

ICTR-98-44-T
05-01-2009
(43919-43868)

43919
Ⓟ

THE INTERNATIONAL CRIMINAL TRIBUNAL
FOR RWANDA

CASE No. ICTR-98-44-T

IN TRIAL CHAMBER No. 3

Before: Judge Dennis C.M. Byron, Presiding
Judge G. Gustave Kam
Judge Vagn Joensen

Registrar: Mr. Adama Dieng

Date Filed: 5 January 2009

THE PROSECUTOR

v.

JOSEPH NZIRORERA

JUDICIAL RECORDS/ARCHIVES
RECEIVED
1 2009 JAN -5 A 9:36
UNSTR

JOSEPH NZIRORERA'S 13th NOTICE OF RULE 68 VIOLATION
AND MOTION FOR REMEDIAL AND PUNITIVE MEASURES:
WITNESS ZF

The Office of the Prosecutor:

Mr. Don Webster
Ms. Allayne Frankson-Wallace
Mr. Iain Morley
Ms. Gerda Visser
Mr. Saidou N'Dow

Defence Counsel:

Mr. Peter Robinson
Mr. Patrick Nimy Mayidika Ngimbi

Counsel for Co-Accused:

Ms. Dior Diagne Mbaye and Mr. Felix Sow for Edouard Karemera
Ms. Chantal Hounkpatin and Mr. Frederick Weyl for Mathieu Ngirumpatse

1. Joseph Nzirorera respectfully notifies that Trial Chamber that he has once again uncovered additional violations of Rule 68 committed by the prosecution. He moves for appropriate remedial and punitive measures.

Witness ZF Testimony

2. Prosecution Witness ZF testified that Joseph Nzirorera was a member of a secret network whose aim was to exterminate the Tutsi. This network was known variously as the Abakozi, Friends of the Alliance, Dragons, or Zero Network.¹ Among the persons he listed as part of this network were Colonel Theoneste Bagosora and Alphonse Higaniro.²

The Withheld Material

3. Unbeknownst to Mr. Nzirorera, the prosecution had in its possession a statement from Colonel Bagosora dating back to 1992 in which he said:

I declare on my honour that I am not implicated in the actions of this fictitious group called "Reseau Zero"; in fact I am not even aware of its existence in Rwanda.³

4. This statement was not disclosed to Mr. Nzirorera until October 2008 after Colonel Bagosora appeared on Mr. Nzirorera's witness list and the prosecution was ordered to produce all statements of Mr. Nzirorera's witnesses pursuant to Rule 66(B).

5. Also unbeknownst to Mr. Nzirorera, the prosecution has in its possession a recorded interview from 1996 with Alphonse Higaniro, a former Minister and General Manager of a parastatal corporation known as SORWAL. In the interview, Mr. Higaniro was asked:

Were you a member of Reseau Zero?

¹ Transcript of 16 May 2006 @ 16-23

² Exhibit DNZ-108, Transcript of 19 May 2006 @19

³ This document, dated 31 October 1992, is attached as Annex "A"

To which he answered, "No."⁴

6. This statement was not disclosed to Mr. Nzirorera until October 2008 after the Alphonse Higaniro appeared on Mr. Nzirorera's witness list and the prosecution was ordered to produce all statements of Mr. Nzirorera's witnesses pursuant to Rule 66(B).

The Violation of Rule 68

7. Rule 68 provides that:

"The Prosecutor shall, as soon as practicable, disclose to the Defence any material, which in the actual knowledge of the Prosecutor may suggest the innocence or mitigate the guilt of the accused or affect the credibility of Prosecution evidence."

8. A party alleging a violation of Rule 68 must: (1) identify specifically the material sought; (2) present a *prima facie* showing of its probably exculpatory nature; and (3) prove that the material requested is in the custody or under the control of the prosecution.⁵

9. Mr. Nzirorera has specifically identified the two statements which are the subject of this motion. They are clearly of an exculpatory nature since they expressly contradict the testimony of a prosecution witness. Indeed, this Trial Chamber has clearly held that information which contradicts that provided by a Prosecution witness is exculpatory within the meaning of Rule 68.⁶ And the material has been shown to be in the possession of the prosecution since the Bagosora statement bears a K# and the Higaniro interview was conducted by OTP investigators.

10. Therefore, yet another violation of Rule 68 has clearly been established.

⁴ This interview, dated 25 July 1996, is attached as Annex "B". The quoted portions appear on page 3

⁵ *Decision on Joseph Nzirorera's Appeal from Decision on 10th Rule 68 Motion* (14 May 2008) at para. 9

⁶ *Prosecutor v Karemera et al*, No. ICTR-98-44-T, *Oral Decision on Disclosure of Material from Joseph Serugendo* (30 May 2006); *Prosecutor v Karemera et al*, No. ICTR-98-44-T, *Decision on Defence Motions for Disclosure of Information Obtained from Juvenal Uwilingiyimana* (27 April 2006) at para. 9

Prejudice to the Accused

11. The failure of the prosecution to disclose these statements as soon as practicable prejudiced Mr. Nzirorera because he was unable to use these materials in his cross examination of Witness ZF in 2006. The Trial Chamber has held that disclosure of contradictory information after a prosecution witness has testified causes prejudice to an accused.⁷

Remedial and Punitive Measures

12. The latest violation of Rule 68 comes on the heels of the prosecution's failure to disclose the closed session testimony of RPF insiders, which was the subject of *Joseph Nzirorera's Eleventh Notice of Rule 68 Violation and Motion for Stay of Proceedings* (21 July 2008). The Trial Chamber, in its decision on that motion, after finding that the prosecution had violated Rule 68 for the thirteenth time, said that:

“Although the Chamber is not prepared to state that the Prosecution can no longer be relied upon to discharge its Rule 68 obligations in this case, it notes that the Prosecution's compliance with the rules of disclosure has been less than adequate thus far. In fact, the Chamber finds that the increasing number of disclosure violations by the Prosecution is quickly approaching the threshold for sanctions of a more serious nature than mere disclosure of the misconduct to an internal disciplinary body. The Chamber hereby warns the Prosecution that future disclosure violations will not be met with the same lenience that has been displayed to date.”⁸

13. The violations continue.

⁷ *Prosecutor v Karemera et al*, No. ICTR-98-44-T, *Decision on Joseph Nzirorera's Eleventh Notice of Rule 68 Violation and Motion for Stay of Proceedings* (11 September 2008) at paras. 23-24, 32

⁸ *Decision on Joseph Nzirorera's Eleventh Notice of Rule 68 Violation and Motion for Stay of Proceedings* (11 September 2008) at para. 30

14. Mr. Nzirorera will address the appropriate remedial and punitive measures in his reply brief after the prosecution has had the opportunity to explain the reasons for the latest Rule 68 violation.

Conclusion

15. Mr. Nzirorera respectfully requests the Trial Chamber to (1) make an explicit finding that the failure to disclose the Bagosora and Higaniro statements prior to October 2008 violated Rule 68; and (2) impose such remedial and punitive measures as are warranted under the circumstances, taking into account the extent and pattern of violations.

Respectfully submitted,



PETER ROBINSON

Lead Counsel for Joseph Nzirorera

43914

ANNEX "A"

43913

K0246865

RETAINER-SOLEMN DECLARATION

I, the undersigned, Théoneste Bagosora, born at Gisenyi, residing in Kigali, Rwanda, hereby retain Mr Luc de Temmerman, of the Brussels Bar, to represent me in the broadest sense against the false accusations levelled against me by Messrs Reyntjens, Kuypers and Schers that I was a member of a movement that allegedly organised the "death squads" in Rwanda.

I declare on my honour that I am not implicated in the actions of the fictitious group called "RÉSEAU ZÉRO"; in fact, I am not even aware of its existence in Rwanda.

I am not charged with any crime in Rwanda.

Done at Kigali, 31 October 1992

[Signed]

43912

ANNEX "B"

43911

K0159157

IDENTIFICATION: 899/k96 - 2: Alphonse HIGANIRO
25/07/1996 KT00-0771

LENGTH: 90 MIN

QUALITY: GOOD

BROADCAST: ///

TRANSCRIPTION DATE: 07/02/2000

TRANSCRIBER'S NAME: Drocella ICYITEGETSE

FILE NAME: 899K96.WPD

DICTAPHONE: SANYO: BO - 760/19

N.B. Investigator 1 always speaks in English.

SIDE A

Investigator 1 [original in English]: ...present in Belgium this is the interview of Alphonse HIGANIRO, present here are also Alphonse HIGANIRO, Maître Edmond and Maître Karsters and ...[inaudible]... a linguist, and Mr. HIGANIRO continues with a story on the Akazu.

HIGANIRO: Uh... I was talking about the Akazu's alleged responsibility in the... the massacres in Rwanda. I had just explained that... you should look for the planners of the massacres amongst the planners of President HABYARIMANA's murder, because uh... the assassination of President HABYARIMANA was the trigger of uh... these massacres. And uh I was trying to show that I believe it is out of the question to implicate the Akazu in the planning of the assassination of President HABYARIMANA. My reasoning is twofold:
Uh... the first reason is that I believe it would have been inconceivable for one of the President's friends or for a prominent member of the Akazu to

shoot the plane down, knowing that he was on board. That is the first reason.

Uh...the second reason, which I believe cannot be ignored, is that the people who were members of the Akazu - the trio of in-laws - were nothing, absolutely nothing without President HABYARIMANA. President HABYARIMANA was their shield. The population feared them because of the ties that existed between the President and his brothers-in-law. So President HABYARIMANA, unwittingly, enabled them to act with impunity ... So... they hid behind their title of the "President's brothers-in-law" to demand protection so that the population would fear them.

And, once HABYARIMANA had disappeared, they were nothing. They would have been exposed to a great deal of revenge. So I cannot see any reason why they would have killed President HABYARIMANA. Of course, I could not have been a direct witness... a good witness uh...as my very own father-in-law perished in the plan. Thus, if there is one person who could not have been associated with that project it is I, I agree. And yet, if you take into consideration the facts, I do not really see why SAGATWA's friends would have decided to kill him. I really cannot see what that trio would gain by doing away with President HABYARIMANA, especially as they knew quite well that they were hated by Rwandan society.

As for their involvement in the murder of various people, as I said at the beginning, it is difficult to know because the... the... the massacre of politicians began the day after President HABYARIMANA's death, and as I was saying there was generally speaking an absolute curfew. And in my case in particular, I had to spend my mourning period at my father-in-law's residence. This meant it was virtually impossible to have any contact with so and so.

Investigator 1: Huh!

HIGANIRO: Impossible. You cannot know what one person or another did without ruling out the possibility that they might have participated, but they could have... someone could have taken advantage of the generalized curfew to do things without the population knowing. That is what I had to say about the Akazu. I don't know... I am willing to provide you with any other information I might have available. Thank you.

Investigator 1 [original in English]: We continue with question 34th and that is: Do you know anything about an organization called *Réseau zéro*?

K0159159

- Interpreter:* We continue with number 34. Do you know anything about an organization called *Réseau zéro*?
- HIGANIRO: Uh...*Réseau zéro*, is a... a... a concept that was introduced by Christophe MFIZI. MFIZI is spelled M-F...
- Investigator 1: MFIZI?
- HIGANIRO: Yes that's it. He was the director of the Rwandan Information Bureau. In this regard, he was an important personality because he could participate in the governmental council debates. He was virtually a Minister of Information, but without that specific title. One day he was kicked out of his post. It would seem that, the Akazu was responsible, i.e. the President's in-laws. In any case, when he left his position he wasn't very happy. He wrote a book to denounce the Akazu's activities and that is where I first saw the concept *Réseau zéro*.
- Investigator 1: Hum.
- HIGANIRO: He thought that *Réseau zéro* was a sub-group of the Akazu in charge of executing people. So, did this sub-group really exist? Or is it a figment of his...
- Investigator 1: Huh.
- HIGANIRO: ...imagination. I have no information about that.
- Investigator 1: 35. We are going to ask you a question: Were you also a member of *Réseau zéro*?
- Interpreter:* 35. Were you also a member of *Réseau zéro*?
- HIGANIRO: No.
- Investigator 1: No. The reason that we have this question is that it was asked to be published by journalists I think one them corrected it somewhere in 1990 in which you were mentioned as one of the members of *Réseau zéro*.
- Interpreter:* Why do we ask this question? Because an article appeared in a publication – I do not have the publication – in which you were mentioned

as being one of the members of *Réseau zéro*.

Investigator 2: You have to listen to the Belgian media.

HIGANIRO: Yes, yes. They contain some things that are...

Investigator 2: Its' [inaudible], they say incredible things. [Laughter]

Interpreter: That's [inaudible] part of his answer.

HIGANIRO: And... as I said there were things like that... when I left to go south, I was not always appreciated by the opposition. And as the terms already existed, *Réseau zéro*, Akazu, and so on and so forth, those who, like myself, fitted the conditions that I described at the beginning were placed into the categories of *Réseau zéro*, Akazu, and things like that...

Investigator 2: Hum.

HIGANIRO: ...to justify the...the actions uh... the adverse actions to be taken against him! But if you look into the di...the...the different files that you have available you will certainly see that there is only one witness who states that. It isn't very often that you see mentioned that HIGANIRO was a member of the Akazu or of *Réseau zéro*.

Investigator 1: Ok. Uh...because of the ... the answer should indicate from questions 34, 35... 36, 37, 38.

Interpreter: In view of the answers that you have already given, in view of what you have already said, we shall skip 35, 36, 37 and 38.

HIGANIRO: Hum.

Investigator 1: So, we continue with 39. Did you ever give money to RTLM radio and for what reason?

Interpreter: Did you give RTLM any money? And for what reason?

HIGANIRO: Umm...yes I am a RTLM shareholder. I have some shares. Uh... the...the reason is that uh...I believed, like many Rwandans, that the multiparty system should go hand in hand with a...a liberalization of information.

Investigator 1: Huh.

HIGANIRO: And at that point, when we signed the Arusha accords, there was only one national radio station. And it had been made quite clear that the national radio station: "...must not be partisan. It must not broadcast the opinions of one party or another." This meant that measures were taken so that private radio stations could be created. And I believe, if my memory serves me right, that aside from RTLM, other radio station projects had already been accepted by the government. RTLM was the first one to be founded and I ... and I was contacted by some of its promoters.

Investigator 1: Hum.

HIGANIRO: They described their objectives...

Investigator 1: Huh.

HIGANIRO: ...what they were going to focus on, broadcast, news, music, advertising etc... And they recruited me to become a mem... a shareholder of that radio. I should mention that one share in ...that radio cost almost nothing. It cost something like five thousand Belgian francs a share. That's five thousand a share. So, many people became shareholders in that radio. I think there might have been over two thousand shareholders. The radio had over two thousand shareholders. Thus, I also bought shares. I... I did not listen to RTLM because it did not broadcast up to Butare.

Investigator 2: It didn't reach

HIGANIRO: It didn't reach...

Investigator 2: Okay

HIGANIRO: ...you had to climb onto the top of hills to listen to it. But when I went to Kigali, every now and then, I would listen to it; it was a station that had good music, they organized debates, etc... And this of course until the April events as we know them. But otherwise, those are the reasons... But why did I buy RTLM shares? Well, my objective was basically to support democracy. You see, democracy has to go hand in hand with freedom of the press, like here in the western world. Especially, as I had studied here, I could see what role the media play in a real democracy.

Investigator 1: 40. Was he a shareholder of radio RTLM?

...

Interpreter: He has already said...

[Inaudible two persons speaking at the same time]

...was also a shareholder. He even understood the same question that you have already answered. Were you a shareholder of Radio RTLM?

Investigator 1: 41. Do you think Radio RTLM played a role in the 1994 Rwandan genocide?

Interpreter: 41. Do you think Radio RTLM played a role in the 1994 Rwandan genocide?

HIGANIRO: Yes, I believe so. I believe that RTLM and Radio Muhabura...

Investigator 1: Huh!

HIGANIRO: Both radios played...a role in the...the events.

Investigator 1: ...

HIGANIRO: Yes, Muhabu...Muhabura, thus I...Muhabu...Muhabura: M-u-...M-u-h...M-u-h-a-b-u-r-a, that is the RPF radio. Let me explain. Uh... I will not go into details because I did not listen to RTLM very often, but I listened to Radio Muhabura because it broadcast on shortwave.

Investigator 1: Uhuh!

HIGANIRO: ...it...it had better coverage in Butare than RTLM. But Radio Muhabura, at one stage de...de...denied the 1959 revolution. The 1959 revolution was the point in time when Rwanda went from a feudal monarchy to a republican regime. Radio Rwanda...Radio Muhabura claimed that this phase was just a hiccup in history.

Investigator 1: Uhuh!

HIGANIRO: So, basically it did not accept the 1959 revolution. If my memory serves me right, radio RTLM reacted very strongly against this. And in a certain

43905

K0159163

sense it ran a campaign to increase Hutu awareness so that they wouldn't lose sight of the gains of the 1959 revolution. And with everything else that was going on the...the...the whole issue of ethnicity - Tutsi or Hutu - was reawakened by this type of program. I...I...I got the feeling that it really reawakened the whole Hutu-Tutsi distinction in the country's political arena.

And, soon before the events and even during the events, RTLM continued to provide information, notably on the assassination of politicians. The assassination of politicians, thus...Minister GATABAZI, the... the... the... infamous MDR member, GAPYISI and all that, when it...it tried to explain that the assassinations were done by the RPF, which meant that the RPF were eliminating Hutu leaders.

Investigator 1: Uhuh.

HIGANIRO: It also broadcast a great deal of information on UNAMIR's position... position...UNAMIR's position, notably the Belgian contingent...

Investigator 1: Uhuh!

HIGANIRO: ... in Rwanda and its complicity. Thus, RTLM used to mention its complicity with uh... the... the RPF, notably through the Belgian journalist who worked there and who spoke in French. They would start by saying: "Okay, General Dallaire, the RPF has killed Hutus in Ruhengeri, you have been tasked with the...the investigation, you have accepted it. Now, where do you stand? If you have not produced a report, it is because you are sure that the RPF killed them and you do not want everyone to know. Therefore you are an FPR accomplice. Therefore, you are an FPR accomplice" and so on and so forth... RTLM also spoke of the erstwhile Prime Minister's complicity, with the RPF, and so on and so forth. I believe that such programs would have stoked the fire rather than put it out.

Investigator 1: Hum... then question 42. Did you ever donate money to the Kangura newspaper or did you always contribute to this newspaper?

Interpreter: Did you ever give money to the newspaper Kangura. Or did you assist it...

HIGANIRO: No. No. I...

- Interpreter:* ...by writing articles for the newspaper?
- HIGANIRO: No, I never wrote any article for that newspaper. I never even supported it. How could I support a newspaper that President HABYARIMANA himself did not support? I don;t think everyone is aware of the fact. President HABYARIMANA – I was still a member of the government at the time – asked that the person in charge of Kangura be arrested. In this regard, he called in the Attorney General to the governmental council. He asked him the following: “How can this person, under the pretext of freedom of the press, write things about members of my government... with such contempt?” And so on and so forth. “And how can he still be free?” I was still a member of government and I can say this categorically, the Prosecutor came to the government. The President asked him the question. The Prosecutor answered as follows: “That is what the freedom of the press is all about. If people feel wronged, they should file a complaint.” The prosecutor, the prosecutor at the time was François NSANZUWERA.
- Investigator 1: NSANZUWERA.
- HIGANIRO: Hey. He is...he is even here in Belgium. You can ask him about that. He was there at the governmental council when it happened. I was there as well. The President said: “That guy must be punished.” People said: “the law protects him. If someone feels wronged, they should file a complaint.” So the MRND, President HABYRIMANA, the MRND didn’t support that newspaper. The auth... the auth... the author of the...the person in charge of the newspaper was, I believe, a member of the CDR party...
- Investigator 1: Uhuh!
- HIGANIRO: ...but... not the MRND. And in any case, when I arrived in Gisenyi on 12 April, the Army had decided to arrest him – the person in charge of Kangura - and the guy had disappeared. He never really resurfaced since the April events ... since the April events until I don’t know when... He never reappeared because he was a wanted man. Now I hear that he is wandering around somewhere in Africa. I... even when there are meetings, like the ones chaired by President Carter, I hear in the press here that he participates in meetings over there as a representative of the press. Who finances his travels? How come he has documents that allow him to travel and...while other Hutus in Exile do not? And I should mention

43903

K0159165

something else that maybe everyone is not aware of and that is that this journalist was initially an RPF journalist. He was recruited and trained by Mr. KAJEGUHAKWA. KAJEGUHAKWA, is the main person that bankrolls the RPF...

Investigator 1: Uhuh!

HIGANIRO: ... and now he is a Member of Parliament at... the National Assembly in Kigali. He was his...his servant initially. I should mention that this guy doesn't know how to read or to write. He was his servant. He had him trained in the U.S. on how to gather and distribute news. Why? Because he used to go around the city of Gisenyi helping cab drivers to obtain clients, and in exchange the driver would pay him some money. Thus, he was aware of everything that was going on in town, because he would drive around with these cabs. So KAJEGUHAKWA took him in, trained him to gather information, until KAJEGUHAKWA left the country. We know that KAJEGUHAKWA recruited him, but personally I do not know when they decided to part ways. I do not know when they decided to go their separate ways.

Investigator 1: Hum.

HIGANIRO: In any case, he gave the information that I have just given you in his first issue. He, he, the author ... the owner of Kangura, he gave his curriculum vitae in the manner that I have just described. In short, this man did not belong to the MRND. He was never a member of the MRND. President HABYARIMANA never supported [him]; moreover, neither his government, nor his party ever supported him. And I, HIGANIRO, I am also a member of the party and all that. I never did anything against the party. I never gave the newspaper money. I never had any links whatsoever with the person in charge of Kangura, those...whose who say so are simply inventing things.

Investigator 1: Okay. Em... 40, em 3 we already have, so that brings to ...[inaudible] when did you in April 1994 do in Butare?

...

Interpreter: Uh...I believe you have already answered these questions, it was... when did you leave Bitwa...Butare in April 1994?

HIGANIRO: But, I left on the seventh.

43902

K0159166

Investigator 1: Hum.

HIGANIRO: On the seventh.

Investigator 2: At what time?

HIGANIRO: I left my house around 8 or 9 o'clock...

Investigator 2: Uhuh.

HIGANIRO: I went to...

Investigator 2: The camp.

HIGANIRO: ... the camp to wait for...Mr. GATSINZI's escort to leave. The escort left around... around noon or one o'clock, something like that.

Investigator 2: Okay

HIGANIRO: And we arrived in Kigali around 4 p.m.

Investigator 2: 44. you also have ... [inaudible] Whose company were you in when you left Butare in April 1994?

Interpreter: You have already answered this question, whom, who was accompanying... who was... who was with you when you went through ... Butare in April 1994?

HIGANIRO: To...to leave Butare?

Interpreter: Yes. Whose company were you in?

HIGANIRO: Uh... let me see... Colonel GATSINZI led the escort, Theodore SINDIKUBWABO...

Investigator 2: There was SINDIKUBWABO.

HIGANIRO: Uhuh. There was the President's little brother, Dr BARARENGANA... and I. And the others were the members of the escort.

Investigator 1: And... and when?

[Several people speaking at the same time]

HIGANIRO: And my children, and my children, and one of my brothers-in-law who had spent the night at my house. Yes.

Investigator 1 [original in French]: Was Colonel BAGOSORA at the house?

HIGANIRO: No, colonel BAGOSORA wasn't there...

Investigator 1: No!

HIGANIRO: ... wasn't there. I saw that statement in my file. Mr. BIRARA made that statement to the examining magistrate or to the military court here. It's pure fabrication, it's all lies, and Colonel GATSINZI, who was also interviewed, confirmed that Minister BIRARA was lying. He was not part of the escort.

Investigator 1: Okay. 45...[inaudible]... in April 1994 and when did you reach Kigali?

Interpreter: I believe that you have already answered, but 45 [sic]... After you left Butare, uh...when did you arrive in Kigali?

HIGANIRO: ... [inaudible]

Investigator 1: All these questions regardless ... [inaudible]... when you read about them will cause confusion about the exact dates and exact times ... [inaudible]... Did you say it is about 6 ... [inaudible]...

Investigator 2: Indeed, there must be a mistake in... uh... some confusion in the dates...[inaudible]... I believe that at one point we...uh...we...[inaudible] ... the corresponding dates. We said that we could... we must have checked to see what date Easter fell on. I don't think...[inaudible] ...

Investigator 1: 47. Oh! Sorry 46. How long did you stay in Kigali in April 1994?

Interpreter: How long did you stay in Kigali in 1994?

HIGANIRO: I stayed from 7 April...

Investigator 1: Uhuh.

HIGANIRO: ... until the morning of the 12th.

Investigator 1: Uhuh.

HIGANIRO: The morning of the 12th.

Investigator 1: Okay. 47. When did you leave Kigali again and where did you go?

Interpreter: 47. When did you leave Kigali again and where did you go?

HIGANIRO: So, I left Kigali on 12 April...

Investigator 2: Uhuh.

HIGANIRO: ...for Gisenyi.

Investigator 2: And what road did you take?

HIGANIRO: Uh... you go... you go out of Kigali...

Investigator 2: Yeah.

HIGANIRO: ...uh, you take the road to Gitarama...

Investigator 2: Gitarama?

HIGANIRO: Yes, because normally the usual route is the road going towards Ruhengeri.

Investigator 2: Yes.

HIGANIRO: But this road had been cut off by...

Investigator 2: Is bad.

HIGANIRO: ... the fighting. The RPF already occupied it. Therefore we went through Gitarama...

- Investigator 2: Aha!
- HIGANIRO: Once, we arrived in Gitarama, rather than continue to the left towards Butare, we turned to the right. It's a new road, a new road that is still under construction...
- Investigator 2: Yes.
- HIGANIRO: ... so we followed this road under construction until we arrived in a place called Mukamira...
- Investigator 2: Mukamira?
- HIGANIRO: Yes, it's where the... the old Ruhengeri road meets the new one. It's about 30 km from Gisenyi, and there is only road down towards... Gisenyi.
- Investigator 2: Hmm. Is that the road I took?
- HIGANIRO: That's the way you went.
- Investigator 1: This line is more familiar but there is one thing I do not understand because when you go to Gitarama you go first the direction of Ruhengeri. Why... why... why did you choose for Gitarama and than the direction of Mukamira?
- Interpreter:* Why did you choose or why did you choose Gi... Gitarama for Mukamira rather than going towards Ruhengeri?
- HIGANIRO: Ah! Yes that's what I was saying earlier, the... the road to Ruhengeri was...
- Investigator 2: Cut off.
- HIGANIRO: ...cut off, had fallen into the area...
- Investigator 1 [original in French]: Of major wars
- Investigator 2: Of fighting.
- HIGANIRO: ... of war. Hmm, the war zone.

- Investigator 1: A-a-m 48. After you left, you got Butare and in April 1994 [inaudible] got back in Butare for instance when you left Kigali on the 12th, did you go back to Butare or did you not go [inaudible]...
- Interpreter:* The question was, after you left Butare in April 1994...
- HIGANIRO: Hum.
- Interpreter:* ...did you go back to Butare? For example when you left Kigali on 12 April...
- HIGANIRO: Hum.
- Interpreter:* ...did you go through Butare before arriving in Gisenyi?
- HIGANIRO: No, no, no. I did not go through Butare before going to Gisenyi. But once I was in Gisenyi, a... after a certain number of days, I went back to Butare, because around the month of May, the government went through a calm spell...
- Investigator 1: Hum.
- HIGANIRO: ... and called for the resumption of activities on the radio. I believe that the... the governmental communiqués were broadcast on the radio uh... around the 12th or 13th, something like that, April, something... no, the 20th, the 22nd...
- Investigator 1: Yeah!
- HIGANIRO: ... or the 23rd of April, that's when the government broadcast the communiqués on the radio asking companies, to resume their activities. I waited a week to see how the situation was going to evolve and on the 28th of April I went down to Butare to start...to start up the factory. On the morning of the 29th I chaired a meeting of the board. We decided to resume activities... work at the factory starting on the 3rd, and I went straight up to Kigali, because my whole family was there. In the mean time...the...the... my father-in-law's remains had been brought up there to me as well. I wasn't very motivated to work at such a distance from my office. So I went back to Gisenyi to give my collaborators instructions. I have a statutory deputy who continued to manage the factory. Thus, I

43897

K0159171

went back, I went back to Butare indeed on the 28th. I slept there and on the 29th I went back to Gisenyi.

Investigator 1: ... [inaudible] is it... is it the only time, or?

Interpreter: Is it... is it the only time or?

HIGANIRO: That was... the only time.

Investigator 1: Yes.

HIGANIRO: That was the only time.

Investigator 1: Okay. 49. What happened to SORWAL factory after you left Butare?

Interpreter: What happened to SORWAL factory after you left Butare?

HIGANIRO: After I left Butare, on 7 April...

Investigator 2: Well.

HIGANIRO: ... the factory, like all the other businesses closed...

Investigator 1: Uhuh.

HIGANIRO: ... there was a complete and all-out curfew, until I returned to the factory on the 28th, to reopen it.

Investigator 1: Did you order the closure of the... factory?

Interpreter: Were you the one who ordered that the...the factory be closed down?

HIGANIRO: No, no. I wasn't the one who ordered that the factory be closed down. The radio-communicé said: "No one shall leave their house..."

Investigator 2: Okay.

HIGANIRO: "... each and everyone must remain at home."

Investigator 1: Until when?

- Interpreter:* Until when did it remain closed?
- HIGANIRO: Until... May 3rd. Until May 3rd.
- Investigator 1: Well, uh, question... [inaudible]
- Interpreter:* Question number 50. During the massacres in 1994, was there always uh... a person in charge at the SORWAL factory? [inaudible]
- HIGANIRO: Between the 7th and the 3rd of May, uh... no one, because the factory was closed...
- Investigator 1: Ok. Question 50. [inaudible] ... Does it mean that there was still [inaudible] ... someone in-charge in the factory during the massacres in 1994?
- Interpreter:* Does this mean there was no one in the factory – except for the watchmen of course – or was there someone...
- [Original in English] Okay. Mr. Gatabazi nobody present in the factory or you suggested for some to guard the place for [inaudible]...
- HIGANIRO: No one, no one, no one, not a soul, except for the usual watchmen, as well as a military detachment because of the [strategic] importance of the uh... the factory. Thus, it was... the factory was guarded by the... a military patrol that patrolled the street in front [of the factory] and the usual factory watchmen. That was it, but there was no...
- Investigator 2: Person in charge.
- HIGANIRO: ... person in charge.
- Investigator 1: Okay. When you went back on 28th of April, to talk to your assistant to the factory who else did you go with?
- Interpreter:* On the 28th of April, when you went back to Butare to speak with your managerial staff, where were you [sic]?
- HIGANIRO: Which way did I go?

- Interpreter:* When you left to go and speak with them, how did you go?
- HIGANIRO: Where did I go?
- Interpreter:* Yes, when you left...
- Investigator 2: Where did you meet them...
- HIGANIRO: I met them at... first I went to... see my deputy...
- Investigator 2: Uhuh.
- HIGANIRO: I think I should explain what I mean when I say my deputy. SORWAL statutes state the following: "When the Executive director is not there, he is replaced by the highest ranking director."
- Investigator 2: Uhuh.
- HIGANIRO: And the company had two posts of that type: the technical director who is in charge of ... manufacturing and oversees the machinery and the administrative and financial director – you understand what...what that means.
- Investigator 2: Hum.
- HIGANIRO: Thus, when the executive director is not there, the more senior one automatically takes over. Thus, on Sunday, I went to uh... rather on the morning of Saturday the 29th, because when I left Kigali, I arrived in Butare late at night, the road was bad and all that! I arrived at night, I went home and the next day I went to see the statutory deputy, I am... I... I told him, I found him at home and I said: "Okay, I am coming for this reason, can you go and get your colleague in charge of administration and finance and join me at SORWAL for a little meeting?" He found the administrative and financial director, he found the marketing director, and he found the chief accountant. We... we... they met me at the factory and we held the meeting.
- Investigator 2: Hum. Okay.
- Investigator 1: 51. Was the factory, SORWAL factory in Butare guarded? Why and by who?

Interpreter: Was the SORWAL factory in Butare guarded? Why and by who?

HIGANIRO: Uh...SORWAL was guarded by two types of guards. There were SORWAL guards, who were paid by SORWAL – basically watchmen. And in difficult times, like those we lived through during the events, soldiers, detached by the local military authorities guarded it as well.

Investigator 2: Uhuh.

HIGANIRO: But...

Investigator 2: From the ESO?

HIGANIRO: Sorry? E-S, that's it exactly. The ESO commander, because he was also, he was also the... at the same time, he was the Army commander, I should mention that the commander was none other than Colonel GATSINZI!

Investigator 2: Uhuh.

HIGANIRO: Even though he was based in Kigali as Deputy Chief of Staff, he was still the commander of that location.

Investigator 2: Marcel? Marcel GATSINZI?

HIGANIRO: Marcel that's it exactly. [Pause] And I should add that SORWAL is a... it's something that has...that...that has pretty dangerous products. That might be why the army was interested in guarding the factory. In that... the match factory has products such as red phosphorus and potassium chlorate, which are highly flammable products, that people can steal to manufacture explosives very easily.

Investigator 1: These soldiers who were guarding your e-e-m factory it is question 51a. That is an additional question.

HIGANIRO: Uhuh.

Investigator 1: Were they allowed to go into the factory compound or did they just stay around the factory?

Interpreter: Uh... the guards that watched the...the factory, were they allowed to go