

## Mungwarere Trial - Weekly Summaries

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### **Week 1 (May 28 - June 1)**

The trial of Jacques Mungwarere began on Monday, May 28 at the Ottawa Courthouse, before the Honourable Mr. Justice Michel Z. Charbonneau of the Superior Court of Justice. Mungwarere is accused of genocide and crimes against humanity for having committed the intentional murder of persons of the Tutsi ethnicity in the Kibuye Prefecture of Rwanda. In particular, the Crown alleges that he participated in the attack on the Mugonero hospital complex that took place on April 16, 1994. Tutsis that had taken refuge there were massacred. He is also alleged to have partaken in the subsequent persecution of surviving Tutsis in the hills of Biseseo. On the first day of the trial, the Crown explained that the Court would hear the testimony of an expert on Rwanda, of RCMP investigators, an arms expert, and ten Rwandan witnesses who implicate Mungwarere in the genocide.

The first witness called by the Crown was American professor Timothy P. Longman. He is an expert on Rwanda who lived and worked in Rwanda both before and after the violence in 1994. The subject of his doctoral dissertation is the political role of churches in the genocide. He explained that the Tutsis and the Hutus view themselves as distinct ethnic groups despite the fact that they share a common language and territory. The colonization of Rwanda consolidated ethnic identities, exacerbated antagonisms between the two groups, and further bureaucratized and centralized the political structures of the Rwandan state. Longman described the history of ethnic tensions in Rwanda, which are closely related to struggles for economic and political power. He stated that the government in the early 1990s had a plan to eliminate its adversaries, and the genocidal violence of 1994 occurred in a highly organized and systematic way.

In its cross-examination, the Defense asked questions on the source of ethnic differences in Rwanda, but focused primarily on the current political context, including whether the government supports and promotes the idea of the collective responsibility of all Hutus for the genocide. Longman was critical of the current regime, because political opposition is strongly controlled, there are restrictions on the freedom of expression, and the government is guilty of human rights violations. Rwandans who criticize the government run the risk of being accused of holding pro-genocide views. Longman also discussed the system of transitional justice in Rwanda. Apart from formal criminal prosecutions, there is also a system of 'gacaca' courts for the 'less responsible' perpetrators, in which Rwandans are obliged to participate. It is a form of popular justice, loosely based on traditional communal justice systems, in which people are to identify the crimes committed in their communities and those who committed them. Longman estimated that around 1.5 million cases had been heard in gacaca courts.

After Longman, RCMP investigator Marc Lishchynski took the stand. He has been the lead investigator on the Mungwarere file since 2006. Using the information of the first three witnesses the RCMP learned of, he prepared a list of witnesses to meet with in his first investigative mission to Rwanda, which took place in February-March 2007. To investigate in Rwanda, he had to obtain the permission of the RCMP and of the Rwandan authorities. In the course of his investigation, he used a Rwandan aide, who was an

employee of the Rwandan government, to locate the witnesses on his list. While doing the interviews, Lishchynski's strategy was to encourage witnesses to give 'open' statements of what they experienced during the genocide, and afterwards asking more specific questions relating to Mungwarere. On his first mission, he met with 20 witnesses, 15 of which implicated Mungwarere in the attacks. His second mission was in November 2007, and he met 10 new witnesses on this trip, through the help of a different aid. He used this second aide in his third mission of June 2008, when he met with 16 new witnesses. In a trip in September 2009, he met an additional witness; in October 2010, he met with three new witnesses; and in April 2011 he met another new witness. Through the course of the investigation, 59 witnesses total were interviewed.

During Lishchynski's testimony, the Court viewed photos of the Mugonero complex and the surrounding region. It also viewed videos of portions of interviews, in which witnesses were to identify Mungwarere's picture from a photo spread. Other videos viewed were of Prosecution witnesses at the site of the massacre today. They were asked to describe the events on the 16<sup>th</sup> of April, and to retrace their steps from that day while explaining what they saw and did. The first video of this sort was of the witness François Ndahimana, who alleges Mungwarere shot a family member of his. He claims to have seen Mungwarere shoot, from a distance of around a hundred metres. Another witness maintains that Mungwarere shot him in the arm, and saw him from approximately the same distance. Witness Florence Mukamana described how she survived the attacks by hiding in a room in the complex's surgery building, amongst bodies of Tutsis who had been killed.

The Defense has strongly maintained the position that there has been fabrication of incriminating testimony. While testifying, Lishchynski acknowledged that certain witnesses have given false information. The Defense asked him several questions about the use of witness declarations from the International Criminal Tribunal for Rwanda (ICTR), and of information coming from the gacaca system. Lishchynski testified that he did not have access to ICTR declarations, except for that of Witness 100, and some parts of that of witness 151. The information from the gacaca courts did not strongly figure in the investigation. The Defense suggested that some of the witnesses had collaborated with each other, and that modifications and additions to declarations made in the past renders the veracity of these witnesses' testimony suspect.

After Lishchynski, Yves Gravelle of the RCMP testified. He had accompanied Lishchynski to Rwanda on two of his missions, assisting with witness interviews, as well as taking photos and GPS coordinates of important sites.

The last witness to be heard in the first week was David Larin of the RCMP, who was in charge of the Mungwarere file prior to his retirement from the RCMP in 2004. In 2001, he held a meeting with members of the Rwandan community in Windsor, Ontario, to inform them about the war crimes program, and to suggest that they contact him if they had any information to provide. In February 2003, an individual in the Windsor area called him to say he had spotted Mungwarere there, and it was this phone call that sparked the investigation. The informant gave the name and phone number of Witness 100, who alleges to have seen Mungwarere distribute Kalashnikov guns to members of the Hutu Interahamwe militants in Rwanda. In September 2004, Larin met with three witnesses: Witness 100, Witness 101 and Elam Rutaganda. In its cross-examination, the Defense asked questions relating to their testimony in U.S. immigration proceedings.

## Week 2 (June 5-8)

Many of the sessions during this week were held *in camera*. On June 5, the judge decided that the members of the public and journalists should be excluded from the Court during discussions on whether there was sufficient reason to make an order of non-publication for the first Rwandan witness, or to allow him to testify anonymously. During these closed sessions, 'Witness 100' said that he would not testify without such a protection measure. However, on June 7, the judge ruled that there was no objective evidence to support the witness's subjective fears, so no protection measures would be ordered.

Despite what he had stated earlier, the witness did participate in the trial. According to him, he weighed the factors, and his desire to explain the truth of what happened outweighed his fear of the repercussions of testifying. He testified openly under his real name, Gérard Bandora. He gave his testimony in the Kinyarwanda language, with the help of an interpreter.

He knew Mungwarere from a very young age, since their fathers worked together.

The Prosecution asked Bandora to tell the Court what he had seen and experienced during the Rwandan genocide. When President Habyarimana's plane was shot down, triggering the start of the genocide, Bandora was in Kigali. He was then 21 years old. He was staying at his brother-in-law's house, until this brother-in-law was killed outside of his home, by a mob yelling the word 'cockroach'. After the murder, Bandora went to stay with neighbours along with his sister and her child, but they were also attacked and killed a day or two later. While testifying, Bandora clarified that he did not see their murders with his own eyes. Rather, some of his friends in the neighbourhood explained to him what happened.

He decided to leave the capital around mid-May. Before going, he altered his identification card to show that he was Hutu, and not his true ethnicity, Tutsi. He headed towards Gitarama, passing through Taba. He stayed there for about a week and a half before leaving for Kibuye. He was stopped several times during his journey.

Once in Kibuye, Bandora went to the house of friends of his family. One of the sons of the family was named Omar. Omar was Hutu, and was part of the Interahamwe. Soon after Bandora's arrival, a member of the family betrayed his presence, and members of the Interahamwe came to take him away. They ordered him to dig a 'hole' for himself. Bandora knew they intended to kill him, but Omar came to rescue his visitor. Omar suggested that Bandora begin to come work with him at the road block, where people were required to show identification, and cars of those passing were searched. Omar told him that his safety was not assured, and that he would have to participate in order to survive. They went to the roadblock every day.

Bandora accompanied Omar to two meetings in Kibuye, both of which were attended by over a hundred people. At the first meeting, the discussion focused on the fact that there were still Tutsis alive in the Bisesero area, despite the fact that the Interahamwe had finished "working", which meant killing. Many people complained of not having rifles. Bandora saw many people from his place of origin, Ngoma, at the meeting, Jacques Mungwarere being one of them. He testified that Mungwarere was sitting near the podium of the leaders of the meeting. At the second meeting, the leaders explained the plan to attack Bisesero, and guns were distributed. Bandora saw Mungwarere and others lift big cases filled with rifles to bring them outside. He also saw Mungwarere in one of the pick-up trucks used to transport the trunks, and saw that Mungwarere had a rifle himself.

The attack on Bisesero was carried out the day after the meeting. They went in a bus, and once they arrived, Omar told Bandora to stay and guard the bus, which contained trunks full of munitions. Bandora did so. From his vantage point, he could see people running in Bisesero and hear gunshots. Late in the day, a pick-up truck arrived. Mungwarere was in the back, along with other people from Ngoma. They looked very dirty, as their clothes were full of dust and blood. Bandora saw Mungwarere jump from the truck to kick a 4 or 5 year old child who had been running in the road. The child fell to the ground, and Mungwarere shot and killed the child. He then got back in the truck and it drove off.

Bandora witnessed two other incidents involving Mungwarere. One time, he saw him in the centre of Kibuye. Two Tutsis persons had been captured and were laid in the back of a pick-up truck. People were kicking them, and Mungwarere had his foot on the head of one person. Mungwarere and his companions were celebrating the capture of the Tutsis. A couple of days later, the same group came back into town. They had a human head, which they attached to an electric pole, while singing "we must exterminate them. Mungwarere pierced the head with his rifle and raised the rifle in the air, as though to show victory.

In its cross-examination of Bandora, the Defense strategy was to highlight inconsistencies and contradictions between his testimony before the Court and his several past declarations. These declarations had been made to the RCMP, the ICTR, to American immigration officials, to the lawyers, etc. The goal of the Defense was to attack his credibility. Up until the end of the session on Friday, June 8, none of the alleged contradictions were directly linked to Bandora's allegations against Mungwarere. However, there was not enough time for the Defense to finish its cross-examination.

The Defense pointed out that in 2003, Bandora declared that his father had been poisoned by Pastor Elizaphan (Ntakirutimana), but that in actual fact, the father had died of cholera. The Defense suggested that Bandora had made declarations about things he had not seen personally. However, Bandora denied that his father died of cholera.

In the same declaration, written in English for a U.S. asylum application, Bandora described the death of his sister in Kigali. The declaration said that a mob took her while he was watching. The Defense drew attention to the fact that in Court the day before, Bandora admitted that he had found out what happened after the incident. Bandora replied that in the 2003 declaration, he was telling a story, he was not stating that he had seen the murder occur.

The Defense next brought up the fact that Bandora had learnt from two cousins that Mungwarere had been involved in the deaths of two other members of his family. Bandora said he would not offer any commentary on that matter because he had been told the day before that he should only speak of what he had witnessed directly himself.

The Defense asked several questions about the period of time when Bandora was a student at the school where Mungwarere came to teach. There was a student strike, a primary complaint being that there was a lack of teachers. In his 2003 declaration, Bandora stated that when the demonstration happened, Mungwarere and the other Hutu teachers called the military to denounce the striking students, saying that the Tutsi students were opposing the Hutu authorities at the school. The military came. They tortured and beat the students, leaving them for dead by the side of the road. Bandora managed to escape harm by hiding.

After the end of the genocide, Bandora joined Ibuka, an organization that brought together genocide survivors so that they could help each other.

Another inconsistency pointed out by the Defense was that on his 2003 declaration, Bandora described the way that he modified his identification card differently than the way he described it to the Court. In response, Bandora explained that he thought the phrase written in the declaration was incomplete. The fact that there may have been language translation errors was brought up by Bandora to explain other incoherencies that the Defense suggested existed between his past declarations and his testimony before the Court.

### **Week 3 (June 13-15)**

This week, the hearings in the Mungwarere trial were held from June 13-15. The defense continued with its cross-examination of witness Gérard Bandora, asking questions about several aspects of his testimony.

One topic discussed was the disguise that Bandora would wear when he went to go work at the barrier checkpoint with his friend Omar. In that period, Bandora would wear a long coat – like a rain coat - with dark sunglasses and a bowl-shaped helmet. There were several others who wore the same outfit who participated in the Interahamwe’s planning meetings and worked at the barrier, but Bandora did not know them. Even though he would go to the barrier every day, Bandora could not remember the names of these other persons. In addition, he did not know whether they were Hutu or Tutsi. He explained that it is often difficult to distinguish the physical features of these two groups. He himself was able to survive without being recognized as a Tutsi.

Another point of interest for the defense was Bandora’s role within the AERG, the Genocide Survivors Students Association. The defense highlighted that in his declaration for his asylum application in the United States, Bandora had said that he continued to work for the AERG after leaving Rwanda. Bandora explained to the Court that in fact, he had to stop his activities with the AERG once in the United States, and that the supposed contradiction raised by the defense was in fact due to language problems.

The defense also brought up an incident that occurred when Bandora was in Gitarama. An officer had asked Bandora whether he had received some news from his cousin Eric and his brother Elam. Bandora lied in his response by saying that he had received news that the school he attended had reopened from his brother and cousin. In fact, he had not. The defense wished to know why Bandora had not specified that this was a lie when he gave his declaration to the ICTR in 1999.

One of the recurring themes in the cross-examination was the fact that Bandora did not strongly implicate Mungwarere in the genocidal violence before his 2004 meeting with the RCMP, despite the fact that he had known Mungwarere for a long time and that he now claims Mungwarere played an important role in the genocide. For example, Bandora testified in the ICTR trial against Eliézer Niyitegeka but did not mention Mungwarere on this occasion. At that point in time, Bandora had already been told that Mungwarere was among the group responsible for the death of his brother. He explained that he did not mention this fact in his testimony because he had not seen the murder himself. His testimony focused on Niyitegeka. Prior to 2004, Bandora had said that Mungwarere was one of the “escorts” of Ntakirutimana, Mpambara and Kagaba; he was a killer because he was “with the killers.”

In his declaration of 1999, Bandora described the two murders committed by Niyitegeka on the day of the Bisesero attack, but omitted to mention that he saw Mungwarere kill a child the same day. Bandora

explained that he cannot describe all the murders he saw during the genocide every time he tells the story of his experience. He has seen a lot of violence, especially when he was in Kigali. During the genocide, seeing the death of someone was not something extraordinary. However, in past declarations, Bandora mentioned several names of individuals that he did not see commit murder.

The defense was also interested in the planning meetings of the Interahamwe, and the past declarations of Bandora on this subject. Bandora's identification of the leaders and speakers of the meetings was not consistent throughout his declarations. Moreover, he had not mentioned Mungwarere's name in relation to the meetings until his 2004 interview with the RCMP, in which he alleged that Mungwarere had been sitting in the front row.

During the cross-examination, Bandora had to clarify several alleged contradictions between his past declarations, often on very precise details. For example, he was asked questions on receiving a rifle at the second planning meeting; specifically, whether he received one inside the meeting or outside, whether he already had a rifle in his hands when he received a new one, and whether the distribution of arms took place before or after the discussion of the plan of attack on Bisesero. Mungwarere was not one of the primary leaders of this attack.

Other questions focused on the chronology of events that Bandora had described, and the number of days between the events he experienced. The defense alleged that Bandora had reduced the number of days between events with subsequent declarations.

One significant contradiction the defense identified was that in 2010, Bandora had spoken of the murders he witnessed on the day of the attacks on Bisesero, as he was guarding the buses. On that occasion, he said that he had seen two murders: one committed by Niyitegeka, and the other committed by Mungwarere. Bandora admitted to the Court that he had forgotten one murder: that of the other child that had been killed by Niyitegeka that day. That conversation in 2010 had taken place in English. Bandora attributed his error to his difficulty to expressing himself properly in English.

Complications related to translation were very evident during the cross-examination. One example is that the definition of the expression for 'naked' in the Kinyarwanda language was discussed. The meaning of the term was important in relation to the incident where Bandora had seen two captured Tutsis in the back of a truck (or trucks). The Defense asked him whether the captured Tutsis had been completely naked or still had underwear on. In 2010 Bandora had been interviewed by Crown prosecutors in English and said the people were naked, but he had previously told the ICTR that they were wearing underwear. Bandora explained that in Kinyarwanda, the term "naked" is used for both meanings.

When testifying about that incident, Bandora admitted that he did not remember whether the captured Tutsis were in the same truck or two separate trucks. He also acknowledged that there were many people around, and a lot of movement and dust. Nonetheless, he maintained that, from about 20 metres away, he saw Mungwarere kick one of the Tutsis in the head.

After the conclusion of the cross-examination, the Crown had the opportunity to conduct a re-interrogation to clarify certain points. It attempted to use prior consistent statements of Bandora's to help the judge know how much weight to accord to contradictory statements, but the judge refused this approach. Next, the defense had the chance to ask a few final questions, and the testimony of Gérard Bandora came to an end.

#### Week 4 (June 18-22)

This week began with the interrogation of the witness Eliézer Nsabimana, who has known Jacques Mungwarere ever since they attended the same primary school.

Nsabimana was 24 years old at the time of the genocide in 1994. He left his village Kigarama a few days after the crash of the President's plane because certain of his neighbours had begun to do what resembled military exercises while shouting "Power!". These individuals harassed and beat up their Tutsi neighbours. Nsabimana left his home for the Mugonero hospital complex, a refuge that he thought could not be penetrated by wrongdoers. There were security officers who protected the refugees and their possessions, particularly their cows. Many refugees had brought their cattle to the site. At Mugonero, Nsabimana slept outside. There were many buildings in the complex, but not enough to fit all of the numerous refugees who were there.

Nsabimana had brought food with him, but once his provisions ran out, he had to walk to the centre of Ngoma to sell coffee beans that he had, and to buy food for himself. His trip was only a partial success. He was able to sell his coffee in a small business in a house in Ngoma, but as he left he saw a group of men with maces, which he considered to be an ambush. Nsabimana testified that Mungwarere was one of these men. The group chased Nsabimana, yelling his name and "surround him!", but he saved his life by outrunning them.

The massacre of the refugees at the Mugonero complex took place on the April 16, 1994. The day before, the Hutu husband of a Tutsi refugee came to the complex. He warned the refugees that there were people coming to kill them, and that no one would escape alive. Nsabimana was scared and did not know what would happen. That night, the refugees were assembled, and were obligated to deposit the objects that they had that could be used as weapons, including grenades or the knives that they would use to peel bananas. That same day, the water for the complex was cut off.

The morning of the 16th, the attackers arrived in vehicles, coming from many different directions. They started throwing grenades at the refugees. They also had rifles and traditional weapons like maces. Nsabimana and numerous other refugees attempted to defend themselves by throwing rocks at the attackers, but they had to abandon this effort once it was obvious that their attempt was futile. A grenade injured his arm and leg, but he was still able to escape being massacred at the complex.

He went to Gitwe, where there were also attacks, and later moved on to Bisesero. Many survivors of killings in other locations had taken refuge there, where there were steep hills. However, many Tutsis were killed at Bisesero as well. Nsabimana testified that there were daily attacks on the refugees there. The attackers would come in trucks and buses, they would hunt down the refugees, and they would kill them. One day, armed white French men arrived in helicopters, and gave the refugees hope that there would be no more attacks. However, they did not stay to protect the refugees, and the day after there was a very big attack on Bisesero. The day after that attack, the French soldiers returned, and the attacks on Bisesero stopped.

During the cross-examination, the Defense asked questions about the birthdate on the identity card of Nsabimana, his coffee bean harvest, his neighbours in Kigarama and their activities after the President's plane crash, the manner and moment that Nsabimana learned of the death of the President, and the exact date when he left his house to seek refuge at the Mugonero complex. Nsabimana could not remember

the exact date of his departure. In 2007, he had told the RCMP that it was around the April 7, but in Court he estimated that it was the 8th or the 9th.

The Defense also asked questions about the events that preceded the big attack on Mugonero and what Nsabimana saw and experienced in the attack. Counsel asked him to identify the people he saw on the 16th, both amongst the living and dead Tutsi refugee, and the attackers. The Defense asked many questions to clarify the exact trajectory Nsabimana followed to escape being killed.

The Defense was clearly very interested in what happened to Nsabimana on the day he went to sell his coffee beans in Ngoma. The lawyers asked for details concerning: his route from Mugonero to Ngoma; the description of the house near the edge of town where he sold his coffee; the location of the house of Jacques Mungwarere's family, which Nsabimana was aware of; and the escape of Nsabimana after he saw the ambush in Ngoma. When he exited the house, he saw that a group was blocking the road that led to Mugonero. Those people were not close by. Nsabimana looked for another route to get out of Ngoma, but the group noticed him. This is also the moment that he recognized Mungwarere in the ambush group. Nsabimana escaped by running at high speed, going through fields to arrive back in Mugonero. The pursuers cried his name and yelled "Catch him!" and "Surround him!" Nsabimana told the Court that the attackers threw rocks at him as well, but previously he had said that sticks were thrown at him.

The second witness this week is named Alphonse Nsengiyumva. He was 21 years old at the time of the genocide, and a Tutsi. He too had studied in primary school with Jacques Mungwarere, and he knew Mungwarere's parents and siblings. After the violence started, he left his residence to seek refuge at the Mugonero complex. In Court, he was not able to estimate the number of people there, but he explained that the numbers increased up until the attack on the 16th. Nsengiyumva was also part of the group that threw stones at the attackers, until he abandoned that futile effort and fled the complex.

During his escape, his left arm was injured by a bullet. He testified that he had seen that it was Jacques Mungwarere who shot him. According to Nsengiyumva, Mungwarere was the only attacker he saw with a gun at Kanyinya, the place where he was hurt, but he could hear many other gunshots.

Nsengiyumva did not go to Bisesero, but rather fled to the Congo.

The Defense wanted to know more information about his activities within the AERG (the Genocide Survivors Students Organization), and if he had discussed the role of Jacques Mungwarere in the genocide, either with members of the AERG or with his family and friends. Nsengiyumva answered that he had never spoken of Mungwarere previously.

One notable aspect of the testimony this week was that there was a contradiction between what the two witnesses said on one issue. Nsabimana maintained that he had seen the dead body, missing its legs, of a man named Marc Gato. He alleged he saw this body near where he was injured on the Mugonero complex. However, Nsengiyumva said that he saw Gato's body, with the legs attached, near the place where he alleged Mungwarere shot him, on the hill in Kanyinya.

The Defense had some difficulties with the witnesses who were not amenable to answering their questions. For example, when the Defense asked Nsabimana to estimate how many people formed the ambush in Ngoma, he replied that they should ask Mungwarere instead of him, because Mungwarere was part of the group. Both witnesses referred to the difficulty of remembering details, especially those relating to the brutal attacks they had experienced. They expressed, with a certain frustration, that the

lawyers could not understand their mental state during the attacks, unless they had experienced something similar themselves. When the Defense asked Nsengiyumva if the bandage that his companion made him for his gunshot wound when they were hiding in a forest during their escape was similar to a bandage from a hospital, he retorted “You think we were on a picnic?”

Other challenges related to the fact that the witnesses were reluctant to do estimations, especially of distances and of hours, and the fact that testimony was through video conference, with an inverse image. As such, indicating left and right was complicated, as was demonstrating distances and sizes to scale.

### **Week 5 (June 25-28)**

The fifth week of the trial of Mungwarere took place from June 25-28, 2012. On June 25, which was the first day of this week, the defence lawyers went on with the cross-examination of the witness named Alphonse Nsengiyumva. The defense lawyer asked the witness questions related with his escape. The witness explained how a Hutu man, Jean Karibana, saved his life. The witness said that Jean Karibana found and gave him a boat that he used to escape to Congo.

The witness explained that he was not an eyewitness of the death of Matingiri and Thomas. He explained that, regarding the death of those two people, he only has information he got from Madibongo. The defense lawyer asked about the attack of April 16 and the witness said on that day before escaping he threw rocks at the attackers.

The defense lawyer asked the witness if he talked with Damascène about his testimonies. He said he had talked with Damascène regarding the testimonies about Mungwarere but he doesn't remember what they said. The witness denied asking Damascène to confirm his allegations against Mungwarere.

On June 26, the court heard from witness François Ndahimana. He was born in 1980. From April 7-8, 1994, he lived in the Mugonero complex. After that, he joined other displaced Tutsis who were at Mugonero until April 16.

While answering to the questions of the Crown, he testified that he went to Mugonero with his mother. He said he had livestock with him. Other people who were with him had food. He said that his relatives who stayed at home all perished including his father, his grandparents, his brother and his sister. He said that he doesn't know who killed his family members.

The witness testified that when they were at Mugonero, they could eat and drink water before the pipes which brought water to Mugonero were cut. He also testified that before the big attack of April 16, there were three governmental police officers who were protecting the displaced persons. Those governmental police officers left one day before the big attack of April 16. Before their departure, those police officers said that they could not protect people who are armed themselves, and they disarmed the displaced persons before their departure.

The witness testified that in the morning of April 16, there was a letter transmitted to the pastor, Sebihe. That letter warned them that the attackers were ready to come to kill people at Mugonero. On that morning, the witness began picking up pebbles which they used as a means of defense. Then, he saw the attackers arrive. Immediately, the vehicle of Ruzindana arrived transporting the soldiers. Those soldiers started to shoot at the displaced people.

The witness said he knew Jacques Mungwarere even before the attacks. He said he knew him because they were neighbours. He also knows Manassé who is Jacques' father and who was an accountant. He said he knows Jaennot and Gérard who are Jacques' brothers, and J suite and G rardine who are Jacques's sisters.

The witness testified that in the morning of April 16, the attacks intensified at Mugonero and he fled to the hill of Kanyinya. He was together with his cousin Ntirenganya, also known as Safari. He said they were both protecting themselves against the shooting by the attackers. He testified that on that day his cousin Ntirenganya was killed by a bullet shot by Jacques Mungwarere. The witness said that he saw Jacques Mungwarere among the attackers at Muyira. Mungwarere was with G rard, Daniel and other people. Many "Interahamwe" were on buses. The witness said he saw Jacques shoot Dieudonn  dead. The witness then asked to take a break from the questions because he was tired.

The third day of the week, June 27, the trial continued with the cross-examination of Fran ois Ndahimana. The defense lawyer asked the witness some questions regarding his escape from his home to the Mugonero complex.

In cross-examination, the defense lawyer compared Ndahimana's statements to the RCMP with those he made to Dutch authorities. In June 2010, Ndahimana had told the Dutch that his parents died near the church in Ngoma, and that he had seen this with his own eyes. On the other hand, in the trial he testified that he did not witness their death. Another contradiction was that he told the RCMP in March 2007, that he fled from his home at Mugarama towards the Mugonero complex together with his relatives, including his father, whereas in the trial he testified that his father stayed at home.

On June 28, the cross-examination continued. The questions of that day were mostly about the attack on the Mugonero complex and the Ndahimana's situation after the attack. He confirmed that he saw Jacques Mungwarere in that attack. He testified that Mungwarere had a gun and that he saw Mungwarere in a shooting position. The witness added that many persons were killed during the attack in which he saw Mungwarere. When the defense lawyer asked the witness if he recognized some of other people who were with Mungwarere, he answered that he recognized Ernest and Daniel and that both of them had guns. The defense lawyer said that the witness had not previously mentioned that Daniel had a rifle.

The defense lawyer asked the witness if he had seen Obed Ruzindana in person and when he may have seen him in relation to visits of French soldiers to the refugees in the hills of Bisesero. The French went there on two separate occasions, and in his testimony, Ndahimana said that Ruzindana went in between these two visits. When Ruzindana went, it was to call the refugees to stop hiding in the hills, reassuring them that they would have no more problems. However, the attacks in the hills continued up until the second visit of the French.

The defense lawyer again compared Ndahimana's statements to the RCMP with his statement to the Dutch judges. The defense lawyer mentioned that there was another contradiction. He said that the witness declared to RCMP officer Lishchynski that he met his brother Joseph after the attack on the Mugonero complex, whereas he had declared to the Dutch judges that Joseph and a certain Sabato were killed near the church. In the cross-examination, Ndahimana clarified that Joseph did not die near the church.

Ndahimana asked to stop the cross-examination because he was exhausted. The judge gave him the choice to continue for 15 more minutes or to come back the next Tuesday. He chose to come back next Tuesday, July 3, 2012.

### **Week 6 (July 3-6)**

On Tuesday, July 3, the Defense continued with its cross-examination of François Ndahimana, asking questions about his participation in the gacaca process at Ngoma. During his testimony in the gacacas, he named seven people implicated in the massacre at the Mugonero complex. Mungwarere was not mentioned. In addition, Ndahimana had given a list of names to Dutch authorities that did not include Mungwarere. However, Mungwarere's name was on a list that Ndahimana wrote more recently for the RCMP. During the re-interrogation, the Crown submitted this list to the Tribunal. Ndahimana confirmed that he had seen Mungwarere several times during the genocide, in Ngoma, Gitwe, Bisesero, and other places.

The next witness was a man named Phénéas Bambanza. He was born in 1958, is Hutu, and knows the family of Jacques Mungwarere. He knew Mungwarere as he was growing up and as he was a student. Bambanza participated in the attacks against Tutsis during the genocide. He was convicted and sentenced to 11 years in prison in Rwanda, after his gacaca trial.

Before the attack on the 16th of April 1994, Hutu authorities came to Bambanza's house, accusing him of complicity with the Tutsis. These people killed Tutsis that had hidden in the bushes near Bambanza's house, and threatened him by saying that they would kill him if he did not participate in the attacks.

On the morning of the 16th, he went to the Mugonero complex, passing by the commercial centre of Ngoma, where a gathering of the attackers took place. At that gathering, Obed Ruzindana criticized the Hutus of Ngoma for not having participated in the killings. According to Bambanza, the reason for which the Hutus of Ngoma had not killed their Tutsi neighbours in the region was that they lived in harmony. They gave each other cows and land, and there was intermarriage.

During the cross examination, Bambanza admitted that he had lied to investigators of the ICTR when he told them that he had not taken part in the April 16th attack. He justified his lies by saying that he was pressured by Gérard, the older brother of Mungwarere, and another man. Bambanza was fearful of the consequences for himself and his family.

However, in Court he recognized that he had participated in the April 16th attack. That day, he had a machete and a bludgeon with him. He marched behind those who had rifles. According to him, Jacques Mungwarere was one of these men and had a long rifle. For this reason, Bambanza referred to Mungwarere as a leader of the attack. This term was used for those men who had rifles. Commoners like Bambanza did not have rifles and were to finish off Tutsis that managed to escape the bullets fired by the leaders.

Bambanza said that Mungwarere was right in front of him at the start of the attack at the Mugonero complex, but he emphasized that they had not attacked in single file. The attackers climbed up an embankment. Soon after, they began to start shooting at the refugees. Bambanza maintained that Mungwarere fired. However, from his testimony it was not entirely clear whether he actually saw Mungwarere shoot or not.

During the attacks, one of the attackers, Uzurama, was killed by a lance.

After the attacks ended, Bambanza pillaged the nursing school of the complex, notably taking two mattresses. As he was going home with these two mattresses, he was intercepted to help dig holes at the surgery area of the hospital. According to Bambanza, Mungwarere also contributed to the execution of this task: he took an explosive device from his belt, put it onto his rifle somehow, and shot into a hole, which caused an explosion. In the following days, Bambanza returned to the site of the massacre to bury corpses.

In 2008, Bambanza said that that incident was the only instance in which he saw Mungwarere shoot. He had never spoken of this incident until meeting with Canadian police officers in 2008. In fact, he never mentioned the name of Jacques Mungwarere prior to 2008, not even during two interviews with Dutch authorities investigating Joseph Mpambara. However, Bambanza had spoken of Habimana, who he also identified as being a “leader.”

The next attack in which Bambanza participated was in Murambi. Bambanza spoke of two large attacks there, although he could not remember the precise dates of these attacks. He participated in other attacks in the hills of Bisesero, each time there was an order to attack. He killed people with a bludgeon. He testified that Mungwarere was also in these attacks, with a long rifle. Bambanza knew that their objective was to kill.

He remembered one specific incident involving Mungwarere. When coming back from one of the attacks at Murambi, they saw some Tutsi refugees. Mungwarere only had two bullets left, and he used them to kill these refugees. Bambanza spoke of this incident in 2008, but not during an interview in 2012. On this last occasion, he explained that he could not say whether or not Mungwarere had killed a specific person in the hills because there were a lot of bushes in which the Tutsis refugees hid.

The Defense suggested that Bambanza was aware of the fact that the Canadians were searching for information on Jacques Mungwarere in 2008. However, during the cross-examination, Bambanza maintained that he had not known that they were investigating Mungwarere, and that it was purely a coincidence that he mentioned the name of Mungwarere for the first time in 2008.

Bambanza appeared stubborn and non-cooperative at several points during the cross-examination. For example, he decided at one point that he no longer wished to comment on his declarations to the ICTR, so he refused to respond to Defense questions on this subject. Similarly, he refused to answer questions about his testimony to Dutch authorities concerning Joseph Mpambara. He asked questions back about the questions the lawyers asked him.

### **Week 7 (July 9-12)**

Hearings this week were held from the 9th to the 12th of July. The first witness to be heard was Jonas Bizimana. He was born in 1968, and he lived in Ngoma in 1994. The morning of the attack on the Mugonero complex, from where he lived he was able to see numerous men meeting in the small centre of Ngoma; he estimated that there were around 100. According to Bizimana’s testimony, they had been ordered to go kill people at the hospital, and a young man pressured him to join the others. He was scared, so he took his machete and went to join them. There were soldiers, civilians from Ngoma, and people from other nearby villages. Bizimana named several people who were there, but he did not name Jacques Mungwarere.

Bizimana left with these armed men, but according to his testimony he branched off from the attackers at a certain moment and returned home, rather than continue onwards to the complex. He later used the same tactic on several occasions to avoid participating in the killing in Bisesero.

About three hours later, he saw people pass by with things that they had pillaged from the hospital. That afternoon, he himself went to the hospital with an older uncle named Salathiel, who wanted to find the body of his brother Uzarama, an attacker that had been killed with a lance. They learned that the cadaver had been taken to Kibuye.

The next day, Sunday, Bizimana saw Mungwarere while he was in the midst of talking to a man named Samuel Nyiramagemye. Bizimana testified that he had been going to the house of Habimana, one of the Interahamwe 'leaders', to find out information about the situation. According to Bizimana, Mungwarere was nearby and had a grenade at his hip. This occasion was the only time he saw him during the genocide.

Later that same day, Bizimana received the order to go to the complex to "do a little cleaning", but he refused, using the excuse that he was going to see his mother. She was a Tutsi who had taken refuge with a man who lived around 30 minutes from their home in Ngoma.

Although he initially testified that he went to see his mother on Monday, Bizimana later said that he had gone on Sunday, and that he had perhaps been mistaken. However, when the Defense asked him to explain the contradiction, Bizimana said that he had gone on both days.

On Monday, Bizimana and Salathiel wanted to go find the corpse of Uzarama in Kibuye. They went to see Habimana, to ask that he bring them in his vehicle.

During his testimony, several photographs taken in the centre of Ngoma were shown to the witness so that he identify the owners of the houses, including Manasse Bamporiki, the father of Mungwarere. One of the photos showed Habimana's house, and Bizimana was asked to indicate where he saw Mungwarere.

Many of the questions of the Defense focused on the chronology of the events described by Bizimana, especially in relation to contradictory past declarations. For example, in one declaration he had said that he saw Mungwarere the Monday after the attack. Another contradiction highlighted by the Defense was that previously, Bizimana had said in an interview that Mungwarere was alone when he saw him. In response, Bizimana told the tribunal that Mungwarere only spoke to Nyiramagemye in passing, without stopping. Another point that was not clear was whether or not he actually spoke with Habimana on the Sunday.

Some of the cross-examination questions focused on the morning of the 16th of April: what Ruzindana said that morning, if the people from Ngoma kept together among the attackers, and who brought them to the complex. Other questions were on what occurred prior to the attacks on Bisesero: from where did Bizimana see the attackers, how often he started on the route with the attackers, and on the Interahamwe in the centre of Ngoma.

The next witness was Asinathe Nyiragwiza. She is a Hutu woman who had eight Tutsi children with her Tutsi husband. She lived in Kigarama in 1994. She was scared, so she decided to take refuge with her family at the Mugonero complex. She stayed even when Hutu refugees there were told that they should leave the complex and return home, which was two days before the big attack of the 16th.

On the morning of the attack, Nyiragwiza was among the women who were picking up rocks for the men to use to defend themselves. When the attackers got nearer, she and many others ran to take refuge in the church. From the inside, she could hear gunfire and grenades exploding. The attackers surrounded the church, and threw in gas that prevented people from seeing and caused them to tear up. Nyiragwiza said it was like hot pepper. The attackers broke down the doors of the Church and started to kill the people inside, with bullets, machetes and clubs. Everyone was pushing to get out. Nyiragwiza was lucky enough to be able to escape by a secondary door.

It was at that moment that she saw Mungwarere, with a rifle and dressed like a soldier, among the attackers. She was running away, but encountered an attacker who knew her. Another attacker, her nephew Daniel, escorted her to the road, and she hid at a house.

After that, she went to stay at her sister's. During this time, her husband was killed and one of her young children was found, gravely injured. A few weeks later, she went to stay in the centre of Ngoma with a man called Paul Munana.

His house was nearby where the attackers would get together before leaving for the attacks in Bisesero. Nyiragwiza saw Mungwarere among them with a rifle. She heard the beating of drums to signal to the men to go to attack; she heard gunshots; and she heard the returned attackers brag about their killings.

Although Nyiragwiza was able to name several of Mungwarere's siblings, the first time she met with Canadian investigators, she used the name "Gerardine" for the person she identified as being Jacques Mungwarere.

In the cross-examination, the Defense asked several questions about the people that Nyiragwiza knows and what she personally saw during the genocide. In her first declaration to Canadian investigators, she did not name Jacques or Gerardine as being one of the attackers preparing to go to Bisesero. The Defense was also interested in knowing who had notified her that there were foreign authorities who wanted to obtain declarations from her.

The Defense ended its cross-examination on the topic of false accusations. A woman had accused Nyiragwiza in a gacaca process of having killed her own husband, but she was acquitted immediately. The Defense suggested that Nyiragwiza was making the same sort of false accusation against Mungwarere, because she was scared that Vincent Usabyimfura and Samuel Ndagijimana would bring some sort of accusation against her. She rejected this hypothesis.

The last witness of the week was Mariya Niyiramaboyi. She was born in 1931, and is a Hutu who lived in the Ngoma centre during the genocide. After the crash of the President's plane, she left to go take refuge in another house that she had, which was about a 30-40 minute walk from the centre. After three days, she went to stay at the Church in Muramba, where the Hutus took refuge. The Tuesday after the big attack at the complex, she returned to Ngoma. She saw the men who were 'leaving to war', including Mungwarere. She said that he normally had grenades, but that she had seen him once with a rifle. According to her, the attackers left night and day.

The Crown finished its questioning of Niyiramaboyi, with the Defense cross-examination being left until the next week.

## Week 8 (July 16)

The trial only took place for one day this week: Monday, July 16. That day, the Defense conducted its cross-examination of Mariya Niyiramaboyi.

Several of the questions of the defense lawyer focused on where Niyiramaboyi lived in the period before the genocide, which wasn't clear from her past declarations. Prior to 1990, she lived in the village of Rufumberi, "below the road". After her son was hospitalized following a car accident, she lived in Kigali for a period of time. Next, she lived in a small house next to the Mugonero hospital, and later, they went to live in the centre of Ngoma.

Niyiramaboyi was frightened when the Tutsis were fleeing to take refuge at the Mugonero complex, so she fled from Ngoma to her house below the road, and then to the church in Muramba. She spent a week or two there, where Hutus were taking refuge, before returning to Ngoma with one of her children.

She testified that from Muramba, she was able to see people running at the complex, and she could hear the rattle of gunfire and grenades exploding. The two places are about 2km away from each other, as the crow flies. The Defense suggested that at that distance, it was not really possible to see people, and not probable that one could hear.

While she stayed at the church in Muramba, and after returning to Ngoma, Niyiramaboyi had to go get food to eat from her field, near her other house. During the time she was staying in Ngoma, her husband and other children lived in the house below the road. Given these facts, and the fact that her house in Ngoma had been "destroyed" (the door and windows had been removed), the Defense suggested that in fact, she had not lived at her house in Ngoma during the genocide, meaning she would never have seen Mungwarere in the centre of Ngoma. Niyiramaboyi seemed offended by this suggestion. She replied that she had stayed in Ngoma because her child was still in school, the rent had been paid and she could not leave without first advising the person who had paid it (a foreigner), and that Hutus from various places were occupying the houses in the centre of Ngoma.

Other questions dealt with Niyiramaboyi's participation in the gacaca courts. She had testified in gacaca trials on several (at least six) occasions. She had also acted as a judge, in cases of people accused of pillaging. She had worked alongside Jonaz Bizimana, who had been a secretary in the gacacas. The Defense asked if she had seen Bizimana leaving or coming back from the attacks in the hills, and she replied in the negative.

Often, the witness did not directly answer the questions of the Defense, and she seemed annoyed. In addition, on more than one occasion, she had to be told to slow down and shorten her sentences so as to allow the interpreters to translate, and so that her testimony would not be lost.

Near the end of the cross-examination, the Defense asked if it was possible that, after several years had passed and hearing so much testimony on the genocide, that she had mixed up facts, and that in fact Mungwarere was not among the attackers. She affirmed that she had seen Mungwarere 'go to war' with her own eyes. With indignation she asked whether the dead can rise and say who killed them. She insisted that she had no malice directed towards Mungwarere or his parents. The last thing she said in her testimony was: "In my memory, there is no mix-up. I'm not crazy! I saw Jacques go in the attacks night and day!"

On the 17th of July, the Crown announced the decision not to call the witness that had been planned to be heard, Florence Mukamana. On July 23, the Crown said the final witness decided not to testify so the Crown completed its case. The Defense will present its witnesses in the fall. There will be a hearing on September 12 to deal with preliminary issues.

### **Week 9 (October 9-12)**

The trial started back this week. The defense began by announcing the different arguments that it would present through witness testimony. The defense planned to show contradictions in the statements of the Crown's witnesses and also present proof about fabrications as well as an alibi. With the testimony of its first witness, Mr. Brian Endless of Loyola University in Chicago, the defense intended to explain the specific context of Rwanda. This context, the defense argued, has led to the fabrication of accusations against Mr. Mungwarere. This type of false accusations is, according to what Mr. Endless would say, something that happens commonly in Rwanda. The practices of the present government encourage false accusations and create the fear that motivates witnesses in genocide trials.

The defense sought to qualify Mr. Endless as an expert. He testified that he has a PhD in Political Science and has conducted extensive research on the Rwandan Genocide and the general human rights situation in Rwanda. He is currently a professor of International Relations with a focus on Rwanda. The Crown pointed out that although he has done significant research on fabrications, he has not done extensive research on the issue of the fear of testimony by witnesses.

Mr. Endless believes that the international community has a perception of Rwanda and of the current government that does not reflect reality. In the same way, he believes that the genocide is not as simple as to say that "the Hutus killed the Tutsis." He believes that at some point Hutus were also being killed for political reasons. Mr. Endless argued that witnesses are afraid, that the government is pressing them to present a certain version of events.

Through questions concerning the number of peer reviewed articles the witness had written and the number of experts who approved of his opinion, the Crown tried to demonstrate that the witness was biased. The defense then made an objection, arguing that the Crown was going too far in the questions concerning the witness' qualifications. The Crown replied that they were simply trying to demonstrate that the expert had no knowledge of the witnesses' fear of testifying, other than reading the works of other experts. The Crown asked more questions on the activities of the foundation that Mr. Endless works with in Rwanda. The Crown tried to demonstrate that the foundation is politically engaged and that it is critical of the government of Rwanda's human rights record after 1994.

The defense argued that the opinion expressed by the witness was not biased and that it was part of a range of opinions of experts on the Rwandan government and the genocide in general. To say that this witness is biased would be saying that all expert witnesses are biased. The Judge expressed a desire to make sure that the testimony of the expert would address the context in general and would not be used to support specific testimonies of the witnesses.

The court had to determine whether the testimony of Mr. Endless was relevant and necessary. The judge found that Mr. Endless has sufficient knowledge of Rwanda political and social history to be qualified as an expert on the matter. As for the necessity of his testimony, the judge said that his opinion relies on the Rwandan government's involvement in the compiling evidence against several individuals. His testimony is important as it helps situate the context in which witnesses are being heard. His testimony will explain the socio-political climate but will not be used to undermine the credibility of the Crown's witnesses.

Mr. Endless testified that the government uses the genocide as a political tool to eliminate all party opposition and to create a climate of fear. Asked about his report "Genocide as a tool of politics in Rwanda today", he explained the "double genocide theory", according to which two genocides have occurred. One by the Hutus against the Tutsis and one of the Tutsis against the Hutus. This second "genocide" has been perpetrated by the Rwandan Patriotic Front (RPF), founded by Paul Kagame, the current President of Rwanda. The government doesn't accept this theory and is against anyone who supports it. Furthermore, anyone who suggests that there is no reconciliation between Tutsi and Hutu can be accused of divisionism. As an example, Mr. Endless cited the case of Victoire Ingabire Umohoza, a Rwandan politician who, after coming back to the country in January 2010 to found her own party opposed to the RPF, was accused of having a genocidal and terrorist ideology. According to Mr. Endless, the arrest warrant against her was inaccurate and not supported by evidence and the outcome of the trial has been kept secret. Mr. Endless pointed out that false accusations are accepted as a fact of life in Rwanda.

He also discussed the rise to power of Kagame and the consolidation of Tutsi power after the genocide. Around 1960, when the Tutsi's situation became precarious because of the rise of the Hutus, Kagame's family, which is Tutsi, fled to Uganda. However, due to xenophobic campaigns against the Tutsis, conflicts occurred between Rwandan and Ugandan military. It is at that time that Kagame founded the RPF and returned to Rwanda to force the government to give Tutsi their rights. Eventually, the RPF encircled Kigali and took control of the city. At the beginning, everyone was convinced that the RPF was acting in good faith, but it has not turned out this way. Mr. Endless testified that Kagame consolidated his power very gradually after the genocide, by pushing aside Hutu power, little by little. Although the government was supposed to be a coalition between the two groups, it soon became clear that the RPF would be a Tutsi government for those (both Tutsi and Hutu) willing to work with them. As a result, many Hutus fled. In 2000, the President of the National Assembly fled into exile and in 2003, Kagame was confirmed as President of Rwanda.

According to Mr. Endless, in Rwanda, politics is often used as a tool of oppression. In fear of any opposition, Kagame established a totalitarian system. Anyone can be victim of false accusations and the people of Rwanda know this. People know that they can be arrested at anytime and that has implications on trials even outside Rwanda because it makes people consider what the government wants them to say or do. They have to be careful when they testify to not say something the government doesn't agree with. If a defense witness testifies contrary to the government's interests, he can be charged with perjury. Moreover, the Rwandan government tries as much as possible to prevent anonymous testimony.

On cross-examination, the Crown tried to find flaws in Mr. Endless' arguments. He was unable to say how many individuals have been tried before the International Criminal Tribunal for Rwanda or how many have been imprisoned. He said that it is because the results are kept secret. The Crown also questioned Mr. Endless' assertion that it is impossible to have a fair trial in Rwanda because there has been a 25% exoneration rate in the Gacaca courts. The Crown argued that Mr. Endless was unable to give accurate

data, that his arguments are too broad and that he cannot support them clearly, relying instead on other people's studies and literature. The Crown added that the witness might be mixing together two distinct issues: opposition to the government and testimony in genocide trials. When the Crown claimed that Mr. Endless was asserting that the government controls witnesses. Mr Endless replied that not all testimony is controlled by the government, only testimony in cases in which the government has an interest, such as the genocide trials.

The cross-examination of Mr. Endless wrapped up. In the opinion of Mr. Endless, what makes a trial worthy of interest in Rwanda is the profile of the trial and the capacity of that trial to change or maintain the specific view of the genocide that the government is trying to promote. It only allows people to view genocide on a restricted spectrum. Most foreign trials qualify as high profile trials for the government. They will take an interest in those matters. With that, Mr. Endless' testimony concluded.

The second witness, another expert presented by the defense, is Mr. Batard, who is a former officer of the French Gendarmerie for which he stopped working in 2005. He explained that he began working on the Mungwarere case as an investigator for the defense in 2010 when he met with a defense lawyer to receive the files concerning Mr. Mungwarere.

The defense explained to the court the witness was necessary to show that there had been a certain amount of fabrication in this case. The defense wanted Mr. Batard to describe the difference between the allegations in the file in 2010 and the number of allegations that are currently left. The Crown argued that allowing this testimony would amount to admitting evidence that is inadmissible because it did not concern the investigation of the RCMP. The Judge allowed the defense to go on, as long as there are no specifics about past investigations.

Mr. Batard continued with his testimony. He was asked to describe his investigation into the allegations against the accused. He described all the steps he took, the search for witnesses and for evidence in support of or against the allegations. When asked about any specific difficulties in his investigation, Mr. Batard said there were none, except for the recent complaints of fear by the witnesses. At this point, the Crown argued that affidavits provided by Mr. Batard to explain the events that caused the fear for the witnesses should not be admissible since the Crown was not allowed to cross-examine the witnesses.

After examining the affidavits, the Judge declared them generally inadmissible, but since they are only to be used for request by the defense for witness protection, the Judge will consider admitting them into the proof for that request. Since some of the witnesses will be testifying next week, their affidavits won't be admitted. For the others, considering that Mr. Batard will be commenting on them only for the purpose of the security of the witnesses, the Judge would admit them into the cumulative evidence if the Crown agreed to it. The judge decided that although the lack of cross-examination was problematic, the importance of the testimony was stronger. The Crown argued that it was a violation of procedure and that important questions would need to be asked about how the testimonies were obtained.

Mr. Batard begin his testimony again by addressing the way the testimonies were obtained and the procedures for obtaining the affidavits and translations. Mr. Bartard questioned witnesses with an interpreter at his side and together they wrote the declaration in French and corrected it until the witness was ready to sign it. Before the questioning there was always a period of informal discussion in order to get acquainted with the person. All testimonies were obtained in the same procedure.

The prosecution explored the issue of why, at the beginning of the inquiry, there were a significant number of allegations against Mungwarere and now only about ten remain in the case. The Crown also explored why witnesses changed sides and decided to cooperate with the defense, and what might have caused them to invent stories about Mungwarere. The prosecution also sought clarification about the circumstances of contacts between Mr. Batard and the witnesses he questioned.

According to Mr. Batard, he worked with colleagues in Rwanda who met and questioned witnesses in regard to the Mungwarere case. The Crown asked about a meeting with an alibi witness, Witness OU20. This witness was referred to Mr. Batard by Célestin Kabangu, the principal Rwandan colleague, who himself was referred by Jean-Marie Vianney, a source from Uganda. Mr. Vianney had been sent to a refugee camp in search of witnesses who would know what happened in Kibuye. Mr. Vianney didn't know Mungwarere, nor did he know that Mr. Batard and his colleagues were searching for witnesses for Mungwarere's trial. Vianney referred OU20 to Célestin who took his statement. Mr. Batard has a report about this meeting in Kinyarwanda, but he did not ask his colleague to record the testimony. The witness subsequently proved to be irrelevant.

Other witnesses include Gérard, Mungwarere's brother, and Jasmine, another member of Mungwarere's family. Mr. Batard met Gérard Mungwarere on January 26th, in Kigali. This witness has been very important for the Mungwarere case. He did not identify any other witnesses, but he confirmed names. As for Jasmine, she provided the names of four families with information, but she herself did not sign any statement. When asked by the Crown how many individuals he had met talking to Jasmine, Mr. Batard could not remember precisely, but he was certain he had met at least two of them.

The Crown explored witness C6307's testimony. This witness was referred by another colleague to Célestin. A meeting took place on February 18, 2012. According to Mr. Batard, no statement obtained at that time and he does not know the date the witness was referred to him.

Mr. Batard hired Witness KRV700 in November 2011 and KRV700 worked from January to April 2012. KRV700 is a teacher who was paid by the Defense to find people who had actually been present at the Gacaca trial of Mungwarere. A list of allegations was given to him and he was mandated to refer anyone who had information.

Witness RV711 was interviewed on September 15 by defense counsel Mr. Larochelle. Mr. Batard did not know who referred the witness but he assumed it was Célestin.

The Crown also asked about Witness RV717, met by Mr. Larochelle in March 2012. Mr. Batard didn't know who referred this witness to Célestin at first, but he believed that Mr. Larochelle knows the answer. As for Witness 712, another colleague, Venant, met him by videoconference in Kigali in December. 712 made some statements, mainly in Kinyarwanda and translated by Venant.

The Crown also asked about Witness 108, who was located by Venant on the Burundi border on October 11, 2011. Venant took no statement and Mr. Batard said that they did not need to keep track of this witness.

As for Witness 153, the Crown wanted to know how he was referred. Mr. Batard replied that he was previously a witness for the Crown. The Crown asked how the first contacts were made, and Mr. Batard replied that he doesn't have the relevant information.

The Crown requested a suspension of the hearing until Wednesday October 17th, in order to provide Mr. Batard sufficient time to track down the contact history for the witnesses and to find the relevant documents.

The suspension was granted.

### **Week 10 (October 17-18)**

The trial was suspended until Wednesday, October 17, in order to provide Mr. Batard sufficient time to track down contact history for some witnesses who important to the case. The Crown sought clarifications as to how contact was made with the witnesses.

On cross-examination, the Crown questioned Mr. Batard concerning thirty witnesses. Without focusing on any particular witness, the prosecution wanted to know when Mr. Batard had met the witnesses, how many interviews there had been, who was present and whether they provided signed statements. According to Mr. Batard, most of the interviews took place in 2011 and 2012. He and Célestin interviewed most of the witnesses. Several signed statements were taken but very few recordings. Mr. Batard testified that he does not like working with computers because it creates a barrier between him and the witnesses.

The Crown questioned Mr. Batard on details regarding the alibi witnesses and contacts he had with Mungwarere's family members. Mr. Batard could not recall precisely when he received the witness list. According to him, he went to visit Mungwarere's sister in Denmark. The Crown then asked Mr. Batard if it was true that the Rwandan authorities were present and intervening in the areas near where the witnesses were or where some witnesses were being detained. Mr. Batard said it was a possibility but he always had very good cooperation from the witnesses he interviewed. With that, Mr. Batard's testimony concluded.

In the afternoon, the Defense questioned a new witness by videoconference, Célestin Kagamgo, the principal colleague of Mr. Batard in Rwanda. Mr. Kagamgo was asked about the process of interviewing the witnesses. After the genocide commemoration week in Rwanda, Célestin Kagamgo met four witnesses who made four statements: RW687, 686, 688 and 612. Mr. Kagamgo testified that when he questioned the witnesses, he took notes and then put together statements from the notes. With each witness, he read the statement and if the witness agreed with it, the witness signed it. Otherwise, he modified the statement to reflect the witness' testimony. According to Mr. Kagamgo, these testimonies were in Kinyarwanda and he translated them into French. He usually asked witnesses to sign each page. When Mr. Batard was with him for the interviews, Mr. Kagamgo's primarily role was that of an interpreter and the procedure for signing the statements was the same.

During cross-examination, the Crown tried to challenge the accuracy and the authenticity of witnesses' statements. After mentioning that Kinyarwanda is a difficult language, the prosecution asked Mr. Kagamgo if he ever made a mistake in translating statements. Mr. Kagamgo said that errors are always possible but he translated word for word from the statements.

The prosecution then looked into Mr. Kagamgo's contact with the Rwanda authorities. According to Mr. Kagamgo, usually it was up to the lawyers to be in contact with the authorities. When asked if he ever had problems with the authorities, he answered that he did not but he said that it is a delicate issue and since he was not sure if this was a public inquiry, he did not want to say more. The Crown asked him if he was

aware of the availability of a witness protection program. Mr. Kagamgo testified that he knew about this service but did not discuss it with witnesses because it was the lawyers' job to discuss this issue.

Even though all the witnesses were questioned separately, the Crown noted that in the statements three of them said exactly the same thing regarding the "climate of panic." The Crown found it rather curious that they had exactly the same impression and used the same wording. Mr. Kagamgo replied that these were the same witnesses that spoke at the commemorative event, and that they all saw the same thing. These witnesses were all referred to him by the same source, RW700.

As the process started on Thursday morning, the public was allowed in only for the first few minutes. The proceedings were then closed to preserve the anonymity of the witnesses.

During the public part of the session, the Crown continued the cross-examination of Célestin Kagamgo on the subject of the process of obtaining witness statements in Rwanda. For the four witnesses mentioned by the Crown, the person who found them and referred them to Mr. Kagamgo was RW700. It was RW700 who confirmed that these persons were present for the events relevant to the trial and who brought them to Mr. Kagamgo to testify. Mr. Kagamgo also testified that sometimes, when he personally knew persons who could be witnesses to the events, he would be the one to initiate contact.

The Judge then asked the public to exit the room for the testimony of RW700.

### **Week 11 (October 22-26)**

The proceedings were closed to the public Monday, Tuesday and the morning of Wednesday in response to the Defense's concerns regarding protection of confidentiality for witnesses. Public observation resumed Wednesday afternoon, albeit with measures to continue to protect witness identity.

The Defense questioned a witness regarding his presence at a church where an attack took place. The witness, who was injured in this attack, was able to identify three individuals who participated in the attack: Obed Ruzinda, Mika and Ishuni. After the attack, he went to Gitwe where he stayed with relatives until the area was targeted. He then moved to a number of other areas to escape attacks, eventually staying in Bisesero until the end of the genocide. He testified that there had been attacks in the area every day. When asked whether he recognized any of the attackers, the witness named the same three as earlier and several others. He testified that he did not hear any mention of Jacques Mungwarere.

The Defense moved on to questions about the Gacaca courts. The witness assisted in information gathering in Gishyita and Bisesero by responding to questions he was asked regarding the participants in the genocide. He testified that he went to the Gacaca every day and that he recognized the names of many criminals but never heard Jacques Mungwarere's name. The defense emphasized this point, asking him to list the places where he went and the Gacaca trials he watched, without ever hearing mention of Jacques Mungwarere.

The Crown's cross-examination began with general questions about the witness such as his age at the time of the genocide (16) and the number of siblings he had (9), all of whom died during the genocide. The Crown also asked questions about how the witness became aware of the investigation of Jacques Mungwarere. He testified that he learned of the investigation at the beginning of 2012 from Wilson and was then in contact with the Defense's investigators, Célestin and Mr. Bâtard. He knew Jacques before the genocide because both of their families went to the same church to pray on the Sabbath.

Next, the Crown asked questions about the witness' experience at the church that was attacked during the genocide. He confirmed that he was able to recognize those who attacked the church where he had sought refuge, but not those who attacked another church nearby. Further questions were also asked regarding his ability to identify participants during attacks in the places he went subsequently.

Wednesday's session finished with the Crown's questions regarding the witness' testimony about the Gacaca. In particular, the Crown focused on the fact that the witness said he was beaten after testifying at a Gacaca trial that he had not seen the accused during the massacres. The Crown asked who the accused was in that Gacaca trial. There was some confusion over whether the accused was Ishuni or someone else.

On Thursday, the Defense resumed questioning of the witness regarding various attacks in Bisesero and Gishyita. In his testimony, the witness stated that there were many attacks and that often it was not possible to identify all attackers or where they came from. The time he spent in Bisesero was difficult for the witness. During that time, he was a child and was forced to flee constantly in order to stay alive. Attackers were everywhere in the hills and, again, he could not identify all of the participants.

The Crown then asked in cross-examination further questions in order to clarify the witness' story regarding the Gacaca where he testified to the charges against two individuals. When asked what were the consequences of his testimony, the witness stated that he was beaten but did not remember the date.

The Defense then called a new witness who is Tutsi. During the genocide, he was living with his parents and wife, all of whom are now deceased. He knows Jacques Mungwarere as he lived minutes away from him. The Defense asked the witness whether he remembered the day when the airplane carrying President Habyarimana was attacked. He responded that it was April 6 and that he and his family sought refuge at the hospital. According to the witness, there was a killing around April 16. However, before attackers killed people at the hospital, there was an attack at a nearby church. The killings were in the morning. The witness recognized many of the attackers, some of whom were neighbours, but he stated that it was difficult to recognize all of them due to their numbers. The Defense asked where in the hospital he saw the attackers. The witness noted the path leading to the bus stop, the side "field" defined by the interpreter as an Adventist building. When the witness saw these attackers, he was in the church. The witness stated that people were throwing rocks at the attackers who were firing on them for around 3 hours. After this, the witness sought refuge in an operation room at the hospital until around 3am in the morning. When asked by the Defense if he saw the accused during this attack, the witness responded that he did not see Jacques Mungwarere at the hospital. However, he admitted that he told Canadian investigators that he saw the accused shoot a woman and child during the April 16 attack. He confessed that this was a lie and that he was asked to lie to the investigators to ensure Jacques Mungwarere remained in prison.

After the attack on the hospital, the witness went to Murambi where there were more attacks in which he was able to identify participants. He then went to Gitwe and to Bisesero, both areas where there were more attacks. The witness stated that many people came during the attacks and that it was not possible to recognize each of them. When asked if he saw the accused during the attacks in Bisesero, the witness said he had not. However, he admitted that he told police that he saw Jacques Mungwarere kill a Tutsi and that he also accused him of a violent sexual crime and of kidnapping. The Defense asked him why he said he saw the accused commit these acts when it was not the truth, to which he responded that he wanted Jacques Mungwarere to remain in prison.

The Defense also asked this witness about attacks that took place on the Sabbath, the 13th and 14th of May, at Bisesero. The witness saw these attacks and said that there were many attackers who arrived by vehicle and, in addition, there were government buses. He recognized some of the attackers, but not all.

Next, the Defense asked the witness if he remembered speaking to the Canadian investigators about someone named Marcel. Marcel was a Tutsi who was killed during the genocide. The witness said that, yes, he told the investigators that it was Jacques Mungwarere who killed him. When asked why he said this, the witness responded that he had been asked to do so in order for Jacques Mungwarere to stay in prison.

The Defense continued its questioning by asking about the facts of the attack on April 16 and particular attackers. The Defense asked whether he saw them with weapons and if he saw them again afterwards. The Defense also asked whether, during the genocide, the witness spoke to other survivors about who they saw amongst attackers. The witness stated that there was no occasion where Jacques Mungwarere was named. The witness never saw the accused take part in the attacks nor did he ever hear others say that the accused took part. When asked by the Defense why he had lied and why he should be believed now, the witness responded that when he made accusations against Mungwarere, he had a desire for vengeance that he no longer has today.

In cross-examination, the Crown questioned the witness about the attack on the hospital on the Sabbath. The witness explained that the attacks began in the morning. As soon as the attackers arrived, they began shooting. They came from the intersection. The witness was five steps from the church and he threw rocks at the many attackers who had circled the complex. After a while, they began firing shots and throwing grenades towards the witness who then took refuge in the hospital. The Crown asked why he did not hide in the church. According to the witness, many others had already taken refuge there and the doors were closed. He was not able to tell the Crown on which side of the church he passed to get to the hospital. Once in the hospital, the witness hid in a room within the surgery area. Around 3:00 am, when the witness was safe, there were dead people everywhere in the hospital. All of the doors were removed and the attackers were gone.

The Crown then questioned the witness regarding the attackers he recognized on April 16.

On Friday morning, the Crown resumed its cross-examination of the same witness from Thursday afternoon. The Crown asked whether many individuals had guns on the day of the attack, April 16. There was some confusion regarding names, but the witness confirmed that some of the individuals named by the Crown did, in fact, have guns. The witness was able to recognize those with guns because they were in front of those with machetes. However, he was not able to identify those behind the ones with guns because he had fled to save himself.

After a brief discussion about the end of the war, the Crown moved on to 2007, the time when Canadian police contacted him. He said that he knew there were investigating Jacques Mungwarere, but it was not them who had told him. Rather, it was Samuel Djimana who told him Mungwarere was the subject of the Canadian investigation. He said it was then that he decided to incriminate Mungwarere, out of vengeance. It was Samuel who told him what clothing Mungwarere was wearing. Based on the Crown's questions, it would seem that the witness told the police investigators that nobody had told him that Mungwarere was the subject of the investigation. The witness stated that he did not recall saying that.

The Crown then focused on the witness' first contact with the Defense. Celestin had phoned him to say that someone wanted to meet him in Kigali. The witness said that, at the time of the phone call, he did not know it was someone for the Defense who wished to speak with him. Upon arrival in Kigali, he met Celestin who brought him to the place where he was to stay. He mentioned that Celestin was also staying at this place – a hotel – and that Celestin had paid for him. The witness then stated that Celestin asked him if he wished to testify for Mungwarere. The witness said yes, since he had lied previously and wanted to rectify that.

The testimony took place during a second meeting, around 10 days later. The Crown then asked a number of questions about the procedures relating to the testimony and whether Celestin had mentioned the possibility of travelling outside of Rwanda to testify. The testimony was given in a hotel room and notes were taken on a computer. There was a third meeting, with Celestin and 3 white individuals. They asked the witness to sign the declaration and asked if he would be willing to travel in order to testify.

Next, the Crown returned to the attacks and asked questions regarding the attackers whom the witness was able to identify. The Crown asked why it was easy to recognize attackers in some instances, but not in others. The Crown also asked why the witness spoke to police about certain individuals (Kamanyahanga, Daniel, Rozindana) but not others (Babamza) whose actions were more serious. His response was that he did not remember everything when he spoke to police and that Babamza had apologized for his actions. The Crown asked whether he was aware that Babamza had testified in the trial and that he claimed he participated in attacks alongside Mungwarere. The witness responded that he was aware, but that he only saw Babamza during the attacks, and not the accused.

### **Week 12 (October 29-November 2)**

On Monday, the Defense questioned a witness (whose name was kept confidential) regarding his knowledge of people lying about Jacques Mungwarere. According to the witness, certain people willing to testify against people accused of participating in the genocide had been told that Canadian police were investigating Mungwarere. The witness said that those people thought about the locations of important attacks, such as the hospital and Bisesero, and then claimed that Mungwarere participated in those attacks. When the Defense asked how the witness knew this, he responded that particular individuals were chosen to bring charges against Mungwarere. They knew what they were going to say and against whom they were going to testify. The witness also said that he told investigators that Mungwarere wore military clothes during the attacks. The Defense asked if Hutus also participated in this false accusation process. According to the witness, Hutus involved in the killings also brought charges against Mungwarere. He said that these individuals confessed to killing people to show that they were on the prosecution's side and, in return, they were promised money.

Next, the Defense questioned the witness about the attack at the hospital. First, they asked if he knew a woman named Ester. The witness said that he knew her – she was the Tutsi concubine of Mungwarere's father. He said that he saw her dead body at the hospital and that, in his false testimony, he claimed Mungwarere was the one who killed her. When asked why he told such lies, he confessed that he wanted the crime for which Mungwarere was accused to seem significant.

After the attack at the hospital, the witness said that all the survivors fled to the hills of Murambi where there were more attacks. The Defense asked if he recognized any of the attackers. According to the witness, there were notable "interahamwe" among them. The Defense also asked the witness if he spoke

to other survivors about who they had seen during attacks. He responded that he had. The Defense asked, more precisely, if they had spoken about Mungwarere. The witness testified that it was only after Mungwarere was arrested that they invented charges against him.

Finally, the Defense questioned the witness regarding his participation at the Gacaca courts. The witness testified that he went to give testimony against those who participated in the killings, those who planned the genocide, and those who pillaged. He never talked about Mungwarere at the Gacaca courts. The Defense asked the witness if other people had testified against Mungwarere in the Gacaca courts. According to the witness, people started to talk about Mungwarere after he was arrested and not during investigations. He added that even people who pleaded guilty did not see Mungwarere participate in the attacks.

In the morning, the trial was closed to the public. The Crown cross-examined the witness regarding fabrication of evidence. The witness provided the names of certain attackers and witnesses involved in the fabrication of evidence against the accused.

The Crown continued its cross-examination of the same witness in the afternoon in open session. The Crown asked about the circumstances that led the witness to change his testimony. He explained that he did not want to testify for the defense in Rwanda. If he hadn't been given the opportunity to testify in another country (his current location is confidential), he would have continued to lie, i.e. he would have continued testifying against Mungwarere.

Next, the Crown questioned the witness regarding the attacks in the hills. Specifically, the Crown asked whether the witness could have known the whereabouts of Mungwarere at each moment starting on April 16th. The witness responded that this would be impossible, that there were many attackers and he was constantly running to save himself. However, he noted that he never saw Mungwarere.

The Defense then called a new witness but the questioning was closed to the public. The public was granted access for the Crown's cross-examination, although the witness was hesitant to testify. The witness, a Tutsi, said he knew Mungwarere. The witness was at the hospital on the day of the attack, April 16th. He sought refuge there along with his family members, all of whom were killed. The Crown asked for details regarding the attack. The witness said that it began in the morning. He was close to the area where there now stands a memorial to the genocide victims. He and others were throwing rocks and sharp pieces of wood at approaching attackers. The witness said that he recognized certain attackers from Ngoma. There were many and they were armed with guns, grenades, machetes and spears. The Crown had no further questions.

After a period closed to the public, the Defense continued questioning a witness regarding the attack of April 16th. The witness stated that the attackers prevailed and they began killing people. (Note: Since the preceding questions were behind closed doors, it was not possible to confirm who was attacking whom.

After the attack, the witness left for Gitwe by foot. There were many others there – people he had seen at the hospital and who managed to escape. The witness said he then began life as a refugee, sleeping outside, going hungry and living in fear. He was scared that the killers would come back for them. Then he went to Bisesero, where he ran from attacks with others in the hills. He said there were attacks at least five days per week. He was able to recognize some of the attackers and not others. The Defense asked for details about the people he recognized and the witness provided several names. More specifically, he was

asked whom he recognized from Ngoma. Many of these people were former neighbours. Two among those he recognized were carrying guns and the others had grenades or traditional weapons. The witness was able to see them use their weapons before he fled.

After another brief period of closed questioning on dates, locations and names, the Defense asked the witness when these attacks ended. He responded that it was June 15. He remembers the date because he injured his foot on thorns while running for his life. Then, the witness thought to go to a friend of his parents who lived in Mahekie. After a couple of days, a Hutu helped him travel to Ijwi in the Democratic Republic of Congo where he stayed for just under three months. The Defense asked about the people he saw there (whom he already knew from Rwanda). The witness saw Jacques Mungwarere's father who had a letter for the witness to give to Jacques upon his return to Rwanda. When the witness returned, he went to the home of Jacques' older brother, Gerard. He stayed there until Gerard was imprisoned, after which he went to Kigali in October or November of 1994.

The Defense asked the witness about relations between Tutsis and Hutus while he was in Ngoma with Gerard. He responded that the Hutus were afraid and showed respect for the survivors. When asked about his own feelings towards the Hutus while living there, he said that he felt hatred. He said that when he heard that justice would be pursued against the people who participated in the genocide, he felt the need to testify. According to the witness, many other people felt the same way. There was a list of names that was used to say which individuals had participated in attacks. It was then determined who would testify against each of these individuals.

The witness explained that the first time he "pointed the finger" was in 1995, when he falsely accused someone of crimes because that person had been named counsel of a sector and had seized the land of a survivor. The witness gave false testimony to the military authorities who brought the person to jail. The Defense asked the witness if he had given other prosecution testimony. He responded that he had, naming several people including Jacques Mungwarere.

Next, the Defense questioned the witness about his statements to the Canadian police. He believed that he knew in advance they were investigating Jacques Mungwarere and that it was "Samuel" who told him. He explained that he had not spoken about Mungwarere before doing so with the Canadians, simply because he had forgotten to put Mungwarere on his list of people about whom he wanted to tell lies. He told the Canadian police that Mungwarere had raped girls and shot people. The witness was able to repeat the names of the girls he had told to the police. The witness also stated that he told lies about Hutus in general because of what they had done to Tutsis.

The afternoon session took place behind closed doors, as the Defense continued to question this same witness.

On Thursday, the Crown's cross-examination was only open to the public for a certain period. During this period, the Crown asked the witness to confirm that he was not necessarily able to identify all of the attackers on April 16 and that Jacques Mungwarere could have been present even though the witness did not see him. The witness responded that this may or may not be the case.

Next, the Crown asked questions related to the witness' familiarity with Jacques Mungwarere's family. The witness said that he knew Mungwarere's mother and sister, as well as his father who worked as a

bookkeeper at the school in 1994. He also knew Jacques himself who had been working as a teacher at the school for a short time. There was also discussion about Jacques' younger brothers and sisters.

Then, the Crown focused on Gerard, one of Jacques' older brothers who was a doctor at the hospital when it was attacked. The witness said that after the genocide, Gerard fled to exile and that he was discussed a lot at the Gacaca courts. The Crown also asked about Gerard's father, the pastor. Gerard's father left Rwanda following the genocide and was discussed at the Gacaca courts. Before the events of April 16, Gerard's father, the pastor, told the witness that the witness was going to die. The witness later saw him participate in the genocide.

Before the proceedings were once again closed to the public, the Crown asked the witness to answer a set of questions in relation to a number of different people (their age in 1994, their occupation, if they left Rwanda after the genocide, if they were discussed at the Gacaca courts). He gave precise responses for each question and each person.

The court was closed to the public on Friday.

### **Week 13 (November 5-9)**

The trial was frequently closed to the public this week. These notes reflect the open sessions when we were in attendance, on Monday, November 5 and Wednesday, November 7.

#### **November 5**

The witness (whose name was kept confidential) was questioned by the Defense about the events following the attack of April 6, 1994 on President Habyarimana's airplane. The witness explained that, after the attack, there was a climate of insecurity in the area where he was living. He and his family sought refuge at the hospital in Mugonero, along with others who were mostly Tutsis. Every day they saw people, who looked like bandits, assemble. These people had machetes and appeared to be getting organized. According to the witness, things got progressively worse as the days went on. The Defense asked the witness whether he had recognized anyone in particular. He responded by naming a number of attackers. The Defense then asked if he had recognized any of the other people hiding at the hospital. The witness said that he knew a number of them, but he could not say exactly how many people were there in total. There were many.

The witness was also asked to describe the events of April 16. According to the witness, the attacks began in the early morning and the attackers came from Ngoma and surrounding areas. The attackers had guns and grenades.

The rest of his testimony in the morning session was closed to the public.

In the afternoon, the Defense questioned the witness about events following the genocide. The witness explained that many people left Rwanda, especially Hutus because of reports on the radio that the RPF were killing Hutus. The Defense asked whether the witness knew that Jacques Mungwarere had left Rwanda, and he responded that he did. The witness himself stayed in Rwanda, where he was imprisoned in November 1994. It was not until 5 years later that the witness knew the reason for his imprisonment, which is that he was accused of killing Tutsis. The witness assumed that this was a result of the events of April 16, 1994, when there were killings at the hospital. The Defense requested a closed session for further questioning.

When the session was reopened to the public, the Defense moved on to questions regarding the collection of information from prisoners. According to the witness, prisoners who were from the same communities were put together and required to provide all of the information they could remember, namely the number of people they had killed; the names of the victims; and who else had participated in the attacks. They were told that if they pleaded guilty, their punishment would be reduced. However, they were also told that if one of their accomplices (not already in prison) were caught, that person would not be pardoned. This manoeuvre made it so that the names of people who participated in the genocide were reported.

The Defense asked if, during the information sessions, the witness ever heard Jacques Mungwarere's name. The witness responded that he had not.

Next, the Defense questioned the witness about his participation in the Gacaca courts. The witness was involved in the Gacaca courts from 2005 to 2009. He heard many testimonies over the course of the trials and the collection of information, and he never heard talk of Jacques Mungwarere. The first time he heard the name of the accused was in 2007. The witness testified that there was a meeting at the home of one of his neighbours. He knew some people who attended and they told him that people had met to bring claims against Mungwarere. Before 2007, the witness said that he never heard people make accusations against Mungwarere.

The session was then adjourned for the day, to be resumed on Tuesday behind closed doors.

#### November 7

The trial resumed on Wednesday morning after a closed session on Tuesday.

The Crown questioned a witness who was present during the events at the hospital on April 16. Since the witness lived close to the hills, he was able to hear the gunshots when people staged attacks there. He was not able to see the attackers, but he was able to hear them. According to the witness, the attacks lasted until "the whites" came, and even for a short period afterwards. He said that the attacks took place several days a week. He said it was a difficult time and that people spoke on the radio about going to kill the Tutsis, or rather "hunting the cockroaches".

The witness then said that he was afraid he would also be killed because people could be mistaken about his identity and kill him. It was difficult to tell whether someone was Hutu or Tutsi. Since the attackers came from all over, they would not know he was not a Tutsi. Therefore he did not feel secure during the attacks.

The Crown questioned the witness about the doctor's participation in the attacks. The witness responded that the only thing he saw was that the doctor left in a bus that was headed to Musambi along with youths who were reputed bandits.

Next, the Crown asked questions about the Gacaca courts. The witness had participated in collecting information in Ngoma. People would gather to name perpetrators and acts, all of which were written in books. Those who made statements had to sign and fingerprint the books. The collection of information began in approximately 2005, and lessened as time passed.

The witness stated that he did not hear the name of Jacques Mungwarere during the information gathering. However, he was able to say that Mungwarere was a teacher at the school of Lesapane in the

year preceding the events and that he had just begun teaching. The witness said that Mungwarere left Rwanda, as many others did. He said that just because someone left does not indicate that they participated in the genocide; there were some who were afraid of being arrested despite their innocence.

The witness met the Defense team in 2010. Contact was made through Celestin. Nobody spoke to him about the evidence. The witness was asked whether the Defense team instructed him to reread or look over statements before appearing on camera. He responded that they did.

#### **Week 14 (November 12-16)**

There is no summary for this week because there were not any sessions open to the public at times when our notetakers were present.

#### **Week 15 (November 19-22)**

On Monday, a new witness was sworn in. The witness was Frederic Njambare, whose father was Hutu and mother was Tutsi. In Rwanda, he is considered Hutu. In 1994, he was living in Ngoma at Lesapane where he was a prefect from 1990 to 1994. The Defense asked him what he did as a prefect. Njambare explained that his job was to ensure the supervision of the children and be aware of which classes were without teachers due to absence. Then the Defense asked him if he knew the accused, Jacques Mungwarere. Njambare responded that Mungwarere was a drawing teacher at Lesapane.

The Defense reminded Njambare of a previous statement that the school was closed for vacation on April 6, 1994 (the day of the attack on President Habyarimana's airplane). Following this event, Njambare stayed in Ngoma for approximately a week. Around April 12 or 13, he went to the home of his friend Benoit Senani in Gichita. Njambare could not recall how long he stayed there.

Next, the Defense asked Njambare whether he witnessed violence while in Gichita. He did not. However, he did hear about attacks in and around Gichita, as well as those of April 16 in Ngoma. Njambare went back to Ngoma to return to work several weeks after the killings. [Notes taken on this day say Njambare went back to Gichita, but this is likely an error either by the notetaker or the witness.] He lived in the home of Ngabonzima that, according to Njambare, was across the road from where Mungwarere's family lived.

The Defense asked Njambare to explain what was happening in Ngoma while he was living there. He said that people – specifically Habimana, Bamba, and Daniel along with others he could not remember – were leaving to participate in attacks in Bisesero.. He saw them gather in the centre of Ngoma and prepare for the attacks. According to Njambare, Habimana appeared to be the one who exercised the most influence over others. These gatherings took place every day. The attackers would leave and come back with looted goods, notably cows. The Defense asked Njambare if he had ever seen Mungwarere amongst the people who left to attack. He stated that he had not. Nor had he ever seen Mungwarere with a gun or wearing military garb.

The Defense also questioned Njambare regarding the time when he went back to work at Lesapane after the attacks, when they were preparing for the beginning of the school year. Njambare said the school did not stay open for long because people began to flee toward the end of July. During the time the school was open, a number of teachers ran courses, including Mungwarere. According to Njambare, Mungwarere never entered the school in military garb. He would not have been allowed to do so.

The rest of the proceedings for the day were closed to the public.

On Tuesday, the Crown cross-examined the same witness from Monday, Frederic Njambare. The Crown asked him when he last had a conversation with Gérard Mungwarere, the accused's brother. Njambare could not remember exactly. He stated that the first time he spoke to Gérard was soon after his release from prison in 2009. The Crown also asked whether Njambare met Gérard at the same time as the Defense team in 2011. He said it was possible, but he could not remember the date. The Crown asked what Njambare and Gérard discussed when they met. Njambare had difficulty remembering, but stated that they did not discuss Jacques Mungwarere.

Next, the Crown questioned Njambare regarding his meeting with a Canadian police officer in 2007, while he was still in prison. At first, Njambare did not know that Jacques Mungwarere was the subject of the investigation. However, given the questions, he doubted that it related to Mungwarere. The Crown also asked whom from the Defense team he met first in 2011, after being out of prison for a little while. Njambare responded that it was Venant, who met him at a hotel in Kigali. Contact was made by telephone. Venant questioned Njambare about his trial in the Gacaca courts. Njambare did not remember if he signed a statement at that meeting which lasted approximately one or two hours. The Crown asked whether they only discussed his participation in the Gacaca courts. Njambare said they also talked about Jacques Mungwarere. Then the Crown asked Njambare if he received money, to which he replied that he was only compensated for his accommodations and the days he spent in Kigali.

The Crown also questioned Njambare regarding his meetings with other members of the Defense team in 2012. Njambare confirmed having met Célestin and Mr. Batard in Kigali. He did not remember whether he met Gérard Mungwarere at that time.

Then the Crown questioned Njambare about a statement he gave to Canadian police in 2007. There was an ambiguity relating to Njambare's understanding of the word "often". He was asked if he saw Jacques Mungwarere "often" at Lesapane in July 1994. He stated that he did not but, for him, "often" meant "all the time" and that was not the message he wanted to give the police.

The trial began Wednesday with a short closed session.

The defense resumed questioning the same witness. Njambare said he went to hide in the church. There were many people present and Njambare knew most of them. Although they were all told that they would be safe in the church and the hospital, there was a major attack on the morning of April 16, 1994. Njambare said that the attackers had maces with nails on them. When they arrived, Njambare picked up some stones to bring them to the young men who were strong enough to throw them at the attackers.

Njambare remembered that all the people who were still inside the church that morning were Hutus because earlier the families of all the Tutsis came to get them. Two Tutsi women decided to stay. Marthe who was a Tutsi who was married to a Hutu and she had her son taken away from her because her husband's family did not want the Hutu boy to get killed along with the Tutsis. Madeleine was the other woman who stayed. A large number of Hutus did leave the church before the attacks started, but Njambare cannot name them all.

The defense then asked if there were a lot of attackers that morning. Yes, said Njambare. Most of them came from their area and the others were people who were taught how to use guns. The defense asked

the name of the persons to whom Njambare brought stones. Njambare said all of them were killed. Njambare was able to recognize some of the attackers.

He asked for a brief, closed session.

Then the defense asked if Njambare saw Jacques Mungwarere on April 16, 1994. The answer was 'no.'

The trial ended for the day with a closed session so the witness could talk about his family.

On Thursday, most of the proceedings were close to the public in order to protect witness confidentiality. Once open to the public, the Defense continued questioning Njambare regarding his knowledge of the Gacaca courts. Njambare said that the Gacaca courts were different than courts in Canada. In the Gacaca courts, the entire population was present except for those who were sick. Also, in these courts, the judges were elected by the public after verification that they were not accused of murder, theft, slander or lying. The individuals elected by their peers then went through training, but did not receive a salary.

Then, the Defense focused on the collection of information prior to the trials. According to Njambare, everyone from a region gathered in a small forest protected from the sun. Each person would rise and share what he or she had to say. It started with men who had married Tutsi women who were not killed. The man would say who attacked him or his house. The people whom the man named would then name others, like a chain. Once named, that person had the opportunity to rise and provide an explanation. The information collection took place every Tuesday and Thursday, and it was mandatory for the population to participate. The information was transcribed in big booklets and then any relevant information was recorded in the files of particular individuals.

Once the trials began, these also took place two days per week with mandatory attendance of the population. The accused would be called and then defense and prosecution witnesses would appear. Everything was considered and the public could also make observations. Finally, the accused was found guilty or innocent. If innocent, the accused returned home.

The Defense asked Njambare what he knew about Jacques Mungwarere. He responded that he knew Jacques likes drawing and that a lawyer named Venant spoke to him about the fact that Jacques was accused of genocide in Canada. Njambare said that he was surprised to learn this because he had never heard people speak about Jacques during the collection of information for the Gacaca trials.

### **Week 16 (November 26)**

The trial only had one session this week. Monday morning, November 26, the trial started with a brief closed session. Once the public was allowed in, the Crown was cross-examining one of the witnesses.

The Crown began by asking how the witness first came in contact with the defense team. The witness said there was a man named Venant that got in touch with him by phone and then asked him to meet in Venant's car on the side of the road to ask him one or two questions about Jacques. The Crown questioned the witness about whether he would be afraid of Venant because he was told by some people beforehand what Venant wanted and who he was. The witness said that to the contrary, he did not know anything and he was pretty afraid. The Crown continued the line of questioning and the witness affirmed that he had no knowledge of what Venant wanted from him before meeting him in the car.

The Crown then asked a few questions his declaration. The witness said that he met the defense team at least five times to tell them his story and answer their questions. He would talk and someone would type his testimony on the computer. He signed a copy of it but he was not able to tell if the paper he signed corresponded to what he had said. The Crown then asked whether the defense team had him repeat his testimony before going in front of the camera. He said no, but they did explain to him the procedure and how it would work. The Crown then asked if he was given the name of the other witnesses that were testifying against Jacques. He said that yes, he'd known the names for at least a year.

The questions from the Crown then turned to the Gacaca courts. According to the witness, they began by collecting the information from a small group of people and then, in order to get everything down, they would assemble several groups together. The witness said the people were not allowed to avoid the collection of information or miss the trials except in the case of illness. The witness did miss some trial sessions because he had some pain in his ribs.

The Crown now turned to the witness' knowledge of Jacques. The Crown asked if it would be correct to say that Jacques is also known under the name "Yakobo". The witness confirmed that in Rwanda, his name is "Yakobo". The witness reiterated that he did not hear anything about Jacques or Yakobo when he was collecting information for the gacaca courts.

The Crown went back to the events of April 16, 1994. The witness said he had not slept the night before the attack because he was afraid. There was information circulating that there would be a major attack on the Sabbath day. The witness said that this information came from the soldiers who were ensuring their safety. He was in the church with many other people and praying to God. In the morning, when the attack began the witness went outside to give some stones to the men throwing them to repel the attack. They were at a place called Uwiteka. It was near the memorial, down the hill from the church. The witness then went to the kitchen to get some porridge for the people who had been shot. When the witness arrived in the kitchen, he saw several dead bodies and began to be very scared for his own life. He then ran up to the hospital and saw more dead.

The Crown's questioning attempted to emphasize that the witness was running a lot and that it was impossible for him to see all of the attackers.

### **Week 20 (January 9-10)**

The trial began January 9 with testimony from Édouard Hasangwineza. The Defense questioned Hasangwineza about the attacks in Bisesero. More specifically, the Defense wanted to know whether he remembered certain attackers. Hasangwineza remembered some of them, but very few.

The Defense then focused on the witness' travels. Hasangwineza stayed in Kibuye for most of the genocide, except for two months that he spent in Bisesero. There was some confusion over whether Hasangwineza recognized the same attackers in both locations. Hasangwineza said there was only one – Murakaza. The Defense asked if he had ever seen Jacques Mungwarere during the attacks in Kibuye or Bisesero. Hasangwineza said that he had not.

Hasangwineza then recounted that at night, when the attackers returned, people would talk about the attacks and attackers. He stated that he had heard the name Mungwarere at this time because the family was well known. Next, Hasangwineza said that he left the hills once the French arrived and lived in an

orphanage for about a year and a half. Afterwards, Hasangwineza returned to his native village where he was reunited with his older brother.

Next, the Defense asked Hasangwineza if he had heard accusations brought against Jacques Mungwarere during the gacaca trials in Gitwe and Bisesero or during the genocide commemoration in April 2003. Hasangwineza responded that he had not. Hasangwineza did say that during the commemoration ceremony in 2003, people came seeking testimony against individuals arrested for crimes at the international level.

Hasangwineza said that he had already been reproached for his testimony in Mungwarere's trial in Canada. A certain "Nkuzi" told Hasangwineza that Hasangwineza was defaming his country by saying that people had been arrested based on false accusations. Nkuzi said that Hasangwineza would go to jail if he continued down this path. There were 4 or 5 of them drinking beer together and another man, Adrien, teamed up with Nkuzi to try and convince Hasangwineza not to testify. Hasangwineza said he had never previously told anyone he was going to testify for the defense in this trial.

The Crown then began cross-examination of Hasangwineza. The prosecutor first explained to Hasangwineza that questions would be aimed at clarifying things that he saw with his own eyes, rather than what he heard from other people.

The prosecutor asked Hasangwineza for more details about the night he was intimidated by "Nkuzi" and Adrien. The prosecutor asked who were the others present and what they usually discussed when they met. Hasangwineza explained that that particular night, they were all coming back from a trial concerning a conflict over field boundaries between two neighbours, Nason and Shuni. Hasangwineza was present because he was the one who marked the boundaries.

After a brief discussion with the Hasangwineza about his first meeting with Celestin, the prosecutor focused on his experience in the hills during the genocide when he was just 14 years old. The prosecutor confirmed certain things that Hasangwineza told the Defense, specifically the fact that he hid in the hills and that there were attacks every day to try and kill them.

The prosecutor then asked questions about the part of the genocide that Hasangwineza spent in Gitwe. Hasangwineza said that his older brother died in Gitwe and that his mother, father and sister died in Bisesero. His brother was killed during an attack where he stayed behind so that others could escape. When they came back, they found him among the other dead bodies. Hasangwineza then spoke about his mother's death in Bisesero. She was killed by Interahamwe from Rubazo and Bisogou.

During the attacks, Hasangwineza recognized Mika who was a counsellor and led attacks on Hishita and Bisesero. There was some confusion about whether Hasangwineza actually saw Mika with his own eyes, or if it was other people who said it was him. This was also the case for two other attackers. However, Hasangwineza said he was certain that he saw Shuni at each attack with his own eyes because they were neighbours.

Next, the prosecutor asked Hasangwineza if he remembered when he last saw Gerard, Jacques Mungwarere's brother. He said that it was during the gacaca trial when Gerard was acquitted. But he did not speak to Gerard because they were not of the same social status.

The prosecutor then returned to Hasangwineza's first contact with Celestin in 2012. Hasangwineza said that was the first time he learned of accusations against Jacques Mungwarere. The prosecutor asked why Hasangwineza knows Jacques' family name, but not the family name of Jacques' brothers and sisters. Hasangwineza said that he only knows Jacques' full name and nobody told him Mungwarere's name.

On January 10, the Defense began questioning the next witness (we do not have the witness' name). First, the Defense asked the witness if he knew the centre in Ngoma and if he spent much time there. The witness said that he went there on some occasions because there was a market and a hospital. The witness worked for Lزامutuma in his fields for 8 years, from 1980 to 1988.

The witness said that he knew certain people who lived in Ngoma, such as Manasse who was an accountant at the hospital. He also named a few other people. The Defense asked if the witness knew Manasse's children. He responded that he knew Jacques and Gerard. They lived close to the centre in their house.

Next, the Defense turned to the beginning of the genocide. The witness was considered a Tutsi. He tried to avoid attacks along with his family by hiding in the hills. He stayed in the region of Kitwe during the genocide. The witness provided some information about the attacks and how people defended themselves, either with rocks or guns when they found some. But in general, people ran and hid.

The Defense then asked the witness to name people who came from Ngoma and who had guns or other types of weapons during the genocide. The witness named a few people. The Defense asked if he saw Jacques Mungwarere during the attacks – he replied that he did not see Mungwarere.

The witness explained that at night, people who had survived searched for food and discussed what they lived through. The Defense asked the witness if, during these discussions, he ever heard people mention Jacques Mungwarere. He responded that he had not. The Defense then inquired about the circumstances under which the witness knew the attackers whom he was able to identify. For the most part, they were neighbours or individuals who held important positions in the community.

The questions then focused on the end of the genocide, the Gacaca trials, and the information gathering. The Defense asked if the witness heard mention of Jacques Mungwarere at that time. He responded that he had not. The trial then came to a close for the day.

### **Week 21 (January 14-18)**

On Monday, January 14, the Defense began by questioning Mrs. D. Mujawyezu about the attackers who had firearms. Mujawyezu was not able to provide their names, but she said that her brother was given a gun.

Next, the Defense asked questions about the patrols. Mujawyezu said the patrols involved going to the barriers at night to see whether a Tutsi was approaching and, if so, to kill them. There were several patrols and barriers on the roads. Mujawyezu said she never saw them herself, but heard about them from others.

The Defense asked Mujawyezu if she had witnessed attacks at the town centre in Ngoma. She said that the only attacks were the one "that killed the children" and the one that killed Tom Gwdigiri, Tom Mumyadamutsa, and Matingiri. Mujawyezu saw Tom Gwdigiri, Tom Mumyadamutsa and Matingiri being taken away by bandits in a white van. One person Mujawyezu recognized in the van was Mumbara

Joseph. Mujawayezu also explained that there were other people who climbed onto the vehicle as it was driving. The Defense asked if at any point during this event Mujawayezu saw Jacques Mungwarere. She said that she had not. Mujawayezu wanted to provide further details, but the judge explained that the court was only interested in what she had seen with her own eyes and not what others had told her.

Then there was a brief debate over whether Mujawayezu was in a position to know who had climbed onto the vehicle as it drove away. The conclusion seemed to be that she was not. Mujawayezu was also unable to say exactly when this event took place. She did say that it was before she gave birth to her child in 1994 and after the attack at the hospital. Despite repeated questions from the Defense, Mujawayezu had difficulty providing a more precise date.

About 1 month after giving birth, Mujawayezu left Rwanda for Congo along with her parents. She returned to Rwanda in 2002 by herself, at which point the Gacaca trials had yet to begin. Mujawayezu worked as a secretary for one of the courts, Ingabo. The Defense asked if secretary was a position of integrity. Mujawayezu said that it was. The Defense then asked to end the proceedings for the day given that the witness seemed extremely tired.

The Defense resumed questioning of Mujawayezu on the morning of January 15. It was reconfirmed that she was a secretary for the Gacaca court in Ingabo. She was responsible for category 3 cases, which concerned primarily people who had pillaged during the genocide. She said that although she was a secretary, she had filled in for judges when they were absent. The Defense asked whether she had heard people make accusations against Jacques Mungwarere. Mujawayezu said that there were accusations made against him by Uhoraningoga, Jean Nzabihimana and Nteziryayo. The Defense asked what accusations were made, but Mujawayezu could not say because she was not present at the time. She stated that one of the men said that Jacques killed Esther during attacks in a hospital. The accusations would have been made after Jacques was arrested in Canada.

Next, the Defense asked Mujawayezu if people had spoken about certain individuals, including Rozendana (?) and Natimana (?). She said they had, but that she was not present at the time. The Defense asked the same thing about a number of individuals whom Mujawayezu identified as killers according to what was said during the Gacaca trials. She said that although these individuals had been accused, none of them were in Rwanda at the time.

Then the Defense focused on the circumstances surrounding Izakar's accusations against Jacques Mungwarere. Mujawayezu said that the accusation was made during the information gathering and that she was the one who established that the file fell under category 1.

Next, the Defense showed Mujawayezu a document they wished to discuss with her. Mujawayezu said that she recognized the document but that it was her colleague, Samuel Sabymana, who had prepared the cover page. The Defense asked where she had seen the document and Mujawayezu responded that it was in Jacques Mungwarere's file. The Defense asked if this was the file she had created. She recognized her signature but said that she had not written the whole document. She said that she had written the template for Jacques' file, but when the lawyers examined the document pages with her, she did not recognize the handwriting as her own. She said it was Jonas Bizimana who had written certain pages. She recognized one page that she wrote herself, but the lawyers seemed doubtful since the text continued onto a second page. The testimony regarding the person who wrote the charge sheet for Jacques

Mungwarere is unclear. Mujawayezu said she only filled out one page and signed at the end of the document. The date is also missing from the document.

Finally, the Defense asked Mujawayezu about the genocide commemoration ceremonies of April 2012. Mujawayezu confirmed that she was present. She said that Samuel Djimon was at the ceremony and that he spoke about the fact that certain people were testifying in trials at the international level. The Defense asked Mujawayezu if Djimon's words had affected her. She said they had not.

It was then the Crown's turn to cross-examine Mujawayezu. Since she was very tired and had difficulty following the Crown's questions, the trial was adjourned until the next day. Unfortunately there was no observer at the trial in the morning on January 16, so we do not have a summary of the cross-examination.

In the afternoon on January 16, the Defense began questioning a new witness, Eliel Sekamonyo. Sekamonyo was born in 1960 and was about 32 years old at the time of the genocide. He has lived in Ngoma Fumberi his entire life, where he is a farmer. He lives about a 10-minute walk from the centre of Kabaniuza.

Before the genocide, he went often to spend the night in the centre. He also went to farm for the pastors and for Jacques Manasse. Manasse was also called Ungarir and was an accountant. Sekamonyo knew Manasse's children, notably Jacques who was a student at the time. In order to identify him, Sekamonyo said that Jacques drew constantly. He saw the boys often, since he lived in town centre.

The judge asked whether Sekamonyo was aware that Jacques had finished his studies before the genocide. Sekamonyo did not really know. The two were not friends. Jacques was much younger than Sekamonyo.

Next, the Defense began asking questions about the genocide itself. Sekamonyo had a good memory of the dates of the events. He said that the meetings where people were given instructions for the attacks began after the President was murdered. Following this, the mayor beat the drums and instructed people to go kill the Tutsis at the hospital. Sekamonyo had also heard he had distributed machetes.

The Defense asked Sekamonyo whether he had attended any of the meetings. He said that he went to a meeting the day of the attack at the hospital. The meeting took place in the town centre. The day of the attack, the drums were beating at 6am. The people who were inciting the population to kill the Tutsis said that anyone who did not participate in the attack would be killed along with the Tutsis.

Returning to the meeting preceding the attack, Sekamonyo said that he did not see any members of the accountant's family. After the meeting, everyone present headed toward the centre. Sekamonyo's brother was close to him and, again, he did not see any members of the accountant's family. The participants surrounded the hospital and began firing. Sekamonyo had a mace and a machete with him. The soldiers had grenades and guns, while the civilians had maces and machetes. The Defense asked Sekamonyo if he killed people at the hospital. Sekamonyo responded that he had, but did not remember how many.

At that point, since the Defense still had many questions for Sekamonyo, the trial was adjourned until the next day.

On January 17, the Defense resumed questioning Sekamonyo. Sekamonyo explained that he had to return to the hospital 3 days after the attack to bury the bodies of those who were killed. It was the mayor who

called upon people to go remove the bodies from the hospital. Machines were brought to dig holes and it was the people who transported the bodies to the holes. During the time between the attack and the burial at the hospital, there were other attacks, including one at Morambi. Sekamonyo went to that attack and did not see Jacques Mungwarere or any member of his family.

Sekamonyo had to participate in attacks daily, otherwise his cows and goats would be stolen as punishment. So he went to the attacks every day with his brother.

Next, the Defense asked Sekamonyo questions about the trials in the Gacaca courts. Sekamonyo participated in the trials and admitted to killing numerous individuals. He said that he was imprisoned for 11 years. He was sentenced to 12 years, but President Kagame had given him a release. Information gathering for people in prison took place by grouping prisoners by unit. Sekamonyo was in the unit for Ngoma. During the information gathering, Sekamonyo never heard mention of Jacques Mungwarere.

When the Gacaca trials began in 2007, Sekamonyo was one of the first individuals to be tried.

Next, the Crown began cross-examination of Sekamonyo. In order to clarify certain details from his testimony, the prosecutor asked questions concerning Sekamonyo's imprisonment. Sekamonyo was released in 2005, approximately 1 year before his trial in the Gacaca courts. When he was sentenced to 12 years imprisonment, he had already served 11. So for the final year, he did community work.

Regarding the information gathering, there was a person selected to take notes for each unit. It was not necessary for that person to come from the same unit. The person taking notes for Ngoma was not from Ngoma. The information gathering sessions began in 2003.

Then the prosecutor sought to demonstrate that it was impossible for Sekamonyo to recognize and to remember every individual who was discussed during the confessions in prison.

Next, the questions focused more directly on Sekamonyo's role in the attacks. The prosecutor tried to learn how many people Sekamonyo had killed. Sekamonyo was not able to respond. The prosecutor asked Sekamonyo if he was in his right mind when he had killed people. Sekamonyo responded that it was the State who had pushed people to kill and that he doubted anyone could be in their right mind as they go to kill people. The prosecutor tried to make the point that Sekamonyo was not only anxious during the attacks, but there were also many people present and it would have been impossible to identify everyone.

In the afternoon, the Defense began questioning another witness, Mrs. Mukakarangwa Capitoline. At the time of the genocide, Mukakarangwa was 30 years old. She was considered a Tutsi and her husband was considered a Hutu. They lived in the centre of Ngoma, close to Manasse's family. She knew Manasse's children, including Jacques.

Mukakarangwa knew that Jacques was an art teacher at Lesapane since her sister-in-law was one of Jacques' students. Mukakarangwa's husband was a close friend of Jacques' brother, Gerard, and their house was about 100 metres away. From her terrace, it was possible to see Manasse's family's house.

During the genocide, Mukakarangwa's husband told her not to be afraid and to act normal in order to prevent people from realizing she was a Tutsi. Because she was not there often, people did not know her very well.

On January 18, Mukakarangwa explained that the Tutsis began assembling at the hospital in the days leading up to the attack of the 16th. On the morning of the 16th, the drums were beating. Mukakarangwa went out onto her balcony and saw people arriving with weapons. She could see that Jacques and Gerard were on their balcony watching what was happening. As the attackers headed towards the hospital, a child named Angelique escaped and Mukakarangwa tried to catch up with her. In doing so, Mukakarangwa passed by Jacques' house and saw him there while others were heading toward the hospital. While the attack was happening at the hospital, Mukakarangwa said she saw Jacques at his house a number of times.

The Defense then asked Mukakarangwa a number of questions about the attacks and the genocide in general. The Defense asked her if she had seen Jacques leaving or returning from attacks. She said that she had not. She had seen him when school was in session, in May, along with the other teachers. She had not seen anything that led her to believe that Jacques participated in the genocide.

### **Week 22 (January 21-23)**

On Monday, January 21, the Defense continued questioning Mrs. Capitoline Mukakarangwa from the week prior. The questions focused on Mukakarangwa's experience with the Gacaca trials. Mukakarangwa stated that, despite being asked, she chose not to testify in the Gacaca trials in Ngoma because she had not actually seen any person kill another during the genocide. She said that others did give false testimony.

On cross-examination, first the Crown focused on Mukakarangwa's interactions with Jacques Mungwarere's defense team. Mukakarangwa confirmed that the first time she met the investigator, she understood he was trying to help establish a defense for Mungwarere. Mukakarangwa said she did not know who gave the investigator her phone number and that Jacques' brother, Gerard, had not told her about the investigators in advance. Mukakarangwa also described two later meetings with the Defense team that took place in Rwanda.

Then the prosecutor asked Mukakarangwa about her experiences in Ngoma during the genocide. Mukakarangwa said that few people in Ngoma knew her history but that Munyankindi and Rubeni, both participants in the genocide, knew she was a Tutsi and had come to her house. The prosecutor asked if she was scared during this time. Mukakarangwa stated that she followed her husband's advice to act as though she was not scared.

Mukakarangwa testified that on the day of the big attack at the hospital, she left her house to retrieve a child named Angelique who was headed towards the hospital. On the way to get the child, she said she took a shortcut where it was impossible to see Jacques' house. But on the way back, she said she took the road and was able to see Jacques at his house while all of the attackers were heading to the hospital. The prosecutor questioned why Mukakarangwa would have taken the road alongside all of the attackers, given that she was a Tutsi and she knew what the attackers were going to do.

The prosecutor also questioned whether Mukakarangwa had told the Defense team about seeing Jacques at his house on the day of the attack before January of 2013, given that the investigator had testified in October and did not say that she was a witness of interest. Mukakarangwa stated that she told the Defense team, but does not know if they included it in their notes. The prosecutor asked Mukakarangwa if she had spoken to anyone else between September 2012 and January 2013 about her testimony, including Gerard or other witnesses. She said that she had not.

In the afternoon, the Defense called a new witness named Joyeuse Musabyimana. Musabyimana was born in Ngoma and lived there during the attack at the hospital in April 1994. The Defense asked Musabyimana if she knew Jacques Mungwarere and his family. She said that she knew the whole family and that they were her neighbours in Ngoma. She said she attended the same school as Jacques' sibling, J sulte.

Musabyimana told the court that on the day of the attack at the hospital she was at home but left on two occasions to get supplies at J sulte's home next door. The first occasion was to get matches around 8am, which Musabyimana said was around the time the attack began. The second occasion was to get water between 2pm and 3pm. On both occasions, Musabyimana said that she saw and spoke to J sulte's three older brothers – Janot, Jacques and Gerard. She also said they were dressed in the same clothing in the morning and the afternoon.

The Defense then asked Musabyimana whether she had seen any members of Jacques' family in the weeks following the attack at the hospital. Musabyimana said that she had seen Jacques at his house. The Defense asked whether she had seen Jacques during the period between the reopening of the school where he taught (in the middle of May) and the end of the genocide. Musabyimana said that she had seen him drawing and with books for teaching.

The Crown then proceeded by cross-examining Musabyimana. First, the prosecutor asked Musabyimana if a long time had passed since the events of 1994 and whether she had noted anywhere else that she saw Jacques on April 16. Musabyimana agreed that it had been a long time and said that she had not previously noted seeing Jacques.

The prosecutor asked Musabyimana when she had learned of Jacques' arrest in Canada. Musabyimana responded that it was on the day she met the lawyer. She explained that she had received a phone call from Celestin, whom she then met with a week later in Kigali in December 2011. The prosecutor asked Musabyimana whether she had understood from the phone call that Jacques had been arrested in Canada for genocide. Musabyimana said it was either that or she had heard the news before the call. Musabyimana said she was surprised that Celestin had called her. She said it was Gerard who had given her number to Celestin.

The prosecutor then turned to the events of 1994. Musabyimana said she had not seen what was happening in the center on the 16th. She said that she did not remember hearing the drums calling people; she knew nothing about what was happening in the center.

The prosecutor asked Musabyimana to confirm that she saw Janot when she went to get matches and water at Jacques' family home. The prosecutor also said to Musabyimana that Gerard had said Janot was not at home but rather was hiding because he looked like a Tutsi. The Defense objected to this statement. The judge allowed the questioning to continue and Musabyimana stated she was certain that she saw Janot.

Next, the prosecutor asked Musabyimana if it was normal for her to go Jacques' home to get water. She said she went there sometimes. The prosecutor questioned why Musabyimana had not simply gone to get water in the center of Ngoma, only a few meters away from the home, as was the norm. She responded that she went to Jacques' home on some occasions and that on the 16th, there was a lot of gunfire. The prosecutor also questioned Musabyimana about her recollection that Jacques and his

brothers were wearing the same clothing in the morning and the afternoon. Musabyimana restated that Jacques had not changed clothes.

Finally, the prosecutor returned to Musabyimana's interaction with Celestin in December 2011. The prosecutor asked when she had learned that Jacques was arrested – was it when she met Celestin in Kigali after he had phoned her? Musabyimana responded yes. The prosecutor then asked if she knew about it before meeting with Celestin. She responded that she heard it in Ngoma before talking to Celestin.

Tuesday, January 22, began with a closed session. When the court was reopened to the public, the Defense was questioning a new witness. At the time of the genocide, the witness was a farmer. Almost all of his close relatives were killed. The witness said that he knew Jacques Mungwarere's family and was able to name Mungwarere's father as well his older brother, Gerard. He said that he saw Jacques fairly often as an adult and that he would have been in a position to recognize him during the genocide.

The witness explained that, during the events from April to June 1994, he fled to Bisesero and he named a number of specific areas. He said that he was present during a number of major attacks and was able to recognize and name a number of the attackers. The Defense asked if the witness was present for the major attack in Gitwe. The witness said that he was present and described how people tried unsuccessfully to defend themselves with rocks. The Defense then asked about the attack at Muyira. The witness said it was a major attack, involving soldiers that lasted three days. The Defense asked if the witness had seen the buses arrive during this attack. He responded that he saw them and that there were 8-10 that came on two consecutive days. The witness said the attackers who came on the buses were mostly dressed in military uniform but some were dressed in white. After the attack, the witness hid in the forests. He was in a number of subsequent attacks and stayed in Bisesero until the end of the genocide.

Finally, the Defense asked the witness about the information collections and Gacaca trials in which he participated after the genocide. The witness said the proceedings had dealt with the attacks in Muyira and Bisesero. The Defense asked if at any point during the genocide he had seen Jacques or had heard others say they had seen Jacques. The witness said he had not. The Defense asked if Jacques' name was ever mentioned as an attacker during the information collection sessions he had attended. The witness said it was not

The Crown began cross-examination of the witness by asking questions about his time in Gitwe. The prosecutor asked the witness when he had fled to Gitwe. The witness could not remember the date but said that it was around five days after the attack on the President's airplane, which sparked violence in his community. The prosecutor then asked if the witness remembered the arrival in Gitwe of survivors from the attack at the hospital in Mugonero. The witness did remember and said their arrival came at the same time as the major attack in Gitwe. The witness confirmed that this attack involved a great number of attackers that came from every side of the hill. He said that he managed to flee and hide in Bisesero. The prosecutor asked the witness if he had seen every attacker, to which he responded "no". The prosecutor then named specific attackers whom the witness confirmed he had not seen himself but whom he agreed could have been there. The witness also confirmed that there were simultaneous attacks on different hills and that he could not see all of them.

Then the prosecutor asked if it was true that before the information collection sessions for the Gacaca courts, the first step was to make a list of all the people who lived in a given community before the genocide to determine who had died. The witness confirmed they made a list and at the same time made

a list of the people presumed to be those who killed the deceased. The list of presumed killers was then used during the information collection sessions. The prosecutor asked the witness if it is true that he did not participate in the session for Mugonero to which he said "yes". The prosecutor also asked if the gatherings that took place after attacks during the genocide included all of the day's survivors. The witness said they did not include everyone and that, for the most part, he was with the same group of people each night.

On Wednesday, January 23, the Defense called a new witness named Mbuguje Amulamu. Mbuguje is a Hutu who lived near Ngoma and knew Jacques Mungwarere as well as other members of his family. Mbuguje described being taken from his home by Ruzindana to go attack Tutsis at the hospital in Ngoma. Mbuguje said that Ruzindana told him the Tutsis wanted to kill them. The Defense asked if Mbuguje had recognized anyone from Ngoma among the attackers that day and if he had seen Jacques Mungwarere. He said that he had not. Then the Defense asked if Mbuguje could name individuals he had seen be killed. He named a number of individuals, including a woman named Esther. Mbuguje said it was Gisambo who had killed her and that he had not seen Jacques Mungwarere at that point. Mbuguje also said he was present for the attack in Murambi. He said that he had not seen Jacques there either.

Mbuguje fled Rwanda in July 1994 and was in Congo until December 2001. The Defense asked if he had participated in the information collection sessions for the Gacaca courts upon his return. He said he had participated consistently in Ngoma. He had confessed to going to the hospital and to Murambi. He had also named other individuals who participated in the attacks. The Defense asked if Jacques Mungwarere's name was ever given. Mbuguje said he never heard Jacques' name.

The Crown did not have any questions for Mbuguje, who was the last witness for the week.

### **Week 23 (January 28 - February 1)**

On Monday, January 28, the session began with a brief discussion about logistics for the upcoming witnesses for the Defense. Following this, the defendant, Jacques Mungwarere, began testifying on his own behalf.

First, the Defense asked Mungwarere general questions about his education, his childhood and the different areas where he lived. Mungwarere moved to the house in the centre of Ngoma in 1990 and stayed there until 1994. He said that the majority of his friends were Tutsis but that, at school, it was impossible for him to tell the difference between the two groups. He said that while he had been accepted into secondary school, he chose to go to art school instead. His little brother, Janot, took his place at the secondary school Imyemeramhigo. After art school, Mungwarere got a job as a drawing teacher. It was in November of 1993 that he got a job at the school in Ngoma.

[The observer had to leave for a few minutes at this point. When they returned, the Defense was talking to Mungwarere about the way in which he taught drawing.] Next, the Defense asked him questions about his activity at the beginning of the war. Mungwarere explained that vacation had begun at the time the war started. In May, he resumed teaching. In the period between the start of the war and returning to teach, Mungwarere spent his time fishing, staying around the house or in the town centre. Once power had been seized, at the end of the war, Mungwarere went into exile. He went to a refugee camp in Zaire along with his parents. He said he returned to Rwanda in order to reclaim certain personal objects belonging to his family. Afterwards, he and his father started a fishing business in the camp in Kashusha.

It was a large camp, with around 10,000 people. There were schools and churches, and the Red Cross distributed food.

Mungwarere stayed at the camp until July 1995 when he left to go to Dangui along with his wife Marie-Claire Kudwimana. He went to Bangui where he taught for 3 years. Once he had enough money, he left for Belgium. The Defense asked what he went to do in Brussels. Mungwarere said that he went to live with a Rwandan family that had been in Belgium for 10 years. This family told him how to seek asylum. The family said that he had to tell a story and say that he was coming straight from Rwanda rather than Bangui. The family also told him to say that if he returned to Rwanda, the authorities would put him in prison. Mungwarere stated that this family helped many Rwandans with their applications for asylum. The family obtained the documents, helped fill them out, and went before a judge who accepted the application. The Defense asked Mungwarere if the information in his application for asylum was true. Mungwarere stated that it was true, except for the route he described taking.

Eight months later, Mungwarere's wife came to join him. She filled out the same documents seeking asylum, which the judge deemed admissible. Mungwarere said that declaration of admissibility by the judge was the first step in the asylum process, following which the government would consider the case.

Mungwarere stayed in Belgium for 3 years. During this time, he attended night school for programming. His wife also went to school at this time. They did not work and survived on social assistance. After 3 years, a state agent heard their case and concluded that there were inconsistencies in their story and that there was no concern for their security in Rwanda. As a result, Mungwarere left Belgium for Canada, first passing through Paris, Chicago and Detroit. He entered Canada with a Kenyan passport that he had procured in Belgium.

On Tuesday, January 29, the trial began with the judge saying that he estimated another 8 weeks of trial. Then the Defense continued questioning Jacques Mungwarere.

The Defense resumed discussion on Mungwarere's route to Canada. Mungwarere said that his wife arrived in Canada 2 months before he did. They did not travel together because they did not have recognized documents and they did not want to complicate matters. Mungwarere met a Rwandan man in Chicago who drove him to the Canadian border. It was this man who kept Mungwarere's fake passport as well as the return portion of his plane ticket between Paris and Chicago.

The Defense asked Mungwarere about crossing the border. Mungwarere stated that he crossed at Detroit during the night. A customs agent asked him a few questions and gave him an immigration application to bring back within 4 days. He said that the application contained true information, except for his route and some employment experience. Mungwarere had said that he worked in Congo as of 1992. He did not mention his work in Belgium until an agent questioned him. He also changed some details, such as the birthplace of his son. However, in both applications (Belgium and Canada), he described truthfully his experience during the genocide.

Once in Windsor, Mungwarere took English courses. He was hired by General Motors but forced to quit due to a workplace accident. Then he wanted to work as a truck driver, but was unable due to the requirement of crossing the border, which was impossible with refugee status. Instead, he worked on a mushroom farm.

Next the Defense asked questions about the Rwandans whom Mungwarere met in Windsor. In particular, the Defense asked if he met Hozia. Mungwarere said that he did meet him when he arrived in Windsor, but that they were already acquainted as neighbours in Rwanda. Hozia lived less than 500 metres from Mungwarere's house. Although he never saw him during the genocide, Mungwarere said that Hozia's parents had dropped off their suitcases at Mungwarere's house before going to the hospital for refuge.

The Defense sought more details on the relationship between Hozia and Mungwarere in Windsor. Mungwarere said they had a good relationship and they often crossed paths in the city. He said that Hozia had never mentioned denouncing him to the police. Mungwarere learned from his brother that he was being investigated. His brother sent him a message saying that people were in Rwanda asking questions and that survivors were accusing him of killing people. In a second message, his brother provided more details including the names of certain people who were accusing him: Samuel, Vincent, Pascale, etc.

The Defense asked Mungwarere what his reaction was to these accusations. He responded that he was shocked. All the individuals named were people his age; people with whom he grew up and played football. The accusations continued to come up until February 2007, the date when he learned that the RCMP were pursuing an investigation. The RCMP asked him for information and he cooperated in order to protect himself because he thought that accusers in Rwanda would distort the facts. In 2008, the Windsor Police wanted to meet with him. Mungwarere told them his story.

Next the Defense turned to the genocide events of 1994. On April 7, the President's airplane was attacked. Mungwarere said that nothing really changed in Ngoma until April 10, the date upon which soldiers arrived in the centre. They came in a 4x4 and were shooting with a rifle. By the end of the afternoon, they had killed one person. Afterwards, the soldiers walked in front of the houses, accompanied by a neighbour named Edouard. The soldiers wanted to go into Mungwarere's family's house. They thought Mungwarere's family were Tutsis because of their nice house.

Next, Mungwarere said that the Tutsis made their way to the hospital. On their way, many families left valuables at Mungwarere's house. Later, on April 12 and 13, Mungwarere made several trips passing by the hospital. He was going to retrieve his fishing equipment because the soldiers had ordered people to stop all activities. On the 12th, he saw a number of houses burning. On the 14th, he stayed home all day.

The Defense then focused on April 15. The Defense asked Mungwarere if he was aware that an attack was planned for that night. He responded that he was not. He said that a number of people had taken refuge in their house that night and that his entire family, except for Geraldine, was at home. On the morning of April 16, the family was interested in a letter written by the pastor asking for more security at the hospital. There were 2 vans outside of the house so that people could leave. Mungwarere wanted to board, but priority was given to women and children. This was around 8am. Further away, Mungwarere could see people armed with stakes. But around him, close to the house, nobody was armed. After the vans left, small groups of people headed towards the hospital with machetes and clubs. At a certain point, Mungwarere was scared and went to hide at the water reserve on the plantation. He was not able to see anything, but he heard explosions coming from the hospital. Once things calmed down, he returned home. He could see attackers coming back from the hospital.

Next the Defense asked Mungwarere if he had a gun and if he was dressed in uniform that morning. He responded "no".

On Wednesday, January 30, the Crown began cross-examination of Jacques Mungwarere.

The prosecutor started by asking Mungwarere if the events of 1994 affected him. He responded in the affirmative, saying that he was frightened but that a number of normal activities continued which made him less scared.

Next the prosecutor asked questions relating to his wedding that took place in the refugee camp in August 1995. It was a customary ceremony.

Then the questions focused on the genocide events of April 16. The prosecutor asked whether Mungwarere was able to recognize any attackers. He said that he was not. He saw a mass of people but was not able to identify anyone. One of his neighbours, Shadrack, described to him what had happened at the hospital.

After a brief closed session, the prosecutor asked questions about Mungwarere's entry into Canada and his application for asylum. Mungwarere said that it was the lawyer who filled out the application and had him read it and sign it on May 7, 2001. Nonetheless, Mungwarere provided the information that the lawyer used. The prosecutor asked Mungwarere to confirm that the route described in the application was false. Mungwarere confirmed this – he did not mention that he went to Belgium. Mungwarere said that he tried to conform to the criteria in the Geneva Convention. In front of the refugee commission, he told his lawyer that some of the information in his application was false but he did not correct everything. However, he confirmed that he had been fleeing Rwanda from February 1995 to 2001.

Cross-examination continued with a focus on the points Mungwarere lied about in his asylum application. Mungwarere stated that he was scared and was trying to protect himself. He said that it was hard for an immigration officer to know the frightening situation in Rwanda.

The prosecutor asked about Mungwarere's routine during the period of April 1994 to February 1995. Mungwarere said that, each day, soldiers passed by the houses to force people to participate in hunting Tutsis. In the morning, he and his family would hide in their house until they left.

After receiving refugee status, Mungwarere sought permanent residency in Canada. He called the office in Toronto to inform them that he had not divulged information about his time in certain countries. He was told that refugee status was sufficient and to let the issue go.

The prosecutor then asked questions relating to the period preceding Mungwarere's arrest. Mungwarere said he exchanged emails with his brother, Gerard, about the investigation. He also went to the police in Windsor in November 2007, but Constable Campbell had told him there was nothing he could do with regards to the matter. At the end of March 2008, a police officer named M. Lishchynski said that he would meet him and suggested Mungwarere bring a lawyer. The meeting took place on April 22, 2008. Mungwarere thought that he was simply going to answer some questions and that this would lead them to conclude he was innocent.

The prosecutor asked about the details of Mungwarere's declarations during the meeting. The police officer and Mungwarere discussed the genocide in general as well as certain events, like the one at the hospital. At that time, Mungwarere was not certain of the date of the attack at the hospital but confirmed that there were many attackers, none of whom he was able to identify. Then he described how he had hid in order to avoid going to kill Tutsis. He was very scared of the "leader of the killers" and the leader's

brother, Joseph. He saw them brutalize people in the centre of Ngoma. Mungwarere said that he knew the leader would come to the house to get Hutus to go kill the Tutsis. He did not always wear a military uniform. He had worn the clothing of the Red Cross.

Next the prosecutor tried to prove a contradiction in Mungwarere's testimony and the information he provided in the police interview. The prosecutor noted that Mungwarere had said he worked during the month of April, when this did not seem to be the case. Mungwarere completed his testimony by saying that people in Rwanda are terrified to tell the truth and are not afraid to accuse people in order to please the government.

On Thursday, January 31, the session began with discussion between the Crown, the Defense and the judge about points to clarify in the coming weeks and the witnesses involved.

The Crown wanted to explore new elements concerning Jacques Mungwarere's alibi. The Defense's response was that they already had years to investigate and that it was surprising that now, at the end of the trial, certain witnesses would return to their testimony. The Crown said they believed they could now prove the school was not open during the summer, which would mean that Mungwarere had the time to participate in the genocide. The Defense thought it was too late to bring back this evidence and that the Crown had not suggested this to any witness up to this point. The judge said that it was relevant to permit the Crown to present new evidence and that the Defense could argue its admissibility.

#### **Week 24 (February 4-8)**

There were no witnesses available to testify on Monday, February 4. The trial resumed on Tuesday, February 5, with testimony from Mathias Mutabazi. Mutabazi is Hutu and lived in Ngoma during the genocide. He said that he knew Jacques Mungwarere and his family members.

The Defense's questioning focused on the attack at the Mugonero hospital on April 16, 1994. Mutabazi said that he participated in the attack. He described his position by the church and named several attackers who had surrounded the church. The Defense asked Mutabazi if he had seen Jacques Mungwarere the day of that attack, to which he responded "no". Mutabazi also testified that he participated in two subsequent attacks, one in Magarama and one in Murambi. He said that he had not seen Mungwarere during the attack in Murambi.

On cross-examination, the prosecutor asked Mutabazi to confirm that there were a large number of attackers and much chaos in both the Mugonero and Murambi attacks. Mutabazi agreed. He also agreed that it would have been impossible for him to identify all of the attackers.

Mutabazi said that his first contact with the Defense team was in April 2012. He said that he told them he knew Jacques Mungwarere, who was a teacher at Lesapane. He also said that he told them he knew Manasse, Jacques' father, who was an accountant at Lesapane. Then the prosecutor read from the Canadian police interview notes of July 2012, where Mutabazi is quoted as naming "Jacques Mungwanesa" as a teacher who worked at Lesapane and against whom he had never heard accusations of participating in an attack. The interview notes also stated that Mutabazi said he could not remember the names of any other people who worked at Lesapane in 1994.

Next the Defense questioned a new witness named Omar Bizmungu. Bizmungu is currently in prison, having been convicted of genocide crimes. The questions focused on Gerard Bandora, who testified

against Mungwarere earlier in the trial. The Defense questions for Bizmungu seemed designed to dispute Bandora's testimony implicating Mungwarere in certain incidents during the genocide.

Bizmungu provided refuge to Bandora, a Tutsi, at his home in Kibuye. Bizmungu said that he would walk with Bandora but no further than 200 meters from the home. He said that he had not provided Bandora with a disguise. He also said that he never went to meetings at the prefecture with Bandora, nor had they ever participated together in the distribution of weapons. To his knowledge, Bandora had never gone on any attacks.

On cross-examination, Bizmungu said that he had appealed his sentence. He agreed with the prosecutor that it was to his advantage to say that he had not seen anything during the genocide. The prosecutor asked Bizmungu if this was true at the time he met the Defense team, i.e. if it was important to say that he did not do anything during the genocide and to deny any accusations made by Bandora. Bizmungu agreed but insisted that he did not participate in the genocide.

The prosecutor asked Bizmungu to confirm that he had never been to the roundabout in Kibuye with Bandora during the genocide. Bizmungu stated that he never went with Bandora. Then the prosecutor read from the notes taken during Bizmungu's interview with the Canadian police in October 2010. According to the notes, Bizmungu told the police that he did bring Bandora to the roundabout and told him that he should not be afraid since his identity card said he was Hutu. Bizmungu's response was that he would not have taken Bandora to the roundabout because it was too dangerous.

On Wednesday, February 6, Enos Kagaba testified. Kagaba described his whereabouts during the genocide and denied having participated in any attacks. The Defense was primarily interested in Kagaba's hearing in the United States, where he had sought asylum. Kagaba said that the government of Rwanda sent witnesses to testify against him, saying that he had committed acts of genocide. Although there was some debate between the Defense and the Crown regarding relevance, ultimately the Defense asked Kagaba to name the witnesses. The Defense noted that these witnesses had also testified against Jacques Mungwarere in the present trial, suggesting a pattern of false testimony. Kagaba also said that he wanted Mungwarere to testify on Kagaba's behalf at the hearing.

Kagaba was returned to Rwanda where he stood trial and was sentenced to prison. He said that many of the witnesses at his trial in Rwanda were the ones who testified in the United States. He said that nobody testified on his behalf after the first person that tried was sentenced to 20 years in prison.

The Crown's cross-examination attempted to challenge Kagaba's credibility. First, the prosecutor asked if he had lied to American authorities about his occupation and his wife's ethnicity. Next the prosecutor asked if he had spoken to the Defense team about Mungwarere when they first met in 2011. Kagaba confirmed that he had. Then the prosecutor read notes from the Canadian police's 2008 interview with Kagaba. At that time, Kagaba had named various members of Mungwarere's family but failed to mention Jacques Mungwarere as one of Manasse's sons. In redirect, the Defense asked how often Kagaba ate, to which he replied once every 24 hours. Kagaba said that being in prison for such a long time, there were many things he forgot – even the names of his own relatives.

The trial was suspended for the rest of the week.

### **Week 25 (February 13)**

There were no witnesses today. The session focused on the organization of the final steps of the trial, in particular the documents that the parties needed to exchange and submit to the Court.

The Crown wanted to submit several documents relating to information collected from the Gacaca courts in Rwanda. The Crown mostly wanted to submit the original Gacaca notebooks owned by Magasha. The defense agreed with the documents being submitted but raised the issue of how they were going to agree on the sections to be translated from Kinyarwanda. The judge asked that everything relevant be translated because otherwise the Court could not consider it.

The judge then indicated that the sections needed by the Crown were to be translated by the Court and the sections needed by the defense had to be translated by the defense itself. In cases where the parties disagree on the translations, the judge will use the translation from the court interpreters.

Afterwards, there were discussions about the date for the presentation of the final arguments.

Subsequently, the defense described to the judge different documents that they are submitting. Most of the documents are electronic copies of notebooks that were part of the information collected for the gacacas. There was one from 2005 and one from 2006. Furthermore, the Crown submitted some admissions from the accused. They mainly included certification that the documents are official versions and that the Crown correctly describes the process of information gathering. However, these admissions don't imply that anything in these documents has any basis of truth.

The day ended with more discussions on the translated sections of documents that need verification by the parties before being submitted to the judge.

### **Week 26 (March 18-22)**

On Monday, March 18, the trial resumed for closing arguments. Before proceeding, both the Crown and the Defense submitted evidence to the court. Then the judge invited the Defense to make its closing arguments.

The Defense began by addressing questions of law. First, counsel argued that mere presence at the scene of a crime is not enough to convict the accused. The accused must have the requisite *mens rea* (mental state) for genocide. And in order to be convicted on the basis of criminal enterprise, the accused must have assisted. Second, counsel suggested that the documents from the Gacaca courts that name Jacques Mungwarere are unreliable and amount to hearsay. Then counsel argued that the burden of proof in the case is closer to certainty than probability; if there is a reasonable doubt that the accused is guilty, he must not be convicted. The Defense insisted that the Crown's evidence did not rise above the level of probable.

Then a second member of the Defense team emphasized the significance of the socio-political context in Rwanda, urging the court to take this into account when considering the evidence. Referring to expert testimony, counsel noted that Rwanda is not a democratic society and there are controls on individual freedom. It is a society which tolerates false accusations. It will take several generations before people are willing to pardon the groups responsible for killing family members. It is therefore impossible to characterize the evidence as entirely reliable. Counsel suggested that, given this context, it would also have been easy for the defense witnesses to fabricate evidence to implicate Mungwarere out of

vengeance. Furthermore, language and cultural challenges throughout the trial created a risk of significant hearsay evidence and a general lack of clarity.

Next, the Defense discussed in more detail some of the witness testimony from the trial. Counsel drew attention to witnesses who testified that they had seen Mungwarere shoot at people from the top of a hill. However, evidence suggests that it would have been impossible to identify Mungwarere based on the witnesses' distance. Counsel then highlighted a number of inconsistencies between witnesses' testimony in this trial and their earlier statements, suggesting they were prepared to answer questions in such a way that would implicate Mungwarere.

On Tuesday, March 19, the Defense continued challenging the credibility of specific witnesses. First, counsel focused on Bambanza who testified that Mungwarere had accompanied him to the attack at the hospital. Counsel noted that on earlier occasions when discussing the genocide, Bambanza never mentioned Mungwarere as someone who was involved. Then there were a number of inconsistencies in the details used to describe Mungwarere's involvement. There was also concern that Bambanza lied when he said he did not know that Canadian police were investigating Mungwarere and, in addition, that he had communicated with other witnesses for the Crown before he testified. Finally, counsel noted that the witness admitted to lying about related events in the past.

Regarding the witness Bizimana, the Defense argued that he was consistent when testifying about the events he witnessed not involving Mungwarere, but was inconsistent when describing the event in which he said Mungwarere was holding a grenade.

Next the Defense argued that the witness Asinathe was not credible due to a number of inconsistencies and uncertainties in her testimony. Most notably, counsel highlighted that the witness initially told authorities that she saw Mungwarere firing a gun at the church while in her testimony she said that this was not the case.

The last named witness that the Defense discussed was Mariya. Counsel argued that key parts of her testimony were hearsay, for example the fact that she did not in fact see Mungwarere with grenades but rather heard about it from someone else. Another challenge to the witness' credibility is that while she said she could not remember if she testified against Mungwarere in the Gacaca courts, ultimately she said that she did remember hearing that Mungwarere had grenades in the Gacaca courts.

Finally, the Defense highlighted various testimonies supporting the argument that false accusations are prevalent. A number of witnesses admitted to making false accusations, even though this put them in danger. The Defense argued that this must cause the court to question the credibility of those witnesses who did accuse Mungwarere.

On Wednesday, March 20, the Crown presented its closing arguments. The prosecutor argued that the accused should be found guilty of the offences of genocide and crimes against humanity based on his participation in a criminal enterprise. Regarding the required element of intent, the prosecutor emphasized that knowledge of the purpose of the attacks in which the accused participated was necessary. The prosecutor argued that it was well known in Rwanda that the aim of the attacks was to eliminate Tutsis. Further, any level of participation was sufficient to lead to liability. If the court did not find the accused guilty on the basis of actually committing the offences, the prosecutor submitted that alternatively he should be guilty as a party to the offences.

Next the arguments focused on the credibility of witnesses called by the Defense. The prosecutor suggested there was collusion between several witnesses who testified that their previous accusations were lies. The motivation behind the testimony of some witnesses is suspect, he argued, such as Omar who is currently in prison awaiting appeal. Inconsistent stories present another challenge to credibility, as well as varying degrees of recollection depending on the questions asked. For example, some witnesses described in detail seeing Mungwarere at home on the day of the attack at the hospital 18 years ago, but said they could not remember other significant aspects of the genocide. Others have stories that are questionable, such as seeing Mungwarere while passing on a road that would have been dangerous for the witness based on her Tutsi identity. Finally, there are a number of witnesses whose familiarity with Mungwarere and his family is doubted. Overall, the prosecutor argued that the Defense's case, based on evidence from these witnesses, is weak.

Then the Crown addressed Mungwarere's own testimony. The prosecutor noted that it was unusual for the accused to testify so late in the trial, after so many other witnesses. He characterized Mungwarere as a proven liar. Particular attention was drawn to the fact that Mungwarere said he worked at the school in May and June of 1994, yet evidence shows it was closed until the end of June. The prosecutor argued that this indicates his alibi was fabricated and that he both had knowledge of and approved the fabrication.

Thursday, March 21 was the final day of the trial. The Crown continued to address the credibility of witnesses. While the prosecutor acknowledged that certain witnesses who accused Mungwarere were not credible, there is reason to believe the testimony of others, at least in part. The prosecutor went through the testimonies of Bambanza, Asinathe, Mariya, Bandora, Bizimana and submitted to the court that they establish all elements of the *actus reus* (underlying act) and *mens rea* (mental state) required to convict Mungwarere.

In reply, the Defense argued that the Crown took a number of shortcuts in drawing conclusions from the evidence. Counsel for the Defense suggested that the Crown's arguments regarding the fabrication of Mungwarere's alibi are problematic because they presume he is guilty. Counsel also reiterated that the testimony of witnesses for the Crown is not credible or reliable.

The Defense also replied to the Crown's argument regarding the timing of Mungwarere's testimony. Counsel argued that there is no rule of law on the issue and there was no inference to be drawn, given that Mungwarere's testimony was not the same as those who testified before him.

Finally, the Defense argued that the Crown has not proven the elements of genocide in this case. The intent to kill an identifiable group, in whole or in part, is integral to the offence of genocide. Counsel argued that the evidence the Crown presented attempted to show the *actus reus* (underlying act) and special intent necessary for genocide, but is too fragmentary to actually prove them.

Justice Charbonneau said that it will take some time to review all of the evidence and that he will assign a date for judgment in June.