

# Peter Robinson.com: Nzirorera Opening Statement - ICTR

## Opening Statement

“Muraho. Nitwa Peter Robinson, avoka wa Joseph Nzirorera.”

With these few words in the Kinyarwandan language, pronounced poorly by an American, let us begin our journey together to help heal Rwanda of the deep wounds she has suffered from the events which will be the subject of this trial. As judges, prosecutors, or defence counsel, we should never lose sight of this contribution we must make to the people of Rwanda. After all, that was why this Tribunal was established, to promote reconciliation of the Rwandan people through truth and accountability.

In this case, this path to truth and accountability, if freely and honestly traveled, will lead you and the Rwandan people to the conclusion that Joseph Nzirorera is not guilty of the charges brought against him in the indictment.

Madam President, and members of the Trial Chamber, it is my privilege to represent Joseph Nzirorera in this case, along with Ms. Dior Diagne Mbaye of Senegal.

At the outset, I would like to thank, on Mr. Nzirorera's behalf, the people in this courtroom who will make this historical trial possible. First, I wish to thank the members of the prosecution team for their dedication to public service that has led to their participation in this trial.

I would like to thank the staff of the Registry, which has already been busy receiving, processing, and distributing the many pre-trial motions which were filed in this case. They will provide indispensable service to the Trial Chamber in managing the witnesses and documents that appear during the trial. By faithfully keeping an accurate record of everything that occurs here in the courtroom, they will ensure that these proceedings are preserved for all time.

I would particularly like to recognize Deputy Registrar Lovemore Munlo for the hard and unrecognized work that he put in to make this trial come about, and our Trial Chamber coordinator, Constant Hometowu, who has always been efficient and unflappable in dealing with all the pretrial matters leading up to today. I would also like to recognize Didier Preira and Laurent Wastelain of the

Defence Counsel Management Section who have worked beyond the call of duty to help remove some of the administrative obstacles faced by the defence.

I would like to thank the court reporters, who will take down every word that is said in this courtroom, so that when it comes time for the parties to make their closing submissions, for the Trial Chamber to render its judgement, for the Appeals Chamber to review the case, and for history to judge us all for our efforts over the next year, there will be an accurate record of exactly what has transpired.

I would like to thank those in the video booth who operate the equipment which allows this trial to be seen, heard, and preserved for all those who are interested in what happened in Rwanda in 1994 and what we can learn so that it never happens again.

I would like to thank the security staff for the courtesy with which they treat Mr. Nzirorera and me and the professionalism with which they perform their jobs. Although Mr. Nzirorera is charged with grave crimes, these men afford him the presumption of innocence and treat Mr. Nzirorera with dignity. They are to be commended for it.

I would like to especially thank the interpreters, who perhaps have the most difficult job, of simultaneously translating the three languages spoken in this

courtroom, French, English, and Kinyarwandan. The record of this trial will not be an accurate or complete one unless the translation is faithful in the first instance.

I pledge to these hard working people that I will try my best to not make their job impossible. I find that I tend to speak quickly, especially when I am nervous. And I am nervous—today, and probably every day, as I go about defending Joseph Nzirorera—an innocent man. So don't hesitate to interrupt me and tell me to slow down.

I have also told Mr. Nzirorera and the other Kinyarwandan speakers on our defence team to intervene if they believe that a question or answer of a witness has not been translated accurately. It is far better to correct those problems when they occur than to have a dispute later about what was meant or said. So please do not take offence if we occasionally interrupt you and ask that a translation be clarified. It doesn't mean we don't think you are doing a good job, or that we don't appreciate your work. We appreciate you very much.

I would also like to thank the many people who are not here in the courtroom, but who work behind the scenes to make the Tribunal succeed. Those of you who work in administration, finance, archives, transportation, and the detention facility, for example. Each one of the employees of the ICTR can take pride today for their part in the commencement of this trial, in a new chapter of

justice and reconciliation for Rwanda, and in the robust pursuit of the truth that will occur in this courtroom over the next year.

I would like to thank my colleague, Dior Diagne Mbaye, for her spirit of camaraderie and collegiality, and for all of her dedication, hard work, and preparation for this trial. We are full partners in the defence of Mr. Nzirorera. We have divided our work so that Ms. Mbaye is responsible for the global issues as to what happened in Rwanda in 1994 and I am responsible for issues relating to whether Mr. Nzirorera, as an individual, committed any crime in connection with those events.

We hope that, by dividing our work in this manner, we will conserve resources of the Tribunal so as to avoid the duplication of effort and expense. Our goal is to provide a clear and cohesive defence of Mr. Nzirorera that the Trial Chamber will be able to easily follow.

I would also like to thank the other members of our defence team—our two investigators and legal assistant, who have been working hard for many months to help Mr. Nzirorera and his lawyers find the truth in the prefectures and communes of Rwanda, and among the people of Rwanda in exile all over the globe, and bring that truth into this courtroom.

Finally, and most importantly to me, I would like to thank my client, Joseph Nzirorera, for the privilege of being his lawyer in this case. It is both a tremendous honor and a tremendous burden to represent an innocent man.

As I made my first trip to Arusha from America more than a year ago, I asked myself what it would be like to defend someone accused of being responsible for half a million deaths or more, in what was described as the worst massacres since World War II. What I found when I got here was a man who deplored the killing, who in fact tried to stop it, and who himself lost many members of his family.

In the time that I have been Joseph Nzirorera's lawyer, I have come to know him as a wonderful human being who cares about other people, who is hardworking, extremely bright, well organized, gracious and appreciative for my help and that of our defence team. I have also come to see that the prosecutor's evidence against him is weak and the evidence of his innocence is strong. And I am proud to be his lawyer.

So just who is this man, Joseph Nzirorera, who you will be called upon to judge in this trial?

Joseph Nzirorera was born on 18 April 1950 in the commune of Mukingo, in the northwest part of Rwanda. It is in the prefecture of Ruhengeri. He comes from a great family which lived under modest rural conditions. His father, who even in the 1950s could read and write, was a businessman who drove a truck transporting goods in the area. He was also a polygamist, having several wives. The fact of having his own vehicle and having several wives classified the father of Joseph Nzirorera as one of the rich people of the area.

Joseph was the first born child of his mother, who was the only one of the wives to have a legitimate marriage with Joseph's father. As such, Joseph had a special status within the family, and his mother always took care of him, and saw that he was educated well, even though she herself could neither read nor write.

When he was old enough to attend school, Joseph went to the local primary school in the Busogo area of Mukingo commune. He was a gifted student and was able to attend secondary school and then the university. He was awarded a degree as a civil engineer from the National University of Rwanda in 1975.

Besides being a top student, Joseph Nzirorera had an outgoing and friendly personality. He had a tolerant spirit, and always sought to resolve problems through dialogue and winning over even those who were hostile to him. These social skills were to serve him well in his future career.

Joseph Nzirorera also learned at a very young age that assiduous, hard work was the only way of achieving high goals. After receiving his degree as an engineer at the University, Joseph was recruited at the Ministry of Public Works and Equipment. Seven months later, he was appointed General Manager of Bridges and Roads within that Ministry. Joseph Nzirorera was director of this important division within the Ministry of Public Works from 1976 to 1981, approximately five years.

On 29 March 1981, Joseph Nzirorera was appointed by President Juvenal Habyarimana to be Minister of Public Works. At just 30 years old, he was one of the youngest persons ever appointed to be a Minister. He managed the Ministry of Public Works for almost 10 years. Over those years, the Ministry expanded to include energy and water, as well as planning of development within the country and land registration.

During those years, Joseph Nzirorera managed the Ministry of Public Works with a hands-on style, using his own knowledge and skills as a civil engineer to design and execute projects. He turned the Ministry of Public Works from a low-regarded bureaucracy to one of the largest and most powerful ministries in Rwanda.



Under the direction of Joseph Nzirorera, the Ministry of Public Works played a great role in the history of Rwanda. A network of asphalt roads were built connecting the capital of Kigali with the administrative centers of the various prefectures and to the borders of all neighboring countries. These roads were well maintained and, for the first time in Rwanda's history, allowed people to travel easily from the far reaches of the country. The development of these roads, literally and figuratively, led to unity in the country during these ten years of peace in Rwanda.

In the areas of electricity and water, Joseph Nzirorera oversaw a vast program of rural electrification of the country as well as conveyance of water in the cities and rural areas. Many thousands of people were able to illuminate their homes for the first time, and to obtain water from a tap.

This progress not only improved people's lives, but it gave them hope for a better future in Rwanda.

In July 1989, Joseph Nzirorera was appointed Minister of Industry, Mines, and Handicrafts. On 30 December 1991, he left government when his political party, the MRND, relinquished a number of ministries under the multiparty system inaugurated by the Constitution of 10 June 1991. After 31 December 1991, Mr. Nzirorera was never again a member of the government.

While Minister of Public Works, Mr. Nzirorera had also been elected to Rwanda's Parliament from Ruhengeri in 1981, and was re-elected in 1983 and 1988. In July, 1994, shortly before going into exile, Mr. Nzirorera was elected President of Rwanda's Parliament—the National Assembly.

Joseph Nzirorera also held various positions within the MRND party. He was elected a member of the MRND Central Committee in June, 1986 until May 1991, when the multiparty system was initiated. In April 1992, Joseph was elected a member of the National Committee of the new MRND in the multiparty system. This body met only once every three months.

In 1992 through July 1993, when he was out of government, Joseph Nzirorera devoted his energies to designing and building a house for his family in Kigali and to the private businesses of his family. He traveled abroad during this period and took a break from politics and government.

In July, 1993, Mr. Nzirorera was elected Secretary-General of the MRND party. As such he was the administrative officer of the party, managing its day to day activities. This is the work that he was doing until President Habyarimana was assassinated on 6 April 1994.

Joseph Nzirorera believed in the multiparty system and in the benefit of having a diversity of opinions in government. He believed in the goals of the MRND party—peace, unity, and development and promotion of the welfare of the Rwandan people without distinction of race, sex, religion, or national origin.

Joseph Nzirorera was convinced that the MRND party would win the free and democratic elections envisaged in the Arusha Accords. He believed that only those who were afraid of the ballot obstructed the Arusha Accords. He believed that the agreements made in Arusha should reflect the will of those who truly held the power—the people, and that it was only the people, through fair elections, who could give the power to those whom it wanted. Throughout his career, Joseph Nzirorera never lost an election.

Joseph Nzirorera was able to serve so long in government and Parliament, not because he had some family connections, or due to political intrigues, but because he was a hard working, intelligent man, who had the technical skills to get the job done and the social skills to bring people together. Because of these qualities, President Habyarimana greatly appreciated Joseph Nzirorera.

During all of this time, Joseph Nzirorera was married to a wonderful woman with a good head for business. Joseph used his free time to promote the businesses of his family. His efforts, and those of his wife, allowed them and their six

children to live comfortably in Rwanda. Sadly, Mr. Nzirorera's wife died in exile, and Mr. Nzirorera was arrested by the ICTR, leaving their six children without a parent to care for them.

Mr. Nzirorera was arrested on 5 June 1998 in Benin. He was arrested without an arrest warrant or an indictment. He did not make his initial appearance before the ICTR until 8 April 1999—sitting in jail for almost a year without seeing a judge. On that day, he emphatically pled not guilty to these charges. But he has been held in prison for 5 ½ years now without a trial by an institution whose statutes say that its trials must be fair and expeditious. So today is a day that is too long in coming.

Because of my strong belief in Mr. Nzirorera's innocence, and high regard for his character, I will bring to this courtroom a passion which I hope will not offend or annoy you. I will not hesitate to rise at the sight of an injustice, to challenge a witness who fabricates evidence, and to call the prosecutor to account when he does something I believe improper.

I am a freedom fighter--here to ensure that the trial is a fair one, and that an innocent man is not unfairly convicted on false evidence. I will do that job with every ounce of strength in my body—just as you would want to have done for your own child, or your husband, if he was wrongly accused.

In November, 1945, some 58 years ago now, another American, Chief Prosecutor Robert Jackson, stood before a Tribunal of three international judges making his opening statement. It was at Nuremberg, in Germany, after World War II.

Mr. Jackson noted on that occasion that “there is a dramatic disparity between the circumstances of the accusers and of the accused that might discredit our work if we should falter, in even minor matters, in being fair and temperate.”

“We must never forget that the record on which we judge these defendants today,” Prosecutor Jackson said, “is the record on which history will judge us tomorrow. To pass these defendants a poisoned chalice is to put it to our own lips as well.”

Those prophetic words apply with the same great force here in Arusha in November, 2003. And my cause in defending an innocent man is no less noble than that of Mr. Jackson in prosecuting those accused of crimes in Nazi Germany. So I ask you, on behalf of Joseph Nzirorera, to keep those words in mind. We want only one simple thing—a fair trial. The truth and justice and ultimately a judgement of acquittal will flow naturally if the process of this trial—a search for the truth—is a fair one.

Let there be no equivocation or ambiguity: the crimes that were committed in Rwanda in 1994 were horrible. There is no dispute that they occurred, that too many people died, and that they were wrong. On behalf of Mr. Nzirorera, we deplore those crimes. Nothing we say or do during the course of this trial is intended in any way to justify, condone, or excuse the massacres, the killings, the rapes, and the other crimes that were committed in that nightmare that was Rwanda in 1994.

This trial will not provide a single justification for Hutus killing Tutsis, Tutsis killing Hutu, or political extremists killing political moderates. All of that killing was wrong. But it would also be wrong to condemn and convict an innocent man like Joseph Nzirorera just because so many have died.

For those people who see the mission of the Tribunal, or this trial, as one of fostering truth and reconciliation among the people of Rwanda, it is important that the desire for revenge and shared pain not claim more victims to injustice. We intend to work hard to see that the truth comes out in this courtroom—and in Mr. Nzirorera's case, that truth is that he never planned, instigated, ordered, committed, or otherwise aided and abetted any of the crimes committed in Rwanda, and in fact tried to stop them.

Notably, it is not the survivors who will be witnesses against Mr. Nzirorera at this trial, but the killers. As you have heard, the prosecutor's case against Mr. Nzirorera rests on the words of people who murdered, who raped, and who pillaged their neighbor's property. These unscrupulous and immoral people have discovered that the prosecution is desperate for evidence against prominent personalities such as Mr. Nzirorera. They have accused Mr. Nzirorera when they saw that they could obtain lesser sentences, better conditions, cash, and relocation of themselves and their families by accusing others.

This is Omar Serushago—the principal witness against Mr. Nzirorera. (show photo) By his own admission, he participated in the murder of 30 people. He has been paid thousands of dollars of United Nations funds by the prosecution—in cash. They also paid to relocate his wife and children to a Western country half-way around the world. They even paid the hospital bills for his wife to have a baby—to bring more Omar Serushagos into the world.

Mr. Serushago was one of the first people to discover that he could profit from accusing prominent persons in Rwanda, even though he himself was a street boy in Gisenyi, a remote town in Western Rwanda which borders the Congo. He could no more easily meet Joseph Nzirorera, a Minister, than a frog can turn into a prince. Yet Mr. Serushago has been used as a witness by the prosecution in three

trials spinning his fairy tales in courtrooms throughout this building. And instead of spending the rest of his life in a crowded prison in Gisenyi where he belongs, Omar Serushago has parlayed his lies into a more comfortable life than he even had as a free man.

One may not blame Mr. Serushago for taking advantage of these opportunities, but one doesn't have to believe him either. His testimony is riddled with contradictions and inconsistencies—what you would expect if someone was fabricating evidence rather than recounting something that actually happened.

Let me give you an example. When he was interviewed by the prosecution, Serushago claimed that Mr. Nzirorera had intervened on his behalf with a Colonel Nzungize whose sister was a nun that Serushago killed. This is what Serushago told the prosecution when he was accusing Mr. Nzirorera:

“It was Nzirorera who took the...decision,  
**He said even President Habyarimana  
had died, so why should the death of Nzungize's  
sister create a problem in Gisenyi?”**

Now in the year 2001, Mr. Serushago was called as a witness in the Media trial against Jean Bosco Barayagwiza. He testified about the same event. Here's how he told it at Barayagwiza's trial:



“Because of this incident, Colonel Nzungize wanted to use the soldiers of the camp under his command, and he wanted them to attack the Interahamwe and the members of the CDR in Gisenyi town.

On that occasion, Barayagwiza said important words—  
said very important words: **‘Habyarimana is dead’**  
**he said. ‘It’s not the sister of Nzungize who should**  
**be creating disorder in Gisenyi town.’**<sup>[1]</sup>

As you can see, the truth for Mr. Serushago is a shifting concept, depending on what he is trying to accomplish at the time—or who was on trial. Well, he was called again by the prosecution earlier this year at the Military trial, involving Colonel Anatole Nsengiyumva. And this is what he said at Colonel Nsengiyumva’s trial when he was asked:

“After you killed these people and you met Anatole Nsengiyumva, did he seem bothered by the fact that you killed Nzungize’s sister, when you gave him the report?

“Counsel, Anatole Nsengiyumva himself said that

if this woman was there it was no problem,  
because, **after all Habyarimana was dead**  
**so we could continue performing our operations**  
**as usual.”**

“...When was this?”

“Just after the operation, he was very pleased. He  
congratulated us. Evidence of this lies in the fact  
that yesterday my testimony was that he said that  
he was going to deal with this matter with Colonel  
Ngungize and **he had no problems because the**  
**sister of Ngungize was dead because President**  
**Habyarimana was dead.”<sup>[2]</sup>**

This is just one bold example of the lies that Omar Serushago has told and will tell in this courtroom. And it is a clear lesson of how to catch a liar—with his own words—because someone who is lying is unlikely to be able to keep his story straight. Serushago just inserted the name of the person who was on trial in his fairy tale so that his lies would help the prosecution win a conviction.

Besides Serushago, I expect the prosecution will bring witnesses from Rwandan prisons who will make up similar stories about leaders, such as Mr. Nzirorera. The Rwandan government provides these witnesses to the prosecution, but they refuse to provide the Tribunal or the defence with the prior statements and confessions of these witnesses. This deprives Mr. Nzirorera of showing for these witnesses what he has shown you for Mr. Serushago—that the witnesses have fabricated and varied their testimony to the situation—and deprives you of powerful information that you need in your search for the truth. And we must never lose sight of the fact that that is what this trial is—a search for the truth.

On 25 October 2002, more than a year ago, acting upon a motion filed by Mr. Nzirorera, Trial Chamber I issued an official Request for Cooperation to the Government of Rwanda for these prior statements. When I gave that request to Gerald Gahima, the Prosecutor General in Kigali, he told me directly that his government would not provide this information to the Tribunal. I need this information to do my job—and to show you that the witnesses brought from Rwandan prisons by the prosecution to accuse Joseph Nzirorera are lying.

When Mr. Nzirorera asked the Trial Chamber to hold a hearing and invite Mr. Gahima to come and explain his position, his request was denied and I was sanctioned for making such a request. Mr. Nzirorera then made a motion for the

Trial Chamber to report the government of Rwanda to the Security Council for violating Article 28 of the Statute of this Tribunal, which is the remedy specifically set forth in Rule 7 *bis* when a government fails to cooperate with the International Tribunal. No action has been taken on this motion and now we have begun the trial.

Just last month, Mr. Gahima appeared personally before the Security Council in New York and told them that the Rwandan government was cooperating fully with the Tribunal. Had the Trial Chamber reported the non-compliance in this case, as the Rules provide, perhaps the Security Council would have pressured Mr. Gahima to back up his words with action.

The Appeals Chamber has said that:

“The Trial Chamber shall provide every practicable facility it is capable of granting under the Rules and Statute when faced with a request by a party for assistance in presenting its case.”<sup>[3]</sup>

The Trial Chamber has up to now not done that. I hope that the arrival of our two ad litem judges and the elevation of Judge Vaz to presiding judge in this case will provide the occasion for remedying this injustice.

No one said your job would be easy. I challenge you now to take the step of requesting the President to report the government of Rwanda to the United Nations Security Council for failing to comply with the Request for Cooperation. If you are truly interested in getting to the bottom of what is the truth in this case, you will take this small step.

Let me give you an example of the value of such prior statements or confessions. In the trial of Juvenal Kajelijeli, the former Bourgmestre of Mukingo commune, the prosecution brought a Witness GAO. He testified that on the morning of 7 April 1994, Kajelijeli ordered him and others to kill Tutsi at the Byangabo market. He also claimed that Kajelijeli personally led an attack on Tutsis hiding in the building of the Ruhengeri Court of Appeal.

The lawyer for Kajelijeli asked for Witness GAO's prior confessions and statements and the Rwandan government refused. The prosecutor said he didn't have them. Well, the lawyer got them somehow—on his own. And it turned out that in his confession in Rwanda, Witness GAO had said that it was a soldier, not Kajelijeli, who ordered them to kill Tutsis on 7 April at Byangabo market. In another statement he had made to Rwandan authorities, he had listed all of the people who were involved in the attack at the Court of Appeals—and had not mentioned Kajelijeli.

When he was confronted with these statements at Kajelijeli's trial by the defence counsel, he denied that they were his statements. But there were fingerprints on the statements. The defence had them examined by a fingerprint expert. They belonged to Witness GAO.

So he was shown to have lied about the involvement of Kajelijeli and even lied about the statements and confessions being his own. Needless to say, Witness GAO is not on the list of witnesses being brought to testify against Mr. Nzirorera.

But what about the witnesses who are brought from Rwandan prisons? We don't have their prior statements and confessions because the Rwandan government won't honor their obligation to provide them to this Tribunal. How many lies will be concealed by the fact that we are denied access to these very important materials?

To bring a witness to Arusha for the prosecution while at the same time refusing to provide their prior statements and confessions is a pollution of the truth finding process on behalf of the Rwandan government. By allowing them to get away with it, you not only risk convicting an innocent man, but you allow a member of the United Nations to flout the law and act with the very impunity that this Tribunal was set up to exterminate.

This is an issue that you will hear about many times during this trial.

Unless you do something about it, you will leave a legacy of doubt and unfairness for the Appeals Chamber and for those who read the record of this trial in future generations.

As a prosecutor myself for 10 years in the United States federal law enforcement system, I know the value of full disclosure to the search for the truth. The prosecution has the resources to obtain much information, and the power and authority to convince citizens to reveal information that they won't give to an investigator for an accused person—especially someone accused of genocide. There is an obligation upon the prosecutor to share that information with the defence so that the truth will come out and so that the trial will be fair.

Judge Shahabuddeen of the Appeals Chamber described the duty of the prosecutor at the ICTR this way:

““The Prosecutor...is not required to be neutral in a case; she is a party. But she is not of course a partisan. This is why, for example, the Rules of the Tribunal require the Prosecutor to disclose to the defence all exculpatory material. The implications of that requirement suggest that, while a prosecution must be conducted vigorously,

there is room for the injunction that prosecuting counsel  
‘ought to bear themselves rather in the character of  
ministers of justice assisting in the administration of  
justice.’<sup>41</sup>

I am sorry to have to report to you that the prosecution in this case has not lived up to that standard. They have refused to provide Mr. Nzirorera with evidence that is exculpatory and with evidence that contradicts their witnesses, as required by Rule 68. Rule 68 provides:

“The Prosecutor shall, as soon as practicable,  
disclose to the defence the existence of evidence  
known to the Prosecutor which in any way tends  
to suggest the innocence or mitigate the guilt of  
the accused or may affect the credibility of  
prosecution evidence.”

This failure of the prosecution to act consistent with this Rule, and their ethical obligation, is a serious problem that you will hear about many times during this trial, and which jeopardizes the accuracy of your fact finding and Mr. Nzirorera’s right to a fair trial.



Let me give you an example of this. It relates to our old friend Mr. Omar Serushago. Mr. Serushago has told the prosecutor, and testified under oath at two trials, that he didn't participate in any killing between 7 and 13 April 1994—a time when he claims to have been caring for his pregnant wife.

In his interview with the investigators for the prosecution, he said:

“I did not participate in the operation from 6 to 13 April.”

He testified to the same thing in the Media trial in 2001 and the Military trial in June 2003 when he was asked:

“And Witness, between the 7<sup>th</sup> and 13<sup>th</sup> of April 1994 where were you?

“I stayed in my home because I remember that Colonel Buregeya had asked me not to participate in this disorder, to stay at home, particularly as I had this problem with the health of my wife.”<sup>[5]</sup>

To this day the prosecution has not provided any disclosure to the defence that these statements are contradicted by any information in their possession.

But they have information that Serushago is lying about his role in killings which occurred during 7-13 April.

For example, there is a man in Gisenyi who transported the Interahamwe around town during the time that they were killing. And he told the prosecution that he personally saw Serushago with a weapon on 7 April, leading a group of killers around Gisenyi, killing a lot of people, and saw him manning a roadblock where people were killed on 8 April. This man is known as Witness DO.

The prosecution has taken 8 statements from this witness dating back to January 1999, and have never disclosed a single thing about witness DO or his information which contradicts Serushago's sworn testimony. I only learned of it by following the Military trial, where witness DO testified—as a witness for the prosecution.<sup>[6]</sup>

This is not an isolated instance. Witness OAB was an eyewitness to the abduction and killing of a bank cashier by Omar Serushago on the 9<sup>th</sup> or 10<sup>th</sup> of April 1994—the days when Serushago swore he was at home and didn't participate in any killing. The prosecution took a statement from witness OAB in 1999 and never disclosed it to the defence. Again I only learned about this information which contradicts Omar Serushago when witness OAB testified in the Military trial—as a witness for the prosecution.<sup>[7]</sup>

The Appeals Chamber has said that “if a witness was untruthful as to his own role, it follows that he is not a sufficiently reliable witness as to the involvement or non-involvement of other individuals.”<sup>[8]</sup>

Yet the prosecution has failed to disclose this evidence that goes to the heart of the reliability of Omar Serushago.

These are just two witnesses who I know about who contradict the testimony of a prosecution witness, which the prosecution has failed to disclose, in violation of Rule 68. I can tell you that that is only the tip of the iceberg. During my visits to Rwanda, I have encountered many witnesses with information which contradicts that of Mr. Serushago. These witnesses have been interviewed by the prosecution, some on several occasions. Not a single one has been disclosed to the defence.

The prosecution has a database called Zylab and it has a search function called Zysearch. By a simple command, someone in that office can type in the name Omar Serushago and find every time Serushago has been mentioned by anyone interviewed by the prosecution. They can then review these “hits” for Serushago to see whether that information contradicts his statements or sworn testimony. I asked the prosecution to do this back in June and they refused.

This violation of Rule 68 and the ethical obligation to disclose material which contradicts a prosecution witness operates to deprive the defence of information which it needs in order to have a fair trial. I have asked and will continue to ask the Trial Chamber on many occasions during this trial to enforce Rule 68, and to do something about it when that Rule is violated by the prosecution. At this point, only strict and strong action by the Trial Chamber can force the prosecution to honor its obligations under the rules.

The prosecution's violation of Rule 68 is not limited to material which contradicts its own witnesses. The prosecution concealed exculpatory evidence which tends to show the innocence of Mr. Nzirorera and his co-accused of the very crimes charged in the indictment.

The prosecution was told in 1998, some five years ago, that Mr. Nzirorera had asked members of the executive committee of the Interahamwe on 9 April 1994 to go out into the secteurs of Kigali and try to persuade the people to stop the killing. At least two witnesses have told this to the prosecution. It is the most exculpatory evidence one can imagine—proof that Mr. Nzirorera tried to stop the very killing he is accused of ordering.

Rule 68 requires that information such as this be disclosed “as soon as practicable.” Yet these statements were only disclosed to the defence last month,

more than 5 years later, any only after months of resistance by the prosecutor and what Judge Williams has called repetitive motions on my part.

I found out about this exculpatory evidence only from interviewing one of the witnesses myself and from reading the cross-examination of the other witness from when he testified in the Media trial—as a witness for the prosecution.

How can Mr. Nzirorera have a fair trial when the prosecution conceals this type of exculpatory evidence? How much more exculpatory evidence is still being hidden in the office of the prosecutor today?

In addition to failing to disclose the identity and statements of witnesses who can help show that Mr. Nzirorera is innocent, the prosecution has also failed to disclose documentary evidence which can help demonstrate the innocence of the accused. Let me give you an example:

This is a transcript of the PUBLIC ADDRESS OF MATTHIEU NGIRUMPATSE, President of MRND on Radio Rwanda on 10 April 1994:

[display defence document #10]

“Regarding our contribution from MRND Party, we met together with other political parties, we agreed unanimously, and decided firmly to put up another Government.

“It is to my view, a laudable contribution, because it enabled the country to have a Government. Those who killed the President expected a power vacuum to conquer our country by force, because we know RPF prepared the war so long ago, they were preparing the war since several months. Another contribution we may give; I firmly appeal to all MRND members to remain peaceful.

“I do confirm that there is no political Party that sent people to go and kill, because the President died. Nobody had time to talk to his followers. It came spontaneously from people’s mind, they acted recklessly, they reacted in any way that seemed fit to them, maybe because of anger. But our contribution to the administration now, is that we appeal to all party members to mind the security of others, to deter from evil ways, to stop stealing and killing for those who are used to.

“So, in my capacity as MRND President, I appeal to all members of MRND especially the youth, to maintain public order and peace, especially for those who are in need.

“This is therefore our contribution. We have already tried to send our people in all suburbs, to convince the public to go back to their houses, so that they may watch over their own security instead of engaging in criminal activities and looting.

“In our opinion, we have to fight against those who are attacking us, but we can not fight against unarmed people, who are not attacking us.

“This is such behaviour that should be followed by our party members. The enemy, the attacker, it is the RPF. It is not mere citizens who live peacefully in their own houses.”

This document we found on our own—it has never been disclosed to us by the prosecution. What better evidence of innocence can there be?

And I tell you that this is just one of many examples of efforts by the accused in this case, as well as those with whom they are charged with conspiring, to stop the killing in Rwanda.

If the prosecution would have its way, this evidence would never have seen the light of day. The trial would be simply a presentation of only that evidence which favors the prosecution—the rest is covered up, hidden, and concealed. I ask you: Is that the kind of justice you want to see in this courtroom?

I am sorry to say that in a pretrial motion, the defence of Mr. Nzirorera requested that the Trial Chamber order the prosecution to disclose all communiqués of the MRND party during the period covered by the indictment, and the Trial Chamber refused.

I hope that this opening statement, and the additional of our *ad litem* judges to the Trial Chamber, will allow for a greater understanding of the case and a greater appreciation of the rights of the accused to full disclosure. I urge you to take action to prevent and punish such violations. It will only be by your intervention that the prosecution will be forced to produce exculpatory evidence and abandon this “win at all costs attitude”.

One of the most important pieces of information that the prosecution refuses to disclose to this day relates to the identity of those who assassinated President Juvenal Habyarimana of Rwanda, the President of Burundi, other top officials of both countries, as well as the French crew of President Habyarimana’s plane on 6 April 1994.

By all accounts, the shooting down of President Habyarimana’s plane sparked the massacres and killing in Rwanda. You can bet that if the evidence showed that Mr. Nzirorera or the MRND officials were responsible for starting the massacres by shooting down the plane of their own President, the prosecution would be using that evidence in this trial.

The fact is however, that the assassination of President Habyarimana and the others was the work of the Rwandan Patriotic Army with missiles they obtained from the Ugandan government. It was the first act of a renewed attack on Rwanda by the RPF and its Ugandan allies, and it was this violation of cease fire agreements, of the Arusha Accords, and of humanitarian law that began the series of events that led to Mr. Nzirorera and the other co-accused being chased from their country, hunted in exile, and put on trial here today.

The shooting down of the President's plane was investigated most thoroughly by the French Anti-Terrorism Judge Jean Louis Bruguiere in Paris. Judge Bruguiere completed his report of that investigation earlier this year and gave a copy of that report to the prosecution. They have refused to disclose it to the defence.

We are determined that the assassination of two sitting Presidents and other leaders, the event that sparked the massacres, not be covered up, but be the subject of full and fair testimony at this trial. Therefore, despite the efforts of the prosecution to keep the contents of Judge Bruguiere's report secret, we intend to request under Article 28 that this Trial Chamber subpoena Judge Bruguiere to testify as a witness, either for the defence or as a court witness.

We expect that Judge Bruguiere's investigation and testimony will confirm what the prosecution's own investigation, led by Michael Hourigan, had already determined. Mr. Hourigan's memorandum, which was discovered by a journalist, indicated that the prosecution had interviewed high-ranking members of the RPF who told them of their personal knowledge of the planning and execution of the assassination. They also interviewed people who had intercepted radio communications of the RPF indicating that the target had been hit.



I have sent a letter to the man who commanded the Rwandan Patriotic Army forces at that time asking him to testify at this trial. That man is President Paul Kagame. I have had no response to my letter.

I take this opportunity—publicly—to once again ask President Kagame to come and testify here at this trial. In the late 1980s my President, Ronald Reagan, stood at the Berlin Wall and said, “Take down this wall, Mr. Gorbachev.” Today, I stand in the well of the courtroom of the International Criminal Tribunal for Rwanda, an organ of the United Nations, and I say, “Take down this wall, President Kagame.” Do not hide behind the barriers which conceal the truth—this wall of denial you have erected in the name of restoring peace to Rwanda. There can be no peace, no reconciliation, without first telling the truth. What do you fear by coming into this courtroom and answering, under oath, our simple questions? Who killed President Juvenal Habyarimana on 6 April 1994? This Trial Chamber, the Rwandan people, and indeed the world, has the right to know who lit the spark that set off the catastrophic events in Rwanda.

Because this trial is a search for the truth, and an important step in the healing and reconciliation of Rwanda, we intend to ask you to subpoena President Kagame if he refuses to testify at this trial voluntarily.

We have also invited United Nations Secretary General Koffi Annan to testify at this trial as a witness for the defence, and will ask you to subpoena him if he refuses the invitation. Secretary-General Annan was the Director of Peacekeeping Operations for the United Nations in 1994 and made the decision not to credit the allegations of an informant to UNAMIR that the MRND party was preparing a militia to exterminate the Tutsis.

This allegation was made in January 1994 by a man who Mr. Nzirorera had fired from the MRND staff in November 1993. He peddled his allegations first to the opposition party, who sent him to UNAMIR for their own political gain. The Belgian intelligence agency in Rwanda also talked to him and rated him at the lowest category of reliability. Nevertheless, his allegations found their way into a fax sent by General Dallaire to Koffi Annan on 11 January 1994.

We believe that if allowed to testify, Koffi Annan would confirm that his office received many similar unreliable claims of death squads, conspiracies, and exaggerated predictions of massacres and that his refusal to have UNAMIR raid the MRND headquarters based on the claims of this informant was because it was not credible information.

Indeed, after 6 April, Mr. Nzirorera was never able to return to MRND headquarters. The building was taken over by the RPF. And to this day, not a single weapon, or a single piece of paper evidencing a plan to exterminate the Tutsis, has been shown to have been found at the MRND offices.

At the status conference that took place in this case back in February 2002, the prosecutor at the time, Mr. Fleming, announced that the Rwandan government was making available a significant amount of material it had seized relevant to the 1994 events. None of that material has ever been disclosed to the defence, and not a single document has been discovered showing that Mr. Nzirorera planned, instigated, ordered, committed, or otherwise aided and abetted any crime.

The Trial Chamber should also be aware that the prosecution has in its possession thousands of hours of tape recordings of radio broadcasts in Rwanda

before and during the events. Not a single one contains a statement of Mr. Nzirorera in which he instigated, encouraged, or condoned any crimes.

Mr. Nzirorera's actions on and after 6 April also show that he committed no crime. On the day of the shooting down of the President's plane, Mr. Nzirorera had attended a meeting of the MRND in which they decided on a statement to be released upon the President's return from Dar es Salaam. The MRND leadership asked the President's Chief of Cabinet to go to the Kigali airport and meet the President with the statement. The man was waiting there, paper in hand, when the President was assassinated.

At the time of the assassination on 6 April, Mr. Nzirorera was at home in Kigali with his family, and in a particularly precarious place. His house was directly across from the 600 member battalion of the RPF, which was stationed in the Parliament compound. Had he not been evacuated by the military early the next morning, Mr. Nzirorera and his family would surely have been killed, like many of his neighbors were.

If Mr. Nzirorera had been planning genocide, would he have stayed with his wife and six young children in a house directly opposite the RPF battalion when the plan was executed?

On the morning of 7 April, the three accused, Nzirorera, Ngirumpatse, and Karemera were asked by the military crisis committee, at the suggestion of United Nations Special Representative Jacques Roger Booh Booh, to name a new President for Rwanda. Under the Arusha Accords, the President was supposed to be from MRND party. Any of these three men could have assumed the reigns of

power. Instead, they scrupulously followed the MRND statutes, and said that they could not name a President absent action by the MRND Congress.

As I have mentioned earlier, Mr. Nzirorera and MRND leaders attempted to stop the killings over the next few days by issuing public communiqués over the radio and by asking some of the members of the Interahamwe executive committee to go out into the streets of Kigali to try and calm the population. These are hardly the actions of men committing genocide.

Mr. Nzirorera stands accused in Count One of the indictment with conspiracy to commit genocide. Yet there is no proof of the existence of any such plan.

Mr. Nzirorera stands accused in Count Two with genocide itself. Yet the evidence will show he deplored the violence and tried to stop the killing.

Mr. Nzirorera stands accused in Count Three with complicity in genocide, but the evidence will show he did nothing to aid or abet those who killed, and everything he could to stop them.

Mr. Nzirorera stands accused in Count Four with direct and public incitement to commit genocide. Yet there is not a single speech or public statement which the prosecution has produced. The truth is Mr. Nzirorera opposed the killing and tried to stop it.

Mr. Nzirorera stands accused in Count Five of extermination, as a crime against humanity, but the evidence will show he tried to save the Tutsis, not exterminate them.

Mr. Nzirorera stands accused in Count Six of rape as a crime against humanity. The prosecution has itself admitted that he raped no one and gave no orders to rape.

Finally, Mr. Nzirorera stands accused in Count Seven of war crimes—crimes committed in a war he did not start, did not participate in, and called for the help of the international community to end.

Mr. Nzirorera is absolutely not guilty of each and every charge brought against him by the prosecutor.

You don't have to take my word for it, or even his. During the course of this trial, we will bring many, many witnesses, whose testimony will prove to you that the accusations against Mr. Nzirorera from the collection of perjurers that the prosecutor will parade before you to this witness chair, are complete falsehoods.

We will also demonstrate that the prosecution's case is undermined by what evidence it does not bring into this courtroom. You will find no documentary evidence of a plan for genocide, no recordings of Mr. Nzirorera advocating violence, and no physical or otherwise reliable evidence that he committed any crime.

Mr. Nzirorera asks each of you, President Vaz, Judge Arrey, Judge Lattanzi, to do justice in his case. We ask that you not be influenced by public opinion or by politics. We ask that there be justice for everyone, with no exception. If justice is done in this case, then Joseph Nzirorera will be found not guilty.

I appreciate your attention to my remarks this morning and say to you, “Murakose chanye”—“thank you very much” in Kinyrwandan. May you have the

patience, the wisdom, and the courage to render a true and just judgement in this case. Joseph Nzirorera is not guilty.

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<sup>[1]</sup> 16 November 2001 at page 65-66

<sup>[2]</sup> 19 June 1993 at page 5

<sup>[3]</sup> *Prosecutor v Tadic*, No. IT-94-1-A (15 July 1999) at para, 52

<sup>[4]</sup> *Prosecutor v Barayagwiza*, Para. 68, Separate Opinion of Judge Shahabuddeen

<sup>[5]</sup> 18 June 2003 at page 19

<sup>[6]</sup> (2 July 2002) at pages 11, 18

<sup>[7]</sup> (25 June 2003) at pg 46,83

<sup>[8]</sup> *Kupreskic*, (23 October 2001) at para 346