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2 THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

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4 CASE NO.: ICTR-99-50-I
5 ICTR-98-44-I
6 ICTR-99-54-I
7 ICTR-96-14-ITHE PROSECUTOR
OF THE TRIBUNAL
AGAINST

8

9 CASIMIR BIZIMUNGU, JUSTIN MUGENZI,
10 JEROME BICAMUMPAKA, PROSPER MUGIRANEZA,
11 EDOUARD KAREMERA, ANDRE RWAMAKUBA,
12 JEAN DE DIEU KAMUHANDA and ELIEZER NIYITEGEKA,
13 June 28, 2000
14 0958

15

16

17 Before: Justice Laity Kama, Presiding Judge
18 Justice William H. Sekule,
19 Judge Mehmet Guney

20

21 Courtroom Assistant:

22 Mr. Abraham Koshopa

23

24 Registry:

25 John Kiyeyeu

26

27 For the Prosecution:

28 Mr. Ken Fleming, Sr. Trial Attorney

29 Mr. Don Webster, Trial Attorney

30 Ms. Ifeoma Ojemeni, Trial Attorney

31

32 For the Defendant Bicamumpaka:

33 Ms. Francine Veilleux

34

35 For the Defendant Jean Kamuhanda:

36 Ms. Aicha Condé

37

38 For the Defendant Karemera:

39 Mr. Didier Skornicki

40

41 For Defendants Mugiraneza & Mugenzi:

42 Mr. Michael Graves

43

44 Court Reporters:

45 Rex Lear

46

47 Verna Butler

48

49 Haruna Farage

50

51 Judith Kapataymoyo

52

53 Petrus Chijarira

54

55 Shannon Fleming

56 REX LEAR - COURT REPORTER

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I N D E X

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WITNESSES

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5 For the Defence:

6 Motion 3

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P R O C E E D I N G S

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Motions

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28 June 2000

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6 MR. PRESIDENT:

7

Session is called to order. Let me start by
wishing all the parties a good morning. And
our apologies for starting off with such a
delay. Essentially, we had to carry out
some checking as to who is present, who will
be appearing. That stated, can I now give
the floor to the Registrar to tell us what
appears on the cause list this morning.

15

16 MR. KIYEYEU:

17

Thank you, Mr. President.

18

19

Trial Chamber II of the International
Criminal Tribunal for Rwanda composed of
Judge Laity Kama, presiding; Judge William
H. Sekule; and Judge Mehmet Guney; is now
sitting in open session, today, Wednesday,
the 28th of June, 2000 in order to consider
seven motions in the matters of the

NIYITEGEKA & OTHERS

1 Prosecutor versus Casimir Bizimungu, Justin
2 Mugenzi, Jerome Bicamumpaka, Prosper
3 Mugiraneza, ICTR-99-50-I, Edouard Karemera,
4 Andre Rwamakuba, Case Number ICTR-98-44-I,
5 Jean de Dieu Kamuhanda, Case Number ICTR
6 99-54-I and Eliezer Niyitegeka, Case Number
7 ICTR 96-14-I.

8

9 Out of the seven motions, two are
10 Prosecutor's motions and five are Defence
11 motions. The Prosecutor's motions are as
12 follows:

13

14 1. Prosecutor's motion for joinder of
15 Accused in the matters of the Prosecutor
16 versus Casimir Bizimungu, Justin Mugenzi,
17 Jerome Bicamumpaka, Prosper Mugiraneza Case
18 Number ICTR-99-50-I, Edouard Karemera, Andre
19 Rwamakuba, Jean de Dieu Kamuhanda, Case
20 Number ICTR-98-44-I and Eliezer Niyitegeka
21 Case Number ICTR 96-14- Ifiled by the
22 Prosecutor on 3rd of March, 2000.

23

24 2. Prosecutor's motion to amend joinder
25 motion in the matters of the Prosecutor

NIYITEGEKA & OTHERS

1 versus Casimir Bizimungu, Justin Mugenzi,
2 Jerome Bicamumpaka, Prosper Mugiraneza, Case
3 Number ICTR-99-50-I, Edouard Karemera, Andre
4 Rwamakuba, Case Number ICTR-98-44-I, Jean de
5 Dieu Kamuhanda, Case Number ICTR-99-54-I and
6 Eliezer Niyitegeka, Case Number ICTR-96-14-I
7 filed by the Prosecutor on 13th of March
8 2000.

9

10 The five defence motions are as follows:

11

12 1. Extremely urgent motion on
13 inadmissibility filed by the Defence of
14 Jerome-Clement Bicamumpaka regarding the
15 Prosecutor's joinder of Accused pursuant to
16 Rules 48bis and 82 of the Rules of Procedure
17 and Evidence and preliminary motion under
18 Rule 72(b)iii) of the rules, filed by the
19 Accused Jerome Bicamumpaka on the 28th
20 February 2000.

21

22 2. Extremely urgent motion on
23 inadmissibility filed by the Defence of
24 Jerome-Clement Bicamumpaka regarding the
25 Prosecutor's joinder of Accused dated 3rd

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1 March 2000 pursuant to Rules 48bis and 82 of
2 the Rules of Procedure and Evidence and
3 preliminary motion under Rule 72(b) (iii) of
4 the rules, filed by Accused Jerome
5 Bicamumpaka on 9th of March 2000.

6

7 3. Amended motion on inadmissibility filed
8 by the Defence of Jerome-Clement Bicamumpaka
9 regarding the Prosecutor's joinder of
10 Accused dated 3rd of March 2000 pursuant to
11 Rules 48bis and 82 of the Rules of Procedure
12 and Evidence and preliminary motion under
13 Rule 72(B) (iii) of the Rules of Procedure
14 and Evidence filed by Accused Jerome
15 Bicamumpaka on 9th of June 2000.

16

17 4. Defence motion for severance and for a
18 separate trial filed by Accused Casimir
19 Bizimungu on 15th of May 2000.

20

21 5. Defence motion for a separate trial
22 pursuant to Rule 82(B) filed by Accused
23 Casimir Bizimungu on the 22nd May 2000.

24

25 I'm most obliged, my Lords.

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1

2 MR. PRESIDENT:

3 Thank you, Registry.

4

5 Firstly, I would like to say that in a
6 ruling handed down yesterday Eliezer
7 Niyitegeka will not be part of the joinder
8 motion filed by the Prosecutor for
9 procedural reasons that were dealt with in
10 the ruling handed down yesterday.

11

12 Secondly, I would like to say that Mr.
13 Hooper, counsel for the Accused, Rwamakuba,
14 has written to the Chamber to say that he is
15 not in a position to be here or to appear
16 this morning and that he will confine
17 himself to his written briefs.

18

19 I also note, based on our checking, that Ms.
20 Bourne is absent. All the parties had
21 agreed to this scheduling. Miss Bourne has
22 not written to the Chamber to explain why
23 she has not or she's not appearing this
24 morning and that's why Chamber has
25 accordingly decided that it will confine

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1 itself to the written brief, that's in
2 connection with the motion for joinder.

3

4 I further wish to state that Mr. Greaves has
5 been authorized to represent, in addition to
6 his client Mugiraneza, to also stand in for
7 Mugenzi.

8

9 Can I ask the defence counsel to appear?

10

11 MS. VEILLEUX:

12 I am Ms. Francine Veilleux from Canada
13 standing in for Bicamumpaka.

14

15 MR. PRESIDENT:

16 Thank you.

17

18 MS. CONDÉ:

19 Aicha Condé for Mr. Jean de Dieu Kamuhanda.
20 Thank you.

21

22 MR. SKORNICKI:

23 Didier Skornicki representing Edouard
24 Karemara.

25

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1 MR. PRESIDENT:

2 Thank you.

3

4 MR. GREAVES:

5 May it please your Honour, as you have
6 noted, I appear today on behalf of Prosper
7 Mugiraneza and Justin Mugenzi and, as you
8 know, my name is Michael Greaves.

9

10 MR. PRESIDENT:

11 Thank you.

12 So, Prosecutor.

13

14 MR. FLEMING:

15 Thank you, your Honours.

16

17 Ken Fleming, I appear as the senior trial
18 attorney for the prosecution with Mr. Don
19 Webster, trial attorney; Miss Ifeoma
20 Ojemeni, trial attorney. Thank you.

21

22 MR. PRESIDENT:

23 Thank you, Prosecutor.

24

25 I'll merely give the floor to the Prosecutor

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1 to submit his joinder motion.

2

3 MR. FLEMING:

4 Thank you, your Honours.

5

6 Your Honours --

7

8 MR. PRESIDENT:

9 How long will you be submitting?

10

11 MR. FLEMING:

12 About 20 minutes to half an hour at the
13 most, your Honour.

14

15 MR. PRESIDENT:

16 Okay, you have the floor.

17

18 MR. FLEMING:

19 Your Honours, I certainly won't be going
20 over the brief that we filed, which we
21 considered to be fairly comprehensive.

22

23 We may have to reply to something that
24 defence counsel say at some stage.

25

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1 Your Honours, I handed up to you what I
2 consider to be or what we consider to be a
3 summary of the situation, again which I
4 won't go over in any great detail. It's
5 headed The Prosecutor's Summary.

6

7 I note that the President's version is in
8 French, but not an official translation, but
9 nevertheless is accurate enough for our
10 purposes here today.

11

12 It simply sets out the indictments with the
13 original people and then it explains what is
14 actually happening to those indictments and
15 it's paragraph 3 with which we are concerned
16 on this occasion and that is (Interpreter
17 turned microphone on over Speaker) as
18 government ministers in the interim
19 government.

20

21 Your Honours, the state of the various
22 applications in respect of the previous
23 motion that was heard, the joinder of the
24 three, and the joinder of the eight we hope
25 is set out in these two documents.

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1

2 We hope it's accurate, although we may not
3 have included Bicamumpaka motions in there.

4

5 Your Honours, can we briefly go to the
6 rules, again, to remind ourselves that Rule
7 48 deals with joinder of Accused: "Persons
8 accused of the same or different crimes
9 committed in the course of the same
10 transaction may be jointly charged and
11 tried" a simple proposition, and that, of
12 course, was done in the original
13 indictments.

14

15 Rule 48bis, added as a result of problems
16 identified in the ICTY, is that "The
17 Prosecutor may join confirmed indictments of
18 persons accused of the same or different
19 crimes committed in the course of the same
20 transaction, for purpose of a joint trial,"
21 with leave, of course, granted by this Trial
22 Chamber, pursuant to 73, which is just the
23 motions provision.

24

25 Rule 82 is the only other rule with which we

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1 need to be concerned and the only reason we
2 go to this rule is because of the, perhaps,
3 overlapping effect between the motion to
4 join the three and take them out of the
5 major indictment and then the motion to join
6 the balance of that indictment with those in
7 three other indictments.

8

9 Rule 82, "In joint trials each accused shall
10 be accorded the same rights as if he were
11 being tried separately", an important
12 concept and one which has been referred to
13 in different ways in some of the different
14 submissions, that have been made already in
15 writing and; b. "The trial chamber may
16 order that persons accused jointly under
17 Rule 48 be tried separately if it considers
18 it necessary in order to avoid a conflict of
19 interest that might cause serious prejudice
20 to an Accused or to protect the interests of
21 justice."

22

23 We discussed, at the previous joinder, how
24 these rules might interact and we won't
25 spend a great deal of time in looking at

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1 them again, except to say this.

2

3 Rule 48bis appears to quite clearly apply to
4 the situation.

5

6 There are three indictments, they are the
7 smaller indictments which provide no
8 complication in terms of the rules in
9 respect of joinder, because we are not
10 attempting to sever anybody from them,
11 although in respect of one of those
12 indictment one of those persons hasn't been
13 arrested yet.

14

15 In the balance, in the other indictment, of
16 course, two haven't been arrested, three we
17 seek to remove from that indictment and two,
18 then, we seek to join with the others.

19

20 If we may briefly address the problems that
21 might arise as a result of the rules.

22 48bis: "The prosecutor may join confirmed
23 indictments of persons accused in same or
24 different crimes." Of course, there are
25 four confirmed indictments.

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1

2 48. "Persons Accused of the same or
3 different crimes may be jointly charged and
4 tried." That, of course, has been done in
5 every instance and they have been confirmed,
6 each of these indictments has been
7 confirmed.

8

9 We can separate them out under Rule 82 and
10 subject, of course, to the exercise of this
11 court's discretion to do that.

12

13 All of these provisions are not mandatory,
14 rather they are permissive, they all have
15 the word 'may' in them.

16

17 Now, your Honours, we would submit that
18 because they are permissive it can all be
19 done and it can all be done within the
20 confines of the rules.

21

22 The rules are silent, of course, and as your
23 Honours were probably concerned on the last
24 occasion about the severing and what
25 actually happens to the indictment, and your

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1 Honour Judge Sekule was particularly
2 concerned about that proposition, at least
3 your Honour addressed us directly about that
4 proposition on the last occasion.

5

6 But because the Rules are silent in respect
7 of all else and because it's permissive that
8 these things may be done, we would submit
9 that they can be done within the present
10 structures, they can be done within the
11 confines of the confirmed indictments.

12

13 There would be no need in our submission to
14 reconstitute indictments in different forms.

15 Of course, that would apply if your Honours
16 were against us on that, that probably would
17 apply in respect of the larger of the
18 indictments and in respect of the indictment
19 with two people in it, because one of those
20 hasn't been arrested.

21

22 One of our concerns was that if there was an
23 amendment to the indictment then the time
24 for preliminary motions might well start
25 again.

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1

2 Rule 50 seems to address that. Rule 50,
3 Amendment of Indictments, "The Prosecutor
4 may amend an indictment without prior leave
5 up to a certain time and then after the
6 initial appearance of the Accused, pursuant
7 to Rule 62, only with the leave of the judge
8 who confirmed it, but in exceptional
9 circumstances by somebody else."

10

11 And b, "If the amended indictment includes
12 new charges and the Accused has already
13 appeared before a Trial Chamber in
14 accordance with Rule 62 a further appearance
15 shall be held, as soon as practicable, to
16 enable the Accused to enter a plea on the
17 new charges." There would, in fact, be no
18 new charges in any amended indictment.

19

20 And, c, of course, says "The Accused shall
21 have a further period of 30 days in which to
22 file preliminary motions pursuant to Rule 72
23 in respect of the new charges." So because
24 there are no new charges probably the time
25 frame won't be interfered with in respect of

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1 amended indictments. However, however,
2 having said that, we urge your Honours not
3 to take that view, in any event, for the
4 reasons that we expressed on the last
5 occasion and, in summary, they are these.

6

7 That the structure of the indictment applies
8 to each and every one of the accused.

9

10 The only irrelevant parts are those parts
11 relating to those accused who won't be
12 appearing in that particular trial.

13

14 Therefore, if necessary, we can simply
15 redact those parts of the, of the indictment
16 in each case.

17

18 There is a practical issue, which I think we
19 mentioned last time, as well, and that is
20 the numbering of indictments. If such a
21 joinder is allowed by your Honours, then, of
22 course, there would need to be some
23 procedural handling of that by renumbering
24 or something. I know that the Registry is
25 quite anxious about that procedural aspect

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1 of it.

2

3 Your Honours, just in summary, we say that
4 the common interest of all of the Accused
5 that we seek to join in this case, that is
6 the eight Accused, are all members of the
7 interim government and when one looks at the
8 indictments they are joined appropriately:

9 There is the common interest set out: There
10 is the common purpose set out, and there is
11 no difficulty, we would submit, injoining
12 these eight people.

13

14 Your Honours, I know that in some of the
15 motions or some of the responses to our
16 motion the practical consequences of these
17 joinders are raised, for example, the size
18 of this courtroom is raised.

19

20 But, as you can see today, there are a
21 significant number of Accused in the dock
22 today, there are a significant number of
23 counsel present and I'm sure that at the end
24 of the day those issues can be resolved.

25 Indeed they are not your Honours' issues,

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1 nor our issues at the end of the day, they
2 belong to the registry and the registry, I'm
3 sure, can solve those issues.

4

5 Your Honours, we rely upon the brief that we
6 filed and there are our submissions in
7 respect of the joinder.

8

9 Thank you.

10

11 I didn't think I would escape, your Honour.

12

13 JUDGE SEKULE:

14 Mr. Fleming, did I hear you say, that with
15 regard to the joinder motion in this case,
16 you are, it's your submission that you're
17 basing it on Rule 48bis? Did I hear you
18 correctly?

19

20 MR. FLEMING:

21 Yes, your Honour, 48bis and any other rule
22 upon which we might base it.

23

24 We discussed the difficulty with the rules.
25 There are difficulties with the rules still

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1 despite the addition of 48bis, but that
2 would appear to be the clearest rule for us.

3

4 Thank you, your Honours.

5

6 JUDGE SEKULE:

7 Thank you.

8

9 MR. PRESIDENT:

10 I'll now give the floor to the defence. I
11 don't know which order you might wish to
12 speak.

13

14 Can I then take into account the list I have
15 before me? May we give the floor in that
16 order?

17

18 First, Ms Condé, who appears for the Accused
19 Kamuhanda.

20

21 How long will you be addressing the court?

22

23 MS. CONDÉ:

24 Very brief.

25

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1 My apologies, your Honours, I didn't expect
2 to start the ball rolling.

3

4 No problem, just time for me to arrange my
5 papers.

6

7 Very well, then, your Honours, the
8 Prosecutor, I am appearing for Jean De Dieu
9 Kamuhanda who, of course, is objecting, same
10 as all the other Accused here, objecting to
11 the joinder motion filed by the Prosecutor.

12

13 My client objects to that joinder motion on
14 the basis that it is not founded, and the
15 Prosecutor uses three grounds.

16

17 He says that it is founded in law.

18

19 Second reason, second ground, it is
20 warranted based on the evidence.

21

22 The third one, the motion is grounded in
23 view of the interests of the proper
24 administration of justice.

25

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1 Let me take the first ground, that it is
2 founded in law. As far as I'm concerned, I
3 don't have any problem with that, so I do
4 indeed acknowledge the fact that we can
5 consider this motion as founded in law. But
6 it being founded in law doesn't necessarily
7 mean that it will be upheld on the other
8 grounds that have been brought by the
9 Prosecutor, and if you look at them, that
10 would not be the case. The second ground is
11 that it is founded based on the evidence and
12 he says that the accused here are being
13 charged for conspiracy with a view to
14 committing genocide, complicity in genocide
15 and crimes against humanity.

16

17 Well, my client Jean de Dieu Kamuhanda is
18 not being charged with incitement to commit
19 genocide.

20

21 Then we are told that, well, they were all
22 ministers and therefore they were parties to
23 -- so where do I now start?

24

25 Anyway, well, the second ground, namely that

1 the joinder motion is warranted or is
2 founded in law or based on evidence and we
3 are told that the Accused were all members
4 of the interim government and in that
5 capacity they were parties to a plan to
6 commit genocide. In their capacity as
7 members of the interim government when they
8 took the oath, they supported the plan to
9 engage in an extermination plan. Between
10 the 10th of July and the end of late '94,
11 they were informed of the massacres and they
12 did not object to said massacres. They had
13 never renounced the pursuit of a particular
14 policy and they failed in their duty to
15 guarantee the security of the population.

16

17 In the case of the Accused, Jean de Dieu
18 Kamuhanda can not but note that all of those
19 allegations are unfounded, firstly, because
20 my client was appointed minister on the 25th
21 of May, 1994. Consequently, in no
22 circumstances can he be held responsible for
23 events that occurred prior to his
24 appointment and, in my view, aware of that
25 difficulty Prosecutors say Jean de Dieu

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1 Kamuhanda supported or accepted to be
2 appointed minister two months after the
3 commencement of the massacres and,
4 accordingly, he thought he could avoid said
5 difficulty by suggesting that my client was
6 in any case appointed minister after the
7 events.

8

9 Obviously, I do not agree with that
10 submission.

11

12 Mr. Jean de Dieu Kamuhanda was indeed
13 appointed minister on the 25th of May, 1994

14 and he acknowledges that fact. He intends
15 to explain on his own appointment at some
16 stage in the proceedings. It would be

17 premature to do so now, and it is absolutely
18 false to suggest that his belonging to that

19 government automatically serves as the

20 proper ground for the charges being brought
21 against him, firstly because on the 25th of

22 May, 1994 that interim government, the least
23 that one can say was that it wasn't in a

24 good posture and Jean de Dieu Kamuhanda only
25 was present at two cabinet meetings before

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1 each and every one started to look for how
2 to escape from Rwanda.

3

4 Two cabinet sessions, the first one,
5 according to the Prosecutor, took place --
6 the first one took place on the 25th of May,
7 1994. The second one was on the 27th of
8 May, 1994 and after that, there was no other
9 session.

10

11 He wasn't able to set up his ministry or his
12 cabinet, he was not in touch with the civil
13 servants working in his ministry. He wasn't
14 even able to go to his ministry in view of
15 the fact that all the institutes of higher
16 learning were closed in view of the
17 situation. So it is false and totally
18 incorrect to suggest that as Minister in
19 Charge of Higher Education and Research
20 Kamuhanda exercised any authority,
21 whatsoever, over the civil servants who were
22 working in his ministry because he wasn't
23 able to meet any of those civil servants.
24 He wasn't even in a position to talk to them
25 or consult with them.

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1

2 Maybe I'm going a bit too fast.

3 Yes

4

5 I'm losing the trend, as it were.

6

7 MR. PRESIDENT:

8 Could you tell -- fortunately, I understand
9 you. Well, that's not the case for
10 everyone.11 It's for our colleagues who do not speak
12 French. Can I ask you to be a bit slow?

13

14 MS. CONDÉ:

15 I'll try to be a bit slow.

16

17 MR. PRESIDENT:

18 And we won't interrupt you.

19 No, nothing wicked about that.

20 Ms. CONDE:

21 So where was I, then, in this whole thing?

22 (Pgs 1-27 by R. Lear)

23

24

25

1

1030H

2 MS. CONDÉ (CONTINUING) :

3 So I think I was trying to say that Jean de
4 Dieu Kamuhanda only attended two cabinet
5 sessions and he wasn't able to get in touch
6 with the officers in the ministry, that he
7 wasn't able to set up his own cabinet and he
8 wasn't even able to go to his ministry, and
9 as far as I am concerned it would be
10 incorrect to allege that there was any -- or
11 he exercised any authority whatsoever over
12 the officers of his ministry or the officers
13 who were accountable to him. Furthermore,
14 the fact of belonging to the interim
15 Government is not enough ground to use in
16 saying that, well, he was involved in
17 genocide or involved in committing genocide,
18 as suggested by the Prosecutor. Unless I am
19 wrong, the members of the interim Government
20 were 19 in number. Some of them are here.
21 Orders are being sought, and some of them
22 are not even charged, and I'm not trying to
23 say to the Prosecutor to try and, I don't
24 know, investigate and arrest them. That is
25 not the purpose. I am merely trying to say

1 that, well, the initiative to engage in
2 prosecution or to investigate anyone lies
3 with the Prosecutor. From his submission,
4 it would appear that the very fact of
5 belonging to the Government does not
6 automatically implicate someone, say, in
7 genocide or a plan to commit genocide. My
8 client was minister for a very short period
9 and, yes, he was appointed minister, but he
10 wasn't ever able to perform the duties
11 incumbent on a minister. He couldn't carry
12 out the duties assigned to a minister.

13

14 We are told, well, yes, Jean de Dieu
15 Kamuhandwa was an advisor to the President,
16 the interim president. He was an
17 influential member of the MRND party. Well,
18 there I would ask you, if you do recall the
19 hearing of the 5th of June this year, during
20 which one of the Accused handed over to the
21 Prosecutor a copy of the official gazette of
22 1991; that is, the official gazette of the
23 MRND. When you look through that document
24 carefully, you would notice that Jean de
25 Dieu Kamuhandwa does not appear, and he

1 certainly -- was certainly not an
2 influential member of the MRND. He was not
3 even a member of the MRND that exercised any
4 authority whatsoever at whatever level, so
5 it is a mere allegation just for the
6 Prosecutor to suggest that my client was an
7 influential member of the MRND. It is
8 totally unfounded, totally incorrect. It is
9 then alleged that my client was allegedly
10 one of the advisers to the interim
11 President. Again, this is a mere
12 allegation. I was rather surprised when I
13 looked at the documents that were handed
14 over to me, and I noticed -- and I tried to
15 compare both versions, the English and the
16 French versions. The concept of adviser
17 disappears. It is in the English version,
18 but in the French version that post does not
19 appear. I don't think it an error in
20 translation. That would be a bit too easy.
21 I think it is the Prosecutor who didn't
22 think it was necessary to include it in the
23 French version, because that was not
24 something that was true -- unfounded. So it
25 disappeared from the French version, and I

1 am happy and I thank you, Mr. Prosecutor for
2 having removed that allegation.

3

4 I hope I have been able to prove to you that
5 my client, as minister, could not be party
6 to any plan as suggested by the Prosecutor,
7 because he came -- became involved with that
8 Government when it was at the end of its
9 existence. I hope I have been able to prove
10 that he was not an influential member of the
11 MRND; neither was he an advisor to the
12 president. So I really do not see how an
13 attempt would be made to join his trial with
14 those of the other Accused, because the
15 facts are not exactly the same. Well, of
16 course, you are told, well, Jean de Dieu
17 Kamuhanda committed a number of, say, crimes
18 in the rural Kigali and characterized as
19 crimes against humanity. Assuming those
20 facts are proved in the case of
21 Kigali-rural, we are told that these events
22 occurred at or about the 12th of April.
23 Well, Kamuhanda wasn't yet a member of
24 Government, so what is he doing here?
25 Furthermore, the other ministers who are

1 here were not involved in the events that
2 occurred in Kigali-rural, so I do not
3 understand why he should be tried with them.
4 On the contrary, it seems to me if we comply
5 with your judgment in the case of Prosecutor
6 v. Kayishema, the connection, the link has
7 to be established, and in this case there is
8 no link whatsoever between the conduct of my
9 own client the others, and it is for that
10 reason that I am of the view that there
11 should be no joinder. Again, regarding the
12 events that occurred in
13 Kigali-rural, even though that is not the
14 purpose of the hearing today, and my client
15 will have any and every possibility to
16 explain, Jean de Dieu Kamuhanda objects to
17 the allegations made with respect to his
18 conduct at Gikomero because he was accused
19 of having been present at Gikomero on the
20 12th of April. He was never there, neither
21 before or after the 12th of April. We will
22 be pleased to prove to you, with a number of
23 witnesses -- prove to you that Jean de Dieu
24 Kamuhanda was in Kigali city up till the
25 18th of April and moved on to Gitarama, so

1 he never was at Kigali-rural. That
2 allegation, therefore, is unfounded.

3

4 The third ground set out by the Prosecutor
5 in support of the joinder was that, well,
6 the joinder is necessary in order to ensure
7 a proper administration of justice. There,
8 again, I object, firstly, because you are
9 being told, well, it is for the protection
10 of witnesses, that it would be unfortunate
11 to bring the witnesses several times before
12 you. It is very difficult for them to leave
13 their family or their work and they might be
14 traumatized by the questions that would be
15 put to them by the Prosecution, then the
16 cross-examination, and it would be better
17 for them to appear just once before you.
18 Well, I will say maybe for the other Accused
19 that would be the case.

20

21 Now, if you look at paragraph 41 of that
22 joinder motion, some of the witnesses who
23 would be moving to and fro are not witnesses
24 for my own client. The witness who appear
25 in the materials that I received, well, are

1 not those that would need to appear for
2 those here, for the Accused here, and they
3 would only need to appear here once and they
4 do not even have to appear in the case of
5 Jean de Dieu Kamuhanda. So to suggest that
6 the protection of witnesses would make it
7 necessary for there to be a joinder --
8 unfounded. You are also told that it is in
9 the interest of justice and that it requires
10 that all the Accused here be tried together.
11 Even if this was to unduly extend the
12 proceedings, it would be still be within a
13 reasonable time limit, and the Prosecutor
14 says, rather beautifully, that in view of
15 the fact that the charges are founded or in
16 view of the envisaged sentence, if you
17 allowed the motion, the extending of the
18 proceedings would be so prejudicial to the
19 Accused. Then you are being told that,
20 well, they may be sentenced to life
21 imprisonment, so what difference would that
22 make as far as the Accused are concerned?
23 Well, I think it would be make a lot of
24 difference. It would be in violation of the
25 principle of the presumption of innocence,

1 the said presumption of innocence is
2 referred to in your Rules of Procedure and
3 Evidence -- maybe Rule 23. It is a general
4 principle. It is a basic principle in law
5 and we cannot just say that in any case,
6 they might be subject to life imprisonment
7 and, therefore, it wouldn't serve any -- I
8 don't think that would apply. As far as my
9 own client is concerned, he wishes to rely
10 on Rules 19 and 20 of the Rules of Procedure
11 and Evidence and he is anxious to explain
12 himself before here. He would like his
13 trial to be expedited and for him to provide
14 the evidence as to the fact that all the
15 allegations against him are unfounded. So,
16 in the case of Jean de Dieu Kamuhanda there
17 would be no cause for joinder.

18 MR. PRESIDENT:

19 Judge Güney will be putting a question to
20 you.

21 MS. CONDÉ:

22 Yes.

23 MR. PRESIDENT:

24 I said Judge Güney will ask you a question.

25 JUDGE GÜNEY:

1 Q. Ms. Condé, well, I followed you in French,
2 occasionally in English. Please have pity
3 on the interpreters so that your ideas could
4 be properly articulated. I think it would
5 be in the interest of your client. That
6 stated, you said that your client was
7 appointed minister in charge of culture and
8 higher education on the 25th of May 1994.
9 Is that correct?

10 MS. CONDÉ:

11 A. Yes. It is correct.

12 Q. According to your submission, when did the
13 massacres occur, the period?

14 A. Well, according to the Prosecution, it was
15 between the 9th of April and mid-July.

16 Q. Mid-July?

17 A. That's what I read in the documents given to
18 me by the Prosecutor.

19 Q. Because when you dealt with the area, the
20 aspect of evidentiary material, you said
21 that your client was appointed on the 25th
22 of May 1994 and he attended just two cabinet
23 meetings.

24 A. That's correct. Yes, it is because in the
25 documents that were given to me by the

1 Prosecution it is stated. I can't quote --
2 but it is stated somewhere that the
3 Prosecution does have the agenda, or when he
4 took diary, of Mr. Kamuhanda and that in a
5 particular period there were some meetings.
6 Well, as far as I am concerned, yes, my
7 client attended the meeting -- the cabinet
8 meeting on the 25th of May 1994 when took
9 the oath and then he attended one other
10 cabinet meeting and he doesn't acknowledge
11 or agree to the fact that he was party to
12 some strategies, some plan or whatever
13 characterization being used or qualification
14 being used by the Prosecution and which
15 appears in his indictment or the joinder
16 motion, and we are saying that my client,
17 indeed, took office, but he wasn't able to
18 perform the duties that go with his office.
19 If you weren't able to perform the duties
20 associated with your office, how can anyone
21 say that you are exercising authority over
22 your subordinates. He never even met the
23 officers in his ministry.

24 Q. Could you categorically separate, say,
25 assumption of office from the performance of

1 the duties that go with the office?

2 A. I don't find it contradictory and that's why
3 I am saying that the initiative, in terms of
4 prosecution or investigation, lies with the
5 Prosecution. There were other members of
6 Government who were ministers and they are
7 not being prosecuted. It is not enough just
8 to be a member of the Government to
9 automatically be involved in any plan. My
10 client was a member of Government, and
11 that's the only reason why he has been
12 brought here.

13 Q. Last question: As from when was your client
14 the adviser to the President?

15 A. No; my client was never an adviser to the
16 President. He met the President for the
17 first time on the 24th of May 1994, just
18 before he took oath and he was sworn into
19 office, and he was just told that he would
20 be sworn in the very next day and that's why
21 I was rather surprised to read in the
22 documents given to me by the Prosecution,
23 and if you look at the supporting material
24 that was even given to me, there's no
25 evidence that deals with that matter by the

1 way.

2 JUDGE GÜNEY:

3 Thank you.

4 MR. PRESIDENT:

5 Thank you, Ms. Condé. I will now give the
6 floor to Mr. Graves, appearing for
7 Mugiraneza, and, based on a power of
8 attorney, Mugenzi. How much time do you
9 need, sir? How much time do you need?

10 MR. GREAVES:

11 I was contemplating how elliptical I could
12 be in answering Your Honour's question
13 without tying myself down too much to a
14 specific amount of time; I hope about 15
15 minutes. If I go longer I hope you will
16 forgive me.

17
18 Your Honours, the importance of what we are
19 doing today cannot be underestimated, in my
20 respectful submission. The decision you
21 have to make as a result of this hearing is,
22 perhaps, second only to the deliberations
23 that you will have to make at the end of a
24 trial. I stress that, because how this
25 trial is to proceed, the way in which it is

1 to proceed and who it involves has a
2 significant effect on the way in which the
3 case is prepared on both sides but, in
4 particular, by Defence counsel. The
5 importance of the decision is this: That at
6 end of the case after your deliberations it
7 may be that you decide that either or both
8 of the people that I represent, Prosper
9 Mugiraneza and Justin Mugenzi, is guilty of
10 one or more offences, and you may have to
11 make your minds up whether to send them to
12 prison for long periods, perhaps even for
13 the rest of their lives.

14

15 It was with that in mind that I listened
16 carefully to the somewhat cavalier approach
17 of the Prosecution and, in writing, cavalier
18 approach to this particular matter. Why do I
19 say that? This is but the most recent in a
20 series of similar motions that have been
21 placed before the Trial Chamber in respect
22 of Government ministers. Your Honours may
23 recall that back in the summer of last year
24 a similar motion was placed before the Trial
25 Chamber proposing a completely different

1 selection of ministers for you to try
2 together. Well, the Prosecution plainly
3 changed their minds at some stage, shuffled
4 the cards a bit, dealt another eight out
5 onto the table, and there in that very fact,
6 we respectfully submit, you can see quite
7 clearly that this is an ill-considered dog's
8 dinner of a motion. Why do I say that?

9 Well, I'd like to take Your Honours through
10 one or two little parts of the written
11 motion and you will see just how
12 ill-considered the Prosecution's position
13 is, because although this is a motion
14 designed to gather in eight ministers in the
15 text of the motion itself, you will find
16 references; for example, let me give you
17 one. Give me a moment please. Paragraph
18 33, if I can take Your Honours to that
19 paragraph of the motion: "The Prosecution
20 submits that based on this evidence the
21 persons accused of the same conspiracy
22 should be tried together. This is all the
23 more so because eyewitness testimonies from
24 several victims and witnesses place Éliezer
25 Niyitegeka in physical and temporal

1 proximity to the other nine accused --".

2 Well, hang on a moment. I've only got eight
3 Accused in all, on my front sheet, so which
4 nine Accused are we talking about; which 10
5 Accused are we talking about in this motion?

6 That's an example, in my respectful
7 submission, of how ill-considered this
8 motion actually is. Let me take you to
9 another example, paragraph 41: "As
10 examples of witnesses that will be called
11 several times if the cases are not joined
12 can be mentioned: That many witnesses have
13 made signed statements in support of
14 allegations that implicate Éliezer
15 Niyitegeka and Edouard Kamemera, André
16 Rwamakuba, Mathieu Ngirampatse, Joseph
17 Nzirorera and Juvenal Kajelijeli --".

18

19 I can't find them on the front sheet of my
20 motion that has been provided by the
21 Prosecution, so plainly it's just another
22 example of the lack of consideration that
23 has gone into this particular motion.

24

25 What about poor old Jean de Dieu Kamuhanda?

1 He seems to have been left out of that
2 particular proposition. Paragraph 47:
3 "Joinder would allow for considerable
4 economy of time and the resources needed for
5 trial because the evidence against each of
6 the four accused is interrelated and to a
7 large extent the same."

8

9 Well, there you are, Your Honours. One can
10 go on looking at examples of that kind; but
11 that, in our submission, is a clear
12 indication that the Prosecution's heart is
13 not really in this particular motion.

14

15 The next matter of which we have heard
16 nothing, and it may be a matter that perhaps
17 surprises Your Honours, is what the
18 Prosecution propose should happen, and it's
19 absent I note from the summary that he has
20 provided -- what's going to happen if the
21 proceedings which are taking place in
22 another courtroom today should end up with
23 former Prime Minister of Rwanda being
24 allowed to change his pleas to those of not
25 guilty and having a trial arranged for him?

1 Is he to be joined with us? What is the
2 position? What is the plan? Again, the
3 absence of any indication of what should
4 happen in that contingency demonstrates, in
5 our respectful submission, just how
6 ill-considered and ill-founded this
7 particular motion is.

8

9 Let me move on, I hope swiftly. My learned
10 friend, by way of concluding his address to
11 Your Honours this morning, dismissed - you
12 may think in short phrases - the problem of
13 accommodation. Well, Your Honour, "He
14 would, wouldn't he?", to use the phrase
15 employed by a famous English courtesan of
16 the 1960s. He would, wouldn't he, because
17 he knows it's a major problem and he wants
18 to get over that particular issue as quickly
19 as possible and dismiss it as simply a
20 Registry matter because he knows, we submit,
21 full well that space is a major problem.
22 I'd like Your Honours to look around the
23 courtroom at the moment. There are six
24 Defendants present here today. There are
25 eight who are being invited to be joined in

1 the same trial. Perhaps my learned friend
2 would like to tell us where he proposes the
3 other two are going to sit - on the floor?
4 There isn't space for eight Defendants in
5 this courtroom. If each Defendant, as one
6 anticipates will happen, has counsel and
7 co-counsel, that's eight defendants, two
8 counsel each - 16 lawyers. Even my poorish
9 maths has lead me to conclude that we have
10 only 12 seats here. Where are the other
11 four lawyers with all their files and
12 documents to sit? Perhaps my learned friend
13 would like to tell us. You cannot try eight
14 people in this courtroom or any other
15 courtroom in this building. It is a
16 physical impossibility.

17
18 We submit that that is a major factor that
19 Your Honours must consider. It cannot be
20 dismissed as a "Registry problem" for them
21 to sort out. There is no extra space in
22 this courtroom to have that number of people
23 in it, and it's not satisfactory, we submit,
24 simply to say, "Let the registry sort it
25 out". Your Honours have to address that

1 issue. You have to decide whether it is
2 physically possible to try eight men
3 together and if it isn't, then this joinder
4 motion must fail at the first hurdle.

5

6 Let me move on. The Prosecution say that
7 there is a particular relationship between
8 these men which makes it convenient for them
9 to be -- and proper for them to be tried
10 together. In essence, it is their
11 relationship as members of a provisional
12 government which existed between the months
13 of April and July of 1994 and, for example,
14 they cite the desirability of not having
15 witnesses giving evidence more than once,
16 presumably on the basis that the witnesses
17 will give evidence and deal with issues that
18 relate to the global alleged conspiracy, in
19 particular, by the government ministers.

20

21 I pose this question to Your Honours because
22 you might like to invite the Prosecutor to
23 deal with it: What about the other two
24 ministers who are arrested, indicted and
25 being prepared for trial? They are Pauline

1 Nyiramasuhuko - I beg everybody's
2 forgiveness for my appalling pronunciation -
3 and Andre Ntagerura. They are both charged
4 and, perhaps, I have taken the trouble to
5 get their indictments this morning -- or,
6 rather, some legal assistants of mine have
7 very carefully got the documents for me.
8 The lady minister is charged, and it's set
9 out in her indictment at paragraph 4.2: At
10 the time of the events referred to in this
11 indictment, Pauline Nyiramasuhuko, held the
12 office of Minister of Family and Women's
13 Development in the interim government. On
14 the indictment, count 1: Pauline
15 Nyiramasuhuko conspired with Andre
16 Rwamakuba, one of the people whom the
17 Prosecution seek to join in this trial, and
18 then identifies a number others and
19 concludes "and others".
20
21 You may well conclude that refers to the
22 Government ministers who are in this court
23 and subject to this motion today. So, the
24 Prosecution are having at least one more
25 trial on the very same count, you may think,

1 that involves these Defendants. So, there's
2 two trials.

3

4 Andre Ntagerura, opening paragraph: At the
5 time of the events referred to in this
6 indictment, he was the minister of transport
7 and communications of the Republic of
8 Rwanda. Count 2 on the indictment:
9 Conspiracy to commit genocide. Andre
10 Ntagerura conspired with three individuals -
11 who are not part of this group - and others.
12 It may be a reasonable inference that "and
13 others" refers to the people who are the
14 subject of this motion. That's trial No. 3
15 of which one may reasonably infer witnesses
16 who are going to be called in this trial
17 are also going to have to be called in that
18 trial. So, Your Honours, let's look at
19 this. The Prosecution say that one of the
20 principal reasons for you to grant their
21 motion is so that their witnesses don't have
22 to make repeated journeys to court and give
23 evidence. They have shot themselves firmly
24 in the foot, we submit, because they haven't
25 sought to join those other two ministers in

1 this indictment. If what they say is right
2 - that it is appropriate to try government
3 ministers together - then the only proper
4 course, we would submit, was to apply to
5 have two those two as well.

6

7 The fact of the matter is they haven't done
8 so, one suspects, because that they know
9 that trying to invite you to try 10 people
10 in this small courtroom was just beyond the
11 pale, but because quite simply there isn't
12 actually any real basis in the propositions
13 that they place before you. They rely on
14 the proposition that trying these eight men
15 together is going to lead to saving of
16 expense and saving of time. One fears
17 greatly that those propositions, if allowed
18 and if you join these men together in the
19 same trial, may well turn out to be false
20 economies and, Your Honours -- I invite Your
21 Honours' attention to the paragraph in the
22 responses of both Mugiraneza and Mugenzi to
23 what happens when you actually have and try
24 to conduct complicated crimes against
25 humanity, war crimes trials involving

multiple defendants. Your Honour, I speak from some experience, and I hope that I'm not thought to be boasting in any way, but I have been involved one of the trials which is detailed there. The Celebici trial, conducted between March 1997 and October -- I'm sorry, November 1998. That involved four Defendants. There is no doubt that in any national jurisdiction, the more Defendants you have, the more complicated it becomes and, in fact, they have the habit of turning into longer trials. That proposition doesn't change simply because you come before an international tribunal. You, inevitably, have considerable increase in the amount of time which is taken to deal with each witness, to deal with each issue which is raised during the course of the trial, and you can see from the figures which I have set out in the response by Mr. Mugiraneza, the length of some of the trials involving two or three Defendants only that has taken place before the international tribunal in The Hague, the Yugoslavia tribunal. Having eight people together is

1 no guarantee of shortening the amount of
2 court time, court days, that are going to be
3 needed for trying these men.

4

5 The reality is if you have four or three,
6 it's actually a much more digestible bite.

7 Having eight is going to be a monster.

8 I'll tell you that now, and when we come to
9 the end of an eight-man trial you may, of
10 course, tell me that I was wrong, but it is,
11 I tell you, going to be a monster. So, it
12 really isn't safe to say agree with the
13 Prosecution that they are right in that
14 proposition. Those sort of trials have the
15 habit of turning into greater things than we
16 all expect. The evidence is there, I
17 submit, from the figures which I have set
18 out in the reply.

19

20 I can update you as far as one of them is
21 concerned. There is one trial which is
22 ongoing. It is the trial of Kordic and
23 Cerkez. That is going to go on probably
24 into the New Year, as we speak, and may turn
25 out to be the second or third longest trial

1 of the lot. That's a two-man trial.

2

3 So, there we look at, perhaps, the two most
4 important factors that my learned friend
5 advances in his arguments for joining these
6 people together. If we retain the
7 indictments as they are, there is no reason
8 why there should not be consistency of
9 treatment. There is no reason why there
10 should not be consistency in verdict. There
11 is no reason why the proceedings should
12 cease to be transparent. There is no reason
13 why a proper examination of the offences
14 which are alleged against these people
15 cannot take place in a smaller trial.

16

17 Of course, one of the things the Prosecution
18 is seeking to avoid, and they make it quite
19 plain in a blinding flash of honesty, is
20 this: It is also to avoid the discrepancies
21 and inconsistencies inevitable from the
22 separate trial of joined defenders. Your
23 Honour, that is shorthand for this: We
24 don't want our poor witnesses being
25 demonstrated to be people who cannot tell

1 the same story twice. That's what it is
2 about. The Prosecution are desperate to
3 avoid that because my learned friend knows
4 only too well that it's going to be
5 extremely difficult for him to get his
6 witnesses to do the business twice running
7 in the same way. That's what he's trying to
8 avoid. It may be dressed up as one thing,
9 but that's what it's about. Well, that's
10 not a good reason, we submit. Protecting
11 the Prosecution from the vagaries of the
12 honesty and dishonesty of his witnesses is
13 not a proper reason for having joinder of
14 these eight men.

15
16 Your Honour, in our respectful submission,
17 and we place before you in written form
18 other objections -- in our respectful
19 submission, this motion coming as it down in
20 the way that it does being simply a
21 reshuffling of old material is a motion
22 which is not well conceived. It may be
23 superficially attractive looking at law to
24 say that's okay, but when you examine it in
25 some detail, we respectfully submit that, in

1 fact, it is not a well-founded motion and it
2 must fail for the reasons we have advanced,
3 if only because of the one upon which I
4 dwelt -- if only because you can't
5 physically try eight men in this room. Are
6 there any matters upon which I can assist
7 Your Honours by way of Your Honours'
8 questions? Then I will sit down and keep my
9 peace.

10 MR. PRESIDENT:

11 Thank you. The next counsel will be
12 Francine Veilleux for Jerome Bicamumpaka.
13 How much time will you need, because we have
14 also read your motion?

15 MS. VEILLEUX:

16 I cannot say for sure, Your Honour. I would
17 simply like to stress that this morning I
18 did not receive a response from the
19 Prosecutor to my motion on inadmissability.

20 MR. PRESIDENT:

21 You can go ahead and present it and the
22 Prosecutor will answer or respond orally.

23 MS. VEILLEUX:

24 There is something fundamental. The parties
25 have to inform themselves and have the same

1 possibility of defending their clients.

2 MR. PRESIDENT:

3 What conclusion are you drawing? Do you
4 want us to adjourn?

5 MS. VEILLEUX:

6 I would, first of all, like to have an
7 explanation from the Prosecutor. Does he
8 intend to approve each of the paragraphs of
9 my brief? Is that an indication that he is
10 in total agreement with what I presented,
11 since there is no response? Is he,
12 therefore, admitting that what he was stated
13 in my brief is correct? Would you like to
14 answer now?

15 MR. PRESIDENT:

16 I intended to have a short recess. That's
17 why I was asking you how much time you
18 needed.

19 MS. VEILLEUX:

20 If the Prosecutor accepts my motion on
21 inadmissability, what I say in all the
22 paragraphs, then it will be much shorter
23 than if I have to present what is contained
24 in those paragraphs.

25 MR. PRESIDENT:

1 Could you please avoid laughing, please?
2 We are going to take a break and when we
3 return you ask your question to the
4 Prosecutor.

5 MR. SKORNICKI:

6 You will excuse me: The question asked by
7 my learned colleague at this point is not
8 provocative. I did not think so, because we
9 knew as counsel for a number of Accused that
10 the fact -- and the Registry did tell us,
11 that the fact that there is no response to
12 the joinder motion of the Prosecutor was,
13 indeed, an approval on the part of the
14 Accused, so it was very normal that we
15 should return the question to the
16 Prosecutor.

17 MR. PRESIDENT:

18 You are trying to open a door, which is
19 forcing a door which is already open,
20 because I said that when we return you are
21 going to ask the questions. So when we
22 return you have to ask your questions. You
23 have all the time to do that.

24 MR. FLEMING:

25 I am very grateful to the Defence for their

1 opinion on that question, too.

2 ADJOURNED AT 1110H

3 (Pages 28 to 57 by Verna Butler)

4

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1 MR. PRESIDENT:

2 The hearing is called to order. Mr.
3 Prosecutor, let me remind you that
4 Ms. Veilleux submitted a motion on
5 inadmissibility to which you did not answer
6 in writing. What do you have to say about
7 that?

8 MR. FLEMING:

9 Your Honour, if it's in respect of the first
10 motion which we withdrew. So it's become a
11 moot point. As to the others, I can
12 respond in kind. The other motions,
13 so-called, are not in fact motions at all
14 but they are responses to our motion for
15 joinder. Each one is repetitious and I, for
16 myself, do not want to be seen to be putting
17 in exactly the same propositions, time after
18 time, after time.

19

20 If my learned friend wants to talk about
21 being timeous, then she ought to have read
22 the directions of this Court and the
23 registry in respect of putting in various
24 responses and the like. I think the date of
25 the 30th of April was mentioned in one, and

1 yet what we find we get is the document
2 dated 28th of February 2000, which is in
3 respect of the previous motion. We didn't
4 file this motion until sometime in March.

5

6 In any event, it became a moot point when
7 Your Honours ordered that we could withdraw
8 the previous motion. What we find in this
9 though, is a proposition which is entirely
10 unintelligible, a proposition that our
11 motion, filed last year, was inadmissible in
12 some way. I don't understand the legal
13 reasoning and in any event, we were saved
14 from that problem by the fact that it was
15 withdrawn.

16

17 The balance of her motion are simply
18 propositions in response to her motions. And
19 I'm not going to answer and clutter up this
20 Court's record with a response to something
21 which, for whatever reason she chooses to
22 call her motion, but is in fact a response
23 to mine. And my only response at the end of
24 the day is, we would be repetitious. I
25 would be simply putting in the same

1 materials as I've already put in.

2

3 Now, as to the more recent material, we say
4 this: There is a distressed dealing with
5 the facts of the case, and the only response
6 I would ever put in in respect of that any
7 way, this is neither the time nor the place.

8 She misconceives the purpose of this legal
9 argument, wants to review, either wants to
10 review the decision of the confirming judge
11 or wants to have a trial today. Well, she is
12 not getting a trial today. This is a legal
13 argument about whether or not joinder should
14 occur. Your Honours, whatever she likes to
15 call them, they are nothing more than
16 responses to our motion.

17

18 Now, there is another thing which she does
19 and, in fact, is a recidivist in respect of
20 this despite some of Your Honours earlier
21 comments about them. She takes a previous
22 motion which might or might not be filed in
23 time, then adds a few more facts and calls
24 it an amendment of that previous motion
25 because she knows full well that she's going

1 to be out of time. And in any event, they
2 are not motions despite what she calls them,
3 they are simply responses to ours. And Your
4 Honours, this Court's time is more valuable
5 than to be dealing with repetitious matters
6 in such a way. Thank you, Your Honours.

7 MS. VEILLEUX:

8 First of all, the Prosecutor underscored
9 right from the beginning of the hearing that
10 he was speaking under Article 48 bis. And
11 now he is referring to 48 instead of 48 bis.
12 When the Prosecutor wants to present his
13 motion for joinder in 19th November, he was
14 out of the time frame. He was out of the
15 time frame that was prescribed and the
16 Prosecutor withdrew this motion and come up
17 with another completely one on the 3rd
18 March. We maintained our motion on it's
19 inadmissibility, Your Honour. He withdrew
20 it and came up with another one to be within
21 the time frame of-- prescribed under Rule
22 72.

23

24 What is very important as per the rule is
25 the right of the Accused. Everybody is

1 equal before the Tribunal, as well as
2 Article 4(b) which says that, all persons
3 accused under this Statute have the right to
4 full equality or at least to the following
5 guarantees: To have the time and facility--
6 adequate facilities for the operation of
7 their defence and to communicate with the
8 counsel of their right-- of their choice.
9

10 Your Honour, I just want to emphasize a
11 certain number of points regarding the
12 problems of defence. We prepared our brief
13 in record time. Even though we left Arusha,
14 had to go back to our respective countries
15 and we were told that we had just about
16 five/ten days, otherwise we are going to be
17 foreclosed. If the defence is foreclosed,
18 how then can the Prosecutor respond, present
19 a response at the last minute and thereby
20 depriving the defence of the adequate time
21 to present a response? Double measures.
22 And here, we did not receive a response. We
23 do not know what submissions the Prosecutor
24 intends to make. And, as he did say, when
25 we had to present our brief, it is because

1 if we did not present it, we have a
2 acquiesced to his motion. And I'm not-- I'm
3 wondering why today, that rule is not being
4 applied to everyone?

5

6 I might add other issues as well, Your
7 Honours, because we requested the
8 authorization to meet our client. We asked
9 the authorization from the registry.

10 Sometimes you have to ask, you have to put
11 in a request three/four times, sometimes
12 they are turned down such that the time is
13 running and you meet your client at the very
14 last minute. Particularly also, because we
15 have to buy our own tickets and you are
16 reimbursed about three/four months later. I
17 have to buy my ticket on a number of times
18 to be here to consult with my client, and
19 I'm still waiting for reimbursement. So,
20 where is justice? How can we say that
21 everybody is equal before the Tribunal?

22 MR. FLEMING:

23 I wasn't paid for five months and three
24 weeks working for the UN.

25 MR. PRESIDENT:

1 Please do not interrupt without
2 authorization from the Chamber.

3

4 THE INTERPRETER:

5 Your Honour's microphone. Mr President's
6 microphone.

7 MS. VEILLEUX:

8 I will therefore like to know, since there's
9 no response, whether the Prosecutor has
10 acquiesced to all the points I raised.

11 MR. PRESIDENT:

12 Madam, you come from a system. And you will
13 understand that you just have to make your
14 submissions and the Chamber will draw its
15 conclusions.

16 MS. VEILLEUX:

17 Your Honour, in order not to overlook some
18 aspects, I would like to refer you to my
19 brief on page 4 on inadmissibility at law.
20 My brief is divided into four aspects,
21 admissibility at law. In fact, the joinder
22 of Accused is not in the interest of Accused
23 and the right to a speedy trial.

24 MR. PRESIDENT:

25 Before I give the floor to Mr. Sekule, we

1 received your document, and you have --
2 normally, what you do is you present
3 briefly. Are you going to read the whole
4 document?

5 MS. VEILLEUX:

6 No, not the document I intend to read, to
7 read the whole document so that it would be
8 read into the records so that the Court
9 would know all the points that I raised.

10 MR. PRESIDENT:

11 And how much time do you need for that?

12 MS. VEILLEUX:

13 One hour, one and half hours.

14 MR. PRESIDENT:

15 Certainly, not one and half hours, counsel.
16 One hour, maybe. The document, we received
17 your document and we've read it. So, if you
18 can present it briefly, orally and touch on
19 the salient points. You don't need to read
20 the whole document, but we will concede you
21 that if you insist. But before then let me
22 give the floor to Judge Sekule.

23 JUDGE SEKULE:

24 Thank you, Presiding Judge. Maybe the
25 problem I had may be solved if counsel's is

1 going to read. But I wanted to make a
2 request and that is because I don't read
3 French, and there are many documentations
4 if counsel, you are going to make references
5 to the various documents you filed, I was
6 going to request that at least you specify
7 which date and what have you, so that at
8 least I can also have time when I get the
9 appropriate translations, to follow your
10 arguments. So that's exactly what I wanted
11 to asked you of, counsel. Because so that,
12 it's known exactly the document you are
13 referring to, of course. In other words,
14 you identify the documents so that it can be
15 followed up much later. Maybe if you want
16 going to read, maybe that might not be the
17 problem I had, might not have arise. So
18 that's the request I wanted to make from
19 you, Counsel. Thank you.

20 MS. VEILLEUX:

21 To assist you, I'd like to say that first of
22 all, there was a motion, the Prosecution
23 motion filed on 19th November, we received
24 the supporting material much later. But the
25 Article provides that this should have been

1 presented within sixty days. Not only was
2 this motion not presented within the time
3 frame but it was withdrawn on the 3rd March,
4 to present a new motion, such that we came
5 up with a brief. We had already prepared a
6 brief on the basis of the first one on
7 inadmissibility, and we had to come up with
8 another one so as not to be foreclosed from
9 submitting on the second motion presented by
10 the Prosecutor. And that is why the
11 inadmissibility in law is in reliance of
12 Article 72. As I said earlier on it is not
13 as in 48 bis which applies because this is a
14 joinder of -- this is a joinder of Accused.

15 MR. PRESIDENT:

16 Thank you, Counsel. Since we received so
17 many documents from you, some talk about
18 formal defects which is not what you are
19 talking about now, I would like you to limit
20 yourself to the motion on joinder of motion
21 -- of joinder of Accused.

22 MS. VEILLEUX:

23 As I explained earlier on, the Prosecutor
24 filed a first motion on a joinder among
25 which accused, including my client, and this

1 was withdrawn on the 19th -- 28th March.
2 Another one dated 3rd March 2000 was filed
3 by the Prosecutor. And this time, this
4 covers eight accused. How many, I'd like to
5 know, how many times would the Prosecutor
6 amend his indictment for us to be clear, to
7 know the exact number of people?

8 THE INTERPRETER:

9 Your Honour, can counsel read slowly? And
10 again, we are not too sure of the exact
11 document she is reading.

12 MR. PRESIDENT:

13 She can slow down a little bit.

14 THE INTERPRETER:

15 Well, Mr. President, I think that is slow
16 enough. The other problem is we do not have
17 this document that is being read.

18 MS. VEILLEUX:

19 So, the Prosecutor has a period of sixty
20 days to file a motion for joinder, including
21 the Accused, and this in application of
22 Article 72(a) of the Rules of Procedure and
23 Evidence. According to this rule,
24 preliminary motions of one or the other
25 party, should be raised within the sixty

1 days following disclosure by the Prosecutor
2 to the Defence of all materials envisaged by
3 Rule 66(a). I explained earlier on that
4 these materials were given to us on the 16th
5 of September 1999.

6

7 The new motion for a joinder by the
8 Prosecutor was on 3rd March 2000, and this
9 was outside the time frame prescribed for in
10 Article 72(a) of the rules. The disclosure
11 of the material to the Accused was done on
12 16th September 1997. Article 20 of the
13 Statute of the Tribunal provides that all
14 are equal before the International Criminal
15 Tribunal for Rwanda. And this is in
16 reference to Article 72 -- Rule 72(a) of the
17 Rules of Procedure. When you respect the
18 time frame of sixty days within which the
19 Prosecutor needed to file his motion, and
20 not the motion under Article 73. Between the
21 initial appearance of the Accused, 7th or
22 8th August 1999, and the filing of the
23 motion of the Prosecutor on 3rd March 2000,
24 we had 210 days, which by far exceed beyond
25 the maximum time frame prescribed for in the

1 Rules of Procedure and Evidence.

2

3 Similarly, on 16th September 1999, date on
4 which the Accused received the supporting
5 material on 3rd March 2000, that work up to
6 180 days, which again extend beyond the time
7 frame which should apply to the two parties
8 as it is said at the beginning of the Rule.

9 The Prosecutor's motion for joinder which
10 was filed to the registry on 3rd March 2000,
11 is therefore inadmissible, in reliance of
12 Article 72(a) of the Rules of Procedure and
13 Evidence. Prosecutor produced an indictment
14 against the Accused which was presented to a
15 judge for review. Here, he intends to join
16 four Accused, Casimir Bizimungu, Jérôme
17 Bicamumpaka, Prosper Mugiraneza and Justin
18 Mugenzi. Further, following this new
19 motion, Prosecutor's motion for joinder of
20 Accused, we are not too sure of the other
21 Accused that this Accused would be joined
22 with, because there are so many
23 inconsistencies and contradictions. Article
24 48-- Rule 48 of the Rules of Procedure and
25 Evidence provides that persons accused of

1 the same -- persons accused of the same or
2 different crimes committed in the course of
3 the same transaction may be jointly charged
4 and tried. In the Prosecutor's motion, this
5 is a joinder of Accused and not a joinder of
6 indictments.

7

8 During his initial appearance, the Accused
9 refused to plead to the indictment on the--
10 due to the fact that he has not been
11 assigned counsel and the fact that he did
12 not understand the content of the indictment
13 which was vague and inaccurate. Without his
14 counsel, he found himself unable to
15 challenge the validity of the indictment.
16 The Chamber in application of Article 72--
17 of Rule 72(ii), entered a plea of not guilty
18 on behalf of the Accused. And this is very
19 important.

20

21 According to Rule 72(b) of the Rules of
22 Procedure and Evidence, the Trial Chamber
23 may order a separate trial for accused who
24 had been joined so as to avoid any conflicts
25 of interest, so as not to cause serious

1 prejudice to the Accused or to safeguard the
2 interest of justice.

3

4 These are the points that I have developed
5 further on regarding Rule 48, regarding the
6 interest of justice and serious prejudice to
7 the Accused. The Accused declares that
8 there is a conflict of interest in joining
9 him to another Accused before the Tribunal,
10 which conflict of interest is of such a
11 nature as to cause him serious prejudice.
12 Separation would contribute to the interest
13 of justice-- severance would contribute to
14 the interest of justice. Besides, a joinder
15 of Accused would bring about certain
16 procedural problems which would delay the
17 trial and therefore, the prolongation of the
18 detention, which again is a serious
19 prejudice to the Accused.

20

21 The Prosecutor states in paragraph 72 of his
22 second motion that the joint trial of the
23 Accused could be held very much faster than
24 a separate trial if even if all of them are
25 together, it is shorter than one Accused.

1 It is clear that this, based on the fact
2 that various witnesses would have to appear
3 only once for all the Accused or we realize
4 that Jérôme Bicamumpaka, out of 50 witnesses
5 only two of them are referring, testifying
6 against him.

7 MR. PRESIDENT:

8 (Un-interpreted).

9 THE INTERPRETER:

10 Your Honour, he's reading the document.
11 There are certain -- we have a serious
12 problem here. Counsel is reading the
13 document which the interpreters do not have.
14 Standard practice requires that the
15 interpreters should have a document, go
16 through it before it is read.

17 MS. VEILLEUX:

18 Is contrary to an expeditious and fair trial
19 and also to the interest of justice. To
20 raise the fact that there are ten persons
21 and not eight anymore, especially, since the
22 Prosecution is mentioning ten Accused
23 persons and not eight. Who is he talking of?
24 They are vague and imprecise allegations
25 from the Prosecutor which do not permit us

1 to know who exactly he is talking about.

2

3 The Prosecutor is talking about the
4 existence of related and indivisible facts
5 and that a joinder of Accused would
6 contribute to avoid contradictions between
7 the proceedings and decisions which will be
8 taken by the Chamber. But the Prosecutor
9 does not proof or exhibit his related and
10 indivisible facts in his motion. In fact,
11 the facts at issue are neither indivisible
12 nor related. And that is why I tried to
13 develop that in the second part, all that is
14 not related and indivisible.

15

16 The Prosecutor of the Tribunal states in his
17 motion for a joinder of 3rd March 2000, that
18 the facts and issue for the eight accused
19 persons for which the joinder was being
20 requested are related and indivisible. But
21 neither in the indictment or in the document
22 of supporting material, the Prosecutor does
23 not prove these related and indivisible
24 nature. A careful look at the content of
25 these two documents, shows that as far as

1 Jérôme Clement Bicamumpaka is concerned,
2 there is no relation of the facts mentioned
3 by the Prosecutor.

4

5 The only fact raised by the Prosecutor is
6 the one of Witness 2F, 55, 69, who states in
7 paragraph 5.21, supporting material which
8 Jérôme Clement Bicamumpaka spent most of his
9 time, if not, all his time abroad. That is
10 during the period from April to July 1994.

11 To support his allegations of 5.2 of the
12 indictment, the Prosecutor talks about a
13 letter dated 3 December 1993, addressed to
14 the commander by officers of the UNAMIR,
15 copies of which were addressed to the former
16 ministers, Casimir Bizimungu, Prosper
17 Mugiraneza and Justin Mugenzi. He
18 arbitrarily adds the name of Jérôme Clement
19 Bicamumpaka. In December 1993, Jérôme
20 Clement Bicamumpaka was not a member of the
21 government. The Accused is requesting that
22 his name should be deleted from paragraph
23 5.2 or that that entire paragraph should be
24 withdrawn from this indictment.

25

1 In paragraph 5.1 of the indictment, the
2 Prosecutor could carefully add the name of
3 the Accused to that of twelve Rwandan
4 personalities whom he charges of having
5 organized a plan with the aim of
6 exterminating the Tutsi population and
7 eliminating members of the opposition. He
8 doesn't supply any witness to other forms of
9 proof that this Accused is guilty of these
10 crimes. The Accused is therefore requesting
11 that his name should be withdrawn from that
12 paragraph and also from the indictment.

13

14 In paragraph 5.2 to 5.7, the Prosecutor
15 accuses a number of people of having made
16 speeches inciting hatred and ethnic violence
17 which constitutes an important element of
18 the plan that was set up. To prove these
19 charges, the Prosecutor bases himself on the
20 testimony of Alison Des Forges and on a
21 letter from the-- of Bureau G-2 of the
22 headquarters of the army. But neither the
23 Prosecutor nor Alison Des Forges nor even
24 the letter from the G-2 office talks about
25 Jérôme Bicamumpaka. Mr. Bicamumpaka is

1 therefore asking that his name should be
2 withdrawn from 5.2, 5.3, 5.4, 5.5, 5.6 and
3 5.7 of his indictment.

4

5 In paragraph 5.8 of the indictment, the
6 Prosecutor talks about Tutsis being the
7 enemies and this description was supposed to
8 be used by Mugenzi. The Prosecutor cites in
9 his supporting material, Witness 96, which
10 states that Justin Mugenzi, Eliezer
11 Niyitegeka preached about ethnic differences
12 and also quotes Filip Reyntjens as a
13 witness. And neither of these witnesses
14 talks about Jérôme Clement Bicamumpaka as
15 far as this allegation is concern. The
16 Accused is therefore asking that paragraph
17 5.8 of his indictment should be deleted. We
18 cannot say there is any related nature
19 because none of the witnesses talks about
20 Jérôme Clement Bicamumpaka.

21

22 In paragraph 5.9 of the indictment, the
23 Prosecutor talks about a meeting of the MRND
24 party in Nyamirambo Stadium under the
25 chairmanship of Mathieu Ngirumpaste. He

1 does not mention the name of the Accused,
2 and the Witness, his name does not appear in
3 the motion. So, he is also asking that that
4 paragraph should be deleted from the
5 indictment.

6

7 In paragraph 5.10 of the indictment also,
8 when we talk about MRND, we should say that
9 Jérôme Clement Bicamumpaka was in MDR party
10 and not MRND. He was a member of the
11 opposition, the opposition which was being
12 persecuted. In paragraph 5.10 of the
13 indictment, the Prosecutor accuses Théodore
14 Sindikubwabo, Jean Kambanda, André
15 Rwamakuba, André Ntagerura, as having
16 publicly incited the people to exterminate
17 the Tutsis population and its accomplices.
18 And as his supporting evidence he gives the
19 Witness, IIF 0919, IIF 0934, that André
20 Rwamakuba, Eliézer Niyitegeka incited the
21 population to exterminate the Tutsi
22 population. This Witness does not say
23 anything about Jérôme Clement Bicamumpaka.
24 The Accused is therefore asking that his
25 name should be withdrawn from paragraph 5.10

1 of the indictment.

2

3 In paragraph 5.11 of the indictment, the
4 Prosecutor is talking about the creation of
5 media means among them, RTLM Radio and the
6 Kangura Newspaper, which were founded and
7 used by senior personalities of the MRND to
8 propagate extremist ideologies. However, the
9 Prosecutor does not cite the name of the
10 Accused. Similarly, none of the witnesses,
11 FP, AN, DS, AN and GO, mentions the Accused
12 name. In fact, Mr. Bicamumpaka was a member
13 of the MDR party which was a party, a
14 democratic party of opposition. He is
15 therefore asking that his name should be
16 deleted from paragraph 5.11 because there is
17 no relation.

18

19 In paragraph 5.12 of the indictment, the
20 Prosecutor is asking-- accusing Théodore
21 Sindikubwabo, Jean Kambanda, André
22 Rwamakuba, André Ntagerura, please, excuse
23 my pronunciation, Justin Mugenzi, Hassan
24 Ngeze and Georges Ruggiu of having incited,
25 aided and abetted the extermination of the

1 population. As evidence Witness GI, 1269
2 does not talk about Jérôme Clement
3 Bicamumpaka. The Accused therefore is
4 asking that paragraph 5.12 should be
5 deleted.

6

7 Paragraphs 5.13, 5.14, 5.15. 5.16, 5.17,
8 5.18 and 5.19, the Prosecutor is talking
9 about the militia, about their training and
10 the arms and particularly the Interahamwe.
11 He cites a good number of personalities from
12 the MRND party which played the role of
13 bringing out the Interahamwe. As evidence,
14 he cites Witness ED, François Xavier
15 Nsanzuwera, Alison Des Forges, MJ, MK, IFF
16 4253 but neither the Prosecutor nor any of
17 the witnesses mentions the name of the
18 Accused in the seven paragraphs concerned.
19 That is why the Accused is asking that those
20 seven paragraphs should be withdrawn from
21 this indictment.

22

23 In paragraph 5.20 of the indictment, the
24 Prosecutor is talking about the statements
25 from President Habyarimana during a meeting

1 of the MRND party, which was held in
2 Ruhengeri. Witnesses A1 and A20 say nothing
3 is said about Jérôme Clement Bicamumpaka.
4 They are talking about the meetings of the
5 MRND party which was held in Ruhengeri on
6 the 15th of November 1992 and which was
7 initiated by Casimir Bizimungu. And during
8 what meeting President Juvénal Habyarimana
9 stated that he wanted to use the Interahamwe
10 to crush the opposition. Not only Jérôme
11 Clement Bicamumpaka was present but he was a
12 member of the opposition of the members of
13 the MDR, whom the President wanted to crush.
14 So, the Accused is therefore asking that
15 paragraph 5.20 should be deleted from this
16 indictment.

17
18 In paragraph 5.21 of the indictment, the
19 Prosecutor is talking about the Minister of
20 Finance who withdrew money from the funds of
21 the Gitarama prefecture and for evidence, he
22 talked about IIF5769 but nothing concerns
23 Jérôme Bicamumpaka. He is therefore asking
24 that that paragraph should be deleted from
25 his indictment.

1

2 In paragraph 5.22 and 5.23 of the
3 indictment, the Prosecutor is talking about
4 people who are alleged to have participated
5 in the distribution of arms to the
6 militiamen and the civilian population. For
7 evidence, he talks about Witnesses A1, EB,
8 ZD, MJ and OW. In these two paragraphs, the
9 Prosecutor does not talk about Jérôme
10 Clement Bicamumpaka and none of the five
11 witnesses talks about the Accused. The
12 Accused is therefore asking that paragraph
13 5.22 and 5.23 should be deleted from this
14 indictment.

15

16 In paragraph 5.24, the Prosecutor is talking
17 about a letter from Ms. Agathe
18 Uwilingiyimana, who at the time was Prime
19 Minister and was addressed to the ministers
20 of her government, amongst them, Justin
21 Mugenzi. The aim of that letter was to
22 withdraw all firearms which has been
23 illegally distributed to the civilian
24 population. Jérôme Clement Bicamumpaka was
25 not a minister under the government of Ms.

1 Agathe Uwilingiyimana and did not receive
2 this letter. Whereas the letter is
3 addressed solely to members of the
4 government who were under her authority.
5 So, the Accused is therefore asking that
6 that paragraph should be deleted from the
7 indictment.

8

9 In paragraph 5.25, 5.26 and 5.27 of the
10 indictment, the Prosecutor talks about the
11 violation of the disarmament program called
12 "Kigali Weapons Secure Area" by influential
13 members of the MRND party. Those who
14 resisted the execution of this program hid
15 weapons in caches down. As evidence, he
16 cites Witnesses ZC, Filip Reyntjens and
17 MARCLUC. Neither the Prosecutor nor any of
18 his witnesses mentions the name of the
19 Accused alongside those cited. He is
20 therefore asking that these three
21 paragraphs should be deleted from his
22 indictment.

23

24 Since the four witnesses say nothing about
25 the Accused and there is no relation in

1 5.29 -- 5.28, 5.29, 5.30, 5.31 and 5.32, the
2 Prosecutor talks about the identification of
3 the Tutsi as the main enemy, and members of
4 opposition as accomplices in the drawing up
5 of the list of Tutsi people who are
6 distributing arms, and asked that Mr.
7 Bagosora should kill people on the basis of
8 this pre-established list, the Accused is
9 not cited as somebody who played any role.

10 Besides, he was not a member of the Armed
11 Forces, he not a member of the Interahamwe,
12 neither was he a member of the government of
13 Agathe Uwilingiyimana. But then, the
14 Prosecutor cites as evidence Witnesses AX,
15 AK, DU, CP, ET, BA and GJ. And these eight
16 witnesses say nothing about the Accused. So,
17 the Accused is therefore asking for the
18 withdrawal of 5.28, 5.29, 5.30, 5.31 and
19 5.32 of his indictment.

20

21 In paragraph 5.33, 5.34, 5.35, 5.36, 5.37,
22 the Prosecutor talks about previous cases of
23 campaigns of incitement to ethnic violence
24 carried out by local authorities and
25 followed by massacres of Tutsi with the

1 collaboration of the Interahamwe-MRND, and
2 some soldiers who did not want the setting
3 up of institutions set up by the Arusha
4 Accords, and attacks carried out by civilian
5 people on the 7th of April 1994. The
6 Prosecutor, as evidence, talks about
7 Witnesses CK, ER, MARCLUC, AX, FIDH, René
8 Dégni-Segui, GA, GB, GC, GD, GP and GE. None
9 of the twelve witnesses of the Prosecutor
10 mentions the Accused's name, not even the
11 Prosecutor, himself. So, these witnesses
12 cannot testify. So, the Accused is asking
13 for the withdrawal of 5.33, 5.34, 5.35, 5.36
14 and 5.37, of his indictment, since it does
15 not concern him at all.

16

17 In paragraph 6.1, 6.2 of the indictment, the
18 Prosecutor talks about the shooting down of
19 the plane of President Habyarimana, on the
20 6th of April 1994, and its consequences,
21 that is, the killing of-- or the killing of
22 the Armed Forces. He talked about a number
23 of senior responsible officers of the Army
24 and Defence, and that Colonel Bagosora was
25 the man of the moment who could solve the

1 crisis. Not only he does not mention the
2 Accused in these two paragraphs, it also
3 talks about the statement from Colonel
4 Bagosora, who, as evidence, does not even
5 mention the Accused's name. Besides, on the
6 6th of April, the Accused was not a member
7 of the government. So, the Accused is
8 therefore asking that paragraph 6.1 and 6.2
9 of his indictment, should be deleted.

10

11 In 6.3 and 6.4 of the indictment, the
12 Prosecutor is talking about the attempt to
13 take over power by soldiers. The issue here
14 is a meeting of soldiers during which there
15 was an attempt to take power and at the same
16 time, senior political officials and blue
17 helmets were killed; and the elimination of
18 political or people in the opposition. As
19 evidence, he relies on Colonel-- the
20 witnesses BW, DT, Annunciata, EQ and ZB. Not
21 only does the Prosecutor not mention the
22 name of the Accused in these two paragraphs,
23 the witnesses do not talk about him.
24 Besides, the Accused was not a soldier, so,
25 how could he have been taking part in the

1 soldiers meetings. Besides, during the
2 meeting, not only was the Accused not a
3 minister, he did not even know that he was
4 going to become a minister on the 9th of
5 April 1994. The Accused is therefore asking
6 that paragraphs 6.3 and 6.4, should be
7 deleted from his indictment.

8

9 In paragraph 6.5, 6.6, 6.7, 6.8, 6.9 and
10 6.10 of the indictment, the Prosecutor is
11 talking about the formation of the
12 provisional government, and he talks about
13 the fact that the Presidential Guard moved
14 ministers of MRND and members of the
15 political party, amongst whom Casimir
16 Bizimungu and Justin Mugenzi; because
17 Colonel Bagosora, convened members of the
18 steering committee of MRND, to swear in the
19 new President of the Republic. The same
20 personalities convened political-- members
21 of political parties to a meeting in order
22 to form the new government in which he was
23 sworn-in on the 9th of April, 1994. Many
24 members of the government approved the
25 extermination plan set up and took the

1 necessary measures to execute that plan.
2 The Prosecutor based his accused-- his
3 charges on Witness DY, Colonel Bagosora, EL
4 and EJ. Neither the Prosecutor nor the
5 witnesses, mentions the presence of the
6 Accused in all these meetings. Neither do
7 they show the role that the Accused played
8 in all this. The Prosecutor, maliciously
9 adds the name of the Accused on the names of
10 personalities, without proving anything
11 else. The Accused is therefore asking that
12 paragraphs 6.5, 6.6, 6.7, 6.8, 6.9 and 6.10
13 should be deleted from his indictment
14 because there is no connection, no link
15 between that and what happened.

16
C In paragraphs 6.11, 6.12 and 6.13, the
17 Prosecutor talks about reducing soldiers in
18 the army. As far as he is concerned, members
19 of the extremist class adopted a strategy
20 whose aim was to withdraw the forces.
21
22 Leaders of MRND held meetings to prepare
23 strategies to provoke the Belgian troops.
24 Consequently, ten Belgian blue helmets were
25 killed on the 7th of April 1994, by FAR

1 elements. The killing of these blue helmets
2 made the Belgian government to decide to
3 withdraw its contingent after consultation
4 with the United Nations. The Prosecutor,
5 bases himself on the evidence from Luc
6 Marchal and Lieutenant Nees, does not
7 mention the name of the Accused. More so,
8 because the killing of the Belgian blue
9 helmets took place before the Interim
10 Government was set up on the 9th of April,
11 1994. The same is true for all these
12 witnesses. So, these cannot say-- testify
13 in the case of the Accused. The Accused is
14 therefore asking for the withdrawal of 6.11,
15 6.12 and 6.13 of his indictment.

16

17 In paragraphs 6.14, 6.15 and 6.16, the
18 Prosecutor talks about the commission on the
19 massacres and states that the planes-- the
20 crimes had been planned long ago and they
21 were supposed to be carried out by soldiers,
22 gendarmes and the militiamen, following
23 orders and directives, or the knowledge of
24 others with whom the roadblocks had been set
25 up, the Interahamwe-MRND and the

1 Impuzamugambi, all these carried out as--
2 murders and that the very influential
3 leaders played a leadership role in these
4 massacres. The Prosecutor, is basing his
5 charges on the Witnesses AE, DE, EK, GS, FM
6 ZC and ZF. The Prosecutor even adds
7 arbitrarily and maliciously, the name of the
8 Accused which-- who did not belong either
9 to the MRND party, to the Interahamwe or
10 Impuzamungambi-CDR, and was not even a
11 soldier or a gendarme. All the witnesses
12 cited by the Prosecutor did not mention the
13 name of the Accused, and they cannot
14 testify in this case. The Accused is
15 therefore asking that his name should be
16 withdrawn from the three paragraphs; 6.14,
17 6.15 and 1.16 of his indictment.

18
19 I know that it is long and difficult to read
20 an indictment where an Accused is not
21 concern at all.

22 MR. PRESIDENT:

23 We'll allow you to do that and we are
24 listening to you. Motions, motions for
25 indictment are made under other

1 circumstances. So, we wonder whether we are
2 within the time limit but that
3 notwithstanding, we ask you to go ahead. So,
4 we are listening to you.

5 MS. VEILLEUX:

6 In paragraph 6.17 of the indictment, the
7 Prosecutor is accusing Joseph Nzirorera,
8 Justin Mugenzi and the Interahamwe, of
9 trying to hide massacres in Kigali. He does
10 not mention Jérôme Clement Bicamumpaka's
11 name. He doesn't-- in the evidence provided,
12 Witness ZC states that Justin Mugenzi is
13 alleged to have receive a report on the
14 success of the mission about the massacres
15 in camera in Kigali, and states that he met
16 Eliezer Niyitegeka in a hotel but does not
17 mention Jérôme Clement Bicamumpaka's name.
18 The Accused is therefore asking that that
19 paragraph should be deleted from his
20 indictment.

21
22 In paragraphs 6.18 and 6.19 of the
23 indictment, the Prosecutor talks the
24 provisional government and accuses the
25 members of the government to have approved

1 the extermination plan set up during-- by
2 taking an oath. According to him, several
3 members of government incited the population
4 to eliminate the enemy and its accomplices
5 and distributed weapons to them. There is
6 also a question of convening all the *prefets*
7 as early as 8th April. The Prosecutor talked
8 about ministers who approved the plan for
9 extermination, but does not mention the name
10 of the Accused. He was out of Rwanda for
11 almost the entire month of April 1994, and
12 he did not take part in convening the
13 meeting of *prefets*, or in holding the
14 meeting. So, it is just maliciously and
15 arbitrarily that the Prosecutor adds his
16 name in the list. The Prosecutor bases his
17 allegations on the testimonies of Witness
18 ZB, who says nothing about the Accused.
19 Hence, the Accused requests that that
20 paragraph should be deleted.

21
22 In paragraph 6.20, the Prosecutor talks
23 about that Niyitegeka read his statement
24 where he asked people to desist from their
25 work. The Prosecutor does not mention the

1 link between this release and Jérôme
2 Bicamumpaka, both in time and space, which
3 is not done. So, the Accused is asking that
4 this paragraph should be withdrawn from the
5 indictment.

6

7 In paragraph 6.21 of the indictment, the
8 Prosecutor talks about the dismissal of many
9 personalities, including the *prefet* of
10 Butare, because they refused to take part in
11 the massacres. He bases his evidence or his
12 allegation on the witnesses but neither the
13 Prosecutor, nor his two witnesses, mentioned
14 the Accused's name. The Accused never took
15 part in the meeting for anybody who was
16 dismissed. The Accused is therefore asking
17 that this paragraph should be deleted from
18 his indictment.

19

20 In paragraph 6.22 of the indictment, the
21 Prosecutor is talking about numerous
22 meetings of the Council of Ministers, during
23 which, the government was regularly informed
24 of the situation of the massacres. He bases
25 his allegations on the testimony of Z-- of

1 Witnesses ZB and BW. And according to
2 Witness ZB, Minister Karemera, was not
3 giving regular accounts of what was
4 happening. If the minister had submitted
5 his report irregularly, how can we therefore
6 say that the members of government were well
7 informed? Moreso, because neither of the
8 two witnesses mentions the name of Jérôme
9 Bicamumpaka as been informed of the report
10 that is mentioned in the meeting. Besides,
11 he was even out of Rwanda.

12
13 Furthermore, the Prosecutor mentioned a
14 number of meetings that were held on some
15 dates, in some places. In the indictment, it
16 is said that the meeting-- the government
17 held meetings regularly, whereas, we realize
18 in the evidence by minister-- that the
19 Minister, Karemera, informed the government
20 not on a regular basis. The Accused is
21 therefore asking for the withdrawal of that
22 paragraph or that they should ask that-- the
23 Prosecutor should be asked to provide
24 details so that they know exactly what it is
25 about.

1

2 In paragraph 6.23 of the indictment, the
3 Prosecutor talks about the adoption of
4 directives and instructions given to the
5 prefets and the *bourgmestres*, in order to
6 incite, aid and abet the massacres. Talking
7 about those who were in charge of
8 pacification by prefecture, he uses or his
9 bases is only the testimony of Witness ZB.
10 Not only the Prosecutor and the witness did
11 not mention the Accused's name, he never
12 received or give any-- he never gave any
13 directives to the *bourgmestres* or the
14 prefets or he did not appoint anybody for
15 pacification. In fact, he was out of the
16 country during almost the entire period from
17 April to July, 1994. The Accused is
18 therefore asking that paragraph 6.23, should
19 be deleted from his indictment.

20

21 On page-- paragraph 6.24, given the fact
22 that the new prefet was from the MDR party,
23 there was no massacre of civilian
24 population. According to him, there were
25 only clashes between members of the MRND and

1 those of MDR.

2 MR. PRESIDENT:

3 Madam Veilleux, Judge Güney would like to
4 ask you a number of questions.

5 JUDGE GÜNEY:

6 You have already referred to the relatedness
7 and indivisibility as the basis for joinder.
8 And in dealing with the conicity issue, you
9 stressed mostly on the time and space and
10 stated mostly, that your client was Minister
11 of Foreign Affairs, and was most of the time
12 abroad. Is that correct?

13 MS. VEILLEUX:

14 It's correct.

15

16 (PAGES 58 TO 96 REPORTED BY H. FARAGE)

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1 (Time: 1230) .

2 JUDGE GÜNEY:

3 Are there any other elements on which
4 connexité could be based. Could this
5 nexus be established by a unit of
6 purpose, for example in a previous
7 meeting?

8 MS. VEILLEUX:

9 Honourable Judges, Your Honours, if he
10 says that there was a plan before the 6th
11 of April, how is it possible that Jérôme
12 Bicamumpaka who was appointed Minister on
13 the 9th of April, how could he have been
14 part of that plan? Where is the nexus?
15 There is a plan and they give a number of
16 names, they don't mention this name among
17 those that are given and since on the 8
18 of April the Minister of External Affairs
19 is assassinated and Jérôme Clement
20 Bicamumpaka takes over at the last
21 minute, he did not even know that he was
22 going to be appointed Minister. How can
23 he be part of that plan, especially that
24 in the indictment there is no testimony
25 to that effect, there is no supporting

1 material, and there is no reference to
2 the fact that he was part of it?

3 JUDGE GÜNEY:

4 I am asking you a specific question could
5 you be kind enough to answer the
6 question. Could a nexus be established by
7 a unit of purpose because of an agreement
8 in advance, that is my first question?

9 MS. VEILLEUX:

10 No, Your Honour, there was no nexus.

11 JUDGE GÜNEY:

12 Second question, could there be nexus as
13 a causer link in a course to effect
14 relationship?

15 MS. VEILLEUX:

16 Could you explain to me what you mean by
17 causer link?

18 JUDGE GÜNEY:

19 Because you decided -- you tried to talk
20 about it -- to limit it to unit of time
21 and place which is not the case. There
22 are a number of elements on which this
23 nexus could be based, that is my
24 question?

25 MS. VEILLEUX:

1 I do not see how this nexus, on what this
2 nexus could be based, I just --

3 JUDGE GÜNEY:

4 Now you can go ahead, thank you.

5 MS. VEILLEUX:

6 In paragraph 6.24 of the indictment,
7 Prosecutor talks about an order of the
8 government for erection of roadblocks,
9 and mentions Pauline Nyiramasuhuko and
10 Arsene Shalom Ntahobari. The evidence is
11 the letter of the Minister of Interior
12 dated 27 April 1994, addressed to the
13 prefect requesting them to erect
14 roadblocks as well as the statements of
15 witness QJ FB SR and FA. However, he
16 does not exist the linkage that exist
17 between this letter and Jérôme Clement
18 Bicamumpaka just as he does not say that
19 Jérôme Bicamumpaka was informed about
20 this letter. And Jérôme Bicamumpaka was
21 out of the country at the time. Similarly
22 witnesses QJ, FB, SR and FA do not in
23 anyway refer to the Accused. This
24 paragraph should be withdrawn from the
25 indictment particularly since these are

1 no part of the joinder requested by the
2 Prosecutor on 3rd March 2000. The
3 Accused therefore, requests this
4 paragraph to be withdrawn from his
5 indictment. Paragraph 6.25 of the
6 indictment refers to directives for civil
7 defence. As evidence, the Prosecutor
8 calls on witnesses CR 11F at 241 ET and
9 ZB who testified as follows: Witness CR
10 testifies that Prosper Mugiraneza and he
11 himself said that the arms that they
12 referred to were used to kill the Tutsis.
13 Witness 11F at 241 stated that in October
14 94 Prosper Mugiraneza participated in a
15 meeting held in Cyangugu. None of these
16 witnesses refer to the adoption of the
17 self defence program and Bicamumpaka
18 because he did not participate in any
19 meeting that adopted this program, if
20 indeed there was -- there were meetings
21 because in fact at the time the Accused
22 was out of the country. Similarly, he
23 did not participate in the meeting held
24 in Cyangugu. At the time the Accused was
25 out of the country. The Accused

1 therefore has requested this paragraph to
2 be withdrawn from his indictment.

3 Paragraph 6.26 of the indictment
4 Prosecutor states that Justin Mugenzi,
5 Casimir Bizimungu, Prosper Mugiraneza
6 Jérôme Bicamumpaka, Eliezer Niyitegeka
7 officially went to various prefectures of
8 Rwanda so as to check on the
9 implementation of government directives.

10 As evidence he mentions witness 2F4140
11 who said who said Edouard Karemera and
12 Eliezer Niyitegeka went to Kibuye.

13 Witness FG makes the same statement
14 regarding Eliezer Niyitegeka. It
15 therefore appears that neither the
16 Prosecutor nor his witnesses said to what
17 extent Bicamumpaka was involved because
18 in fact he did not go to any of these
19 prefectures. Witness 2F4140 FA LF
20 LP FE PB LG FH also do not mention Jérôme
21 Clement Bicamumpaka while referring to
22 the Ministers who went to the
23 prefectures. The Prosecutor maliciously
24 adds the name of the Accused without
25 adducing evidence, and no witness talks

1 about the Accused because in fact he was
2 out of the country. The Accused
3 therefore is requesting the withdrawal of
4 his name -- the withdrawal this paragraph
5 from his indictment. Paragraph 6.27 of
6 indictment said that various members of
7 government went to the various
8 prefectures to incite and encourage the
9 population to cause -- to massacre. He
10 maliciously adds at the name of the
11 Accused as having been to one of the
12 prefectures. Indeed the testimony of
13 witness AG talks about the participation
14 of Eliezer Niyitegeka in a meeting in
15 Kibuye. Witness FG also said that Justin
16 Mugenzi participated in a meeting held on
17 18 April, 1994, and it was said this
18 morning that Mr. Karemera was appointed
19 Minister on 25th May. These witnesses do
20 not talk about Jérôme Bicamumpaka because
21 he did not participate in any of the
22 meetings of Kibuye Murambi. Similarly
23 witnesses FF FE LF PB QF QB QA do not
24 talk about the Accused. The Accused
25 therefore requests the withdrawal of this

1 -- of paragraph 627 -- 627 from his
2 indictment.

3

4 Paragraph 6.28 of the indictment,
5 Prosecutor accuse Justin Mugenzi of
6 having made a statement inciting to kill
7 Tutsi. As his evidence he refers to
8 testimony of witnesses EJ ON GI WD
9 RUSALEO-6, 0625K and FH. He does not
10 mention the Accused. Similarly according
11 to witnesses EG and ON Justin Mugenzi
12 made statements inciting to killing of
13 Tutsis on 20th April 1994 in Gisenyi. He
14 does not mention Bicamumpaka. Witness GI
15 says he heard Mugenzi say on radio RTLM
16 saying that they should go and look for
17 the enemies in the neighborhoods and kill
18 them. The enemies being the Tutsis and
19 the accomplices. Here again he does not
20 mention Bicamumpaka. Witness WD says that
21 he heard Justin Mugenzi and Eliezer
22 Niyitegeka on 7th April 1994 in Hotel
23 Diplomats making inciting statements.
24 There again he does not mention Jérôme
25 Clement Bicamumpaka who was not a

1 Minister and did not know he was going to
2 become a Minister. Witness RUSALEO-6
3 says that Justin Mugenzi said that if
4 there were given ten thousand guns they
5 were going to exterminate them. Witness
6 0625K94 says that he saw Eliezer
7 Niyitegeka and Justin Mugenzi, in a
8 meeting held in Murambi. He also does not
9 mention Jérôme Clement Bicamumpaka.

10 Finally witness FH states that in that
11 same meeting of Murambi he saw Edouard
12 Karemara and Justin Mugenzi. Witness FH
13 does not talk about Jérôme Clement
14 Bicamumpaka. Not only was nothing said on
15 the fact that Jérôme Bicamumpaka used
16 radio RTLM but also no witness did say
17 that he saw Jérôme Clement Bicamumpaka
18 participate in the meetings mentioned
19 above or made a reprehensible statement.

20 The Accused therefore requests that
21 paragraph two, 628 be withdrawn from his
22 indictment. Paragraphs 6.29, Prosecutor
23 accuse Jean Kambanda and André Rwamakuba
24 of using radio RTLM. He supports this
25 with the statements of witnesses FI, FK

1 QI FJ FB GQ QI. HF0938 and IIF0934. The
2 Prosecutor said that he was supervising
3 the activities of the Interahamwe. None
4 of the eight witnesses of the witnesses
5 mention Jérôme Bicamumpaka. Similarly the
6 Prosecutor does not mention the Accused
7 in this paragraph. The Accused therefore
8 requests that this paragraph be withdrawn
9 from his indictment.

10

11 In paragraph 630, 631, 632, to 633
12 Prosecutor states that members of the
13 government new or had cause to know that
14 their subordinates had committed or were
15 about to commit crimes, and did not
16 inform the commission or punish the
17 perpetrators that they failed in their
18 duty to grant the security of the Rwandan
19 population. And the distribution of
20 weapons that was announced over the radio
21 could not escape their attention. As for
22 André Ntagerura he is alleged to have
23 authorized the use of ONATRACOM buses for
24 the transportation of militia, weapons
25 and ammunition as well as Tutsi victims

1 to some of the places of execution. The
2 Prosecutor relies on witness -- the
3 statements made by witnesses EN, Jean
4 Kambanda and on video tapes. None of the
5 Prosecutor's witnesses talks about the
6 applicant, which subordinates are
7 involved here. Prosecutor adds -- does
8 add the name of the Accused in arbitrary
9 and malicious manner to the list of
10 Accused. The Accused is therefore asking
11 that paragraph 6.30, 6.31, 6.32 and 6.33
12 be withdrawn from his indictment.

13

14 In paragraph 6.34 of the indictment the
15 Prosecutor charges Félicien Kabuga,
16 Mathieu Ngirumpatse, Edouard Karemera
17 Anatole Nsengiyumva of having set up a
18 National Defence Fund on the 25th of
19 April 1994. He relies on the statements
20 made by witnesses FD FC and OZ and thus
21 witness OZ states that during a meeting
22 to set up the Nation Defence Fund Edouard
23 Karemera and Eliezer Niyitegeka were
24 present. However, neither the Prosecutor
25 nor these three witnesses talks of the

1 Accused. It does happen that the Accused
2 was in France as of the 25th of April,
3 1994 and therefore would not be party to
4 any meeting regarding the setting up of
5 the National Defence fund. He therefore
6 requests that this paragraph be withdrawn
7 from his indictment and therefore he
8 shouldn't be party to this joinder.

9
10 In paragraph 6.35, 6.36, 6.37, 6.38, 6.39
11 and 6.40 of the indictment, Prosecutor
12 talks of the authority exercised by
13 members of government and political
14 parties on militia and local authorities
15 the authority with respect to the
16 commission of the massacres which were
17 carried out throughout the country
18 following an extermination plan attacks
19 and disappearance of persons who were
20 threatened their murder in complicity
21 with some soldiers. Prosecutor relies
22 mainly on the statement by witness ZA.
23 Again the Prosecutor adds maliciously and
24 arbitrary the name of the accused to the
25 long list of accused. Indeed none of

1 these witnesses talks of the Accused in
2 relations to those charges. The Accused
3 is therefore asking that paragraphs 6.35
4 to 6.40 be withdrawn. Yet, as of the 9th
5 of April 1994 the applicant had asked
6 officially of France and UNAMIR which at
7 the time had military forces in Kigali to
8 intervene and corporate with the
9 government and the Rwandan army to put an
10 end to the massacres in Kigali, before
11 other areas or regions of the country are
12 affected.

13

14 In paragraph 6.41 of the indictment the
15 Prosecutor accuses Casimir Bizimungu for
16 not having taken steps to prevent those
17 crimes committed at the Kigali hospital.

18 He makes mention of witness ZB which
19 makes -- who makes a lot of statements
20 with respect to Casimir Bizimungu.

21 However witness ZB and the Prosecutor do
22 not talk of Jérôme Clement Bicamumpaka.

23 The Accused is therefore asking that that
24 paragraph be withdrawn from the
25 indictment. In paragraph 6.42, 6.43 and

1 6.44 of the indictment the Prosecutor
2 talks about massacres in the Butari
3 prefecture. According to the Prosecutor
4 the government engaged in incitement of
5 the population to involve -- so that
6 they become involved in the massacres. He
7 talks about the role played by Joseph
8 Nzirorera and Casimir Bizimungu in the
9 composition of the government delegation
10 to Butari on the 19th of April 1994 to
11 ensure that the speeches made there have
12 maximum impact on the population.

13 Prosecutor relies on the statements made
14 by ZB and ZC. Both witnesses do not talk
15 about the accused because he did not go
16 to Butare. The Prosecutor only adds on
17 the name of the Accused maliciously and
18 arbitrary to the list of Accused persons.

19 The applicant is therefore asking that
20 paragraph 6.42 to 6.44 be withdrawn from
21 his indictment.

22

23 In paragraph 6.45 of the indictment, the
24 Prosecutor talks of the installation
25 ceremony of the new prefet of Butare on

1 the 19th of April 1994, and accuses
2 Théodore Sindikubwabo of having made an
3 incendiary statement, an inflammatory
4 statement and Jean Kambanda and Justin
5 Mugenzi for not objecting to such
6 statements. The Prosecutor relies on
7 Witnesses ZC, CY, BV and RU. And we have
8 tendered exhibit (R-8). In the speech
9 made by Jean Kambanda in Butare on the
10 19th April 1994, he introduces the
11 members of government who were present at
12 the installation ceremony of the prefect
13 of Butare. He did not refer to the
14 Accused. Witness ZC states that Casimir
15 Bizimungu told him that there was huge
16 delegation which went to Butare and the
17 government was behind them. Neither the
18 Prosecutor nor the witnesses talk of
19 Jérôme Clement Bicamumpaka and the
20 Accused is therefore asking that
21 paragraph 6.45 of his indictment be
22 withdrawn.
23
24 In paragraphs 6.46, 6.47, 6.48, 6.49,
25 6.50 and 6.51 of the indictment,

In paragraphs 6.52 of the indictment the
Prosecutor talks about crimes which
occurred at the Butare University
hospital. And accuses Casimir Bizimungu
and André Rwamakuba. He relies in support
on witness RJ. Neither the Prosecutor nor
witness RJ talks of the Accused. The
Accused therefore asks that that
paragraph be withdrawn from his
indictment because it has no link to him.

1
2 In paragraph 6.53 of the indictment the
3 Prosecutor talks about the fact that the
4 MRND party as of April 1994 had made
5 every effort to chase out of the Gitarama
6 Bourgemesters were opposed to his policy
7 of carrying out massacres, and to replace
8 them with people who were faithful to the
9 party. The Prosecutor relies on the
10 statement made by witness ZB but neither
11 the Prosecutor nor the witness refer to
12 the applicant. The Accused has never been
13 a member of the MRND and has always stood
14 against MRND. He is therefore asking that
15 paragraph 6.53 be withdrawn from his
16 indictment.

17
18 Paragraph 6.54 of the indictment,
19 Prosecutor talks about meetings among
20 officials on the MRND, representatives of
21 local Authorities and members of
22 government who supervised the conduct of
23 the massacres. The witness referred to
24 his witness 0668/K96. This witness states
25 that in the cause of a meeting which took

1 place at the Centre de Formation des
2 Cadres in Murambi. Justin Mugenzi and
3 Edouard Karemera took the floor and in
4 their statement referred to the need to
5 put an end to the killings. Neither the
6 Prosecutor nor witness 0668/K96 talk of
7 the Accused. The Accused is therefore
8 asking that paragraph 6.54 be withdrawn
9 from his indictment.

10

11 In paragraph 6.55 of the indictment the
12 Prosecutor talks about the Gitarama
13 Bourgemestre who were blamed for having
14 refused to implement the instructions of
15 the government. He relies as evidence on
16 witness RUSALEO-6 and witness 0668/K96.

17

18 Witness RUSALEO-6 states that Justin
19 Mugenzi stated, had stated that if he
20 were given ten thousand guns he would be
21 able to exterminate them. As for witness
22 0668/K96 he states that during the
23 meeting which took place at the Central
24 de Formation des Cadres in Murambi,
25 Justin Mugenzi and Edouard Karemera took
the floor and they made speeches asking

1 for an end to the killings. Neither the
2 Prosecutor nor the two witnesses refer to
3 the Accused. The Accused is therefore
4 asking that this paragraph be withdrawn,
5 paragraph 6.55 be withdrawn from his
6 indictment.

7

8 In paragraph 6.56, 6.57, 6.58, 6.59, and
9 6.60 of the indictment, Prosecutor talks
10 about soldiers and Interahamwe militia
11 who had taken away and raped students and
12 Tutsi refugees at the nurse's school in
13 Kabgayi. Having been informed of this
14 situation Augustin Bizimana and Casimir
15 Bizimungu did not take steps to put an
16 end to such crimes. The Prosecutor states
17 that the Gisenyi prefecture was the
18 theatre of massacres of Tutsi civilian
19 population as well as moderate Hutus. As
20 far as he was concerned the same
21 incidents occurred at the Ruhengeri and
22 Kibuye prefectures. He relies on
23 statements made by witnesses EZ,
24 Reyntjens, DM, ZD, EB, ZD and OV. It
25 would appear the Prosecutor -- neither

1 the Prosecutor nor any of the witnesses
2 refer to the Accused. The Accused
3 therefore is asking that paragraph 6.56
4 to 6.60 be withdrawn from his indictment.

5

6 In paragraph 6.61 of the indictment, the
7 Prosecutor talks about ONATRACOM buses
8 which were used in facilitating the
9 movements of the invaders. He relies for
10 support on witnesses 154/H95, 176/H95,
11 FF, GK, LG, 573/K96, IIF 1028, Dec
12 1435/K97 and 143K97. Witness GK states
13 that Eliezer Niyitegeka and Edouard
14 Karemara were at Kibuye during the
15 meeting that took place at the
16 Prefecture. The witness does not mention
17 Jérôme Clement Bicamumpaka. As for
18 witness 573K96 he states that Eliezer
19 Niyitegeka led the attacks in Kibuye.
20 Jérôme Clement Bicamumpaka is not
21 mentioned anywhere in that testimony.
22 Witness IIF 1028 for his part states that
23 he recognized Eliezer Niyitegeka in
24 Gisovu. Same witness does not make any
25 mention of Jérôme Clement Bicamumpaka.

1 Witness Dec 1435/K97 states that he saw
2 Eliezer Niyitegeka kill two children. He
3 adds that Eliezer Niyitegeka associated
4 with the extremist wing of the MDR and
5 that as of the 13 May 1994, he saw him
6 during one of the attacks. Finally, he
7 makes no mention of Jérôme Clement
8 Bicamumpaka. So, neither the Prosecutor
9 nor any of these witnesses do refer to
10 Jérôme Clement Bicamumpaka. The Accused
11 is therefore asking that paragraph 6.61
12 be withdrawn from his indictment because
13 it is not related to him.

14
15 In paragraph 6.62, 6.63, 6.64, 6.65,
16 6.66, 6.67 and 6.68 of the indictment,
17 Prosecutor says that several hundreds of
18 thousands of persons were massacred in
19 Rwanda in April to July 1994. That these
20 massacres were carried out with the
21 participation assistance and
22 encouragement of MRND Interahamwe,
23 soldiers and Gendarmes that it was the
24 outcome of a strategy adopted and
25 prepared by political, civil and military

1 authorities of the country who were
2 intent on exterminating the Tutsis. That
3 other crimes such as rape, sexual assault
4 were committed and that members of
5 government, political officials and
6 military officers aided and abetted their
7 subordinates and third parties in
8 committing the massacres that knowing
9 that these massacres were committed. The
10 political and military authorities took
11 no steps to put an end to them. The
12 Prosecutor relies on witness statements
13 including R. Degni-Segui. Whereas none of
14 these witnesses talks of the Accused. The
15 Prosecutor maliciously and arbitrary adds
16 the name of the Accused to the list. The
17 Accused is therefore asking that
18 paragraph 6.62 to 6.68 be withdrawn from
19 his indictment. Consequently each time
20 the Prosecutor makes mention of the word
21 government he arbitrary adds on the name
22 of the Accused without specifying what
23 actually is brought against him
24 personally. The first charge relies in as
25 evidence for the crime of conspiracy to

1 commit genocide, relies on paragraph 5.1,
2 5.2, 5.14, right up to 6.19, 6.21 to
3 6.26, 6.30 to 6.37, 6.39 to 6.41, 6.43,
4 6.44, 6.46, 6.48 to 6.51, 6.54, 6.61 , to
5 6.64, 6.66, 6.67 and 6.68. Yet all these
6 paragraphs -- in all these paragraphs the
7 Prosecutor does not provide any evidence
8 against the Accused and none of the
9 witnesses talks about the Accused in any
10 manner whatsoever. The Accused is
11 therefore asking that these paragraphs be
12 withdrawn from his indictment because
13 there is no link and there are sustained
14 by any evidence.

15 MR. PRESIDENT:

16 Very well. Could you please allow Judge
17 Sekule to put a question to you?

18 JUDGE SEKULE:

19 Thank you. Yes, Counsel these are very
20 substantive submissions but I hope at
21 what stage do you intend to show as to
22 how they relate to the motion that we are
23 dealing with today, the motion of joinder
24 by the Prosecutor. They appear to be,
25 address more the question, maybe a defect

1 in the form of the indictment and in the
2 matters of evidence but is there a
3 possibility that there will be a linkage
4 as to whether or not there is any
5 justification if at all, with the motion
6 the Prosecution has put before us, that
7 is my question if you understood it,
8 thank you.

9 MS. VEILLEUX:

10 In his motion Prosecutor had to prove to
11 each of the Accused that there was some
12 linkage and that the joinder was
13 indivisible because each aspect of
14 indictment would warrant their joint
15 trial, but if you look at each of the
16 paragraphs of the indictment one notices
17 that none of the witnesses in each of the
18 paragraphs I have referred to, none of
19 the witnesses mentions the name of Jérôme
20 Clement Bicamumpaka. So if there is any
21 linkage where is that linkage unless of
22 course he is going to bring some 15
23 witnesses. Is there any of the witnesses
24 who have something to say against him. Is
25 it in the interest of justice. The

9 There is no proof, no evidence that he
10 committed acts and there is no witness to
11 buttress those allegations or those
12 charges and that's why Your Honour this
13 joinder is unfounded, is without merit.
14 Should I continue for each of the -- so
15 as to show --

16 JUDGE SEKULE:

17 Thank you, very much. You may continue
18 with your presentation. I get the
19 answer. thank you.

20 MR. PRESIDENT:

23 MS. VETILLEUX:

24 Yes, for each of these charges reference
25 is made to a conspiracy to commit

1 genocide whereas there no supporting
2 material. There was no evidence to
3 sustain such charges. In the second
4 charge reference is made to the crime of
5 genocide which relies on paragraphs 5.1.
6 all the paragraphs refer to Rule 85. The
7 Prosecutor does not provide any evidence
8 against the Accused and all the witnesses
9 do not refer -- none of the witnesses
10 makes mention of the Accused. So in the
11 case of the second charge, in the second
12 count we are asking that these paragraphs
13 be withdrawn. The third count,
14 complicity in the crime of genocide, all
15 the paragraphs I have referred to, 5.1,
16 5.2 etc, all those paragraphs are not
17 backed up by evidence provided by the
18 Prosecutor and none of the witnesses
19 refers to the Accused, and that's why we
20 are asking that this count be withdrawn.
21 As for the fourth count, incitement --
22 direct and public incitement to commit
23 genocide, again all the paragraphs that
24 refer to public incitement to commit
25 genocide do not even refer to Jérôme

1 Clement Bicamumpaka. No facts, no
2 material evidence are used to sustain.
3 The fifth one, the fifth count, applies
4 only to Justin Mugenzi. So, why should
5 this fifth count appear in the indictment
6 of Jérôme Clement Bicamumpaka? So where
7 is the link? The sixth count namely
8 complicity in genocide in paragraph 5.1,
9 5.1 these paragraphs are not supported by
10 evidence but all the witnesses provided
11 by the Prosecutor do not refer to the
12 Accused and we are therefore asking that
13 that count be withdrawn. Seventh, crimes
14 against humanity relies on paragraphs
15 5.1, 5.2. For those paragraphs
16 Prosecutor does not provide any evidence
17 against the Accused and the witnesses do
18 not refer to the Accused in any
19 circumstance and that's why the Accused
20 is asking that, that seventh count be
21 withdrawn from the indictment. The
22 eighth count, namely crimes against
23 humanity relies on paragraphs 5.1, 5.2,
24 5.14. All these paragraphs are not backed
25 by evidence produced by the Prosecutor

1 and none of the witnesses talks of the
2 Accused and that's why we are asking that
3 it be withdrawn, that is the eighth be
4 withdrawn. As for the ninth count
5 serious violation of Article III Common
6 to Geneva Conventions and Additional
7 Protocol II thereto, relying on 5.1, 5.2,
8 5.14, 5.21. Well, all these paragraphs no
9 evidence is produced to support said
10 paragraphs by the Prosecutor and none of
11 the witnesses refer to the Accused in any
12 circumstance and the Accused is therefore
13 asking that these paragraphs be withdrawn
14 together with the counts from his
15 indictment because they are not sustained
16 by any evidence. The tenth count that of
17 serious violation of Article III Common
18 to Geneva Conventions and Additional
19 Protocol II thereto, relying on
20 paragraphs 5.1, 5.2. The Prosecutor does
21 not prove the linkage in the facts, and
22 does not provide any supporting material
23 or evidence against the Accused. There
24 are just two witnesses in the supporting
25 material that's FF 59 and ZB who talk

1 about the Accused, and in fact it is to
2 his advantage. It is exculpatory evidence
3 or testimony being provided by those
4 witnesses. So, it's just two witnesses
5 providing exculpatory evidence, and they
6 have nothing to do with the other
7 Accused. The Accused is asking the
8 International Tribunal that the
9 Prosecutor be asked to specify in time
10 and space what is stated or the charges
11 being brought in the indictment
12 particularly in cases where the
13 Prosecutor adds on the arbitrary the name
14 of the Accused to the charges. If such
15 proof cannot be provided or evidence
16 cannot be provided that said paragraphs
17 or counts be withdrawn or even the
18 withdrawal of the indictment because it
19 is not sustained by any material fact.
20 In my motion on the inadmissibility where
21 there are some inconsistencies some
22 discrepancies that appear --

23 MR. PRESIDENT:

24 You have submitted a motion on
25 inadmissibility in law and in fact. It is

1 a lengthy brief, and it talks about the
2 fact that there is not so much of the
3 link with the joinder motion. You are
4 also trying to prove that they not
5 related and they are not indivisible.
6 What you are asking for some other motion
7 and that should be done in some of other
8 circumstances. So, what do you want now
9 because it is time for us to conclude?

10 MS. VEILLEUX:

11 The issue of inadmissibility then in the
12 interest of justice in fact that joinder
13 being sought is not in the interest of
14 justice and we are asking that they be
15 withdrawn.

16 MR. PRESIDENT:

17 Could you just sum up because his rights
18 are known. You wanted to read your
19 brief, that's not customary, that's not
20 normal for an Attorney to read out his
21 entire or her entire document. We do
22 have time believe me, we do read these
23 briefs when they are given to us.

24 MS. VEILLEUX:

25 Well, the hearing is public.

1 MR. PRESIDENT:

2 You can continue reading but that's not
3 normal that's -- but let me draw your
4 attention to the fact you have been going
5 on for more than an hour. So, you may
6 wish to continue.

7 MS. VEILLEUX:

8 The Prosecutor's motion for joinder
9 contains several errors and several
10 inconsistencies. Indeed the Prosecutor
11 states in paragraph five that today the
12 Accused has not been transferred to the
13 UNDF of Arusha. He says this for the
14 Accused as well as the other Accused
15 Prosper Mugiraneza in paragraph 5D and
16 Justin Mugenenzi in paragraph 5B whereas
17 the Accused has made his initial
18 appearance 17th August 1999, even though
19 he says he has not had his initial
20 appearance, that's an error. Paragraph
21 49 of his motion, 47 of his motion he
22 says that a joinder will make it possible
23 to save some time and resources and given
24 the fact that the testimony relating to
25 the four Accused are related. This

1 referring to four Accused for which the
2 Prosecutor is asking for a joinder. If
3 there are only four which Accused is he
4 referring to or is he, and if there were
5 eight Accused what will be -- what are we
6 going to save in terms of time and
7 resources, whereas the witnesses,
8 Prosecutor witnesses do not make any
9 references to Jérôme Clement Bicamumpaka.

10

11 Paragraph 6.60, he says that the
12 provisional detention of Edouard Karemera
13 and the nine Accused does not -- is not
14 comparable to the criticism made by the
15 committee, and paragraph 47 of his motion
16 we need to hear the 50 witnesses
17 unnecessarily without taking into account
18 the presumption of innocence which is
19 provided for in Article of the Statute of
20 International Tribunal, and that a person
21 has a right to be judged without
22 excessive delay.

23

24 Paragraph 6.65 the Prosecutor refers to
25 the joinder of ten Accused by saying the

8 JUDGE GÜNEY:

As you are about to conclude and having
heard the remark made by the President of
the Chamber, don't you think it will be
advisable to concentrate the last part of
your submission to the joint trial
question and in particular as the
Prosecutor said then, the joint trial
indicates before us is -- was asking for
-- to avoid duplication of evidence to
minimize the hardship caused to the
witnesses and they said also is generally
in the interest of Judicial economy and
in the right of trial without undue
delay. Maybe it will be advisable then
if you concentrate yourself to this
element and to elaborate on them, thank
you.

1 MR. PRESIDENT:

2 Thank you, Your Honour.

3 MS. VEILLEUX:

4 Well, in the facts we realise that the
5 joinder is done together with Minister of
6 other political parties. Different
7 political parties. There were three
8 interim governments one in 1992, one in
9 1993, and one in 1994. The ministers who
10 were in the governments of 1992. 1993
11 were not necessarily the same who were
12 appointed 9th April, 1994 which brings on
13 difference, and in 1994 there was an
14 attempt to apply the Arusha Accords.
15 There was this attempt and this is why it
16 was decided to appoint the Prime Minister
17 Jean Kambanda who was from MDR as well as
18 the Minister of Foreign Affairs Jérôme
19 Bicamumpaka, who was from the MDR as
20 well. So, the first nomination is not --
21 should not have been Jérôme Bicamumpaka
22 it should have been Boniface, the one who
23 was killed on 8th April. These two people
24 Jean Kambanda, Jérôme Bicamumpaka are
25 from the same political parties. So, what

1 I explained in fact is that the fact that
2 this government was different with --
3 from -- by people from various political
4 parties, means that the Prosecutor should
5 be able to say together with who in which
6 government, is it the government of 92,
7 93, 94 and who were those who planned the
8 genocide, that was not done in the
9 indictment and so we do not know exactly
10 what to respond to and that's why I am
11 taking each one of the points of the
12 indictments because this joinder is going
13 to bring together people that the Accused
14 does not know. He knows only two people
15 that is from the MDR but he does not know
16 the others. So, how can we then join
17 indictments where we see in the
18 supporting material that there are no
19 witnesses who are going to come to
20 testify. So, the evidence is not the
21 same. So, where is the linkage, and then
22 some clarification because we do not know
23 exactly what the points -- you go through
24 the indictment 90 pages -- 80 pages at
25 the end of 80 pages you really do not

1 know together with whom he has been
2 accused and where is the linkage? Today
3 we are being presented with a joinder
4 with 8 people whereas we have already
5 been presented with a joinder with 13
6 people. Perhaps, they just say well, 13
7 people, let's withdraw a few. So, and
8 this on the basis of what linkage? What
9 are the facts that establish this
10 linkage?

11 MR. PRESIDENT:

12 Ms. Veilleux, you have dealt extensively
13 on this connexité linkage and
14 indivisibility, how, you will have to
15 deal two points in time and write to the
16 Judge without undue delay.

17 MS. VEILLEUX:

18 That is from Article 20, Your Honour.
19 That all persons accused should -- and
20 further to that, that all persons have
21 the right to quality. Now, and to be
22 properly informed but can we say that
23 Jérôme Bicamumpaka has been properly
24 informed in detail and in a language that
25 he understands? Can we say that he was

1 formed in a detailed manner of the nature
2 of the cause of the charges brought
3 against him, and to have time, adequate
4 time and facilities to prepare his
5 defence. How can he prepare a defence,
6 when he does not even know the charges
7 being brought against him in 80 pages and
8 in 180 pages of testimony, we are not
9 able to determine exactly what he has
10 been accused of. Now the joinder has
11 been made, one is withdrawn another is
12 made and we want an indictment, we
13 expected an indictment which will be more
14 specific and which focuses on the
15 Accused. I did not initiate the
16 procedure. This was initiated by the
17 Prosecutor but very vague, fluffy
18 indictment in which the accused does not
19 know exactly what he is been charged
20 with. The Accused has been detained for
21 the past 14 months without knowing and
22 without being informed in a detailed
23 manner of the nature of the charges being
24 brought against him. More so since he
25 has to react to the procedures of the

1 them refers to my client. So, how can
2 that be in the interest of justice? And
3 we also need to keep in mind that the
4 Accused need to be judged without undue
5 delay. These are the major points that I
6 wish to raise, thank you, Mr. President.

7 MR. PRESIDENT:

8 Before giving the floor to the Prosecutor
9 there is Mr. Skornicki.

10 THE INTERPRETER:

11 Mr. President's microphone, please.

12 MR. SKORNICKI:

13 Mr. President, I do not want to force
14 open an open door that is already open.
15 But I just what to see if it is possible
16 to start at the beginning of the
17 afternoon.

18 MR. PRESIDENT:

19 I just want to know how long that will
20 take that is all.

21 MR. SKORNICKI:

22 I think 25 minutes should do.

23 MR. PRESIDENT:

24 We take into account your comment,
25 especially since I do not think there is

1 a collective hipoglycemia as he said
2 since it is being said that there is a
3 collective hypoglycemia, do you want to
4 wait until the afternoon to take the
5 floor before we give the floor to Mr.
6 Skornicki?

7 MR. FLEMING:

8 Yes, Your Honour, I prefer to wait until
9 after Mr. Skornicki has completed and
10 then I can deal with all matters.

11 MR. PRESIDENT:

12 Okay.

13 MR. FLEMING:

14 For all the Accused.

15

16 MR. PRESIDENT:

17 Okay, thank you. That's okay, then we
18 will take a break and come back at 3
19 o'clock.

20 (Time: 1325 pgs 97-135 by J. Kapatamoyo)

21

22

23

24

25

1 MR. PRESIDENT:

2 The hearing is called to order. Mr.

3 Skormicki I suppose that everything has come
4 back to normal now?

5 MR. SKORMICKI:

6 Yes, he says.

7 MR. PRESIDENT:

8 So, I will give you the floor immediately.

9 MR. SKORMICKI:

10 Mr. President, Your Honours, for a number of
11 years now, your Tribunal has become one of
12 the workshops of Humanitarian Law that our
13 children will learn about tomorrow and I can
14 see my own children looking emotionally at
15 the great decisions that you have taken and
16 that you will take, emotions that I also
17 share, but I know that a hearing is at
18 crossroads. This one is under study because
19 if we look at it from a global point of
20 view, the trial of the accused person here
21 present, there are chances of total truth
22 seems to me to be very difficult. I am
23 going to try very briefly going from law to
24 the fact and from the fact to the law, that
25 you cannot today crown these globularization

1 at against which your very Tribunal, your
2 very Chamber has taken war on in all the
3 decisions. In fact in July, 1999, the
4 Prosecutor presented a joinder for 13
5 accused persons after the original of 28
6 which was rejected or dismissed on 24th of
7 February in the year 2000, that motion as
8 withdrawn because it was impossible to
9 practically implement it but that notwithstanding
10 it was deemed reasonable to
11 maintain for ten members of the members of
12 government.

13 And then on the 24th of March, 2000, there
14 was a new vision of globularization for 8
15 and these gradual movement to unfloor this
16 -- a clear thought to ensure that through a
17 collective meeting, the job of demonstrating
18 individual responsibility is facilitated.

19 That is a point of view that I understand as
20 far as the Prosecutor is concerned but that
21 I would not understand in the case of the
22 Tribunal.

23 The joinder is grounded on Rule 48; persons
24 accused of the same or different crimes
25 committed in the course of the same

1 transactions maybe jointly charged or tried.

2 It is therefore necessary to prove an act

3 which is part of a plan or a strategy, a

4 scheme or strategy in the course of a

5 transaction and your Tribunal will no doubt

6 recognize that this concept of transaction,

7 the same transaction is the basis of the

8 joinder if it is not necessary to attribute

9 personal participation to an offence which

10 is involved in the same transaction.

11 It is on the other hand absolutely necessary

12 to prove that each and everyone of them here

13 present including Edouard Karemera acted

14 together in the same transaction.

15 That is, within a scheme or a strategy with

16 a view to committing the most serious

17 offenses in Humanitarian law. I repeat

18 neither the attempt nor the complicity in

19 legal sense comes up with this concept of

20 complicity referred to in -- of conspiracy I

21 beg your pardon, referred to in 23(B).

22 Conspiracy should be proved to put all of

23 them in one case. We have to add no doubt

24 that that also implies that the individual

25 participation or approach of each of them

1 has to be proven too including the Minister
2 of the Interior. We are talking about Rule
3 61.

4 At this stage of the proceeding which is not
5 -- we are not dealing with the merits of the
6 pre-trial yet, we could admit that a certain
7 number of facts which are offences shouldn't
8 be characterized exactly as acts which were
9 done by Mr. Karemera. That will be done with
10 when we get to the merits.

11 But then it is absolutely indispensable that
12 his involvement in a scheme or a criminal
13 transaction should be proven.

14 But then your Tribunal on the 31st of May,
15 in the year 2000, deemed that the general
16 formulation introducing each of the charges
17 in the following manner, in the acts and
18 omissions so described in 5.1 and 6.7 and
19 particularly in the following paragraphs
20 nothing is done to clearly state it to
21 broaden the possible scope of the indictment
22 without making any clear and precise charges
23 against the accused so much so that your
24 Tribunal wanted that the indictment should
25 be amended in the Kanyabashi trial or case.

1 What is good enough for the stage of the
2 indictment definitely is good enough for the
3 joinder.

4 If your Tribunal and rightly so considered
5 that the Prosecutor could not refer to
6 general and inconcise allegations to base
7 his charges on and the broadening of these
8 incrimination deemed acts or the charges,
9 deemed at the violation of the rights of the
10 accused and in the same way at the stage of
11 requesting a joinder, the putting together
12 of all of the indictments of all of each of
13 the accused persons which you are no doubt
14 aware follow the same wording which I will
15 repeat once more;

16 by the acts and omissions described or
17 referred to in paragraphs 5.1 and 6, 7.6,
18 6.5 and 6.1 for some other people which
19 doesn't specify an allegation whatever, by
20 the mere reference to unclear charge the
21 Prosecutor cannot justify the joinder. Such
22 a broadening is the basis of the indictment
23 and the joinder which the Tribunal considers
24 unlawful because it is not based on clear
25 allegations or charges. If these had to be

1 granted by you, such a broadening by
2 approving the request for joinder would
3 allow a leeway for globularization and
4 unclear globularization by the Prosecutor in
5 respect of each of the accused persons taken
6 individually.

7 The approach against globularization made in
8 your judgment here, re-iterated in the same
9 manner at the stage of the joinder seems the
10 same wording is used and it is the same
11 basis are given and it would be paradoxical
12 not to say, it would be the height of
13 paradox that after -- calling to mind to the
14 Prosecutor's mind, the need to state clearly
15 what the charges were looking at the
16 indictment, we should base ourselves on the
17 same charges to justify the joinder. So the
18 Prosecutor needs to provide minimum proof
19 beyond reasonable doubt of the criminal
20 transaction, that is the conspiracy in order
21 to justify the joinder.

22 And I understand the difficulty and the
23 courage too which my learned colleague had
24 this morning in the face of this Tribunal,
25 to decline all the paragraphs of -- describe

1 all the paragraphs in the indictments and
2 all this had a simple purpose which is mine
3 too here to show the absence of
4 participation in a criminal transaction. So
5 the absence of a nexus between her client
6 and the rest of the clients within a
7 criminal transaction and I would be tempted
8 as far as I am concerned not to list all
9 these but to bring out a number of them to
10 describe a criminal transaction when the
11 Prosecutor vigorously introduces his
12 indictment in paragraph 5.1 and where we
13 read a number of people including Edouard
14 Karemara from the end of 1990 to 1994
15 conspired to draw up a plan with the
16 intention of exterminating the civilian
17 Tutsi, the civilian population and to
18 eliminate the people in power.
19 We no longer understand paragraph 5.2 which
20 raises the fact that in a letter dated
21 December 1993, Officers of F.A.R revealed
22 to the commander of the United Nations
23 UNAMIR, the existence of a Machiavellian
24 plan prepared by soldiers from the North and
25 based on the Hutu ideology, Extremist Hutu

1 Ideology.

2 Does that imply that there were two plans or
3 just one plan? Why these differences
4 between the plans of one group and the
5 other?

6 It would have been desirable that the
7 Prosecutor should stop at only one version
8 and definitely we have no explanation on the
9 plan which is or scheme which is finally
10 given, chosen.

11 Another example in paragraph 5.14 to 5.35,
12 if I remember well, the role of Mr. Karamera
13 in developing the young Interahamwe
14 militiamen, at least in the Prosecutor's
15 version, the pivotal or crucial role in this
16 planning is mentioned.

17 If we look at the supporting material
18 pertaining to the crucial role of the
19 Interahamwe militia, I don't think that I
20 saw even one line, not even one word
21 concerning Edouard Karamera.

22 So all we have to say is that as Vice
23 President of the MRND, he had authority.
24 Humanitarian law is not done by induction.

25 We have to provide a minimum of evidence

1 beyond reasonable doubt of participation in
2 criminal, in a criminal transaction and in a
3 scheme or a strategy and its execution.
4 When we realize that the Minister of
5 Interior at the arrival of the Interim
6 Government, he was only appointed to the
7 government on the 25 May of 1994, that is
8 when it would appear that he is being made
9 one of the brains of the organization and
10 that the fact that he was Vice President of
11 the MRND. He is proof of his active role in
12 the planning particularly as concerns the
13 Interahamwe militia.
14 This deduction as far as I am concerned is a
15 cavalier deduction. In fact as far as I am
16 concerned, it is almost frivolous.
17 Under the circumstances when this Tribunal
18 reads Articles 6.5, massacres perpetrated as
19 well as the strategy prepared and executed
20 by the political leaders including Edouard
21 Karemara who conspired to exterminate the
22 Tutsi population as from the 7th of April,
23 he joined the government only the 27th of
24 May, the 25th of May, I beg your pardon.
25 There again this is chronological surgery

1 which is not permitted in an International
2 Criminal Courtroom.

3 To quote another cardinal point of
4 participation in the criminal transaction
5 where Mr. Karemera is being accused of
6 having aided and abetted the massacres
7 during the public meetings at the very
8 beginning of the month of May -- April, we
9 omit to recall once again at that point that
10 he was not yet a member of government but he
11 is being attributed with having aided and
12 abetted this or that behaviour as a
13 politician. It is understandable but in the
14 indictment when we refer to his capacity as
15 a member of government, that is totally
16 incomprehensible.

17 Generally speaking, this Tribunal is faced
18 with the demanding difficulty of defining a
19 criminal transaction and we have to start
20 through the surrounding in order to get to
21 cracks of the matter but it is clear that
22 this joinder cannot be grounded on a certain
23 number of principles mentioned by the
24 Prosecutor which concern Edouard Karemera
25 sometimes and very often not directly, as

1 far as his alleged participation is
2 concerned.

3 This minimum requirement, if we look at
4 Article 6.1 of the Statute which this
5 Tribunal knows better than me recalls one of
6 the general principles of law, the
7 requirement of personal criminal
8 responsibility.

9 That requirement in law requires that true
10 clear and physically proven facts,
11 participation or involvement in a criminal
12 transaction or scheme with a view to
13 genocide is proven. That is -- and the
14 requirement that this Tribunal stated very
15 clearly as far as stating clearly and
16 individualizing the charges are concerned,
17 holds true to the same extent as far as
18 consideration of the -- is basic condition
19 for the joinder, the involvement in a scheme
20 is concerned.

21 The collective trials, the bunched trials
22 can only have a severely meaning, true
23 meaning if this is established from the
24 beginning.

25 Under such conditions therefore a few words

1 would suffice to bring out other
2 justifications put forth by the Prosecutor
3 on how practical these collective or bunch
4 process is concerned.

5 My learned colleague, Mr. Grieaves, said
6 that some people might have to sit on the
7 carpet. He is right to talk about how slow
8 the proceedings would become starting with
9 the fact that even if we suppose that these
10 accused persons are sentenced for quite a
11 while, they are waiting and they are patient
12 during the trial but this doesn't tie in
13 with their presumption of innocence and I
14 would like to add in the end.

15 I would like to add that if the Prosecutor
16 in support of these charges in the
17 indictment has grounds to which we have not
18 been given access yet for reasons we could
19 be justified pertaining to the protection of
20 witnesses, pertaining perhaps also to the
21 protection of certain victims or relatives
22 of victims. There is no doubt that in the
23 absence of open access to such material, we
24 can only arrive at these or take a decision
25 on this request for the joinder by looking

1 at the supporting documents of the
2 indictment and you would have noticed as far
3 as Edouard Karemera is concerned that either
4 he is not concerned or he is indirectly
5 concerned or lastly if he is concerned, he
6 is not in manner that would incriminate him
7 but also and I remember that one of the
8 witnesses talked about Edouard Karemera
9 asking militia persons to behave properly
10 and I think that that to me is not a
11 vocabulary that in any way can be
12 interpreted since I know that there is a
13 special lexicon of genocide that would ask
14 him to support.

15 At this time, that is what we think about
16 this request for motion for joinder which is
17 not convincing because it has the same
18 defects as the indictment which you
19 criticized on 31 May, 2000. Thank you.

20 MR. PRESIDENT:

21 Judge Güney has a question for you.

22 JUDGE GÜNEY:

23 Mr. Skormicki, you have tried to highlight
24 through a detailed submission on the concept
25 of criminal transaction as contained in the

1 motion of the Prosecutor. You tried to show
2 that that request for joinder was without
3 merit, unfounded. Maybe you overlooked,
4 looking at the content say of the linkage or
5 a nexus or the indivisibility aspect that
6 should appear in any request for joinder,
7 could you be clear as to -- in your
8 arguments or your submissions on these
9 aspects?

10 MR. PRESIDENT:

11 Mr. Skornicki has the floor.

12 MR. SKORNICKI:

13 Thank you, Your Honour. Judge Güney has put
14 a question to me with respect to the corner
15 stone aspects of joinder, of a joinder
16 namely the nexus or the linkage and the
17 indivisibility of the said joinder. Well
18 beyond the whole concept of a criminal
19 transaction, you do have, I believe the
20 answer to your question.

21 If there is a criminal transaction, there is
22 indivisibility or at the very least a
23 linkage or nexus. If there is no criminal
24 transaction, a common scheme, I find
25 difficulty in perceiving the concept of

1 indivisibility, let alone nexus or a
2 linkage.

3 MR. PRESIDENT:

4 But before I ask the Prosecutor to speak, I
5 wish to move to the case of the Accused
6 Casimir Bizimungu. I wish to get to your if
7 you allow me to speak because we have indeed
8 checked as a matter of conscience because
9 this morning I did tell you that we agreed
10 that is, with the parties including Ms.
11 Bourne after rather lengthy discussions
12 because not everyone was available at the
13 same date. However, we did agree on the
14 28th, 29th and possibly the 30th, your
15 counsel did not appear here today as has
16 been noted and the Registry has not received
17 any letters of say apologies from your
18 counsel on her inability to appear and given
19 the circumstances, we shall confine
20 ourselves to her written brief and if I am
21 not wrong because she at the same time did
22 file a motion for severance. So we do have
23 all the documents and in particular the
24 document I referred to which is entitled,
25 "Prosecution Motion For Joinder Of

1 Defendants."

2 I would like to ask you whether you had any
3 feedback from to your counsel or why she is
4 not here or why she has not appeared?

5 We did talk about it this morning and I
6 think we should cross check?

7 MR. BIZIMUNGU:

8 Your Honours, thank you. I don't have any
9 feedback at this point in time from Ms.
10 Judith Bourne, but the very last
11 communication that I have from her last
12 Friday, she said she would try to appear at
13 this hearing and I further tried to check
14 whether at the Registry there would be
15 further information. In any case, up until
16 1.00 o'clock today there was no new
17 information, nothing new and if I wish to
18 ask for the floor, it is because, Mr.
19 President, she told me that she would want
20 to appear to defend her client, that is
21 myself. She filed a motion for severance
22 and she also responded to the Prosecutor's
23 motion on the issue of joinder.
24 So my own submission and I am merely
25 speculating in this case, maybe there was a

1 flight connection problem and we had
2 scheduled three days and I was asking
3 whether it wouldn't be proper or acceptable
4 in the interests of justice that we wait
5 maybe, until tomorrow since she absolutely
6 wanted to defend me. Thank you, Mr.
7 President.

8 MR. PRESIDENT:

9 Maybe we will ask the Registry to get in
10 touch with your counsel to find out why she
11 is unable to appear but the decision of the
12 Chamber shall stand. She has not appeared,
13 she has not provided any explanation. Maybe
14 your speculation maybe right. It is better
15 to take into account your own interests.
16 When we adjourn, maybe we should be able to
17 get in touch with her to find out why she
18 has not been able to appear.
19 English has so colonized us here, so instead
20 of saying requete in French, we say motion.
21 So we will see this later on and our hope is
22 that your counsel will be present. You are
23 separate from the joinder motion today.
24 Prosecutor, we give you the floor if you
25 have some response.

1 MR. FLEMING:

2 Thank you, Your Honour. Can we make some
3 general propositions which would be
4 applicable to at least three of the
5 submissions.

6 First this proceeding is not a review of the
7 indictment and at least one of the parties
8 wanted to make it so.

9 Second, it is no a trial on the merits and
10 at least three of the parties wanted to make
11 it a trial on the merits.

12 Third, this application is based upon the
13 indictment, the application is based upon
14 the indictment and the limited material that
15 was supplied, there is no need to go beyond
16 that.

17 Fourth, the indictments must show a prima
18 facie case. That has been established in
19 every instance by the confirming Judge.

20 Fifth, all periods for preliminary motions
21 have passed. There is one preliminary
22 motion still pending in the matter of Mr.
23 Karemera. I think I am right in saying that
24 Mr. Kamuhanda's time for preliminary motions
25 is also passed.

1 There has been no successful attack on the
2 form of the indictments in any of those
3 preliminary motions and the indictments
4 stand as they are.

5 Sixth, there are no applications that have
6 been made by any party here for further
7 particularity in respect of any of the
8 indictments.

9 Seventh, the assessment of whether or not a
10 joinder should take place is based upon
11 prima facie case in every instance shown on
12 the indictment.

13 In that case, in that instance then, there
14 is evidence in every case to establish the
15 joinder.

16 In respect of the evidence itself, there
17 have been comments today suggesting, and I
18 do not want to do a disservice to anybody,
19 suggesting that proof is beyond reasonable
20 doubt and then attempting to translate
21 proof beyond reasonable doubt in this
22 present transaction and with the greatest
23 respect that can't occur.

24 In respect of the indictments themselves,
25 there has been much said about whether or

1 not a particular name appears in a
2 particular paragraph.

3 With the greatest respect that misconceives
4 the situation as well in respect of the law
5 on conspiracy and genocide.

6 Akayesu made it very very clear that the
7 special intent, the involvement, the special
8 involvement required in such crimes will
9 often only be in fault from all of the
10 facts. Those matters of course await trial,
11 whether or not we make out a case at trial
12 is another matter altogether.

13 So my learned friend the last to address
14 made much of the inadequacy of the evidence
15 and made much of the prima -- I am sorry of
16 the proof beyond reasonable doubt made
17 comments about Humanitarian Law and the like
18 but with the greatest respect, it's our
19 submission that that's not the standard that
20 applies here. The standard that applies here
21 is whether or not a prima facie case is
22 being made out in respect of each accused
23 and it has and whether on the material there
24 present, there is sufficient to order a
25 joinder and we submit that it has.

1 Your Honours, then specifically to each of
2 the submissions, whenever we mention the
3 government indictments or the fact the
4 people, the accused are members of the
5 Interim Government, there's an immediate
6 reaction to say that they are indicted upon
7 that basis.

8 We, of course, don't say that they are
9 indicted because they are members of the
10 government. We say that the common link for
11 the law is that they were members of the
12 government and all that flowed from that
13 their responsibility in government and so on
14 and so on as is well set out in the
15 indictment.

16 So we are not at all basing the commonality,
17 the common purpose, the common intention or
18 however you might like to put it, the
19 community of purpose upon the fact that they
20 were simply members of an interim government
21 but rather on all that goes with that.

22 My learned friend from Greaves, raised a
23 number of interesting issues. He said that
24 because of the errors he was able to point
25 out in our material, it was therefor poorly

1 conceived.

2 With the greatest respect we make the
3 distinction between conceptional execution.

4 We might plead guilty to poor execution but
5 we won't accept that the conception was
6 poor.

7

8 (Pages 136 to 157 by P S Chijarira,
9 Reporter)

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1 1600

2 MR. FLEMING: (Continuing)

3 We would submit that it's still appropriate
4 that all people should be joined as we have
5 suggested. He raised the spectre of Mr.
6 Kambanda being given a trial, and what shall
7 we then do? May we wait and see? We're
8 certainly not seeking to adjoin him in this
9 particular application, and I think I, quite
10 frankly, said last time that if there were
11 adequate time before a trial and other
12 people came within the ambit of the sorts of
13 offences that we have pleaded against these
14 accused, then we would give consideration to
15 joining. Not something, of course, that we
16 can do by ourselves; it would still depend
17 upon your Honours' determination whether or
18 not we could join. So we make no promise
19 not to bring any applications to join.

20

21 However, whether they succeed or not is
22 another thing entirely. May I say,
23 definitely, we, at this stage, have no
24 intention of bringing such applications, but
25 if the circumstances arose where we could

1 properly mount an argument that in the
2 interest of justice and all the other
3 requirements, then we may well bring an
4 application to this Trial Chamber. But of
5 course, it is a matter ultimately for this
6 Trial Chamber on whether it would be
7 convenient to hear such a person.

8

9 One thing that did become apparent in most
10 of the submissions is the absence of any
11 real attack upon the legal basis of our
12 application. There are many attacks upon
13 the practicality of it, but on the actual
14 legality of it, there are very few attacks.
15 Our learned friend, Mr. Skornicki, attempted
16 to mount an attack, and with the greatest
17 respect, we would submit that it wasn't a
18 sufficient attack to overcome the problems
19 that are faced by the Accused in these
20 cases.

21

22 Mr. Greaves also suggested that we would
23 somehow or another be dealing with witnesses
24 in any number of cases, but with respect,
25 his argument ensures that those witnesses

1 will have to make even more trips to Arusha
2 and be cross-examined many more times, and
3 might I reply in kind that that, of course,
4 is exactly what every defence counsel would
5 love to have happen to every witness. But
6 that isn't the basis of any plea that we
7 make in respect of the witnesses. It's in
8 respect of their welfare that we ask that
9 the number of times that they come to court
10 be limited. My learned friend, Mr. Greaves,
11 was also advocating that the present
12 indictments stay as they are, in effect.
13 What he advocates is a trial much larger
14 than the present trial -- than the present
15 proposed joinder. To be fair to him I must
16 add that it wouldn't be in respect of his
17 client because his client is one of four.
18 However, if his argument is to hold, then he
19 is really saying we don't mind that you have
20 a trial of a greater number than eight in
21 and of a trial.
22
23 May we then come to Bicamumpaka and the
24 submissions they have made. It is said that
25 Rule 72 applies, and our preliminary motion,

1 which this is characterized as, is therefore
2 out of time.

3

4 May we spend a moment on Rule 72 to see
5 precisely what it says and subparagraph (A) :
6 "Preliminary motions by either party shall
7 be brought within 30 days following
8 disclosure by the Prosecutor to the
9 Defence", and so on. There is no definition
10 then of what a preliminary motion on the
11 part of the Prosecutor is. Having said
12 preliminary motions by either party, it then
13 goes on in (B) to define what a preliminary
14 motion by an accused is. There are
15 objections to lack of jurisdiction, defects
16 in the form of indictments. May we go to
17 (iii) : "Applications for severance of
18 crimes joined in one indictment under Rule
19 49 or for separate trials under Rule 82(B)".
20 And then iv, "Objections based on denial of
21 request for assignment of counsel".
22
23 We can only say that to define what a
24 preliminary motion is on the part of the
25 Prosecutor can be argued only by analogy.

1 And this isn't analogous to any of those
2 which are defined as preliminary motions by
3 an accused. I paused at (iii) because it at
4 first glance might have some application,
5 but (iii) refers to applications for
6 severance of crimes joined in the one
7 indictment under Rule 49. We, of course,
8 aren't operating here in respect of the
9 severance, or, to use the converse, the
10 joinder of crimes in one indictment. We're
11 not seeking to do that at all. So we don't
12 fall within the converse of Rule 72(B) (iii).
13 It's our submission, in fact, that this
14 isn't a preliminary motion that we bring.
15 Rule 73 deals with motions, generally,
16 subject, of course, as it says in paragraph
17 (A), subject to Rule 72: "Neither party may
18 move before a Trial Chamber for appropriate
19 ruling or relief after the initial
20 appearance of the accused".
21
22 Just what the definition of a preliminary
23 motion may be in the end may well have to be
24 left for another day. But in any event,
25 this does not take the character of a

1 preliminary motion; therefore, anything that
2 our learned friend has said is inapplicable.
3 And I note that none of the other learned
4 counsel in any of the cases, the 11 cases,
5 have identified this as a point that they
6 ought to take; not that I can claim that as
7 a defence. I might only be saying that none
8 of them were able to identify it as a point,
9 but that's unlikely. It isn't a preliminary
10 motion, and therefore, there is no validity
11 whatsoever in what was said on behalf of
12 Mr. Bicamumpaka.

13
14 Still in respect of those submissions, there
15 was an attempt to review the indictment. I
16 have already made comments about that. If,
17 in fact, she got -- if Mr. Bicamumpaka got a
18 separate trial, that separate trial would
19 still be upon the indictment that was being
20 so stridently criticized. So, the
21 application of her argument to the
22 indictment has no practical effect at the
23 end of the day outside of a preliminary
24 motion for defects in the indictment. We
25 are well past that point, and the

1 preliminary motions in respect of
2 Mr. Bicamumpaka have been heard some
3 considerable time ago. Mr. Bicamumpaka has
4 had his day in court in respect of the
5 defects in the indictment. Might I also add
6 that the concatenation of motions, the
7 building one upon the other of the motions
8 so that it becomes a larger and larger
9 proposition to be heard, in our submission
10 is an unacceptable way of bringing a motion
11 to this court. And we ask your Honours to
12 look carefully at the manner in which those
13 motions have been dealt with before this
14 Court for perhaps some comments from your
15 Honours or some actions by your Honours in
16 respect of that.

17
18 Whatever else our learned friend was doing,
19 she was certainly wanting to go behind the
20 indictment. And I come back and say that in
21 respect of every person except my learned
22 friend, Mr. Greaves, there was an attempt to
23 go behind the indictment.

24 MR. PRESIDENT:

25 I find it difficult to follow the French

1 interpretation. Maybe you are speaking too
2 fast.

3 MR. FLEMING:

4 I'll show down. Thank you, your Honour.

5 Your Honour, can I finally deal then with
6 the submissions of Mr. Skornicki.

7 Mr. Karemera was the Minister for the
8 Interior, and as such, he was responsible
9 for internal order, and he was also
10 responsible for civil defence. We would
11 submit that on any view of the indictment
12 there is plenty of material to show that Mr.
13 Karemera's role either worked wonderfully --
14 that's an unfortunate term in the
15 circumstances in respect of the massacres --
16 or alternatively, it failed appallingly. In
17 either case, he will bear the responsibility
18 for that role. My learned friend said that
19 there was very little chance -- no, I'm
20 sorry. I shouldn't misquote him, although I
21 am working from the translation. So please
22 forgive me if I do happen to misquote. "The
23 chances of the local truth coming out is
24 very difficult".

25

1 One of the advantages in working within the
2 discipline that we are here is that we get
3 the best of both worlds. We get the best of
4 the common law system; we get best of the
5 adversarial system. It has been said of the
6 common law system by the adversarial system,
7 that sometimes the truth doesn't come out,
8 necessarily. Those of us who defend that
9 system, of course, refute that. On the
10 other hand, in the civil system, your
11 Honours play a more active role. So despite
12 my failing or perhaps the failings of
13 everybody else in the courtroom, your
14 Honours will still play a larger part in a
15 trial than that to which I have become
16 accustomed.

17
18 Your Honours will ensure as, of course, is
19 your responsibility, that everyone
20 individual who's joined within an indictment
21 will be guaranteed the rights of an
22 individual. Just because they are joined
23 doesn't mean that they lose their rights.
24 And just because they are joined, it doesn't
25 mean that the truth may not come out.

1

2 Your Honour, Judge Sekule, I must come back
3 to something. It wasn't until afterwards
4 that I realized the basis of your question
5 in respect of 48bis. I note that
6 Mr. Skornicki, my learned friend, said that
7 we were basing this upon Rule 48, and of
8 course, he can be forgiven of being of that
9 view because that's what the motion itself
10 said, the motion filed some considerable
11 time ago. However, there has been debate
12 that last time, and today in respect of Rule
13 48bis, I understand what your Honour was
14 actually asking me this morning. And I want
15 to spend but a moment in respect of that.

16

17 Can we say that there were confirmed
18 indictments of people jointly charged and
19 Rule 48 applies? Each person has their
20 right guaranteed by Rule 82(A). And then
21 the joinder of indictments as distinct from
22 individuals is dealt with by Rule 48bis,
23 which was, of course, introduced as a result
24 of problems found, I think, in one of the
25 applications, one of the motions brought in

1 The Hague. If it's necessary to rely upon
2 Rule 48 to say that we simply want these
3 people tried together, then we do so. It's
4 probably easier to deal with it pursuant to
5 Rule 48bis because there are confirmed
6 indictments, and it's an application, or at
7 least the application of Rule 48bis then can
8 simply join the indictments rather than
9 trying to separate things out and deal with
10 individuals. Thank you, your Honours. They
11 are our submissions.

12 MR. PRESIDENT:

13 Thank you. We have now heard the
14 Prosecutor's submission and response from
15 Defence. I guess we will end there. But if
16 there are further clarifications being
17 sought by Defence, they could do so.

18

19 Please be more specific, more focused.

20 Mr. Greaves.

21 MR. GREAVES:

22 I had hoped I had been reasonably focused
23 this morning. But if I wasn't, I beg your
24 Honour's forgiveness. Your Honour, my
25 learned friend said something; I just want

1 to ask him if he'd be so kind as to clarify
2 it. He said this: "We do not say they are
3 indicted as members of the government". Can
4 I ask him to clarify this: Does he say,
5 thereby, the mere voluntary and conditional
6 membership of the government is not enough
7 to find criminal liability in respect of any
8 count? I brought a couple of other things I
9 just want to mention, but that one in
10 particular I think he needs to respond to
11 immediately.

12 MR. PRESIDENT:

13 Do you want to answer on that specific
14 point, Prosecutor?

15 MR. FLEMING:

16 Thank you, your Honour. We'll reply upon
17 the *prima facie* case that has already been
18 and keep our powder for another day.

19 MR. PRESIDENT:

20 Thank you.

21 MR. GREAVES:

22 Your Honour, the other matter is simply
23 this, and it is a matter simply for the
24 record. My learned friend has observed
25 there have been no applications for further

1 and better particulars of the indictment. I
2 have quite conscientiously not done so
3 hitherto, because I do not know what the
4 final form of the indictment that my client
5 will face is. That depends on this hearing.
6 I tell my learned friend now that he may yet
7 face a little bit of hard work telling me
8 what the particulars I seek are.

9 MR. PRESIDENT:

10 Who wishes to take the floor, Defence?
11 Anyone else? Nobody.

12
13 I think all parties have been heard. We
14 shall now go into deliberation. Ms.
15 Veilleux, I did ask. Ms. Veilleux, I did
16 ask. No, no. I put the question to
17 everybody. It was to everybody, all Defence
18 counsel. Mr. Greaves did speak,
19 Mr. Skornicki said no. Please, don't start
20 fresh arguments here. Well, Mr. Greaves
21 should conclude, and then you'll have the
22 floor.

23 MR. GREAVES:

24 It's not a fresh argument. Your Honours
25 were going to rise. I merely wanted to say

1 there is a general housekeeping matter that
2 I want to raise that does not concern this
3 motion, but it is a matter of some
4 importance to me, and I don't want your
5 Honours to leave without my having had an
6 opportunity to raise it. It is not a matter
7 that concerns this motion at all, but it is
8 an important matter. And as I understood,
9 your Honours were going to deliberate, I
10 didn't want you to leave without having
11 given me an opportunity to raise that
12 particular matter. I'm sorry to have
13 inconvenienced, your Honour.

14 MR. PRESIDENT:

15 So when you talk about housekeeping, what
16 has that got to do with the motion? We are
17 here for the motion. Maybe you should
18 report to the Registry if it is a
19 housekeeping matter.

20 MR. GREAVES:

21 It's a matter that is the fault of the
22 Registry. I'm not going to go to the
23 Registry to remedy their fault. I am going
24 to ask you to order them to do something.

25

1 MR. PRESIDENT:

2 Ms. Veilleux.

3 MS. VEILLEUX:

4 Now, in view of the fact that this morning I
5 did raise an objection, according to which
6 we did not receive the Prosecutor's
7 response, I still stand by my objection,
8 your Honours. And since the Prosecutor has
9 relied on 48 and 72, these are matters that
10 have been canvassed by a motion, I would
11 have wanted to respond, or at least have the
12 same time as the Prosecutor.

13 MR. PRESIDENT:

14 No, no, there is no dispute. I told you
15 this morning, we have heard your arguments.
16 If you feel that the Prosecutor has assented
17 or acquiesced by virtue of the fact that he
18 has not responded in writing, well, that's
19 fine. We will look at it.

20

21 Mr. Greaves, Judge Sekule would like to get
22 some clarifications, why you think you
23 should go through the Chamber.

24 MR. GREAVES:

25 It's simply this: It needn't wait.

1 Numerous motions have been filed in respect
2 of the indictment which my client faces,
3 which have never been served on co-accused.
4 Those motions may well touch or affect the
5 rights of the co-accused, and it may be --
6 and I am not saying that this has happened
7 yet. It may be that a motion is filed by
8 Defendant No. 1 with which procedure
9 Defendant No. 2 violently disagrees and does
10 not accept. If we are not given notice of
11 those motions filed by other co-accused, we
12 are, therefore, prevented from exercising
13 our rights to object to whatever procedure
14 is being requested by the co-accused. And I
15 am simply asking that an order be made --
16 and I don't think that this will find any
17 opposition from the Prosecution -- an order
18 be made that when a motion is filed by a
19 defendant it should be served on all
20 parties, so that they may have an
21 opportunity properly to make such
22 observations as they are advised.

23 MR. PRESIDENT:

24 I wish to say to Mr. Greaves that what he
25 has just said had been raised in a motion,

1 in the form of a motion, by Defence counsel,
2 and we had adopted a decision in principle,
3 and we said that that decision that in
4 principle, when there are co-accused who
5 will be tried jointly, all motions filed by
6 one of the accused should be served upon the
7 others. In other words, the others would
8 then have the opportunity, in the event
9 there is a conflict of interest, to seek the
10 leave of the Tribunal to raise the matter.
11 Does that answer your question?

12 MR. GREAVES:

13 It does, save and except that that order has
14 not been followed in this case.

15 MR. PRESIDENT:

16 No, no, no. It is a new decision.

17 MR. GREAVES:

18 I'm sorry. Well, I wasn't aware that you
19 were ahead of me. In which case I will sit
20 down and behave myself.

21 MR. PRESIDENT:

22 In any case you can ask the Registry to give
23 this decision.

24 MR. GREAVES:

25 I have two legal assistants in the gallery,

1 that is their next tasks, so they hear what
2 I say.

3 MR. PRESIDENT:

4 So nothing else to add? Stands adjourned.

5 We will go into deliberation, as I said
6 earlier.

7

8 (Court adjourned at 1625H)

9

10 (Pages 158 to 175 by S Fleming)

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28 JUNE 2000

1

C E R T I F I C A T E

2

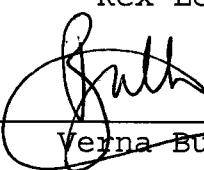
3 We, Rex Lear, Verna Butler, Haruna
4 Farage, Judith Kapatamoyo, Petrus Chijarira, and Shannon
5 Fleming, Official Court Reporters for the International
6 Criminal Tribunal for Rwanda, do hereby certify that the
7 foregoing proceedings in the above-entitled cause were
8 taken at the time and place as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

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

11

(pgs. 1 to 27)

12

Rex Lear

13

(pgs. 28 to 57)

14

Verna Butler

15

(pgs. 58 to 97)

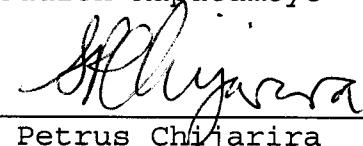
16

Haruna Farage

17

(pgs. 97 to 135)

18

Judith Kapatamoyo

19

(pgs. 136 to 157)

20

Petrus Chijarira

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(pgs. 158 to 176)

22

Shannon Fleming

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