Honours, in fact, are asked to
19 exclude something now, which is perfectly
20 admissible, on the basis that the proof in
21 respect of each of those items mightn't be
22 there. Ultimately, Your Honours, we simply
23 say: Wait and see.

24

25 However, in summary, let us say these things

1 again: First, it is admissible evidence
2 under the Rules; second, Your Honours can
3 distinguish between fact and law; and,
4 third, the documents are tendered for
5 identification purposes only, in any event,
6 so one ought to wait and see.

7

8 Thank you, Your Honours.

9 MR. PRESIDENT:

10 Thank you. Professor Hinds.

11 MR. HINDS:

12 Thank you, Your Honours. First of all, I
13 would like to thank Mr. Fleming for
14 acknowledging Justice Robert H. Jackson, who
15 happened to have been an Associate Justice
16 of the United States Supreme Court prior to
17 him going to Nuremberg, and then he returned
18 to his position.

19

20 But besides that piece of history,
21 Mr. Fleming has not addressed the
22 fundamental problem; and, that is, he
23 correctly says that this Court can sift, and
24 that you know how to sift evidence. But
25 that isn't the issue. Why put you through

1 that process? Obviously, you know that Mr.
2 Kajelijeli stands alone at this trial. He
3 knows it. But why does he intend to link
4 Nzirorera here. He knows that that is not
5 the proper approach. Even a co-conspirator
6 is not listed on the document. He knows
7 that. But he says, "Well, we have done it.
8 You can sort it out". That is the approach
9 he has taken with respect to the exhibits:
10 "Judges, you can sort it out later on."
11
12 The fact of the matter is, Mr. Lucassen is
13 a photographer for the purposes of going out
14 and taking photographs, drawing sketches,
15 and so on, in his capacity as an
16 investigator at the Prosecutor's Office. He
17 should have prepared the documents with
18 minimum commentary so that we do not have to
19 deal with these issues of whether or not
20 evidence, which would be adduced later on,
21 says -- describes the items in the way that
22 they have been described by him.
23
24 Certainly, later on, we can excise out and
25 scratch out, and so on. But why do that?

1 He is making the submissions now. They
2 should be made with minimum commentary so
3 that at some later time, whatever evidence
4 is adduced, whether that evidence is hearsay
5 or direct knowledge of the sources, then we
6 will be able to deal with that, and,
7 therefore, the description would be based
8 upon whatever admissible evidence we obtain.

9

10 And so we make the objections, Your Honour,
11 that we have made before, and we do nothing
12 that Rule 89 changes our application. Thank
13 you.

14 MR. PRESIDENT:

15 Judge Sekule, you have the floor.

16 JUDGE SEKULE:

17 Thank you, Judge. I would like to ask a
18 question of procedure, and I'm not touching
19 on the submissions the parties have given;
20 the Trial Chamber will deliberate upon
21 those. But I just want to ask Mr. Fleming
22 -- of course, Professor Hinds can also
23 comment, it is just for clarification: At
24 what stage, Mr. Fleming, does the
25 Prosecution intend to produce formally the

1 exhibits that have been tendered for
2 identification so far, and by whom?

3 MR. FLEMING:

4 Thank you, Your Honour. We would be
5 anticipating calling witnesses at various
6 times who can identify specifically
7 different items. Your Honours might see in
8 your deliberations that there are different
9 sources of information. We intend to call
10 those sources of information. In the main,
11 there might be one or two that aren't
12 called, but I'll come back to that in a
13 moment. But, in the main, those sources of
14 information will be called and they will
15 identify specifically the respective items.

16
17 In respect of commentary which is obtained
18 from somebody else who we might not call --
19 for example, somebody else who wasn't there
20 at the time -- those items can still be
21 identified by the witnesses that we will
22 call, and we'll be seeking to tender the
23 documents themselves at that point in time
24 through those witnesses. That's why they
25 are, of course, only tendered for the

1 purposes of identification.

2 JUDGE SEKULE:

3 I understand that, Mr. Fleming, but my
4 question is: At what stage do you intend to
5 formally tender these four documents which
6 have been put insofar as Exhibits P, for
7 identification and, if so, through whom?

8
9 Of course, the witnesses, I understand
10 they'll come perhaps in the scheme that you
11 describe. But my question is very narrow:
12 Just at what stage do you intend, when
13 everything supposedly has been done -- so at
14 what stage of the procedure do you intend to
15 have these documents formally tendered as
16 exhibits?

17 MR. FLEMING:

18 Your Honour, they will be tendered -- I'm
19 sorry, they will be identified during the
20 process, and as the full identification of a
21 document occurs, then we will tender it on
22 the basis of the previous identification,
23 specific identification.

24

25 For example, we might call one witness who

1 can say in respect of the sketch that, yes,
2 he identifies that as the area, and we can
3 work through the specific items of it. As
4 that is complete, of course, we'll be
5 tendering it at that point. So we won't be
6 waiting necessarily until the close of the
7 case -- almost to the close of the case to
8 tender all of those documents. As and when
9 they are fully identified, we will tender
10 them. So, I'm sorry I can't give
11 Your Honour --

12 JUDGE SEKULE:

13 Through this witness or how?

14 MR. FLEMING:

15 No. We will do it through the witnesses as
16 they are called, Your Honour, because my
17 understanding, for example, of the process
18 is that we might, in fact, have to undo this
19 bundle of photographs and tender five or
20 eight at a time. But that doesn't
21 necessarily destroy the impact of what we
22 are doing now -- tendering a document for
23 the purposes of identification. And, so,
24 the photographs will be tendered as and when
25 that they are identified.

1

2

I understand what Your Honour is asking me.

3

It might be different, for example, for the

4

maps. One person may be able to come and

5

say, "Yes. That is the map that I identify

6

because I have personal knowledge of that".

7

So, it will be done at different stages as

8

and when the matters are complete and fully

9

identified.

10

11

So, ultimately, Your Honour, it might be

12

more than one witness who identifies any

13

particular exhibit. But that doesn't mean

14

that the exhibit loses its efficacy now as

15

an exhibit. Thank you.

16

JUDGE SEKULE:

17

Thank you.

18

MR. HINDS:

19

May it please the Court. Mr. Fleming in his

20

attempts to explain at what stage these

21

documents are to be tendered into evidence

22

explains the problem and the dilemma that we

23

all face. He has, for example -- let's just

24

take Prosecutor's Exhibit 2. Prosecutor's

25

Exhibit 2 is tied, obviously, in some cases

1 to the photographs, the commentary on the
2 photographs, but as an exhibit it stands by
3 itself. I'm not sure whether you have one
4 witness, two witnesses, five witnesses, all
5 15 of his witnesses who will have to deal
6 with identification of particular locations,
7 particular items, particular sites,
8 particular structures. And I cannot see how
9 he will proceed to introduce these until the
10 end of the trial. But there may be
11 something that he has in mind that I don't
12 see at all.

13
14 That goes for 2 and 3, because if you look
15 at these various locations, and you look at
16 the commentary, they speak to acts that were
17 allegedly committed at different times at
18 different places. And in terms of at what
19 stage, there would be testimony, with
20 respect to all of these items, sufficient
21 for them to be introduced or for an
22 application to be made for them to be
23 introduced. I don't see how he can do that
24 based upon after the testimony of an
25 individual witness.

1

2

And he speaks to precisely the problem.

3

They are not going to be using Prosecutor's

4

Exhibit 4 in its entirety. In fact, they'll

5

take a single photograph out and they'll

6

examine a witness on it, and that is

7

precisely the point we make. They use a

8

photograph, whatever the description would

9

be. The witness would, in fact, identify

10

the photograph, identify the location,

11

et cetera, and, it would appear, that an

12

application would be made after that witness

13

conducts the preliminaries, and we would

14

have one piece after another going in or

15

being subject to objections.

16

17

So, he describes precisely the problem that

18

he, in fact, has created.

19

MR. FLEMING:

20

Your Honours, may I respond in this way --

21

not to anything now that my learned friend

22

has said, because I accept that that debate

23

has finished: If Your Honours are against

24

the proposition that we have put, then I'll

25

be asking that the documents are tendered

1 now as exhibits, not as exhibits for
2 identification, because they satisfy the
3 Rules that are contained in our Rules of
4 Procedure. So, I will be making an
5 application, which we can argue now or
6 perhaps wait for what Your Honours have to
7 say, in respect of that.
8
9 I can also tell Your Honours that I will be
10 calling a number of witnesses who can and
11 will identify the different elements of the
12 documents, each and every one.
13
14 And I can go back to Rule 89 and say to
15 Your Honours that, again, a Chamber may
16 admit any relevant evidence which it deems
17 to have probative value. The documents
18 immediately have probative value. If we
19 take them one by one, for example, the maps
20 themselves have probative value. They will
21 be of assistance to Your Honours in
22 understanding the general location. The
23 smaller sketches have probative value
24 because Your Honours will have those in
25 front of you, and will at least have a basis

1 for understanding some of the evidence. In
2 fact, people will be called in respect of
3 every item there and they will be
4 cross-examined on it. And Your Honours can
5 finally weigh the evidence.
6
7 The photographs and the comments have
8 probative value because, for example, if my
9 learned friend's proposition is correct and
10 he cannot rely upon hearsay at all in those
11 photographs, then Your Honours will not know
12 what a single photograph is. But
13 Your Honours now have a series of
14 photographs, which are laying a foundation,
15 and will have a short description underneath
16 it; for example, "This is Mr. Kajelijeli's
17 house". There is no real contest that it's
18 Mr. Kajelijeli's house. It wasn't put to
19 this witness that it wasn't
20 Mr. Kajelijeli's house. In fact, nothing
21 was put contrary to any of the descriptions
22 in the cross-examination.
23
24 So, Your Honours have before you a series of
25 documents which can form the basis of

1 building upon, a basis of information for
2 Your Honours to understand better the case.
3 We do it precisely for that purpose.

4
5 And if Your Honours are against us on the
6 first proposition, then we ask that they be
7 tendered now as exhibits, pursuant to
8 Rule 89.

9 MR. PRESIDENT:

10 Professor Hinds, do you have any comments on
11 the application for these documents to be
12 tendered as exhibits?

13 MR. HINDS:

14 Into evidence or for identification?

15 MR. PRESIDENT:

16 Already we should consider them as exhibits
17 and not only identification provided for
18 identification purposes.

19 MR. HINDS:

20 Yes, we are incorporating all of the
21 arguments that I made before. I incorporate
22 them by reference and so I don't have to
23 repeat them. That is the basis of our
24 objection to the admissibility. And we
25 believe that Rule 89 does not prevent this

1 Tribunal from instructing the Prosecutor's
2 Office to, in fact, prepare the evidence in
3 its proper form so that the prejudicial
4 impact does not outweigh any probative
5 value.

6
7 And it has to be a balancing test, and this
8 Tribunal certainly has the authority under
9 Rule 89 to weigh and balance. We are not
10 saying that the photographs should not have
11 some description, but the photographs should
12 not have testimony about mass graves and
13 killings and so on. That's improper. It's
14 prejudicial. And balancing the probative --
15 whatever probative value at this stage, we
16 say, is outweighed by the prejudicial value.

17 MR. PRESIDENT:

18 Thank you, Professor Hinds. I think that we
19 can close the matter on this issue -- that
20 is, the discussions.

21
22 We shall withdraw to deliberate on this
23 application introduced by the parties. We
24 should come back within one hour.

25

1 We shall now rise.
2 (Court recessed at 1054H)
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1 (Court resumed at 1238H)

2 D E C I S I O N

3 MR. PRESIDENT:

4 Session called to order again.

5

6 The Chamber has deliberated on the two
7 applications of the Defence and the
8 application of the Prosecutor. I shall give
9 the floor to Judge Sekule to report on the
10 deliberations of the Chamber. Judge Sekule
11 you have the floor.

12 JUDGE SEKULE:

13 Thank you. This is the oral unanimous
14 decision of the Trial Chamber on the motion
15 raised by the Defence as well as by the
16 Prosecution.

17

18 After having deliberated on the Defence's
19 request to strike out the name of Joseph
20 Nzirorera on each of the documents tendered
21 as Prosecution Exhibit for Identification
22 Nos 1 to 4, the Trial Chamber notes that
23 Juvénal Kajelijeli and Joseph Nzirorera are
24 not jointly indicted, nor will they be
25 jointly tried, although they are accused of

1 allegedly conspiring together along with
2 other accused in committing genocide.

3
4 In these circumstances the Trial Chamber
5 finds that mentions of Joseph Nzirorera's
6 name on the said documents tendered as
7 Prosecution Exhibits for identification
8 Nos. 1 to 4 do not cause any prejudice to
9 the Accused.

10
11 In any case, the Judges record that they are
12 professional jurists capable of clearly
13 distinguishing between accused and trials,
14 and also to make independent findings.

15
16 Therefore, the Trial Chamber dismisses the
17 Defence's request to strike out the name of
18 Joseph Nzirorera on each of the documents
19 tendered as Prosecution Exhibits for
20 identification Nos 1 to 4.

21
22 On the Defence's request objecting to the
23 comments on the paragraphs in the
24 Prosecution's Exhibits for identification
25 No. 4 -- that should be "the four exhibits",

1 the Defence objects to the said comments to
2 the photographs in Prosecution Exhibit for
3 Identification No. 4, insofar as, for the
4 Defence, these comments are hearsay and
5 double hearsay.

6
7 The Chamber, first, considers that at this
8 stage of the proceedings there is nothing
9 unusual for the Prosecutor to present
10 sketches and photographs resulting from her
11 investigations.

12
13 As to the issue of admissibility of hearsay
14 evidence, the Chamber reminds the Defence
15 that pursuant to 89(C) of the Rules, the
16 Chamber may admit any relevant evidence which
17 it deems to have probative value. The
18 Chamber considers, on the basis of the Rules
19 and of the Tribunal's jurisprudence as
20 established in the Akayesu judgment, that
21 hearsay evidence is not per se inadmissible
22 before the Tribunal.

23
24 The Chamber notes that, as argued by the
25 Defence, the Prosecution Exhibit for

1 Identification No. 4 contains comments that
2 are not purely informative, but also
3 allegations that rely upon sources whom the
4 Prosecutor may call at trial.
5
6 In any case, the final evidentiary value of
7 these exhibits will be determined by the
8 Chamber after Prosecution and a review of
9 all other evidence presented during trial.
10
11 All evidence presented at trial, including
12 the possible testimonies of Prosecution
13 witnesses who are mentioned as sources in
14 Exhibit No. 4 will be submitted to
15 cross-examination. The Chamber will make
16 its final assessment of all evidence so as
17 to best favour a fair determination of the
18 case pursuant to Rule 89(B) of the Rules.
19
20 The Chamber, therefore, concludes that the
21 comments to the photographs in Prosecution
22 Exhibit for Identification No. 4 do not
23 prejudice the Accused. The Chamber
24 dismisses this Defence request concerning
25 Prosecution Exhibit for Identification

1 No. 4.

2

3 On the Prosecutor's request to have
4 Prosecutor's Exhibits for Identification
5 Nos 1 to 4 admitted as Prosecutor's Exhibits
6 Nos 1 to 4, the Prosecutor requests that
7 these exhibits currently considered as
8 exhibits for identification be admitted as
9 Prosecution Exhibits. The Chamber finds
10 that granting the Prosecutor's request would
11 contribute to the clarity as well as to the
12 proper administration of these proceedings.

13

14 Therefore, the Chamber deems it in the
15 interests of justice to admit these exhibits
16 as proper Prosecution Exhibits and grants
17 the Prosecutor's request that Prosecution
18 Exhibits Nos 1 to 4 be formally admitted as
19 Prosecution Exhibits in the proceedings.

20

21 Accordingly, Prosecution Exhibits for
22 Identification Nos 1 to 4 become,
23 respectively, Prosecution Exhibits
24 Nos 1 to 4.

25

1 These exhibits will remain under seal as
2 ordered on 14th March 2001.

3
4 This is the oral decision of the Trial
5 Chamber on the matter that were raised by
6 the parties this morning.

7
8 Thank you, Presiding Judge.

9 MR. PRESIDENT:

10 Well, thank you very much, Judge Sekule.

11
12 I shall very quickly, before -- as agreed,
13 we will have to defer this matter to a date
14 agreed upon to allow, especially the
15 Defence, to probably get his co-counsel that
16 was busy with another affair in Ireland, or
17 perhaps another co-counsel. On the basis of
18 that, we are going to suspend the
19 consideration of this matter until it is
20 decided. The consideration of this matter,
21 to suspend it, shall be deferred to the 18th
22 of June.

23
24 Now, this having been said, on behalf of the
25 Chamber, I should like to express gratitude

1 to the parties that have demonstrated a
2 great sense of fair play and cooperation.
3 The Chamber trusts that this shall always be
4 the case. We believe that many of the
5 problems between the parties could be
6 resolved by the parties themselves, without
7 going through motions. Of course, the
8 parties are entitled to motions. The
9 Chamber shall take them up and deliberate
10 upon them.

11
12 We shall defer the matter to three months,
13 if not more, and at that time we believe
14 that we can go into the merits; that nobody
15 should say that he's not ready -- neither
16 the Prosecutor for his examination-in-chief,
17 or the Defence for cross-examination. This
18 is the wish of the Chamber.

19
20 If there are no further comments, I shall
21 now say that the consideration of this
22 matter is suspended and deferred to the 18th
23 of June 2001, 9:30 a.m.

24
25

1 If a party has a comment to make, it may
2 take the floor. Professor Hinds, you have
3 the floor.

4 MR. HINDS:

5 Thank you, Your Honour. I'd like to thank
6 the Chamber for its indulgence to the
7 Defence in light of the peculiar problems
8 that we are faced, and the Chamber has
9 graciously agreed to honour the request that
10 we made when I was here during the last week
11 of January.

12
13 I just want to point out to the Court that I
14 indicated that I would be available at the
15 end of June. The Court has set the matter
16 down for the middle of June, and I just
17 wanted to indicate to the Court that that
18 would not be practical for me to be here.

19
20 I am planning to move to Arusha for purposes
21 of dealing with this particular matter and
22 will be here throughout, from the end of
23 June through whenever the case ends. So,
24 that is the first point I wanted to make,
25 and I just didn't want for us to adjourn and

1 for me not to point out that to the Chamber.

2

3 There are some preliminary matters, however,
4 that I would like to put on the record, so
5 that when we reconvene at the end of June we
6 do not have the same problem.

7

8 We had requested original statements of
9 tapes in the language in which the witnesses
10 were interviewed, and we thought that we
11 were entitled to those statements under the
12 Rules, and I think Judge Sekule in his order
13 so referred to those. We have not, up to
14 this time, received any of the original
15 statements or any of the tapes.

16

17 I was told by Mr. Fleming yesterday that no
18 tapes exist. I simply want to put that on
19 the record, as we did with Mr. Webster,
20 concerning tapes of interviews of Mr.
21 Kajelijeli. We were told then that no tapes
22 existed. Months later we were then told
23 that tapes were found secreted in a vault at
24 The Hague.

25

1 It is important that we receive the original
2 tapes. We don't want to find out after the
3 witnesses have, in fact, testified that
4 tapes show up and then we are faced with the
5 problem of recalling witnesses and dealing
6 with that issue.

7
8 We note, as a second request, that the
9 Prosecution intends to call individuals who
10 have been convicted, who have plead guilty,
11 individuals who are in jail in Rwanda, and
12 those individuals will be called as the
13 Prosecution's witness. We think we are
14 entitled to any agreements that have been
15 made between the Government of Rwanda and
16 these witnesses in terms of any
17 consideration whatever that would be given
18 to them for their testimony, pursuant to
19 Rule 68.

20
21 I have orally requested this of Mr. Fleming.
22 He tells me that he will check to see
23 whether or not any such agreements exist. I
24 don't want for us, through our own
25 independent investigation to learn of this

1 and not to be given these documents that we
2 believe that we're entitled to under
3 Rule 68.

4
5 We note that the Prosecutor intends to call
6 one (by order of the Court this name was
7 struck off the record), whom we know plead
8 guilty to crimes and is in jail in
9 Ruhengeri. We are asking --

10 MR. FLEMING:

11 May I interrupt for one moment and ask that
12 that name be struck from the record, because
13 that's a protected witness. If my learned
14 friend wishes to discuss it, I have no
15 objection to discussing witnesses, but he
16 might perhaps find another way to
17 communicate it to the Bench.

18 MR. HINDS:

19 All right. Accepted. There is a particular
20 unnamed witness who has plead guilty and who
21 presently is in jail in Ruhengeri. We are
22 asking the Prosecutor to provide the
23 transcript of the plea of this individual
24 and statements that that person made to the
25 Defence.

1
2 Finally, we have been informed, through our
3 own sources and confirmed by the Prosecutor,
4 that witnesses whom they intend to call have
5 been interviewed more than once. We are
6 asking for the tapes, transcripts of the
7 second interviews, to be provided to us.
8 And, again, we were provided with one
9 transcript of the second interview showing
10 inconsistencies today.

11
12 I am putting on the record our request, and,
13 again, the reason for me doing this,
14 Your Honour, is that I don't want to come
15 back here in June ready to resume this
16 matter, ready to cross-examine witnesses,
17 and then to find out that we don't have the
18 information we requested months ago.

19
20 So I'm putting it on the record in terms of
21 these outstanding matters in terms of
22 discovery that we are requesting, have
23 requested and will continue to request.

24 MR. PRESIDENT:

25 Before I give the floor to the Prosecutor to

1 perhaps make some comments on what has just
2 been said by Professor Hinds, I should like
3 to direct the Registrar to strike out of the
4 record the name of the lady that is
5 purportedly held up in Ruhengeri. Note
6 taken. I shall now give the floor to the
7 Prosecutor.

8 MR. FLEMING:

9 Thank you, Your Honours. Your Honours, I
10 continue, of course, to look for material
11 which is relevant to my learned friend and
12 will provide it, if we come across any.
13
14 I can make some general comments about the
15 tapes and records of interviews. My
16 understanding -- this is the result of my
17 requests for information in respect of this
18 -- my understanding is that when a person is
19 interviewed, tapes -- this is a witness --
20 tapes are never used. I'm very conscious of
21 my learned friend's comment about Mr.
22 Kajelijeli's tapes, but I hope we're long
23 past that. But tapes are not used generally
24 in respect of witnesses who are interviewed.
25

1 Second, the documents are created normally
2 in French, although some are created in
3 English. And that's because an interpreter
4 is always present when a person is
5 interviewed; for example, in Kinyarwanda.
6 So no document exists, that I have been able
7 to find yet, in Kinyarwanda in respect of
8 the interview of any witness.
9
10 The process is completed by a statement
11 being prepared in type-written form and then
12 being read back to the witness. There is a
13 verification, in most cases, of an
14 interpreter being present, and having read
15 the statement back, it is then that the
16 statement is signed.
17
18 So, my understanding is that there are no
19 tapes and, second, there are no documents in
20 the original language -- for example,
21 Kinyarwanda.
22
23 I shall continue to make inquiries. It
24 requires, in fact, speaking to every
25 investigator who is involved. We will

1 undertake that.

2

3 In respect of the agreements that might
4 exist between the Government of Rwanda and
5 ICTR, I know of none. I will make
6 inquiries. At that point I will be able to
7 tell my learned friend whether or not such
8 an agreement exists. At that point, as
9 well, if an agreement exists, then it might
10 be subject to other argument, and I can't
11 tell the Court whether such an agreement
12 exists.

13

14 A transcript -- yes, the second interviews.
15 Again, my understanding in respect of the
16 second interviews is that is done in
17 relation to the original statement, and it's
18 simply reconfirmed.

19

20 We are conscious of our responsibility to
21 produce documents which might affect the
22 credibility of a witness, which is what the
23 Rule says. I think it's Rule 67

24

25 MR. HINDS:

1 68.

2 MR. FLEMING:

3 There are in fact two Rules: 68 is
4 exculpatory and, yes, may affect the
5 credibility of Prosecution evidence. We're
6 conscious of that. We have provided a
7 statement this morning which may well affect
8 credibility of one of our witnesses. We
9 will continue to do so as and when we locate
10 material which is relevant. And of course,
11 we'll continue to look and continue with our
12 responsibilities under the Rules.

13

14 Your Honours, there is one matter which may
15 well arise at some point in time, dealing
16 with witness statements. I'm uncertain as
17 to whether or not the Bench want copies of
18 the witness statements that we will be
19 relying upon, and if the Bench does want
20 that, what is the status of those
21 statements? Do they become part of the
22 record or do Your Honours, if you do want
23 them, want them for some other purpose?

24

25 I raise this because it has come up in some

1 conversation, but I'm not sure what this
2 particular Bench wants in respect of witness
3 statements.

4 MR. PRESIDENT:

5 In answer to your question, distinguished
6 Prosecutor, the usual practice here in this
7 Tribunal is that in general the judges do
8 not need to see the transcripts at the
9 beginning of the process. In proportion, as
10 the trial goes on, if there are problems of
11 interpretation, upon the request of a party,
12 the transcripts may be submitted to the
13 judges. But in practice that is the usual
14 case. Thank you.

15 MR. FLEMING:

16 Thank you, Your Honour.

17 MR. PRESIDENT:

18 Any further comments?

19 MR. HINDS:

20 No.

21

22 I thought that the Court wanted to know if
23 there were any further comments on the issue
24 of the transcripts or the statements.

25 MR. PRESIDENT:

1 No, no. Because we go to discuss about the
2 date, because we fix a date, 18 June. Now
3 are you asking for an extension of the date.

4 MR. HINDS:

5 Okay. Let me just deal with a clarification
6 with respect to the comments made by
7 Mr. Fleming.

8
9 We are not requesting copies of an agreement
10 between the ICTR and the Government of
11 Rwanda. We are not requesting a copy of
12 agreement, if any exists, between the
13 Government of Rwanda and ICTR. In fact,
14 it's a public document. I don't think that
15 there's any question about that.

16
17 What we are talking about is an agreement
18 reached by witnesses they intend to call
19 which would tend to offer or confer some
20 benefit to the witnesses in exchange for
21 their testimony. And under Rule 68 we say
22 that that is the type of information that
23 may go to credibility of such a witness.
24 That is the type of agreement that may exist
25 and that we are requesting information

1 about.

2

3 We really do not care about an agreement
4 between the Government of Rwanda and the
5 ICTR or the Government of Rwanda and United
6 Nations. We know that such agreements exist
7 and it's public information. That is not
8 the question.

9 MR. FLEMING:

10 I understand what my learned friend is
11 saying. Thank you.

12 MR. PRESIDENT:

13 We've consulted within the Chamber
14 concerning the concerns of Professor Hinds.
15 The Chamber does understand, has decided,
16 with the consent of the Prosecutor, to defer
17 the argument of the matter. The 30th of
18 June is a Saturday. We may begin on Monday
19 the 2nd of July at 9:30 a.m.

20 MR. FLEMING:

21 I have no objections, Your Honour.

22 MR. PRESIDENT:

23 And we shall take the matter up for four
24 weeks. This will take us to the 26th of
25 July, Thursday. Professor Hinds, do you

1 agree?

2 MR. HINDS:

3 Yes, Your Honour, although I would hope that
4 we would take it for eight weeks, to the end
5 of August, without interruption.

6 MR. PRESIDENT:

7 We are sacrificing the time of the judges.
8 We usually would begin on the 18th, but they
9 have sacrificed their time and are ready to
10 stay here until the 30th of June (sic). I
11 hope that the four weeks will be useful.

12

13 The Prosecutor said -- that you had about
14 23 witnesses, but I hope that you would
15 reduce them to 12 or 15. Mr. Prosecutor?

16 MR. FLEMING:

17 It's about 15 at the moment, Your Honour.

18 MR. PRESIDENT:

19 Okay. Now another question, I would take
20 the opportunity since we are here: In your
21 pretrial brief you have talked about three
22 hours. Don't you think that you could
23 reduce the three hours to two for certain
24 witnesses. We have had the summaries. It
25 depends upon you. If you want three hours,

1 you could take your three hours, but are you
2 ready to cooperate a little with us?

3 MR. FLEMING:

4 Your Honour, I hope that none of our
5 witnesses take more than about a half an
6 hour in chief. We were --

7 MR. PRESIDENT:

8 You spend three hours on many, couldn't you
9 reduce the time for certain witnesses?

10 MR. FLEMING:

11 We can, Your Honour, and the three hours
12 wasn't only an estimate in respect of
13 evidence-in-chief it was also an estimate in
14 respect of cross-examination.

15

16 In evidence-in-chief I would hope that many
17 of our witnesses don't take very long at
18 all. I would be embarrassed if any of our
19 witnesses, or most of our witnesses, take
20 three hours.

21 MR. PRESIDENT:

22 Well, please, then, unless you differ from
23 Professor Hinds, but talk about your time.
24 I see Professor Hinds wanting to speak. You
25 have the floor, Professor Hinds.

1 MR. HINDS:

2 I certainly appreciate Mr. Fleming's sense
3 of fairness in assigning me two and a half
4 hours of cross-examination. I appreciate
5 that. But I suspect that we may take a
6 little longer on cross.

7 MR. PRESIDENT:

8 Very well. Now that everything is clear
9 now, we shall resume the trial now, as I
10 said, on the 2nd of July for four weeks. It
11 will take us up to the 26th of July. At
12 that date we shall see how to proceed,
13 depending on the circumstances.

14

15 If there are no further observations, I
16 believe we can arise. We shall now rise.

17 (Court adjourned at 1315H)

18 (Pages 36 to 76 by Geraldine O'Loughlin)

19

20

21

22

23

24

25

C E R T I F I C A T E

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

We further certify that we are not of
counsel nor related to any of the parties to this cause
and that we are in no way interested in the result of
said cause.

(1 to 35)

Verna Butler

(36 to 76)

Geraldine O'Loughlin