

THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

CASE NO.: ICTR-01-65-I
CHAMBER I

THE PROSECUTOR
OF THE TRIBUNAL
v.
JEAN MPAMBARA

WEDNESDAY, 14 DECEMBER 2005
0900H
CONTINUED TRIAL

Before the Judges:

Jai Ram Reddy, Presiding
Sergei A. Egorov
Flavia Lattanzi

For the Registry:

Mr. Nouhou M. Diallo
Mr. Edward F. Matemanga

For the Prosecution:

Mr. Richard Karegyesa
Mr. Ousman Jammeh

For the Accused Jean Mpambara :

Mr. Arthur Vercken
Mr. Vincent Courcelle Labrousse

Court Reporters:

Ms. Kirstin McLean,
Ms. Judith Baverstock,
Ms. Sherri Knox

I N D E X

WITNESS

For the Prosecution:

WITNESS AHY

Cross-examination by Mr. Vercken 1

EXHIBITS

Exhibit No. D. 17A and D. 17B..... 26

PROCEEDINGS

1

2 MR. PRESIDENT:

3 Yes, Witness AHY, you will now be cross-examined by the Defence. What is the practice -- do we have
4 to administer the oath again, or is that -- Mr. Matemanga?

5 MR. KAREGYESA:

6 I think the witness can just be reminded that he is still under oath.

7 MR. PRESIDENT:

8 Yes.

9

10 All right, you are still under oath, and you are bound to speak the truth. Do you understand?

11 THE WITNESS:

12 Yes, Mr. President.

13 MR. PRESIDENT:

14 Yes.

15 MR. VERCKEN:

16 I thank you, Mr. President. First of all, I would like to say good morning to everyone in my Court, to my
17 colleagues of the Office of the Prosecutor, and also to you, Witness.

18 WITNESS AHY,

19 CROSS-EXAMINATION

20 BY MR. VERCKEN:

21 Q. Witness, first of all, I will try to see with you, or go through with you the -- go through with you in the
22 chronology of the testimonies you gave when you appeared before various courts, either in Rwanda or
23 before the ICTR.

24

25 According to the documents that have been disclosed by the Prosecution of the ICTR, you were
26 questioned on the 19th of August 1999 by the IPJ in Rwanda of Butati Mwtembe in Rukara *commune*. I
27 read that interview of August 1999, and I did not find the name of Mr. Mpambara. Therefore, I did not
28 find any allegations against the *bourgmestre*.

29

30 My question, Witness, is the following: Did I read correctly that testimony?

31 A. It is true that when I was questioned by that IPJ, I did not mention the name of Mpambara. Neither did I
32 mention my own name, because I continued to plead not guilty. Therefore, I denied my responsibility
33 regarding all the allegations against me for the following reasons: I was still espousing the ideology of
34 the movement, but when I discovered that Rwandans needed to know the truth --

35 Q. I'm going to come to that. We'll go stage by stage. I told you we are going to review the chronology.
36 Now I am requesting that you go to the next stage, and that will give you the opportunity of expressing
37 yourself on the various choices you made, when I will get to that stage, if you will allow me.

1 So, now, according to the documents disclosed by the Prosecution, six months after that questioning of
2 19 August 1999, that is, on the 18th of February 2000, you were arrested, whereas, at that time, you
3 were living in Rukara in Mitungo *cellule*. Are these points correct? Were you arrested on
4 18 February 2000, that is, six months after the questioning of 19 August 1999?

5 A. No, that is not correct. I was arrested on the 4th of April 2000.

6 Q. Witness, you are, therefore -- that the transcript -- you are saying that the transcript relating to your
7 arrest, transcript number RMMP 819154 ND, which states that you were arrested on 18 February 2000
8 in Rukara *commune*, comprises an error. Is that what you're saying?

9 A. Yes, that's correct. I was the one who was arrested, and I cannot forget the date when I was arrested.
10 I was arrested on 4 April 2000, and it was at 5 p.m. I was arrested at Muhazi lake.

11 Q. The same document, Witness, states that a decision to remand you in custody was taken against you
12 on 3 April 2000 at 4 p.m. -- at 4 o'clock. Was it on that date that you were remanded in custody -- that
13 you were arrested and remanded in custody?

14 A. It's possible. But if my memory serves me right, I think it was rather on the 4th of April 2000 at 5 p.m.

15 Q. Witness, when you were questioned on Thursday, 25 September 2005 before this Court, on page 20 of
16 the French version -- I am sorry, I do not have the corresponding page of the English version regarding
17 this point. But it is -- it is part of the documents that were put under seal. You said that you were
18 arrested on the 3rd of April. Now, my question is the following: Were you arrested on the 3rd of April or
19 the 4th of April?

20 A. I may have made a mistake, but you would agree with me that the margin of error is not very significant.
21 I was arrested either on the 3rd or the 4th of April. Perhaps I made a mistake when I mentioned the
22 4th of April. It is possible that I was arrested on the 3rd of April. Therefore, I admit that I may have
23 committed an error regarding the date when I was arrested.

24 Q. Witness, I will continue with the chronology of events -- the events regarding your criminal record.
25 Once more, I will refer to the statement, or testimony that you gave before this Court in Arusha
26 two-and-a-half months ago, on the 29th of September 2005. These are documents that have been
27 placed under seal. In the French version, this is page 21, line 16, and in the English version, page 20,
28 line 10.

29
30 At that stage, you testified that you were questioned a second time. What I mean by "second time" is
31 that you were questioned a second time after the 19th August, that is, on the 9th of June 2002. Do you
32 remember you were questioned -- whether you were questioned on 11th of June 2002, and if yes, who
33 questioned you?

34 A. When I was questioned for the first time, I was questioned by Mwtembe, as you rightly said. I was
35 questioned for the last time by Gashema when I was about to be transferred from the *communal* jail to
36 the central prison. Therefore, I did not remember the date of that second questioning, because I did not
37 write down the date somewhere.

1 Q. Witness, perhaps to refresh your memory, we have another questioning, a copy of another questioning,
2 that was disclosed to us by the Prosecution. This is a transcript of a confession of guilt, and an appeal,
3 or request for pardon. It is numbered K0366950, and it is dated 23 December 2003, and it is signed by
4 Prosecutor Barnabé Madadi, M-A-D-A-D-I. Therefore, it is not Mr. Gashema, who you just mentioned.

5
6 Would this mean, Witness, that the questioning carried out by Mr. Gashema before you were
7 transferred is, indeed, the questioning that you mentioned on the 23rd of -- that you mentioned on
8 11 June 2002?

9 A. I did not follow the details that you gave. I will request you to please kindly repeat.

10 Q. Yes, of course, Witness, I will do that.

11
12 My question was the following: Do you remember whether you were questioned on 11 June 2002, and
13 your answer was that -- what you know, and what you remember, is that you were questioned by
14 Mr. Gashema. Is that what you said?

15 A. Yes.

16 Q. Very well. Then I told you that in the questioning, in the documents that we have, because these
17 documents have been disclosed to us by the OTP, we do not have any reference to your questioning by
18 Mr. Gashema. We see transcript of confession of guilt, and this was done in the presence of
19 Mr. Madadi.

20
21 Then, I asked you to tell me whether it is possible that the questioning carried out by Mr. Gashema is
22 the one dated 11 June 2002.

23 A. When I made a confession of guilt, it was the 11th or the 12th of June 2002. If you want to know
24 whether I was questioned twice, I would say no, I was questioned once by Gashema when I was still in
25 the *communal* jail. And since I was transferred to the central prison, I have no -- I have never met
26 someone from the office of the prosecutor.

27 Q. Where were you questioned on 11 June 2002?

28 A. I was questioned only once.

29 Q. Where were you questioned on 11 June 2002? Please can you answer my question.

30 A. Perhaps you do not know how a confession of guilt is made. When you want to make a confession of
31 guilt, you take sheets of paper, you enter in an office, and you write a document in which you confess,
32 or make your confession of guilt. That document is forwarded to the prosecutor. That is what happens.
33 Otherwise, I was not questioned. I was not asked questions which I had to answer. What I did was to
34 make a confession of guilt in a document which I wrote.

35 Q. On what date did you write that document relating to your confession of guilt, Witness?

36 A. I no longer remember the date. Perhaps I should refer to that document, because it exists. And when I
37 travelled here to Arusha, in fact, that trip was improvised. I did not know that I had to answer questions

- 1 relating to that document. Otherwise, I would have brought it with me in order to be able to answer your
2 questions.
- 3
- 4 But to summarise, if I could have that document, perhaps I will be able to identify the date which
5 appears on that document. If you think that is necessary, maybe I could forward to you the document in
6 question.
- 7 Q. Yes, indeed, we are going to look at that, Witness. But now I move on to my next question, and here it
8 is: Were you made to enter a guilty plea, and to ask for pardon, before Prosecutor Barnabé Madadi on
9 23 December 2003 at the central prosecutor's office in Kigali -- or, rather, at the Mutara prosecutor's
10 office -- at the Mutara prosecutor's office?
- 11 A. At some point in time, I was summoned by the prosecutors, even if I did not know their names. The
12 prosecutors summoned those who had entered, or made confessions of guilt. And the persons who
13 had made those confessions repeated their confessions. They could even change their confessions in
14 order to add other charges to which they pleaded guilty. Therefore, I was also summoned. But I did
15 not receive a document showing that my plea, my guilty plea, had been accepted. Therefore, I am of
16 the opinion that what I said at that time was accepted. Normally, when a guilty plea is accepted, you
17 receive a copy of the guilty plea. I remember that I signed the document, but I did not receive a copy
18 thereof. And that is what leads me to think that my guilty plea, perhaps, was rejected.
- 19 Q. I am going to ask you a more general question, Witness, that perhaps will enable us to come out of this
20 stalemate. With respect to the various discussions regarding your guilty plea, the discussions which
21 you had with Rwandan authorities, did you implicate *Bourgmestre Jean Mpambara*?
- 22 A. It is not only for -- regarding Mpambara that I kept secrets. Normally, when you have to enter a guilty
23 plea, first of all, you take into consideration neighbours and the prevailing atmosphere where you live.
24 If you are of the opinion that somebody could undermine your safety, you avoid mentioning their name,
25 or his name. If you think that would not happen, perhaps you could mention their name. It is in that
26 context that I mentioned the name of -- or, rather, that I did not mention the name of Mpambara. But I
27 would say that there are even other people that I may talk about later on, because I did not mention
28 them in my guilty plea.
- 29 Q. I thank you. I will continue. Witness, once more, with reference to your testimony before this Court
30 two months -- two-and-a-half months ago, I am referring to document placed under seal, French
31 version, page 22, line -- line 2 to line 23, and English version, page 20, line 26 to -- to page 21, line 9.
32 Here before this Court you said that you appeared three times before the Gacaca court in the
33 Rukara *secteur*. The dates that you gave were the 1st -- 1st of September, the 9th of September, and
34 the 15th of September 2005. Is that correct, Witness?
- 35 A. Yes, that is correct.
- 36 Q. These three times when you appeared before the court, or these three times that you -- or during these
37 three times, did you appear before the same court in Rukara *commune*?

1 A. Yes.

2 Q. Can you tell me, Witness, where that court sits, where the Gacaca court sits in the Rukara *secteur*?

3 A. It is in the Rukara *secteur*, Rukara *cellule* at Kinunga.

4 Q. Witness, do you remember the day of the week during which the Gacaca court meets?

5 MR. PRESIDENT:

6 Can we have the spelling of that name, Kinunga? Can you spell it for us, please?

7

8 Can you spell it, Mr. Witness, Kinunga? How is it spelt?

9 MR. KAREGYESA:

10 The witness is illiterate, Your Honour.

11 MR. PRESIDENT:

12 Ah. Well, one of you can help.

13 MR. KAREGYESA:

14 I believe it is K-I-N-U-N-G-A.

15 MR. PRESIDENT:

16 K-I-N-U-N-G-A?

17 BY MR. VERCKEN:

18 Q. Witness, would you like me to repeat my question?

19 A. Yes, please do.

20 Q. Is there any special day of the week during which the Gacaca court meets in the Rukara *secteur*?

21 A. Yes, it is Thursday.

22 Q. If I put it to you that the 1st September was a Thursday, 15 September also a Thursday, but that
23 9 September was a Friday, what do you say to that? Is that an error, or a -- is it that on that day the
24 Gacaca court met on a Friday, sat on a Friday?

25 A. The Gacaca court sits only on Thursdays. And if I mentioned Friday, that would be an error on my part.
26 We do not all have the same ability of remembering certain events. Perhaps I gave those dates in
27 error. But I know that the Gacaca court sits only on Thursdays.

28 Q. Therefore, to correct the testimony you gave two-and-a-half months ago, before this Court, would it be
29 correct to say, Witness, that you appeared before the Gacaca court three times in the Rukara *secteur*,
30 on the 1st of September, 8th of September, and 15th of September 2005?

31 A. Yes, that is possible.

32 Q. Well, since -- is it just a possibility, or do you confirm that you appeared, for three successive weeks,
33 before the Gacaca court in Rukara on Thursdays, that is, on the 1st, Thursday the 1st, then
34 Thursday the 8th, and then Thursday the 15th of September?

35 A. I remember that I appeared before the Gacaca court three times, but I did not note the date
36 somewhere, and, therefore, cannot confirm the dates you are giving. It is possible that it was on those
37 dates that you have just given. You can refer to a calendar, and I am telling you that the Gacaca court

1 sits on Thursdays.

2 Q. I have referred to a calendar, Witness. If that would reassure you, I can show you a calendar, because
3 I have one with me. The first three Thursdays of the month of September are the 1st, the 8th, and the
4 15th of September 2005. Did you, indeed, appear before the Gacaca court on those three Thursdays
5 during the month of September 2005?

6 MR. PRESIDENT:

7 Mr. Vercken, is -- this is a protected witness, isn't it?

8 MR. VERCKEN:

9 No.

10 MR. KAREGYESA:

11 Your Honours, the witness has waived his protection. But there was a complication arising out of his
12 prolonged stay here. So the Chamber ordered that, you know, the proceedings be put under seal, the
13 record be put under seal, because of his prolonged stay here. But at this point in time, I believe we can
14 continue as we are.

15 MR. PRESIDENT:

16 Yes, carry on.

17 BY MR. VERCKEN:

18 Q. Witness, I was telling you that I checked on a calendar, and that the first three Thursdays of the month
19 of September 2005 are the 1st of September, which you admitted, the 8th of September, and not the
20 9th of September, which is a Friday, and also, as you said, the 15th of September.

21
22 Now, when you testified before this Court, it was also the month of September 2005. I believe your
23 recollection was still quite fresh, or fresh enough. Can you now, Witness, confirm or deny that it was,
24 indeed, on these three dates, that is, the 1st of September, the 8th of September, and the
25 15th of September, that you appeared before the Gacaca court in the Rukara *secteur*?

26 A. I remember that I appeared before the Gacaca court three times, but I cannot be certain about the
27 dates. All I know is that I appeared before that court three times. But if you have checked the dates
28 with -- in a calendar -- you are in a position to do that, I would give you the benefit of the doubt. But I
29 must say that I appeared before the court three times, and I thank you for pointing out to me that it was
30 on those three dates.

31 Q. The differences you have given are very close, one or two days' difference. I -- I do not think the effort
32 required of you is too complicated. It is not too much to ask you whether, at the beginning of the month
33 of September 2005, 15 -- that is, 15 days before you appeared before this Court, 15 days before you
34 appeared before this Court, you appeared once a week before a Gacaca court in Rukara *secteur*.

35 A. I appeared before the Gacaca court on those three successive or consecutive Thursdays.

36 Q. I thank you.

37

1 When you were heard by this Court in Arusha on the 29th of September 2005, you said that the first
2 time you appeared before the Gacaca court, on the 1st of September 2005, that that first appearance
3 was only an opportunity for you to introduce yourself to the Gacaca court, but that on that occasion you
4 did not give any testimony. The references for this testimony are under seal, French version page 22,
5 lines 2 to 3, English version, page 20, line 25.

6
7 Is it correct, Witness, that on the 1st of September, you appeared before the Gacaca court and that you
8 did not give any testimony before that court on that day?

9 A. I did not give any testimony on that day.

10 Q. Still with respect to the 1st of September 2005, do you remember whether there was a trial going on
11 before that Gacaca court in the Rukara *secteur*. And if you remember, what was the name of the
12 accused in that trial?

13 A. I remember that there was a trial going on, but it was a trial on appeal. It was a proceedings in the
14 name of -- the appellant was Célestin. Moreover, I was called -- called as a witness in those appellant
15 proceedings. The person who had accused him said that I had been in the parish, that I had seen him
16 at the parish. But I said that I had not seen him at the parish, that I had instead seen him at another
17 place. And I accused him of the acts that he committed at that other place.

18 Q. That testimony, Witness, that is, the testimony concerning Célestin, did you give it on the
19 1st of September or on the following Thursday, that is, the 8th of September?

20 A. I gave that testimony the first time I appeared before the Gacaca court. It was on that day that I gave
21 that testimony in that -- in those appellant proceedings.

22 Q. A short while ago, Witness, I asked you whether, during your first appearance before the Gacaca court,
23 you gave a testimony, or whether you just introduced yourself, and you answered me that, indeed,
24 during that first appearance, you simply introduced yourself. Now you are saying that you gave
25 testimony in Célestin's appellant proceedings. Are you sure that you are not mixing up the date of
26 1st September -- the first Thursday of September, and the next, or following Thursday of September?

27 A. Perhaps you do not know how proceedings are conducted before the Gacaca courts. Perhaps I may
28 explain to you the conduct of proceedings before that court. In the Gacaca courts, testimony comprises
29 the fact that you go before an entire population and you say all that you heard, all that you saw, all that
30 you did. That is what is considered a testimony before the Gacaca court. But in Célestin's
31 proceedings, what I did was not a testimony per se, I simply refuted the allegations that were made
32 before the Gacaca court.

33 Q. The Gacaca court before which you spoke, or testified, on the 1st of September 2005, was it the same
34 as the one before which you testified on the 8th of September and the 15th of September 2005?

35 A. Can you please repeat your question?

36 Q. The Gacaca court before which you testified, be it -- or before which you spoke, whether it was for the
37 purposes of defending yourself, or for any other reason, that is, the Gacaca court before which you

1 appeared before on the 1st of September 2005, was it the same court before which you appeared the
2 following week, and the week thereafter, that is, on the 8th and 15th of September 2005?

3 A. Yes, it is one and the same Gacaca court. However, on the first occasion I gave testimony with respect
4 to the appellant proceedings concerning Célestin.

5 Q. I thank you. In that testimony of 1st September, did you mention the name of Mr. Mpambara, or the
6 *bourgmestre* of -- the *bourgmestre* of Rukara?

7 A. I mentioned Mpambara's name on the third occasion. It was still in the context of Célestin's trial. I
8 believe it was the 15th when I mentioned Mpambara.

9 Q. On the 1st of September you did not mention him; did you?

10 A. I did not mention him during the first and second occasions, or appearances.

11 Q. If I put it to you that on the 3rd -- 1st of September, that before that same Gacaca court, there was the
12 trial of Mr. Simon Bizuru, does that ring a bell?

13 MR. VERCKEN:

14 Bizuru is spelt as follows: B-I-Z-U-R-U.

15 MR. PRESIDENT:

16 The first name is Simon.

17 THE WITNESS:

18 It is true that the Simon Bizuru trial was before the court on that day, but that did not concern me.

19 BY MR. VERCKEN:

20 Q. Witness, therefore you returned before that same Gacaca court that following week; that is, on
21 Thursday, 8 September 2005; is that correct?

22 A. Yes.

23 Q. On 8th September 2005, did you speak before that Gacaca court?

24 A. That was the second time I was appearing before the Gacaca court, and on that occasion I gave my
25 testimony.

26 Q. Witness, in that testimony, did you mention *Bourgmestre* Jean Mpambara?

27 A. My testimony was quite lengthy; I was unable to complete it. But the following Thursday I clearly
28 mentioned Mpambara's name, the name of Célestin, and also the name of Kibuka.

29 Q. On that Thursday, 8th September, does it mean that you -- well, you said you made a lengthy
30 statement. But does it mean that you did not mention Mpambara for any reason whatsoever?

31 MR. PRESIDENT:

32 Can we have the spelling of Kibuka? Mr. Vercken, can you spell it for us?

33 THE ENGLISH INTERPRETER:

34 Kibuka is spelt as follows: K-I-B-U-K-A. Kibuka. K-I-B-U-K-A.

35 MR. PRESIDENT:

36 Thank you.

37

1 BY MR. VERCKEN:

2 Q. Witness, do you remember whether, on Thursday, 8th of September, other people who had recently
3 been released from prison, like yourself, were questioned by the Gacaca court? And if yes, would you
4 remember the names of those other persons who had been recently released, and who spoke before
5 the Gacaca court?

6 A. I remember the name of Shyaka; Shyaka on that occasion spoke. I also remember Ndagijimana, who
7 also spoke. There is also the name of Gisagara. Those are the names which I remember.

8 Q. When you talk of Ndagijimana, is that Mr. Antoine Ndagijimana, N-D --

9 A. Yes. Yes, it is Antoine.

10 Q. I will spell his name, it is as follows: N-D-A-J-I-M-A-N-A (*sic*). Witness, when you talked about Shyaka,
11 is it Jean Baptiste Shyaka?

12 A. Yes.

13 MR. VERCKEN:

14 The name Shyaka is spelt as follows: S-H-Y-A-K-A.

15 BY MR. VERCKEN:

16 Q. Now, Witness, I am going to give you three names, and you will tell me whether -- as far as you
17 remember -- those three persons were heard or questioned on that day, that is, 8th September 2005,
18 before the Gacaca court. The first name is Jean Pierre Karajire.

19 MR. KAREGYESA:

20 Can counsel spell the name for the record, Your Honours?

21 MR. PRESIDENT:

22 Yes, Karajire, can you spell it?

23 MR. VERCKEN:

24 K-A-L -- R-A -- sorry -- J-I-R-E, Karajire. K-A-R-A-J-I-R-E.

25 THE WITNESS:

26 Yes, he spoke. I remember that at the time I was going to give testimony in relation to those appellant
27 proceedings, it was Shyaka who was testifying. The others had already given their testimony.

28 Therefore, I remember that Shyaka, Ndagijimana testified on that day.

29 BY MR. VERCKEN:

30 Q. I am going to give you another name. This is François Rukwaya.

31 MR. VERCKEN:

32 I spell that: R-U-K-W-A-Y-A.

33 BY MR. VERCKEN:

34 Q. Witness, do you remember whether François Rukwaya also testified on the 8th of September 2005?

35 A. I told you that at that time I was testifying in appellant proceedings, and when I left it was Shyaka who
36 was testifying. I do not know whether other persons testified later on. According to the programme, it
37 was planned that Shyaka, Gisagara, and myself, will testify on that day. And when I left it was Shyaka

1 who was testifying. So, I went to give testimony in those appellant proceedings. But I clearly
2 remember that only three persons had to testify on that day, namely, myself, Shyaka, and Gisagara.

3 Q. Witness, you also said that you remember Jean Pierre Karajire?

4 A. It is true that he testified on that day. Jean Pierre told me that someone had offered money to some
5 people so that those persons would not implicate him. Those persons were members of the solidarity
6 camp. Jean Pierre told me that he was going to testify with respect to that issue. In fact, I do not know
7 whether he testified or not on that day. I know that it was provided that three persons who (*sic*) will
8 testify on that day. Maybe he was asked to testify in my place, because he was not present.

9 Q. I thank you, Witness, for those clarifications. To summarise what you said a while ago, you took the
10 floor on the 8th of September, you made rather lengthy testimony. In that testimony you did not
11 mention, or accuse, Mr. Mpambara; is that correct?

12 A. Yes, that is true. I did not say anything concerning him on that day.

13 Q. Witness, just two-and-a-half months ago, that is, on the 29th of September 2005, before this very Court
14 in Arusha, the Prosecutor asked you whether, in the context of your confession to the Gacaca -- which
15 at the time was dated 9 September but we have solved that issue -- whether in the context of that guilty
16 plea of 8 September you accused Mpambara of having incited attacks and provided grenades to
17 assailants on the morning of 9 April 1994. In answer to that question by the Prosecutor, you said,
18 "Yes". Today, in answer to that same question two-and-a-half months later, your answer is, "Yes".
19 Where is the truth; do you remember?

20 A. Yes, I remember. I accused Mpambara on the 9th. Rather, I accused Mpambara regarding what he
21 did on the 9th of April 1994. Perhaps you should ask me why, ask me why I accused him of those acts.
22 On the 9th of April, between 9 o'clock and 9:30 --

23 Q. I am the one asking questions, you are not the one who asks questions which you answer yourself. So,
24 we will come to the events of the 9th of April, don't worry about that. For the time being, the question is:
25 Why is it that in an interval of two-and-a-half months there is such a difference -- such a difference in --
26 regarding events, or regarding a testimony which is not that old?

27

28 Two-and-a-half months ago you said that you accused Mpambara on the 9th of September 2005. And
29 today you have just told me that you did not accuse him at the same -- on the same occasion, which did
30 not take place on the 9th of September, but rather on the 8th of September. My question is: Can you
31 explain this difference, this inconsistency in your testimony, given the time lapse of only two-and-a-half
32 months? That is all, please answer my question.

33 MR. KAREGYESA:

34 Your Honours, counsel is mischaracterising the evidence of this witness of 29 September 2005. I just
35 refer Your Honours to page 21. It's clear that he made a full confession in two parts. And this is
36 evident on page 21 of the English, from line 7. He made it in two parts, both on what he says was the
37 9th, but which we now know was the 8th, and on the 15th of September 2005.

1 MR. PRESIDENT:

2 Yes, if you look at -- Mr. Vercken, if you look at page 21 of the English transcript that is borne out; isn't
3 it?

4 MR. VERCKEN:

5 I do not have the English transcript before me, Mr. President, so I can hardly see what you are referring
6 to. But perhaps you could quote to me the sentence and I would be able to locate it in the French
7 transcript.

8 MR. PRESIDENT:

9 Yes, at line 7 it says: "The first time I made a full confession was on the 9th of September." Which we
10 now know is incorrect. "I did not actually fully complete that. I went back and added more information
11 on the 15th of September. It was done in two parts. First on the 9th of September, and later on I went
12 back on 15th of September."

13

14 That is the part you are referring to?

15 MR. KAREGYESA:

16 Yes, Your Honours. And what the witness has basically done today is only clarifying. Counsel is
17 mischaracterising the evidence.

18 MR. VERCKEN:

19 I wouldn't say such a thing, Mr. President. I would therefore ask the Prosecutor to withdraw what he
20 has said. Because if you look at page 22, French version, line 12 to 14, and English version page 20,
21 line 35 to line 36, documents placed under seal, you would see that the Prosecutor asked the witness
22 the following: "In your confession of the 9th of September", which we know today to be the
23 8th of September, "In your confession before the Gacaca court, did you mention the participation of the
24 Accused, who incited the attacks and gave grenades to the assailants on the morning of
25 9th April 1994?" The witness answered: "Yes. I stated that on that day." Therefore, I do not think that
26 I'm mischaracterising what the witness said.

27 MR. KAREGYESA:

28 Your Honours, it's got to be seen in the context of page 20 and 21 of the English transcript. I don't
29 know the corresponding French transcript.

30 MR. PRESIDENT:

31 And then the next two questions are important. "Had you ever, before this occasion, the
32 9th of September, given evidence implicating the Accused?" "The first time I made a full confession
33 was on the 9th of September. I did not actually fully complete that; I went back and added more
34 information." Doesn't that suggest he had implicated him?

35 MR. VERCKEN:

36 What was important to me, Mr. President, was to know whether he had implicated the Accused on the
37 9th of September. In that question -- in answer to that question, he said, "Yes". Then, whether he did it

1 again on the 9th -- on the 15th of September, that may be possible. What was important to me was
2 whether he says he accused -- implicated Mpambara on the 9th of September. And I believe
3 two-and-a-half months ago, the witness answered, in that respect, "Yes".

4 *(Pages 1 to 12 by Kirstin McLean)*

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1 1000H

2 MR. PRESIDENT:

3 All right. Carry on. This can be the subject of your final addresses to us, but please continue with your
4 cross-examination.

5 MR. VERCKEN:

6 I thank you, Mr. President.

7 BY MR. VERCKEN:

8 Q. Still two and a half months ago before this same Court in Arusha, on page 20, lines 30 to 35,
9 English version, and page 22, lines 12 to 22, French version, you said that on the 9th of September
10 2005 -- today we know that it was the 8th of September -- you said that you made oral confessions and
11 also written confessions. Do you confirm that, Witness?

12 A. Yes, I confirm it.

13 Q. When you say that you made written confessions, does that mean that you yourself wrote, that is, you
14 wrote with your own hand the said confession, which you said earlier on implicated the Accused?

15 A. If you do not know how to write, you ask someone else to write for you, but there -- there is a document
16 containing my confession.

17 Q. That document, was it written by a kind of secretary, a Gacaca secretary, who takes notes during
18 hearings?

19 A. You could even ask someone you trust to write your confession for you.

20 Q. What exactly did you do on that day? Did you ask somebody foreign to the Gacaca court to write for
21 you, or do you remember the person who wrote your confession for you?

22 A. I remember who wrote that document.

23 Q. Can you give me -- can you give me the name of that person?

24 A. I cannot give you his name. It is somebody I trust, but I could, rather, give you the document in
25 question, but I cannot reveal to you the identity of the person who wrote that document. Perhaps it
26 could be my wife or my child, but I will not tell you who wrote it for me.

27 Q. In addition to that document, which allegedly was written by somebody close to you, somebody you
28 trust, Witness, do you remember whether, during the Gacaca proceedings, in the court is there
29 somebody who takes notes -- who takes down notes regarding what is being said?

30 A. Yes, there is someone who takes notes.

31 Q. Do you know the name that person or those persons who takes notes?

32 A. There is Sebutare (*sic*), who takes notes during Gacaca proceedings.

33 MR. PRESIDENT:

34 Can we have that name spelt?

35 THE ENGLISH INTERPRETER:

36 Butare, B-I-T-U -- T-U-R-E (*sic*).

37

1 MR. PRESIDENT:

2 Is it Sebutare or just Butare? Can you give us that name again, please, Witness?

3 THE WITNESS:

4 That person is called Butare, but I do not know his first name.

5 BY MR. VERCKEN:

6 Q. Witness, apart from the said Butare, during the three occasions you appeared before the Gacaca court
7 on the 1st, 8th and 15th September, were there other persons, apart from Butare, who took notes for
8 the Court, as far as you can remember?

9 A. I said that there is one person who has the responsibility of taking notes during the Gacaca
10 proceedings. Apart from Butare, there is a woman called Mukabaliza, who also takes notes.

11 MR. PRESIDENT:

12 Can you spell that name, please?

13 MR. VERCKEN:

14 M-U-K-A-B-A-K-I-S-A (*sic*).

15 THE ENGLISH INTERPRETER:

16 Perhaps counsel made a mistake in that spelling.

17 BY MR. VERCKEN:

18 Q. Is that a woman whose first name is Immaculée, Witness?

19 A. I do not know her first name. I know that her name is Mukabaliza.

20 Q. If I tell you the name Claude Musengimana, M-U-S-E-N -- M-U-S-E-N-G-I-M-A-N-O, would you
21 remember that person as being one of the other persons responsible for taking notes during
22 Gacaca proceedings?

23 A. I do not even know that person.

24 Q. Can you tell this Court whether those who take notes during court proceedings use computers,
25 typewriters or ordinary pens?

26 A. They use pens.

27 Q. Can you tell the Court whether those persons write on fly-leaf sheets or in a notebook with sheets of
28 paper sticking one to another?

29 A. I do not think it is for me to answer that question. Perhaps you could put that question to those who sit
30 in the Gacaca court. I see people taking notes. I do not know whether they take the notes in a register,
31 in a notebook or on fly-leaf sheets. I do not know anything about that. Perhaps you may put that
32 question to those who sit in the Gacaca court.

33 Q. Witness, if I put it to you that I obtained photocopies of notes or court transcripts from the three
34 Gacaca sessions, on Thursday 1st of September, Thursday 8th, and Thursday 15th of September in
35 the Rukara *secteur*, would you confirm all that you said during those court sessions on the dates I
36 mentioned?

37 A. You are saying that you have photocopies?

1 Q. (*Microphone not activated*)

2 THE ENGLISH INTERPRETER:

3 Counsel's microphone was not on, but he seems to be saying that the witness should answer his
4 question, please.

5 BY MR. VERCKEN:

6 Q. Witness, I would like you to repeat your question (*sic*), please. Let us suppose this is a hypothesis, this
7 is an assumption. Let us suppose that the Defence has copies of court transcripts of Thursday 1st,
8 Thursday the 8th, and Thursday the 15th of September 2005. Given that knowledge, would you still
9 maintain what you said?

10 A. I do not think that question should be put to me because I am not the person who files the notes which
11 are taken during Gacaca sessions. That question might, perhaps, be put to the person who takes down
12 those notes.

13 Q. Now, let me be more precise, Witness. Were I to tell you that in the Gacaca transcript of the 1st, the
14 8th and the 15th of September 2005, you spoke only once. You appeared only once on the 8th of
15 September 2005, and that in that in that single or only appearance, you never mentioned
16 Mr. Mpambara's name, what would you say?

17 A. I told you that I spoke about Mpambara on the 15th of September, when I last appeared before the
18 Gacaca court.

19 Q. Witness, were I to tell you that I had transcripts of the session of 15th of September 2005 of the
20 Rukara *secteur* Gacaca court and that on that date you did not testify, what would you say?

21 A. I would repeat to you the testimony I gave on that date, because I remember it. If my testimony were --
22 was not taken down, that is not my business. I know that I testified on that date of
23 15th of September 2005.

24 MR. VERCKEN:

25 Mr. President, as you have understood, I have photocopies of transcripts of the 1st, the 8th and the
26 15th of September 2005, and, as I indicated, the witness appears only on the 8th. He does not talk
27 about Mr. Mpambara.

28
29 And I would like to tender these documents. Let me mention that these are not documents which I
30 obtained through official channels. I asked the Prosecutor for these documents to be transmitted. I
31 asked the registry. And I also asked the ministry of justice in Rwanda. But all those requests came to
32 no good. And I would like to tender the documents in my possession, as well as a translation in French
33 done by the investigators, an unofficial translation.

34
35 And my intention will be that during the status conference during -- which will follow, I will mention
36 articles and judicial cooperation concerning documents that are supposed to be provided by the
37 Prosecutor, so that documents can be translated -- transmitted, rather, through legal official channels.

1 MR. PRESIDENT:

2 Well, how do we know these are authentic documents? You have not obtained them through official
3 channels. Could you enlighten us on that? What is your basis on which we can admit these
4 documents?

5 MR. VERCKEN:

6 First of all, I would say that, as the witness said a while ago, these are handwritten documents. And
7 then I will further say that, as the witness confirmed, one of the registrars who wrote this document is
8 called Immaculée Mukabaliza, and then I will further state that the dates that the documents bear are
9 1st, 8th and 15th September 2005.

10

11 And I will add that, in accordance with what was said for the first time by the witness in today's session,
12 during the testimony of the 8th of September, Mr. Antoine Ndagijimana,
13 Mr. Jean-Pierre Karajira (*phonetic*), Jean-Baptiste Kasetta (*phonetic*) testified. For sure,
14 Antoine Ndagijimana testified because in the documents I have, he is the one who comes immediately
15 after the witness.

16

17 Mr. President, those are the pieces of information which were not given by the witness up till this point
18 and which appear from the reading I have of the documents which I have and which make the
19 documents that I propose to tender valid.

20 MR. PRESIDENT:

21 Yes, Mr. Karegyesa.

22 MR. KAREGYESA:

23 Your Honours, we object to counsel's application to have these documents on the record, both in form
24 and substance. And I will start with the substance, which is what Your Lordship has averted (*sic*) to.
25 We have photocopies that were given to us this morning whose provenance is clearly in doubt.
26 Counsel concedes that he did not obtain these documents through official channels. These documents
27 do not bear any official stamp or seal indicating their origin, and nobody that in this courtroom can
28 identify the signature, which purports to be that of Mukabaliza, Immaculée. On that basis,
29 Your Honours, these documents do not satisfy any test for admissibility.

30

31 Secondly, Your Honours, the witness cannot identify these documents; and, therefore, these
32 documents can't be used to impeach him. Counsel may, indeed, put propositions to this witness based
33 on information derived from these documents but cannot seek to have these documents entered onto
34 the record. At a later stage during the Defence case, however, counsel is entitled to call the author of
35 these documents and lay a foundation for having them admitted onto the record. Otherwise, this
36 witness is not qualified to (*unintelligible*).

37

1 MR. PRESIDENT:

2 So you would have no objection to these documents being marked for identification at this stage? They
3 have been used.

4 MR. KAREGYESA:

5 Your Honours, my understanding of marking for identification is not to leave the document hanging on
6 its record or partially hanging on its record. There has to be a positive step taken. And if counsel
7 wishes to call the author of these documents, then they can properly be marked for identification. But if
8 he has no intention, then there is no point in marking them for identification. They just create
9 unnecessary complications on the record.

10 MR. PRESIDENT:

11 Do you wish to respond do that last point, Mr. Vercken?

12 MR. VERCKEN:

13 Yes, Mr. President. In addition to the point that I have raised to support the admission of these exhibits,
14 I could also go through the detail of his only testimony of the 8th of September 2005 with the witness,
15 and raise points that up till this point he has not mentioned to the Trial Chamber. I also note that, from
16 information available to me, it is not usual that transcripts should be -- should bear a stamp. This is
17 something before the Gacaca courts. There is somebody who keeps the register whose name is
18 known. Besides, the witness mentioned the name. And that person signs every day on the transcript
19 of the court, and that is the case.

20
21 Lastly, let me point out, Mr. President, that, surprisingly, the Prosecutor is not proposing that all the
22 means available to him -- and he has quite some means at his disposal -- should be used to provide a
23 certified copy of the transcripts to the Trial Chamber. But he throws the weight of the evidence on the
24 Defence by insisting that the Defence should call Miss Immaculée, the secretary of the Gacaca courts,
25 whereas it is more than probable that that person -- we don't even know where that person lives -- will
26 even refuse to be responsible and to come to Arusha at the request of the Defence. And I am speaking
27 from experience, Mr. President, because in this trial, I have already attempted to call members of the
28 Rwandan judicial system, and I can tell you that, for the time being, I have not succeeded. So I
29 seriously doubt that this lady would accept to come to your jurisdiction at the request of a Defence
30 team. But then I am certain that if the Prosecutor were minded to do so, he would be able to obtain that
31 document legally, and then we would see if the documents that I am proposing to get admitted today
32 are, indeed, the same.

33 MR. PRESIDENT:

34 Yes, we need time to consider this issue, and I would suggest to you, Mr. Vercken, if you could move
35 on with your cross-examination and leave this issue suspended for the time being. We will make a
36 ruling after the morning tea break, and then you can take it up from there. If that's not too inconvenient
37 for you, would you be able to move to other areas of your cross-examination?

1 MR. VERCKEN:

2 Yes, of course, Mr. President.

3 BY MR. VERCKEN:

4 Q. Witness, do you maintain that, before the Gacaca court in Rukara *secteur* at the beginning of
5 September 2005, you accused Mr. Mpambara of having incited people to massacre and having
6 distributed grenades?

7 A. If it is necessary, I can even repeat the testimony I gave on that occasion because my testimony was
8 fairly short. It was following the problem with Kibuka, who gave me 10,000 Rwandan francs, so that I
9 should not accuse him, and I turned down his offer. And I would like you to understand, therefore, how
10 I came to accuse him.

11
12 I brought that to the knowledge of the Gacaca court, and the court gave me the opportunity of
13 explaining the situation. I also talked about Célestin because people had spread rumours that I had
14 testified in his favour, and in my testimony, I, therefore, said that Célestin could be accused because, in
15 front of his house, grenades were distributed and that, on that occasion, a vehicle which was
16 transporting gendarmes arrived with Mpambara on board. And when they got to his house, they started
17 distributing grenades, and that Célestin never mentioned that.

18
19 It is, therefore, against that background that I accused Mpambara. Célestin did not mention those facts.
20 I am the one who mentioned the facts, and those facts appear in the documents that I drafted -- or my
21 guilty plea, and which I intend to provide to the Gacaca court.

22 Q. Witness, you have not yet given this document to the Gacaca court?

23 A. No, I have not yet given the document to the Gacaca court. I prepared the document and I intended to
24 forward it to the Gacaca court. The testimony is made orally, but generally one keeps a copy of the
25 testimony, and it is forwarded to the courts so that the court can make its ruling.

26 Q. Witness, is there a difference between what you testified to orally before the Gacaca court and what
27 you intend to write to the same Gacaca within the near future -- in the near future?

28 A. The testimony before the Gacaca court can be supplemented. During the oral testimony, the witness
29 testifies briefly, but in the written document there are details. I have drafted such a document, and
30 when I came to Arusha, I was getting ready to forward the document to the Gacaca court.

31 Q. To be very clear, in that written document which you will subsequently give to the Gacaca court, you
32 are accusing Mr. Mpambara, is that correct?

33 A. Yes.

34 Q. Still, to be precise, in your oral testimony before the Gacaca court, did you also accuse Mr. Mpambara,
35 or this is a clarification or an addition that you intended to make in writing?

36 A. In my testimony on the 15th of September, I talked about Mpambara and I mentioned his name
37 regarding the problem of Célestin and Kibuka. That is how I got to talk about Mpambara, but then there

1 was this detailed document that I intended to forward to the Gacaca courts.

2 Q. Witness, tell the Chamber clearly if, in this oral testimony you said, which principally concerned
3 Célestin, you were very precise regarding Mr. Mpambara. How did you describe his actions? Did you
4 describe them precisely, or did you intend to provide those details subsequently in writing?

5 A. The document existed already, but I had not yet given it to the Gacaca jurisdiction. I intended to do so
6 later so that the court should be able to examine the document. Under normal circumstances before
7 the Gacaca court, one testifies briefly, not in detail, not to take a lot of time, because there are a
8 number of people who have to testify. So I talked about Mpambara briefly, but I had a detailed
9 document which I later had to provide. So I did not talk about Mpambara extensively, especially
10 because I did not have many charges to bring against him. And I told the Trial Chamber that that
11 document, which I am supposed to hand in to the Court, exists already, but I have not given it to the
12 Gacaca jurisdiction.

13 Q. I thank you for that clarification. Could you be a little more precise? To the best of your recollection, on
14 what you said orally, what you said about Mr. Mpambara, did you provide details; and, if you did, what
15 kind of details did you provide or did you just mention his name? How exactly did you talk about him?
16 Could you give us a few more details?

17 A. That is what I just told you, but I might perhaps repeat it. I told you that there was a problem
18 concerning Célestin and Kibuka. There were rumours that I had testified on behalf of Célestin, and I
19 wanted to talk about -- about him. And during my testimony I said I did not see him where he was
20 accused of having committed some offences, but then I saw him at another location. And on that
21 occasion, I also said that in his testimony he had not told the truth, because had he told the truth, he
22 should have mentioned a vehicle which arrived in front of his house with gendarmes on board and also
23 Mr. Mpambara. And when that vehicle arrived in front of his house, grenades were distributed. It is
24 against that background, therefore, that I mentioned Mpambara's name.

25
26 But I also have a document which has already been prepared and which I am going to forward to the
27 Gacaca courts regarding my trial.

28 Q. So, if I understand you correctly, in your testimony, without getting into the details, you told the Gacaca
29 court that on the 9th of April, Mr. Mpambara, without providing details, had participated in the
30 distribution of grenades, is that the case?

31 A. Yes. I accused Célestin of not having told the whole truth, because had he told the whole truth, he
32 would have spoken about the vehicle which stopped in front of his house and the distribution of the
33 grenades. I am the person who brought that information before the Gacaca courts, and this information
34 appears in the document which I prepared and which I intend to submit to the Gacaca court.

35 Q. Witness, what family relation do you have with Célestin?

36 A. Our mothers are sisters.

37 Q. Do you think that your cousin Célestin is responsible and guilty of the fact that a vehicle stopped in front

1 of his house and grenades were distributed?

2 A. No, I did not hold him responsible for that, but in his testimony he should have mentioned that, even if it
3 was a detail, because it was as a result of that distribution that people were killed. But then he did not
4 mention that in his testimony. So his testimony should have been rejected because he failed to say
5 everything he saw.

6 Q. Did Célestin receive several grenades in the morning of the 9th of April?

7 A. No, he did not receive any grenades.

8 Q. Witness, could you explain why, when you testified before the Gacaca court, you did not provide many
9 details, apparently, and you decided to do so in writing? Like Célestin, you were given an opportunity
10 to speak. Why were you not more complete?

11 A. That would have taken a lot of time. That is the first reason I decided to stay brief. Oral testimony
12 should be brief so that the population can follow what you are saying. In addition to that oral testimony,
13 there are written documents filed subsequently. Gacaca courts refer more to those written documents
14 to draw their conclusions.

15 Q. That's your opinion, Witness. At any rate, Witness, do you confirm today before this Court you accused
16 Jean Mpambara in the Gacaca courts in September 2005 orally an allegation to the effect that there
17 was a distribution of grenades and incitement for people to commit massacres, even if you did not give
18 many details in your oral testimony? Is that correct, Witness?

19 A. Let me repeat for you so you understand what I said. The testimony of Célestin was not -- was
20 incomplete. Had it been complete, he would have spoken about the vehicle, the vehicle that Mpambara
21 arrived in. Once that vehicle arrived in front of Célestin's house, the people inside started to distribute
22 grenades. That is what I said about Mpambara. I also added that I had a more detailed document that
23 I was planning to give to the Gacaca courts.

24
25 Let me give you an example. When you give a guilty plea, sometimes you may not speak about those
26 matters in front of the Gacaca courts. Instead, you will put it in writing.

27 Q. Yes, but here you are telling us you have given two types of testimony, both oral and written, isn't that
28 correct, Witness?

29 A. Yes, the document is more detailed, and I am planning on giving it to the Gacaca courts.

30 Q. Witness, let me read for you your statement dated 8 September 2005, the statement you gave to the
31 Gacaca courts. After that, you can react to the content of the statement.

32 MR. KAREGYESA:

33 Your Honours, the Prosecution objects to how counsel has framed his proposition by asserting that that
34 is a statement made by this witness to Gacaca. He should first find out whether, indeed, it is the
35 statement (*microphones overlapping*)

36 MR. VERCKEN:

37 That's not what I said.

1 MR. KAREGYESA:

2 At least that's what we got in the English translation, Your Honours, an assertion by counsel that the
3 document (*microphones overlapping*)

4 MR. VERCKEN:

5 Then it was badly translated. That is exactly what I propose, to read a statement out for the witness,
6 and then after that he can tell me if that is, indeed, what he said or not on the date of
7 8th September 2005 before the Gacaca courts.

8 MR. PRESIDENT:

9 You are now reading from what you say are transcripts. Yes, all right. Go ahead.

10 MR. VERCKEN:

11 Absolutely, Mr. President, with regard to all of the precautions that we mentioned earlier as well.

12 BY MR. VERCKEN:

13 Q. Your name, Witness, is mentioned at the beginning of this transcript -- I shall not mention it -- as well as
14 your alias. It said, "On the 9th of April 1994, there was a meeting headed by Nyirahuku."

15 N-Y-I-R-A-H-U-K-U. "And Ruvugo." R-U-V-U-G-O.

16 MR. PRESIDENT:

17 Slow down a bit. You are going very fast, Mr. Vercken. Can you spell those names again, please?

18 MR. VERCKEN:

19 Nyirahuku, N-Y-I-R-A-H-U-K-U. Ruvugo, R-U-V-U-G-O.

20 BY MR. VERCKEN:

21 Q. Let me repeat the entire sentence to be more clear.

22

23 "On the 9th of April 1994, there was a meeting. It was headed by Nyirahuku and Ruvugo. They told us
24 that the Tutsis were going to attack us Hutus. At the end of the meeting, I left with Kibuka."

25 K-I-B-U-K-A. "Mbarute." M-B-A-R-U-T-E.. "Nyirahuku" -- which name I already spelt. "Some were
26 trained in weapons handling, such as Rusagara." R-U-S-A-G-A-R-A. "Gatete." G-A-T-E-T-E. "On that
27 day, I saw the remains of Rugomwa" -- R-U-G-O-M-W-A -- "who was killed by Kanyemera."

28 K-A-N-Y-E-M-E-R-A. "There, on site, was Kanyemera." K-A-N-Y-E-M-E-R-A. "Karolimpara."

29 Karolimpara, K-A-R-O-L-I-M-P-A-R-A. "Célestin Irankunda." I-R-A-N-K-A-U-D-A (*sic*). "And Ndenzi."

30 N-D-E-N-Z-I. "We left the Paris centre and went to Gakara's house." G-A-K-A-R-A. "He was not

31 home. Then we went to Rwibasira's house." R-W-I-B-A-S-I-R-A. "Along the way, we crossed a group
32 of attackers, who were from Gahini, at the bar at Sipire's place." S-I-P-I-R-E. "And Birere."

33 B-I-R-E-R-E. And in parenthesis "Kingabo." K-I-N-G-A-B-O. "Nsengenuva." N-S-E-N-G-E-N-U-V-A.

34 "Samuel."

35 THE ENGLISH INTERPRETER:

36 Could counsel please proceed more slowly, as there are very many names?

37

1 MR. PRESIDENT:

2 I think you have gone very quickly through those names could you repeat them, please?

3 MR. VERCKEN:

4 I shall slow down. Let me go back to Mugenzi, M-U-G-E-N-Z-I.

5 MR. KAREGYESA:

6 Mr. President, if counsel could avail the booth with the document he is reading from it would expedite
7 matters.

8 MR. PRESIDENT:

9 Do you have a spare copy of that document? Would you please --

10 MR. VERCKEN:

11 Now that I have given the document, must I spell all of the names still, Mr. President?

12 MR. PRESIDENT:

13 Well, it might help if you did.

14 MR. VERCKEN:

15 I must continue therefore to spell them. Is that correct? Very well, I will proceed.

16 BY MR. VERCKEN:

17 Q. Indeed there are many details and names. Let me get back to Mugenzi, Rajabu, M-U-G-E-N-Z-I. And
18 then the next word R-A-J-A-B-U, Mbonyu Mugenzi, M-B-O-N-Y-U, M-U-G-E-N-Z-I, Kanega,
19 K-A-N-E-G-A. "We found that they had just killed a certain Rwabutugo." R-W-A-B-U-T-O-G-O. And I
20 stop there. "The group that was with me didn't in any way participate in the death of that person as we
21 found the person already dead. But we, too, could have killed the person because we were -- we had
22 become mad people. On the 10th of April 1994, I was in front of my older brother's house when
23 Rwenyana" -- R-W-E-N-Y-A-N-A --

24 MR. KAREGYESA:

25 Your Honours, maybe counsel should proceed by putting questions or propositions to the witness
26 based on the short text, because he is circumventing his failed application to have the document
27 admitted by reading the entire document onto the record. And we have serious objection to this
28 devious and underhand method.

29

30 On the face of the photocopies, it is clear that there have been alterations in pagination, there are
31 unexplained lapses, so the authenticity of this document is highly in doubt. And by counsel reading it
32 onto the record in its entirety, it distorts the fact-finding process. What we suggest is that he puts
33 propositions to this witness, not based on the entire document, but on segments. He has already read
34 onto the record two paragraphs, by the time he is through -- we could be hear for another hour -- and
35 you know, what will the witness answer to, the entire document or bits and pieces?

36 MR. VERCKEN:

37 With your leave, Mr. President, I should like to respond.

1 MR. PRESIDENT:

2 Yes, all right. Please do.

3 MR. VERCKEN:

4 First of all, as long as you and the Court do not stop me, I don't need a lecture from the Prosecution on
5 how to conduct my examination. It will not take, secondly, an hour to read the document. I am already
6 halfway through it. And, next, with regard to this witness, it seems correct for him to have an overall
7 idea about what we are talking about, and for that I need to read out in one go the text for him. I am not
8 asking about the details of the content of his statements that I have read, I simply want to ask him if
9 generally this corresponds with what he said before the Gacaca courts. After that, we will not get into
10 the details, factual details described, apparently by the witness on that day. I don't think that it is useful
11 that I be stopped at every step along the way. That is a waste of time it seems to me. I simply want to
12 read it out and proceed, as I described.

13 MR. KAREGYESA:

14 Your Honours, my problem with proceeding the way counsel proposes to is that it is going to be
15 compound. There may be parts which this witness concedes to, and others which he doesn't, so it
16 would be better to go piecemeal than what counsel intends to do putting propositions based on an
17 entire text.

18 MR. PRESIDENT:

19 At the end of the day, if we admit this document, this argument doesn't arise, am I right?

20 MR. KAREGYESA:

21 Pardon me, Mr. President?

22 MR. PRESIDENT:

23 If we admit this document, leaving aside the question of what weight to attach to it, this particular
24 objection which you have just taken, will not arise; am I right? Because we will have the document
25 before us and he can then be questioned on any part of it or whole of it.

26 MR. KAREGYESA:

27 Yes, Your Honour. Even if you do admit the document, despite the provisions of Rule 95, still, the
28 witness did not transcribe what he said. We have no evidence of how the transcription was made. Was
29 it word for word, or was it a summary? Now, how does counsel propose to proceed? Is he going to ask
30 him whether he admits the entire content of what has been read, in which case it will be a compound, or
31 whether he admits parts and does not admit others. And that's why we suggest a better use of this
32 Court's time would be to put propositions -- pose questions based on segments, probably by sentence.

33 MR. PRESIDENT:

34 Yes, I think what we propose, Mr. Vercken, we will take a slightly early morning tea break. It's five to
35 eleven now and we will rule on the admissibility of the document and that that resolve this particular
36 issue one way or the other. So we will take our morning break.

37 *(Court recessed from 1057H to 1140H)*

1 MR. PRESIDENT:

2 We will deliver our oral decision. The Defence has asked to have handwritten records of Gacaca
3 proceedings in Rukara *commune* admitted as an exhibit. These records have not been authenticated
4 by the Rwandan government. According to the Defence, these records contain a summary of
5 Witness AHY's testimony before the Gacaca court. The Prosecution has challenged the authenticity of
6 the documents. Rule 89(C) of the Rules of Evidence and Procedure provides that the Chamber, "May
7 admit any relevant evidence which it deems to have probative value." The Appeals Chamber has held
8 that evidence is inadmissible only where it is found to be so lacking in terms of indicia of reliability that it
9 is not probative, and this principle is embodied in Rule 95 concerning exclusion of evidence.

10

11 In the Chamber's view, the documents at issue bear sufficient indicia of reliability to be admitted into
12 evidence. They do not bear any official seal and have not been obtained directly through the Rwandan
13 judicial authorities.

14

15 While the Chamber is admitting these documents, the admissibility of the document should not be
16 confused with the assessment of weight to be accorded to the evidence by the Chamber. The
17 Chamber will consider both parties' arguments concerning the reliability of the documents in
18 determining their evidentiary value, if any, at the end of the case.

19

20 However, in the interests of justice, the Chamber requires an authenticated version of these
21 documents. Consequently, the Chamber also asks the Prosecution, pursuant to Rule 98, to use its
22 good offices to request the Rwandan authorities for these documents.

23

24 Yes, Mr. Vercken. You can now continue. Can we have the document?

25 MR. VERCKEN:

26 Yes, Mr. President. There is a document which I gave to the interpreters. I will now give you two which
27 are preceded by non-official transmission -- documents translated by our own investigators. I had only
28 four copies, Mr. President. Well, if you wish, I could make more -- I could have more copies made by
29 the investigators.

30 JUDGE LATTANZI:

31 *(Microphones overlapping)*

32 MR. VERCKEN:

33 I thank you, Your Honour.

34

35 So, unless the President thinks otherwise, maybe I will complete the reading of the translation, that is, a
36 non-official translation of this document.

37

1 That translation is on page 2 in French of the document given to you. I had interrupted my reading of
2 the document. I stopped at the sentence where it says, "We met him there, but we also could have
3 killed him because we were like -- we had gone crazy."
4

5 Would you want me to ask the witness a question at this stage of my reading, or should I complete the
6 reading?

7 MR. PRESIDENT:

8 Mr. Vercken, now that we have admitted this document and we will have a translation of it, there is no
9 need to read the whole document, we can read it. But you can ask questions.

10 *(Pages 13 to 25 by Judith Baverstock)*
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1 1145H

2 MR. VERCKEN:

3 Perhaps since the witness cannot read, it may be necessary for him to hear the entirety of what is
4 contained in this document so as to be able to respond in -- in some relative comfort. I just have two
5 more paragraphs which I can read quickly.

6 MR. PRESIDENT:

7 We don't have an English version of this yet, have we? Do we have an English version of this?

8 MR. VERCKEN:

9 No, Mr. President. These are documents which we obtained not long ago. We worked on the
10 translation yesterday, and that is why we did not have the opportunity of translating them from French
11 or Kinyarwanda into English, but they have been translated from Kinyarwanda into French.

12 MR. PRESIDENT:

13 All right.

14

15 Mr. Matemanga, what is the next exhibit number, Defence exhibit number?

16 MR. MATEMANGA:

17 D. 17.

18 MR. PRESIDENT:

19 So we'll admit the Kinyarwanda version as D. 17 -- did you say?

20 MR. MATEMANGA:

21 Yes, D. 17.

22 MR. PRESIDENT:

23 D. 17. And you have an unofficial French translation at this stage, which can be marked as D. 17A. Is
24 that how we've been doing it?

25 MR. MATEMANGA:

26 The Kinyarwanda, D. 17A; the French, D. 17B.

27 MR. PRESIDENT:

28 All right. So we have these documents marked, then. A is Kinyarwanda.

29 MR. MATEMANGA:

30 Yes.

31 MR. PRESIDENT:

32 And B is the French.

33 MR. MATEMANGA:

34 Yes, Your Honour.

35 *(Exhibit No. D. 17A and 17B admitted)*

36 MR. PRESIDENT:

37 Yes, Mr. Karegyesa.

1 MR. KAREGYESA:

2 If it pleases, Your Honours, we abide by the decision of the Chamber with regard to admitting these
3 documents onto the record and enjoining the Prosecutor to attempt at having them authenticated.

4
5 We do have, however, great difficulty with the Kinyarwanda photocopies relevant to what counsel
6 purports to be the testimony of this witness. Now, from a reconstruction, it would appear that there are
7 three handwritten pages relevant to this witness, that is, page 3, 4 and 9, which have all been
8 summarised in French at page 2 of the French translation. Clearly, there seems to have been some
9 kind of repagination relevant to page 3 and page 4. We're not sure whether these pages belong to the
10 same document or same date or same sequence. What we find odd is that from page 4, you go to
11 page 9; and only the last two lines of page 9 have been summarised by the Defence.

12
13 So at this point, Your Honours, it's -- it's really not clear to the Prosecutor whether, indeed, what
14 appears on page 3, i.e., the personal details of this witness, relate to the two subsequent pages, i.e.,
15 page 4 and page 9. Most obliged, Your Honours.

16 MR. PRESIDENT:

17 Yes. Would you like to respond to that?

18 MR. VERCKEN:

19 Yes, indeed, Mr. President. As I stated when I started questioning the witness, in his transcripts, it
20 appears that he spoke before the Gacaca court only on the 8th of September. Now, in the
21 Kinyarwanda document which you have, you would see a first page, which at the top is numbered
22 number 2. In French, right at the top, on the title, you see 192005. This is the trial of Mr. Bizuru. It is
23 the third word which you see on -- or in the first line and which was confirmed by the witness a short
24 while ago.

25
26 This testimony -- or, rather, this day, that is, the 1st of September 2005, continues onto page 3 and it
27 is -- it stops in middle of page 3, and it ends with the signature of Immaculée who is the secretary
28 responsible for taking down notes during the proceedings. And this point was also confirmed by the
29 witness.

30
31 Furthermore, since the Gacaca courts meet only every eight or seven days, on every Thursday, we now
32 move on straight to the date of 8 September 2005, which is the following Thursday. And still in that
33 regard -- rather, still on page 3, you have the testimony which I am reading, the testimony of the
34 witness.

35
36 Moreover, you can see this on the fourth line, the fourth line after the date, the date of 8 September
37 2005. You will see that his name is mentioned there. Before his name is mentioned, there is a star --

1 an asterisk, actually. This document has been photocopied. It's photocopied up to the page where
2 you -- which appears to be new, but it would appear that there -- the pagination was changed. Go up to
3 page 9. It appears the pagination was changed. I don't know who did that. On the page bearing
4 number 9, you have Mr. -- "Ubuhamya". Then you have the testimony of Antoine Ndagijimana. This
5 testimony was -- rather the witness confirmed that Ndagijimana was present at that trial.

6
7 Then the next page which also has some -- what seems to be fake pagination or fake numbering, I
8 would like to note that the page begins with the date of 15 September 2005. The photocopy continues
9 up to where you have the signature, the signature of the secretary who took the notes, Mr. Claude, on
10 the last page of the document in Kinyarwanda.

11
12 Now, I would like to know from my investigators whether the pagination which we have at the top
13 right-hand corner of this document is pagination which they did or whether these documents have not
14 been tampered with, whether they are as they received them.

15
16 Are you the one added this numbering?

17 THE ENGLISH INTERPRETER:

18 The counsel says no.

19
20 We did not hear the answer given by the investigators.

21 MR. VERCKEN:

22 Well, you have the figures at the top right-hand corner of the photocopied documents. They do not
23 correspond to the numbering on the original document. Perhaps this explains the Prosecutor's
24 problem. In any case, I believe, thanks to this active research, we would know more.

25 MR. PRESIDENT:

26 These pages, 2, 3, 4, 9 -- 6, 7, 8, 9, 10, are these part of a larger document that you have in your
27 possession, or is this all you have?

28 MR. VERCKEN:

29 That is all we have, Mr. President. Perhaps they are part of a more voluminous document because the
30 photocopy enables us to notice or realise that these copies were apparently made from an exercise
31 book, but I do not have any other copy, apart from what you received as exhibit.

32 MR. PRESIDENT:

33 Very well. We will carry on, and all these are factors that we'll obviously weigh when we come to
34 consider the weight to be given to these documents.

35 BY MR. VERCKEN:

36 Q. Witness, I read out to you the first part of what appears in the photocopied document which we talked
37 about a while ago, and what I related -- read is related to the date of 9th September -- 9 April 1994.

1 This is your testimony. In that testimony you do not mention Mr. Mpambara. While I stand to be
2 corrected by the President, I can say that in the unofficial translation which we have for the time being,
3 the name of Mr. Mpambara is not mentioned either. How do you explain this absence, this failure to
4 mention the name of Mr. Mpambara, even though you said that you effectively mentioned him and
5 brought allegations against him during the hearing of 8 September 2005?

6 A. What you're saying is not correct. I said that I mentioned Mpambara on 15th September. It was on that
7 date that I mentioned his name in my testimony. Therefore, it is not the 8th of September.

8
9 And before making any comment whatsoever, I would request the Chamber not to take into
10 consideration or not to consider the content of this document as being correct, because I have noticed
11 some passages which do not reflect faithfully my testimony. Therefore, I cannot but refer to the
12 document which I had drafted myself. I noticed that some of the paragraphs he read reflect what I,
13 indeed said, but there are additions. I would even say that there are also omissions. Therefore, I do
14 not know how counsel for the Defence came about this document, the document which he tendered
15 today. I repeat that the only document which I recognise is the one which I wrote personally and which
16 I intend to produce before the Gacaca courts.

17
18 But relating to or concerning my oral statement, I would repeat that that statement was brief and it was
19 a summary. In my full testimony, I mentioned or talked about 30 persons, whereas in the passage you
20 read, you hardly mentioned more than three names. Therefore, I reiterate my request to the Chamber,
21 namely, that the Chamber should not take into account the document produced by counsel for the
22 Defence.

23 MR. PRESIDENT:

24 Witness, do you read Kinyarwanda, or are you totally illiterate?

25 THE WITNESS:

26 I can make some effort reading Kinyarwanda.

27 MR. PRESIDENT:

28 And have you been reading that document in Kinyarwanda, which purports to be a transcript of the
29 proceedings before the Gacaca courts?

30 THE WITNESS:

31 No. The documents were not shown. I think I should also make a correction to what counsel for the
32 Defence says. In truth, there was no trial as such. I only gave a statement before the Gacaca courts.
33 But listening to what counsel for the Defence quoted a while ago, it is as if there is someone who gave
34 him an oral statement because there are some parts which, indeed, correspond to my testimony. But I
35 also noticed that there were additions.

36 BY MR. VERCKEN:

37 Q. Can you specify what shocks you in the reading of the first part of the document which I read a short

- 1 while ago before the break? You said that you noticed that there were inaccuracies, there were
2 additions, according to you. Can you specify which?
- 3 A. In what you read, there are some portions which do not correspond to what I said. For example, you
4 talked about an attack which took place at Paris and of another attack which took place at Gahini. You
5 seem to make a confusion between the two attacks. In fact, those who attacked Paris are not the same
6 assailants who went to Gahini. There are some persons who are found in the two groups. And, on that
7 basis, I can confirm that part of the text you read to me reflects my testimony, but there were additions.
- 8 Q. Witness I'm going to challenge that immediately, because in what I read to you, there is no confusion
9 between an attack which may have taken place in Paris and the attack at Gahini. I'll repeat to you the
10 sentence. It's very short. "Upon leaving the Paris centre, we went to Gakara -- Gakara's house, but
11 Gakara was not home. We went to Rwibasira, and we came across to group of assailants who were
12 coming from Gahini." Therefore, there is no confusion between the two attacks. All we have is people
13 leaving the Paris centre, including you, who were going to another place and who came across
14 assailants, assailants who were coming from Gahini. Therefore, this corresponds to the testimony that
15 you gave at that time. Is that correct?
- 16 A. I am telling you that you are observing a fact. You must specify the date when the attack at the parish
17 took place and the attack when the Gahini attack -- and the date when the Gahini attack also took
18 place.
- 19 Q. Witness, I am not testifying. You are testifying. The question I am putting to you is: Do you find any
20 contradiction between your testimony, the way you knew -- you gave in September 2005 before the
21 Gacaca court, and the text that I am reading to you. You say, yes, there is a confusion between the
22 Gahini attack and an attack which purportedly took place in Paris. And I'm trying to read it out to show
23 you that there is no such contradiction. And you are telling me I have to tell you there was an attack in
24 Gahini. Please, answer the question I put to you, because I try to clarify the situation. And it is obvious
25 that there is no confusion between the two attacks. Is that what you testified to before the Gacaca
26 courts in September 2005?
- 27 A. What I'm saying is that those attacks took place on separate dates, and that is why I can state that your
28 document is not authentic. And to prove that, I am asking you to provide me with the dates on which
29 the two attacks took place.
- 30 Q. You are asking me a question. It is not my duty to testify. As far as you are concerned, was there an
31 attack on the 9th of April 1994 in Gahini?
- 32 A. You have tendered a document into evidence claiming that it was a photocopy of our session. Now, the
33 dates that you mentioned in your document are different from the date on which the attack took place.
34 You say that there was an attack on the 9th of April, and I am asking you to provide the date of the
35 second attack, and I will be able, therefore, to confirm whether I agree with you or not.
- 36 Q. You have not answered the first question. You might perhaps answer the second one. Witness, as far
37 as you know, was there an attack at the Ruhara (*sic*) parish on the 9th of April 1994?

1 A. Yes, there was an attack at that location on that date.

2 Q. Witness, as far as you know, on the same day, was there an attack at the Gahini hospital?

3 A. I continue to tell you that you are not well informed of the facts you are describing, because that attack
4 did not take place at the hospital. And I, therefore, challenge what you are saying. You seem to be
5 well informed, but you do not want to concede that my version is correct. I do not agree with what you
6 are saying at all.

7 MR. PRESIDENT:

8 Witness, I must tell you that it is your duty to answer questions put to you by counsel and not to ask
9 questions. All right? Let's get some order into the system. You just answer the questions. If you can't
10 remember, you say so.

11 THE WITNESS:

12 I remember what happened, but I simply wanted to show that the document that has been tendered into
13 evidence by counsel for the Defence contains lies. He confused the 9th April attack with the attack of
14 the 13th of April. On the 9th of April, we went to Karvambara (*sic*), and on the 13th we went to Gahini.
15 And I would like to point out that it was not at the Gahini parish. It was in Gahini *secteur*, but not at the
16 parish. You can, therefore, realise that what counsel for the Defence is saying is not totally correct.

17 BY MR. VERCKEN:

18 Q. Witness, for things to be clear, I am not accusing you of having taken part in an attack on the 9th of
19 April in Gahini. I am reading a document in which a person, who might be you, is stating that the
20 person left the Paris centre and that, on the 9th of April, the person met other attackers who were
21 coming from Gahini. There is no mention of an attack. There is a mention of a group of people from
22 Gahini. That's it. Do you remember having made that statement when you left the Paris centre on the
23 9th of April? Did you go to Gakara's and not find him and then to Rwibasira's and there, apparently,
24 you met a group of attackers coming from Gahini at Sipire's drinking place. Is that correct, yes or no?
25 That's it.

26 A. That corresponds to what I said before the Gacaca court. And in all what you read, that is the only part
27 that exactly corresponds to my testimony. The rest is different from what I said when I testified.

28 Q. Without having me read the entire document, can you specify what differences you found between what
29 you actually said and what I read?

30 A. The names of persons that you mentioned are incorrect.

31 Q. A while ago you testified that when I read the document, I mentioned only three names. I counted
32 about 20 names in the passage I read. Did you listen to my reading carefully? Would you like to
33 answer directly concerning the names that have been added?

34 A. I do not know if you read the entirety of the document, but I realise that you did not mention all the
35 names. And I was doubting, because those who participated at the attack of the Karvambara (*sic*)
36 parish are not the same as those who took part in the Gahini attack. And I had the impression that you
37 were taking those attackers as one -- belonging to one group. And they were two different groups. In

1 my testimony, I made a difference between members of those two groups who participated in two
2 separate attacks.

3 Q. Which two attacks? What are the two attacks you are referring to?

4 A. The attack of the 9th of April and the attack of the 13th of April.

5 Q. For the time being, Witness, the extract I read to you concerns events that occurred on the 9th only, so
6 I do not see why you are talking to me about the 13th of April. All I did was read a passage concerning
7 the 9th of April, and for your information, I'm telling you that in the translation that I have, I -- if it's you,
8 indeed, you talk about the 10th of April, and thereafter you do not refer to any other dates.

9 A. In order to be clearer, you should distinguish between the attack of the 9th and the attack of the
10 13th April. And you should make a difference between the groups of attackers, because in my
11 testimony, I made a clear difference between the two attacks and between those who took part in these
12 two different attacks, because these are two separate groups.

13 Q. I think we're going to stop there because we will never understand exactly what is happening about the
14 9th of April.

15

16 I'm going to try to read a short passage, an anecdote of this unofficial translation and you're going to tell
17 me if that corresponds to what you said before the Gacaca court.

18 MR. PRESIDENT:

19 Mr. Vercken, before you do that, I'm just wondering whether it may not be wiser for you to move on to
20 other areas and to give an opportunity to this witness to read the Kinyarwanda transcript, because he
21 says he does read. And, after all, it's not very fair to throw a document at a witness and expect him to
22 answer questions arising from it without proper and fair opportunity for him to see what's there. So if
23 you agree with that course, could you please move on and we can come back to this document
24 perhaps tomorrow morning.

25 MR. VERCKEN:

26 I'll accept that, Mr. President.

27 BY MR. VERCKEN:

28 Q. Witness, I would like to talk about another document. But before that, let me remind you of what you
29 said. You said that when you appeared before the Gacaca on the 1st, the 8th, and the 15th of
30 September 2005, it was on the 15th of September that you brought charges or allegations against
31 Mpambara, allegations which you said you would specify or provide more details about in a letter which
32 has not yet been officially filed. Now, do you maintain that it was on the 15th of September that you
33 made those allegations, even if they were just sketches, an oral allegation against Mr. Mpambara. Do
34 you maintain that?

35 A. I do.

36 Q. Witness, when the Prosecutor filed a motion for the Tribunal to accept to examine you urgently,
37 whereas you were not on the list of the Prosecution witnesses up till then, to support the motion, the

1 Prosecutor produced a document which is appended to the motion, and this is a solemn declaration of
2 an investigator of the Office of the Prosecution called Mr. Aaron, A-A-R-O-N, Musonda,
3 M-U-S-O-N-D-A. That gentleman signed a solemn declaration in which he states -- and I'll read it in
4 English under "4" as follows: On Saturday, 17 September 2005, I left Kigali with interpreter
5 Colette Merobwayro, M-E-R-O-B-W-A-Y-R-O, and proceeded to Rukara *secteur*, Rukara district, and
6 with the help of local *secteur* officials, located two witnesses assigned the pseudonyms RHY and RFN
7 who confirmed that they had both been recently released from prison and had, indeed, testified about
8 Jean Mpambara and Jean-Baptiste Gatete in local Gacaca court on 1st September 2005."

9
10 Once again, Witness, it would appear from this solemn statement from an investigator of the Office of
11 the Prosecutor that you said something different, because apparently you told this investigator that the
12 allegations against Mpambara were made on Thursday the 1st of September 2005. Witness, what do
13 you have to say regarding that observation?

14 A. I'll tell you what I have to say. I could, indeed, have met that gentleman, and I told him the date on
15 which I mentioned Mpambara's name. And he asked me why I did not mention the name before, and I
16 gave him the reasons. I even explained, or I even gave those same reasons to the president of the
17 Gacaca court. I told him that it was very difficult to testify in public against a person who has a family,
18 and I promised him I was going to prepare a document which I would subsequently submit to the
19 Gacaca court because it is very difficult to testify against somebody who has family members and do so
20 in public.

21
22 I gave that information to the investigator. I told him that I have allegations to make against Mpambara,
23 and he gave the same information to the president of the Gacaca court. But, at the same time, I also
24 requested that I should not be asked to say everything in detail and that I should mention the details in
25 a written document, and my request was granted.

26 Q. Witness, in the solemn statement that I just read, the date on which you say you spoke about
27 Mpambara before the Gacaca courts is, once again, different. Here it's on the 1st of September when
28 you appeared in September 2005 before that court. It is between the 8th and the 15th of September,
29 and today you are telling us that it was only on the 15th of September. Now, the documents at my
30 disposal mention only one statement from you on the 8th of September, nothing on the 1st, nothing on
31 the 15th. And on the 8th you do not talk about Mr. Mpambara. In any case, that is not written.

32
33 Now, Witness, I'm asking you the question, when you spoke to that investigator, when you testified
34 before the Arusha court, the facts were very recent, within a period of 15 days. Would you not be able
35 to remember, or would it be a mistake on the part of those who wrote down what you said?

36 A. Let me repeat once more. I talked about Mpambara on the 15th of September during my testimony, but
37 when I appeared previously, I said confidentially to the president of the Gacaca court that I had

1 allegations against Mpambara, but I could not state them in public because Mpambara had family
2 members. So I could not make those allegations in public. And the president granted my request that I
3 should provide details in writing.

4
5 But now, as to my meeting with the investigator of the Office of the Prosecutor, it is true that I met him
6 and he asked me if I had anything to say about Mpambara. I said I did. And I should point out that I
7 met that investigator on the 17th of September what I had already testified about Mpambara on the
8 15th, so before I met the investigator.

9 Q. Witness, how do you explain the fact that in the document I have before me and according to the
10 translation of that document, which is unofficial, on the 15th of September 2005 before the Gacaca
11 court in Rukara, you did not speak at all? You are not in the transcripts for that day. Your name
12 doesn't even come up. How do you explain that, Witness?

13 A. Let me explain. I'm well informed. I was there. I said there was a problem with Célestin and Kibuka. I
14 was called to give testimony about those two persons. On that occasion, I said that Célestin was lying.
15 Had he told the truth, he would have spoken about the distribution of grenades that took place in front
16 of his house by people who had come in a vehicle, and Mpambara himself was in that vehicle. That is
17 what I said.

18 Q. At 15th of September 2005, was there any reason that the secretary for the Gacaca court, under orders
19 from the president, would not take down the statement regarding your cousin Célestin? And these are
20 statements where, for the most part, you make allegations about Célestin and not Mpambara. Is there
21 any reason that wouldn't have been taken down, Witness? Why would they completely forget to
22 mention your name and if they forgot, why? Explain.

23 A. That was all taken down. Let me repeat it so that you understand. I told you that Célestin's statement
24 was incomplete. If it was complete, he would have spoken about the grenades that were distributed in
25 front of his house by the people who came in a vehicle, a vehicle that Mpambara and gendarmes were
26 in. I also should point out that I signed my statement. What I said was, indeed, taken down, and I
27 signed the statement.

28 Q. Once you signed the statement, who was the statement given to, Witness?

29 A. I signed it in front of Butare, who took down what I said. I was preparing to leave. He reminded me that
30 I had to sign the statement.

31 MR. PRESIDENT:

32 I'm not very clear --

33 THE WITNESS:

34 I was an eyewitness of the events I testified about.

35 MR. PRESIDENT:

36 You were questioning this witness about the statement he made to the investigator of the ICTR.

37 According to that statement, he testified before the Gacaca courts on the 1st of September 2005

1 implicating the Accused. But the evidence so far is that he did not testify on that date; he testified
2 between the 8th and the 15th of September. Is that right?

3 MR. VERCKEN:

4 Mr. President, we are not reading the solemn statement in the same manner. The statement from the
5 Prosecution investigator and the passage that I read, the only one that deals with the Gacaca court -- it
6 says that this witness accused Mpambara in local Gacaca courts on the 1st of September 2005. There
7 is no question in this document of a later date. The only date mentioned is 1st September 2005. To my
8 knowledge, nothing in reading this document can lead us to believe that the Witness AHY spoke about
9 other hearings.

10 MR. KAREGYESA:

11 Your Honours, the investigators (*unintelligible*) in support of a motion in this Chamber. And the -- I
12 believe the investigator is testifying from the best of my knowledge, because he was not there. We
13 have before us the witness who has testified before Gacaca on three occasions and the witness has
14 testified to what he did.

15 MR. PRESIDENT:

16 Yes. I was merely curious about this date, because Mr. Vercken cross-examined on that date for
17 a while and then he just seemed to drop it. So I just wanted to know what is the significance. But
18 you've clarified this is an error the investigator may have made.

19

20 Are you with us, Mr. Vercken?

21 MR. VERCKEN:

22 I'm with you, but I simply thought that was a question you were putting to the Prosecutor, and
23 unfortunately, I did not hear his response.

24 MR. PRESIDENT:

25 Yes, all right. Please carry on.

26 MR. VERCKEN:

27 Apparently I won't have a response from the Prosecution. No worries.

28 JUDGE LATTANZI:

29 Witness, is it possible that on the same day there were two hearings in the same place before the
30 Gacaca courts with, therefore, separate transcripts?

31 THE WITNESS:

32 I believe I've already explained that. When I appeared before the Gacaca courts, it was not in my
33 trial. It is Rusezerangabo's trial. After his trial, I was called. There were rumours to the effect
34 that I had testified on Célestin's behalf. I had explained that I testified that I did not see him in the
35 place he was alleged to have been but that I saw him at a different place where he went and
36 committed acts for which he could be prosecuted. I also said that his testimony was incomplete.
37 In fact, he did not talk about the distribution of grenades that took place in front of his house, and

1 people who came in a vehicle, including gendarmes and the Accused, distributed those grenades.

2 JUDGE LATTANZI:

3 Pardon me, Witness, but I'm seeking further clarification. You are saying that you did not directly
4 participate in the Gacaca trial on the 15th, but you were called subsequently after those hearings
5 took place. In fact, I'm not sure I've understood exactly what you are saying. You said that you
6 gave your statement outside of hearings that were taking place. Is that correct?

7 THE WITNESS:

8 I don't believe you've correctly understood me. In the Rusezerangabo trial, Rusezerangabo
9 testified. He appeared. He was convicted. And after that, I was called to give explanations about
10 rumours that were going around with regard to my testimony in the Célestin trial. I explained that I
11 did not testify on behalf of Célestin. I explained and confirmed that he was not present where he
12 was alleged to have been, but I said that he went to a different place where he committed acts.

13 JUDGE LATTANZI:

14 Stop there, Witness. We're not interested in the content of your testimony there. You've
15 mentioned it several times. We simply want to know, if it's possible, that since you said that you
16 gave that testimony after the hearing, is it possible that that testimony, therefore, was not taken
17 down in a transcript. That's what we are concerned with, Witness.

18 THE WITNESS:

19 After my testimony, I was asked to sign a statement. I was shown the statement. I read it, and I
20 saw that it corresponded to exactly what I had said, and that's why I signed it.

21 JUDGE LATTANZI:

22 Were you given a copy of the statement that you signed, Witness?

23 THE WITNESS:

24 In the Gacaca trials copies of statements are not handed out.

25 JUDGE LATTANZI:

26 Thank you, Witness.

27 MR. VERCKEN:

28 With regard to those observations to the effect that several hearings could have taken place on the
29 same day, the same Gacaca court, I should like to point out that, to my knowledge, this is not of a
30 great deal of interest to us. I was asking the witness to tell us if he testified in a trial on the 1st of
31 September, and he confirmed that he appeared in Bizuru's trial, before or after that date, and that
32 testimony he gave regarded the documents that I was also dealing with.

33

34 I also asked the witness to mention the names of the people who testified on the same day as him,
35 and he gave us three names of people. One Antoine Ndagijimana is one person who spoke
36 directly after him on the 8th of September. So even if several hearings could have taken place at
37 the same time, that is not case here because the witness himself has stated that his statement

1 was given, and it seems to correspond with the contents of the documents that I tendered into
2 evidence.

3
4 Moreover -- and we can deal with this later -- I would like to point out that the Prosecution has tried
5 to obtain the statement that the witness made on the 15th at that hearing, if ever there were
6 separate statements.

7 BY MR. VERCKEN:

8 Q. Witness, I would like to now move on to statement made on 17th September 2005 when you were
9 questioned by an investigator from the Office of the Prosecutor, the same investigator, in fact,
10 Mr. Musonda, who was with the -- an interpreter near Lake Muhazi in the place called Jambo
11 beach. Witness, please tell us, on that day, the 17th of September 2005, you felt fine both
12 mentally and physically?

13 A. We were in Gahini, but I wasn't at the hospital. Regarding my health, I felt fine. I didn't have a
14 headache or I wasn't suffering from malaria. I felt just fine.

15 Q. Was there any pressure from the investigator or the interpreter pressuring you to maintain certain
16 statements more than others?

17 A. At this age, I can't be compelled to maintain statements about things I do not know. There was no
18 pressure. I only gave information that I have and knew about.

19 Q. I'm asking these questions because the Prosecutor put these questions directly to you during your
20 testimony on 29 September 2005. I remind you that the Prosecutor asked you if you were
21 promised anything or if you were compensated or rewarded in exchange for your testimony?

22 A. No promises were made.

23 Q. Had you already met, Witness, an investigator from the office of the Prosecutor called Musonda
24 prior to the 17th of September 2005?

25 A. I didn't even know that person. It was the first time I saw him; it was on that day.

26 Q. When he questioned you, do you remember if he first asked you questions about Mr. Mpambara or
27 did you spontaneously begin speaking about Mr. Mpambara?

28 A. He asked me questions. He first asked me if I had pled guilty. I said yes, I had. He asked me
29 then if in my guilty plea and confession I made any allegations against Mpambara. I told him that
30 was indeed the case. Then he asked me to talk about what I was alleging. I told him what I knew
31 about Mpambara. That's all.

32 Q. You are talking about a guilty plea and confession. Is this a document that you drew up or that
33 was taken on the 23rd of September 2003 which was disclosed to us by the Prosecution, which is
34 called, in fact -- or titled "Transcript of guilty plea and confession and request for pardon"? Is that
35 the -- is that the document, Witness?

36 A. No. I have a different document. I had already pleaded guilty on three separate occasions.

37 Q. So you were talking about a different document that you have. Is this a document that you kept at

1 home and that you have not yet sent to any authorities, the document you've speaking about since
2 earlier today; is that the same document?

3 A. Indeed, that's the document I'm talking about. Therein, I mention all of the confessions -- the
4 various confessions that I made.

5 Q. Sir, are you aware of the fact that since that document has not been handed over to any officials or
6 authorities and since you still have it, even if you gave it to the Tribunal tomorrow, its validity would
7 be rather dubious because you drafted it after leaving the hearing. Are you -- are you aware of the
8 type of difficulties this situation presents?

9 A. Even if you don't take the document into account, you can consider what I've said here in my
10 testimony before this Court. That is sufficient. Even if you don't accept the document, it will be
11 accepted by the Gacaca courts, and so there's no problem whatsoever. The Accused person is
12 there. I'm right here. I can continue to testify and make allegations against him. You can make a
13 choice. We can forget about all of those documents and I'll simply give my testimony. If you want,
14 we can also continue to speak about those documents.

15 Q. Witness, let me show you another document. It's in English. It's a document from the Office of the
16 Prosecutor. It's the testimony you gave on the 17th of September 2005, testimony you gave to
17 Mr. Musonda, an office the Prosecution investigator. Kindly tell us whether or not you recognise
18 your signature on this document, Witness.

19 A. That's my signature. It's mine. That's also my signature. That, too, is my signature.

20 MR. VERCKEN:

21 Your Honour, I seek to tender this document as an exhibit for the Defence.

22 MR. KAREGYESA:

23 Your Honour, we have no objection. (*Inaudible*) the foundation.

24 MR. PRESIDENT:

25 Yeah. You haven't cross-examined him on it. Are you alleging some discrepancies between his
26 sworn testimony and statement? If so, you should put it to him.

27 MR. VERCKEN:

28 Very well, Mr. President.

29 BY MR. VERCKEN:

30 Q. First a general question, Witness. Before you signed the statement of 17th September 2005, did
31 the interpreter with the investigator read -- read the statement back to you in a language that you
32 understand?

33 A. Yes.

34 Q. When it was read back to you, and after it was read, did you have any changes to make with
35 regard to the content?

36 A. No.

37 Q. Does that mean, therefore, that what you heard, in other words, what the interpreter read back to

1 you, did, in fact, correspond to the statement you gave?

2 A. That's correct.

3 Q. Witness, please tell the Court, since the 29th of September 2005, the date you appeared before
4 this same Court, since that date, we know you've stayed in Arusha since then, has anyone read
5 back statements made to you as you appeared before the Court on the 29th of September 2005?

6 A. No one read the transcripts back to me. I haven't met with anyone.

7 Q. Even if it wasn't read back to you, it's still rather fresh. Here's my question: Today, do you trust --
8 your statement made 17th September 2005 at Jambo beach and your testimony before ICTR in
9 Arusha on the 29th of September 2005, which was made 12 days between the two dates, are you
10 confident that there are no variations between the two testimonies?

11 A. You are the one who can say that. You've read the statements. I don't know.

12 Q. Witness, these are things you said which figure in these documents. We can trust the statements
13 because they were made quite recently; isn't that the case?

14 A. Perhaps I've forgotten to give certain details. That's possible.

15 Q. Perhaps you forgot to give some details, that's correct. One statement, that of 17th September, is
16 only one page long. There's another one of the 29th of September 2005 that is several pages
17 long. Indeed, there are many more details in your testimony before the Tribunal. Those details
18 aside, what about the difference regarding the unfolding of the events that you described in the
19 two separate statements, do you trust that there are no differences?

20 A. Surely there can be differences. I am not immortal. I can't say everything that I had said the prior
21 week. Perhaps I forgot some details. What I can say is that overall the two statements
22 correspond to one another.

23 Q. Let me attempt to refresh your memory, Witness. Please tell us if the differences that I underscore
24 contained in your statement of 17th September 2005 and the testimony you gave 12 days later on
25 29 September 2005 deal with details or important matters that are put before a Bench that has to
26 decide the future of Mr. Mpambara.

27
28 First, in your statement of 17 September made at Jambo beach, you said that on the 9th of April
29 1994 at ten in the morning François Nyirahuku, N-Y-I-R-A-H-U-K-O -- or, rather, U, a teacher and
30 brother-in-law of Mpambara, showed up at the ten in the morning at Paris business centre saying
31 that the Tutsis refugees at the parish had to be killed. You said that Mpambara himself said this
32 during a meeting. You also say in that same statement of 17 September that Mr. Mpambara
33 arrived at the Paris centre on that same day at 11:00 in the morning.

34
35 Later on, you show up 11 days later on the 29th of September 2005 in front of this Chamber. You
36 said the first person to arrive at the Paris centre on that morning, in other words, the 9th of April
37 1994, between 9 and 9:30 was not Nyirahuku but Jean Mpambara, to the contrary. You said that

1 the *bourgmestre* remained there for 10 to 15 minutes, and 10 minutes after he left, Nyirahuku
2 shows up for the first time, and that was between 9:25 and 9:50 in the morning.

3
4 How do you explain such a difference with regard to the arrival times of these persons in two
5 separate statements given with only 12 days or 11 days in between the two? How do you explain
6 that, Witness?

7 A. Let me explain. You mentioned 11:00. That's an incorrect time. I said that Mpambara arrived
8 between 9:00 and 9:30. At any rate, these are estimates. I wasn't wearing a watch during that
9 time. Oftentimes Rwandans have a habit of referring to the position of the sun to determine what
10 time it is. In hindsight, you can always try to remember what time events took place. What I can
11 confirm is that Mpambara arrived between 9 and 9:30 in the morning.

12
13 Now, with regard to Nyirahuku, the fact that I said he came out of a meeting, he came from
14 Karubamba, he told us that the decision to kill the Tutsis had already been made. After he left,
15 Mpambara arrived on site. So, in fact, I don't see any difference. It's only a difference with regard
16 to the times. That's all.

17 Q. Let me point out a difference for you, Witness. In what you've just said here, there is even another
18 difference when compared to what you said in front of this very same Court on the 29th of
19 September. You've just said, before Mpambara arrived, François Nyirahuku came to the Paris
20 centre.

21
22 In your statement, in your testimony before this Tribunal on 29th September 2005, you said that
23 the first person to arrive at the Paris centre on that specific morning was Mpambara who arrived
24 between 9 and 9:30. You did not mention what you said before with regard to separate times
25 which you mentioned 11 days earlier in your statement before the OTP investigator.

26
27 Allow me to say your testimony is different. That's the least we can say. And these are
28 nonetheless important details. You talk about the arrival of persons and different times when they
29 arrived over a two-hour time frame. Even if you look at the sun to refer or try to figure out what
30 time it was, that's a large difference, 9 to 11 in the morning. How do you explain that difference,
31 Witness?

32 A. Here's my explanation: Perhaps the person I spoke to doesn't understand Kinyarwanda well
33 enough. I never mentioned 11:00. I spoke about 9 to 9:30. I also mentioned 10:00. You will
34 understand there is not much difference considering I wasn't wearing a watch.

35 Q. Witness, earlier I asked you if your testimony of 17th September 2005 made at Jambo beach was
36 given in serene conditions. You said yes. And then I asked you if your statement was read back
37 to you in a language that you understood before you signed it. You also said yes. Now you are

1 saying that the person who was the interpreter for the Office of the Prosecutor poorly understand
2 Kinyarwanda. Is that the situation, Witness?

3 A. I said that my -- in my statement at Jambo beach I mentioned 10:00. With regard to the events at
4 Paris centre, I mentioned 9 or 9:30. Now, really, between 9:30 and 10 for a simple peasant is not
5 much of a difference, is there, especially as I wasn't wearing a watch.

6 MR. PRESIDENT:

7 Would this be a convenient time to take the lunch break, Mr. --

8 MR. VERCKEN:

9 Yes, Mr. President.

10 MR. PRESIDENT:

11 Could you give us some indication of the time that you need to complete your cross-examination?
12 How much longer will you be?

13 MR. VERCKEN:

14 In all, including anything my co-counsel has to say, I would put it at three hours, Mr. President.

15 MR. PRESIDENT:

16 Well, we can't sit this afternoon because Judge Lattanzi is in another trial. So we will have to
17 continue tomorrow morning, but we must finish at one tomorrow. I'm sure you want to go back
18 home.

19 MR. VERCKEN:

20 Indeed, Mr. President. We will be going back to Paris.

21 MR. PRESIDENT:

22 But I think we can use this afternoon to have our status conference and sort out any outstanding
23 issues. So if we meet at three, is that all right?

24 MR. KAREGYESA:

25 Your Honours, maybe if we could probably make it 3:30 or 4 because I do need to consult. I've
26 been away. I just flew in last night and need some time to consult. But we wouldn't have much to
27 discuss, so even if we started at 3:30, we would be able to finish within an hour.

28 MR. PRESIDENT:

29 Yes, very well, then. We will have our status conference at 3:30, and I would encourage both
30 sides to resolve any outstanding issues that may be out there so that we don't devote too much
31 time to discussing it.

32 MR. KAREGYESA:

33 Much obliged, Your Honours. Just a clarification, is it going to be in this Chamber?

34 MR. PRESIDENT:

35 Yes, yes, in this Chamber.

36 MR. KAREGYESA:

37 Most obliged.

1 MR. PRESIDENT:

2 And this witness can have that transcript, the original Kinyarwanda, if you can give him a copy.

3

4 Witness, we will give you a copy of the transcript of what purports to be the statements you gave
5 or the evidence you gave before the Gacaca courts, and I would suggest that you read them
6 carefully so that you can answer any questions that may be put to you tomorrow. Otherwise --

7 MR. KAREGYESA:

8 If it pleases Your Honours, if he needs any assistance he should feel to ask the WVSS to get
9 someone to read it for him if he has difficulties.

10 MR. PRESIDENT:

11 Yes, all right. If you're having any difficulty reading the statement, you can ask for help from the
12 witness protection unit. All right? But you appear to read --

13 THE WITNESS:

14 I can read Kinyarwanda without any difficulty.

15 MR. PRESIDENT:

16 So he's not illiterate.

17

18 Very well. We'll adjourn until 3:30.

19 *(Court adjourned at 1305H)*

20 *(Pages 26 to 42 by Sherri Knox)*

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CERTIFICATE

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

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

Kirstin McLean

Judith Baverstock

Sherri Knox