

THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

CASE NO.: ICTR-98-42-T
CHAMBER II

THE PROSECUTOR
OF THE TRIBUNAL
V.
PAULINE NYIRAMASUHUKO
ARSÈNE SHALOM NTAHOBALI
SYLVAIN NSABIMANA
ALPHONSE NTEZIRYAYO
JOSEPH KANYABASHI
ÉLIE NDAYAMBAJE

MONDAY, 20 APRIL 2009
0911H
CONTINUED TRIAL

Before The Judges:

William H. Sekule, presiding
Arlette Ramarason
Solomy Bossa

For The Registry:

Mr. John Kiyeyeu
Mr. Emmanuel Mwanja

For The Prosecution:

Ms. Holo Makwaia, Ms. Adelaide Whest, Ms. Althea Alexis-Windsor,
Mr. Cheikh Tidiane Mara, Mr. Lansan Dumbuya, Ms. Madeleine Schwarz

For The Accused Pauline Nyiramasuhuko:

Ms. Nicole Bergevin, Mr. Guy Poupart

For The Accused Arsène Ntahobali:

Ms. Mylène Dimitri, Normand Marquis

For The Accused Sylvain Nsabimana:

Ms. Josette Kadji, Mr. Pierre Tientcheu Weledji

For The Accused Alphonse Nteziryayo:

Mr. Frédéric t. Pacere, Mr. Gershom Otachi

For The Accused Joseph Kanyabashi:

Mr. Michel Marchand, Ms. Alexandra Marcil

For The Accused Élie Ndayambaje:

Mr. Pierre Boulé, Mr. Claver Sindayigaya

Court reporters:

Ms. Deborah Gentile, Ms. Claudette Ask, Mr. Sheriffo Jammeh
Ms. Judith Kapatamoyo and Ms. Sithembiso Moyo

PROCEEDINGS

1

2 MR. PRESIDENT:

3 The proceedings are called to order. Could the registry introduce the matter coming before the
4 Trial Chamber this morning.

5 MR. KIYEYEU:

6 Thank you, Mr. President. Trial Chamber II of the International Criminal Tribunal for Rwanda,
7 composed of Judge William H. Sekule, presiding, Judge Arlette Ramaroson and Judge Solomy Bossa,
8 is now sitting in open session, today, Monday, the 20th of April 2009, for the closing arguments in joint
9 Case Number ICTR-98-42-T, in the matters of the Prosecution versus Pauline Nyiramasuhuko and
10 Arsène Shalom Ntahobali, Case Number ICTR-97-21-D; the Prosecutor versus Sylvain Nsabimana and
11 Alphonse Nteziryayo, Case Number ICTR-97-29-T; the Prosecutor versus Joseph Kanyabashi,
12 Case Number ICTR-96-15-T, and the Prosecutor versus Élie Ndayambaje,
13 Case Number ICTR-96-8-T.

14

15 I'm most obliged, My Lords.

16 MR. PRESIDENT:

17 Thank you for the registry.

18

19 May I have the appearance of the parties, please, starting with the Prosecution.

20 MS. MAKWAIA:

21 May it please the Court, appearing for the Prosecutor this morning, myself, Holo Makwaia,
22 Adelaide Whest, Althea Alexis-Windsor, Madeleine Schwarz, Cheikh Mara Tidiane, Astou Mbow,
23 Lansana Dumbuya, and I'm pleased to present to you today, Mr. President, Your Honours, Aly Bâ, who
24 is also in court. Our administrative assistant, who has always been behind the scenes, supporting the
25 team. I'm obliged, Mr. President.

26 MR. PRESIDENT:

27 Thank you. May we have the appearance for the Defence, please.

28

29 Could you assist, Counsel?

30

31 Please go on, Counsel.

32 MS. KADJI:

33 Good morning, Mr. President, Your Honours. I am Josette Kadji, lead counsel for Sylvain Nsabimana.
34 I'm accompanied by Tientcheu, Weledji, Pierre, co-counsel and Woumbou, Nzetchie, Alain, who is an
35 assistant. We are all from the Cameroon bar, and we wish you all an excellent day.

36 MR. PRESIDENT:

37 Thank you, Learned Counsel.

1 Next, please.

2 MR. MARQUIS:

3 Mr. President, Your Honours, good morning. To represent the Ntahobali team this morning, we have
4 Jean-Marie Muramutsa, our assistant. It is the first time that I have the privilege to announce the
5 presence of Ms. Dimitri, who is my co-counsel, and obviously, myself, Normand Marquis, lead counsel.

6 Good day.

7 MR. PRESIDENT:

8 Thank you, Learned Counsel.

9

10 Next, please.

11 MR. PACERE:

12 Mr. President, Your Honours, I am Titinga Frédéric Pacere, an advocate with the Burkina Faso courts,
13 and I am lead counsel for Mr. Alphonse Nteziryayo. Beside me, Mr. Gershom Otachi, co-counsel from
14 the Kenyan bar. We are assisted by our legal assistant, Jack Muriuki, who is where the legal assistants
15 sit in the court and Louisa Songwe and Milcah Kawira, our other two legal assistants who are sitting in
16 the public gallery. In that public gallery, also, we have our two interns, Linda Ngesa and Elphas Kipro.
17 I will spell the names. Linda is L-I-N-D-A. Ngesa is N-G -- as in George -- E-S-A. Elphas is spelled:
18 E-L-P-H-A-S and Kipro is K-I-P-R-O. I would like to pay you the morning respect, and we wish you a
19 good day.

20 MR. PRESIDENT:

21 Thank you, Learned Counsel.

22

23 Next, please.

24 MS. BERGEVIN:

25 Good morning, Mr. President, Your Honours. Nicole Bergevin, lead counsel for
26 Pauline Nyiramasuhuko. Beside me, Mr. Guy Poupart, co-counsel, and we're assisted by
27 Dr. Deogratias Sebureze. I thank you.

28 MR. PRESIDENT:

29 Thank you, Learned Counsel.

30

31 Next, please.

32 MR. MARCHAND:

33 Good morning, Mr. President, Your Honours. Michel Marchand, I'm lead counsel for
34 Joseph Kanyabashi, accompanied by Ms. Alexandra Marcil, co-counsel, as well as our two
35 legal assistants, Elsa Levavasseur and Sophie Maurice, and we wish you an excellent day.

36 MR. PRESIDENT:

37 Thank you, Learned Counsel.

1 Next please.

2 MR. BOULÉ:

3 Thank you. Good morning, Mr. President, Your Honours. For the Defence of Mr. Ndayambaje, beside
4 me, Professor Claver Sindayigaya, co-counsel. We also have Ms. Laure Huntzbuchler, who is a
5 legal assistant, and myself, Pierre Boulé, lead counsel, for Mr. Ndayambaje. On behalf of
6 Mr. Ndayambaje and the members of his team, we'd like to wish everybody present in the courtroom a
7 good session. Thank you.

8 MR. PRESIDENT:

9 Thank you, Learned Counsel.

10 MR. MARQUIS:

11 Mr. President, two technical issues. First of all, my screen is not in good working order. If I could be
12 assisted in this regard, and the two devices that have been given to Ms. Dimitri are not working, and I
13 would like to address the Court on something that is legal this time. We received, no doubt, the
14 scheduling order of the Chamber regarding the closing arguments. I, however, realise that, from the
15 documents, the possibility of having a response is not there. So I do not know how the Court intended
16 to deal with this issue of responding. As you are well aware, there may be issues that need to be
17 raised. So I wanted that to be clear before, so I know how to proceed.

18

19 Ms. Dimitri is reminding me also that the CaseView is still not working. Apparently, that was the case in
20 the last session, which I did not attend, and I would like to say, Mr. President, that at a time like this,
21 which is crucial to all of us, these technical difficulties should be addressed immediately. Thank you.

22 MR. PRESIDENT:

23 Yes, could you address the problem facing the Defence of the Accused, Shalom Ntahobali?

24 MR. KIYEYEU:

25 Yes, My Lord.

26 MR. PRESIDENT:

27 Ms. Bergevin.

28 MS. BERGEVIN:

29 I thank you. Mr. President, I also have a request to make to the Chamber this morning. This is the last
30 time in the days that will come that we'll be talking to the Chamber, and I would like to request that on
31 account of Nyiramasuhuko's position, the position or the stance of the Prosecutor in their
32 closing arguments, and the position of some co-accused here, we should be allowed to plead last. We
33 have always pleaded first. We examined first, cross-examined first, throughout this case, and I think
34 that it might perhaps be fair that this time we should be the last to take the floor. Those are the
35 submissions I wanted to make.

36 MS. KADJI:

37 Mr. President, if you would like us to respond to that because I think that what she has just said,

1 concerns all of us here. This request that Ms. Nyiramasuhuko is making, to speak last, if you allow me,
2 I am going to vehemently oppose that because there is no super Accused here. All the Accused
3 persons are at the same level. You responded to a similar request that was made by
4 my learned colleagues. I do not know on what issue, but you corrected the issue and said that the
5 order we have should be maintained, and I do not see how on this last stretch, things are going to be
6 modified. I do not know with what intention. There are no super Accused persons in this case,
7 Mr. President.

8 MR. MARCHAND:

9 Mr. President, Michel Marchand. If I could also have a technician assist me, I would be grateful
10 because my screen is not working. Furthermore, I would like to subscribe to what Ms. Kadji just said,
11 regarding what Ms. Bergevin said. I see that nobody is appealing against the scheduling order that
12 you've issued, so I do not see the importance or the objective of that request that is being made this
13 morning.

14 MR. PRESIDENT:

15 This is the ruling of the Trial Chamber on the matter that has been raised. First, with regard -- by
16 learned counsel for the Defence of the Accused, Shalom Ntahobali. The issue of rebuttal and rejoinder
17 was certainly not specified in the scheduling order that is being referred to, but should it be -- need
18 arised (*sic*), and maybe there are specific elements that are dealt with, the Trial Chamber will allow and
19 specify the time frame when that happens. That will apply to it, should the rebuttal arise and also apply
20 to the issue of rejoinder. Okay. With regard to the submissions made by Learned Counsel,
21 Ms. Bergevin, to change the time for submissions, the Trial Chamber emphatically says we cannot
22 change that situation at this particular time. We will continue as we have always done. After the
23 Accused, Pauline Nyiramasuhuko, will start her submissions on part of the Defence, and the
24 procedure -- the order will be followed as it has.

25
26 As we have said, if there is any specific elements that may arise in the course of the submissions,
27 parties are free to raise the issue with the Trial Chamber for its consideration and for any procedures
28 that could be put in place at such an appropriate time and when maybe a specific issue had been
29 raised, but apart from that, the order will be maintained.

30
31 We will start with the submissions now. The Prosecution will begin. And we would like us to observe
32 right at the outset, the timeframe that has been indicated in the scheduling order will be strictly followed
33 and implemented, but, of course, parties are free to present for a shorter period of time than the time
34 which has been allocated, should they wish to do so. And that also would be appreciated by the
35 Trial Chamber.

36 MR. POUPART:

37 Mr. President, before my learned colleague or the Prosecutor starts, I would like to make a request,

1 which may look not serious, but it's important. When the various parties are pleading at this stage, is it
2 a policy that you allow questions to be raised for clarifications or any other reasons, or is it a policy that
3 nobody should interfere when opening statements are being made in regard of what has been done in
4 the case? The question may not sound important, but it has its importance. If we have questions and
5 during the -- during the submissions, the six hours could become reduced by two or three hours,
6 depending on the questions that one would like to raise. So I would like my question to be answered.

7 MR. PRESIDENT:

8 Thank you, Learned Counsel.

9

10 Mr. Boulé, Learned Counsel.

11 MR. BOULÉ:

12 Mr. President, I'm obliged. I would like to address the Chamber on an issue which seems to me to be
13 technical but which has its importance. In your scheduling order, you granted each Defence team
14 six hours and multiplied that by two for the Prosecutor. If I calculate that briefly, it gives two days to the
15 Prosecutor and six for the Defence teams, which means, if everything was going on normally and we
16 had no problem, we would finish the closing arguments on Thursday, next week on the 30th of April. In
17 light of your previous answer to my learned colleague, Mr. Marquis, that there could be rejoinders or
18 rebuttals, which may -- depending on the case -- lengthen the closing arguments or the time granted. If
19 we take it that your sessions are five hours to 6:30 -- six and a half hours of real work in this court, from
20 my experience, if there were any rejoinders and rebuttals which would further lengthen the time of the
21 closing arguments, there is a risk that we would not be able to finish our closing arguments by the
22 30th of April. Since the Chamber has decide that we would start on the 20th and end on the
23 31st of April, my question is as follows: If we can finish the closing arguments by the 30th, do we have
24 to follow up in the following week, that is, the beginning of May, or has the Chamber looked at it
25 otherwise? And if I'm raising the issue, it is because it has become difficult for counsel who are
26 travelling to finalise their travel arrangement with the transport and airline companies because
27 it is -- they have a heavier workload, and it will be difficult for us to finish our work and return home.
28 And as far as I am concerned, personally, I would like to ask the Chamber if there is a probability that
29 we will end this session after the date of the 30th of April. I thank you.

30 MS. MAKWAIA:

31 Mr. President, I would like to make a quick response on Counsel Poupart's request to ask questions of
32 closing arguments that are presented. We oppose that, Mr. President. Parties should be allowed to
33 make their submissions freely. Only the Chamber is -- under the rules in any event -- allowed to put
34 questions at any time during the course of the proceedings. Rule 86 does not foresee such a scenario
35 where counsel can jump up and put questions to submitting parties, Mr. President. We opposed this
36 application. Thank you.

37

1 MR. PRESIDENT:

2 Thank you, Learned Counsel.

3 MR. POUPART:

4 Excuse me. I never asked that I wanted to ask any questions as counsel. I asked whether the
5 Chamber could ask any questions, and if that were taken into account, I did not intend to do that. I was
6 talking about the Chamber. I know that that is not respectful at all and that was not what I intended. I
7 hope that it was that you were not following me closely, and I hope that it was not an interpretation
8 error, because if that is the case, the days ahead are going to be very hard.

9 MR. PRESIDENT:

10 Could you switch off, Mr. Poupart?

11
12 Well, there could have been an interpretation error in English because, I think, it did appear that
13 Learned Counsel, Mr. Poupart, you are saying whether the other parties could put questions. But the
14 submission -- the party making submissions, will have to do it -- will be given time to make his or her
15 submissions fully and, of course, the Trial Chamber, if there is a need for clarification here and there,
16 the Trial Chamber will certainly put questions. For example, if reference is made maybe in a
17 closing brief, we would like to see -- we may ask, for example, whether -- where could it be found in
18 book, in order to take note and be able to follow it up easily in the future.

19
20 As for the submissions made by Learned Counsel, Mr. Boulé, we can only say that we take note of it,
21 but we wouldn't like to speculate on how things will go. And what that -- we can emphasise is that
22 these closing arguments will continue, continuous to the end. So if there is any rebuttal, there will be --
23 if there is any rebuttal, it will be addressed immediately and any rejoinder must be addressed
24 immediately, and there will be no adjournment until that is done during the course of this session. So
25 that is very clear, but we shall certainly take note and be alert as to how things develop as we continue
26 with this oral argument.

27
28 Can we now begin please, Prosecution.

29 MR. MARQUIS:

30 Mr. President, I'm sorry. There is another point I wanted to raise with the Chamber. You will remember
31 that when we filed our brief, we filed, as asked by the Chamber, 250 pages, and we have put in
32 annexes, comments regarding our own evidence, for which we did not have enough space in the
33 250 pages as we were allotted. We would ask the Chamber to know, if we have to address these
34 matters that were put in annexes in other pleadings, or we can take as granted that the documents will
35 be considered by the Chamber or not, so that we know how to organise our oral pleadings on that
36 matter. I thank you.

37

1 MR. PRESIDENT:

2 This is what the Trial Chamber would like to observe. The time frame that has been given has to be
3 respected and always be respected. And parties organise their own oral argument as they see them fit,
4 and I think they should be able to do that. The Trial Chamber's part -- will do its part. Could we now
5 start.

6 MS. MAKWAIA:

7 Mr. President, before I start, I would like to outline to the Chamber how we intend to proceed. I shall
8 make general remarks with respect to the case. And then I shall be followed by Ms. Schwarz, who shall
9 address you with respect to the Accused, Pauline Nyiramasuhuko, who will be followed by
10 Mr. Lansana Dumbuya, who will address you with respect to the Accused, Shalom Ntahobali, who will
11 then be followed by Ms. Adelaide Whest, who shall address you with respect to the Accused,
12 Sylvain Nsabimana. And, Mr. President, during the course of our submissions,
13 Ms. Althea Alexis-Windsor will then address you with respect to the Accused, Alphonse Nteziryayo. I
14 shall then address you again with respect to the Accused, Joseph Kanyabashi. Mr. Mara Tidiane will
15 address you with respect to the Accused, Élie Ndayambaje. And I shall finally come and address you
16 again, Mr. President, Your Honours, with respect to sentencing of all the six Accused.

17
18 In the event we have to make a rejoinder to the Defence submissions, Mr. President, we may take this
19 order, although it may vary. I would also like to underscore, Mr. President, Your Honours, that we do
20 not intend to recite our written brief. We shall only highlight to you the salient points and fully adopt our
21 filed written brief.

22
23 Having said that, Mr. President, Your Honours, I am now ready to make the opening remarks in this
24 closing argument.

25 MR. PRESIDENT:

26 You may start, Learned Counsel.

27 MS. MAKWAIA:

28 Mr. President, Your Honours, the reason why we are all here today is the tragic events that unfolded in
29 Rwanda between April and July 1994, leading to the genocide of the Tutsis. This genocide,
30 Your Honours, is testament to what level mankind can descend in order to remain in power. The world
31 had promised never again, and yet, Rwanda as we shall shortly see, through Butare, did not heed this
32 call.

33
34 The six Accused before you today are faced with multiple counts, which comprise: genocide, rape,
35 crimes against humanity and war crimes. These crimes, Mr. President, Your Honours, were committed
36 in Butare *préfecture* during the time period April through July of 1994. The Butare case, Mr. President,
37 Your Honours, also holds the distinction of having the only woman ever charged and accused at this

1 Tribunal. She also holds the distinction of being charged with rape, alongside her son in this trial.
2 Mr. President, Your Honours, genocide cannot take place without the state's involvement or sanction.
3 In Rwanda this was done through the interim government, through the execution of its policies and
4 directives. Through the Butare six Accused, the interim government was well represented in all strata of
5 society.

6
7 As the genocide was committed, Pauline Nyiramasuhuko represented the interim government, holding
8 the portfolio of a minister. Before you, during the course of this trial, Mr. President, Your Honours,
9 two *préfets*, Nsabimana and Nteziriyayo also stand accused. Nteziriyayo, you will recall, was also a
10 colonel in the Rwandan armed forces. In this trial, Mr. President, Your Honours, two *bourgmestres* also
11 stand accused; Joseph Kanyabashi and Élie Ndayambaje. Both these individuals held long service in
12 their respective *communes* by the time the genocide was committed in April through July 1994.

13
14 And, finally, Your Honours, the sixth Accused in this trial was a young man, the local civilian,
15 the leader of militias, Shalom Ntahobali.

16
17 In the last seven-and-a-half years during which this trial unfolded, you've heard evidence, Mr.
18 President, Your Honours, how the Butare six conspired and executed the killings in their *préfecture*. You
19 heard from factual and expert witnesses how Butare was a safe haven, a *préfecture* where the
20 massacres of Tutsis had been resisted until that fateful day of the 19th of April 1994, when, Mr.
21 President, through the Interim President, Théodore Sindikubwabo, those who refused to work, those
22 who were not concerned, were told to step aside and let those who wanted to work do so. You will
23 recall, Mr. President, Your Honours, that this meeting was attended by many influential persons of the
24 region, as well as outside the region of Butare, such as the Prime Minister Jean Kambanda, as well as
25 at least four of the Accused sitting here before you today; Pauline Nyiramasuhuko, Joseph
26 Kanyabashi, Élie Ndayambaje and Sylvain Nsabimana. It's our submission, Mr. President, and you
27 heard this through the evidence, that it was not by accident that these Accused were present and
28 participants in this important meeting.

29
30 As you've heard from the evidence, Your Honours, they each had a key role to play in the massacres
31 that took place in the days and weeks that followed. The Butare six joined forces to fight the common
32 enemy, who had been defined as the Tutsi. The genocide that ensued, Mr. President, was not a
33 surprise, nor an outburst of violence from the mass. It was a planned, concerted effort by the
34 six Accused before you, and others, to ensure the elimination of the Tutsis.

35
36 Mr. President, Your Honours, the Prosecution has presented overwhelming evidence that through their
37 actions between April and July 1994, the six Accused were an instrumental and integral part of the

1 killing machine in Butare in the planning and execution of the elimination of the Tutsis.
2 Your Honours, once the call was made on the 19th of April 1994, Butare was set aflame. You heard
3 from many Prosecution witnesses how they hid in fear, for they knew their end had come. At this
4 meeting, Mr. President, Your Honours, you also heard that among the persons who spoke was the
5 Accused, Joseph Kanyabashi. You will recall the evidence, Mr. President, Your Honours, he assured
6 the interim government of his full support in upholding its objectives. What support, one may wonder.
7 The evidence showed you that the support he pledged was the killing of innocent Tutsi civilians.
8 Your Honours heard from witnesses that in the ensuing days, following inflammatory speeches that
9 were uttered by the president of the republic and others, Tutsis were tracked, hunted and brutally killed
10 at Kabakobwa, at Kabuye hill, at Matyazo dispensary, at Mugombwa parish, at Ngoma parish, at
11 roadblocks, and at various other places throughout the *préfecture* of Butare.

12
13 Your Honours, the evidence has shown that the Accused did nothing to stop the massacres that
14 unfolded in a systematic and methodical manner in their *préfecture*. They did not stop the massacres
15 because they had agreed to execute them. They did not stop the massacres because they were an
16 integral part of these massacres. They were bent on eliminating the Tutsis of Butare *préfecture*.

17
18 Mr. President, Your Honours, as the massacres unfolded, you heard from the witnesses how words that
19 at times may have seemed in -- awkward acquired a deadly meaning in 1994. Double speak was
20 rampant. One thing was said by the authorities and another was executed. Words such as "clearing
21 the bush", "*Inyenzi*", "Gukora", "clear the dirt", gathering the weed before burning it", all in the end,
22 Mr. President, meant but one thing: Kill the enemy who was identified as Tutsi.

23 MR. PRESIDENT:

24 Learned Counsel, if you may hold a bit for a short while.

25 MS. MAKWAIA:

26 Yes, Mr. President.

27 MR. PRESIDENT:

28 We just want to check one factual element, if you may. Did you say in your submission that all the
29 six Accused were present at the meeting of 19th April 1994?

30 MS. MAKWAIA:

31 No, Mr. President. I said four.

32 MR. PRESIDENT:

33 Four. I think there was a problem. Okay.

34 MS. MAKWAIA:

35 I'm obliged, Mr. President. I can repeat their names, if it may assist.

36 MR. PRESIDENT:

37 Yes, please.

1 MS. MAKWAIA:

2 Mr. President, my submissions, at least four of the Accused before you today were present at the
3 meeting of the 19th of April; Pauline Nyiramasuhuko, Joseph Kanyabashi, Sylvain Nsabimana and
4 Élie Ndayambaje.

5 MR. PRESIDENT:

6 Just a minute. We will take note of that and could check that one after. And just ascertain exactly what
7 the situation could have been. That is for later.

8

9 Go on, Counsel.

10 MS. MAKWAIA:

11 Thank you, Mr. President. I will continue where I left off.

12

13 In this regard, "burning the weeds", all in the end -- in the end, all it meant was one thing: Kill the
14 enemy who was identified as Tutsi. In this regard, Mr. President, Your Honours, you heard factual
15 witnesses as well as experts who defined to you their understanding and the meaning of these words in
16 their deadly impact in the context of the massacres that unfolded in 1994.

17

18 Now, Mr. President, Your Honours, as the various Defences were presented, you heard attempts which
19 tried to portray the Accused as the victims. Your Honours, the six Accused before you are not the
20 victims of these massacres. You heard the evidence from survivors and perpetrators of these
21 massacres. You heard the evidence of survivors and their harrowing experiences. You heard,
22 Mr. President, how women, men and children, had to live through desperate times in constant fear of
23 their lives. You heard, Mr. President, how they were betrayed by their leaders, persons they trusted
24 and held in high esteem. You heard, Your Honours, how their leaders became their butchers
25 between April and July of 1994.

26

27 These witnesses, Mr. President, relived their suffering, their trauma, and their irreplaceable losses that
28 they suffered when they testified before you. They told you how they lost entire families, they told how
29 they lost entire families' clans, they told you how they lost hope, how, Mr. President, their hope was
30 destroyed through the actions of the six Accused before you.

31

32 Pauline Nyiramasuhuko was responsible to ensure the policies of the interim government were
33 executed. She was the direct link to the government. She was in charge of pacification in Butare. In
34 the context of 1994, pacification meant the killing of Tutsis. Pauline Nyiramasuhuko was not just a
35 figurehead. She was directly involved in the massacres and rapes that took place in Butare. Her son,
36 who is also here before you today, Mr. President, Shalom was not far behind his mother's footsteps.
37 He killed and killed. There is overwhelming evidence of his criminal activities as a killer and rapist in

1 Butare. During the testimony of his own wife, Beatrice Munyaneza, Mr. President, Your Honours, you
2 will recall a telling fact that she gave as she testified. As she sat here before you, Mr. President, she
3 had this to say about her husband. And in reference, Mr. President, if you recall the evidence, this was
4 in reference to a question about the Bihera girls who had been kept and raped at the *Ihuliro* hotel. His
5 wife had this to tell you, Mr. President: "He could have killed them, but we left them alive in the hotel."
6 It is our submission, Mr. President, this is a very telling fact of the criminal activities that were being
7 perpetrated by the Accused, Shalom Ntahobali during this time period. The local authorities were not
8 left out in the massacres that ensued.

9
10 Joseph Kanyabashi is also implicated. He was the longest serving *bourgmestre* in the *préfecture*. You
11 heard through the evidence, how he facilitated, how he encouraged the perpetrators of these crimes.
12 Without him, Mr. President, Your Honours, the massacres in Ngoma *commune* would not have reached
13 the high numbers that they did. He was not a proponent of peace. He was not an overwhelmed
14 individual. Without a doubt, Mr. President, he cast his die on the 19th of April 1994 and joined the
15 killers who perpetrated the massacres of the Tutsis.

16
17 Sylvain Nsabimana, the person who was sworn in as *préfet* of Butare on the 19th of April 1994, was
18 also at the forefront of these massacres. He is the person, Mr. President, who replaced the Tutsi *préfet*
19 who had made the resistance of the massacres of Tutsis until that point possible. In the 60 days or so,
20 he was in office, Mr. President, some of the worst massacres were unleashed in Butare *préfecture*. As
21 the highest authority in Butare, he also embraced the cause to exterminate Tutsis, once he was named
22 *préfet*, without looking back.

23
24 Alphonse Nteziryayo, Mr. President, is a seasoned armed colonel. He returned to Butare at the early
25 days during the month of April. His usefulness through the evidence, Mr. President, we submit, is
26 undisputed. You heard through the evidence he set camp at the *Ibis* hotel where the *Interahamwe* also
27 stayed. Nteziryayo was appointed *préfet* in June, and one would wonder why he accepted the position,
28 having seen what the government policies were with respect to the Tutsis. Except, Your Honours, you
29 also heard that he did not remain idle in Butare once he got there before his appointment as *préfet*. He
30 had his own role to play. He espoused the genocide as well.

31
32 Finally, Mr. President, the sixth Accused before you is Élie Ndayambaje, whom you heard came out of
33 retirement to lead a *commune*. The evidence has shown, he never let go of. He is a crucial person in
34 the implementation of the plan to exterminate Tutsis in Muganza *commune*. Those Tutsis who were
35 unfortunate to come across his path in April through July lived through eternal fear, for they knew their
36 end was almost in sight.

1 Mr. President, Your Honours, from the extensive evidence presented during the course of the trial, it is
2 evident that without the support and active participation of the six Accused before you today, the brutal
3 extermination, the brutal rapes and other inhumane acts committed against the Tutsis of Butare
4 between April and July of 1994 would not have been so successful. The terror they jointly unleashed
5 was without comparison in a *préfecture* that had been renowned for resisting the massacres as they
6 started countrywide from the 6th of April 1994.

7
8 Mr. President, Your Honours, as called upon by President Sindikubwabo to work, the Butare six
9 seriously went to work, and thousands upon thousands of Tutsis perished as a result thereof.

10
11 I thank you, Mr. President. But before I sit down, I would like to address you on a specific issue, notice,
12 with respect to the indictments. I'm just going to look for my notes, Mr. President.

13
14 Mr. President, Your Honours, this trial has lasted a long time, at least seven and a half years since the
15 Prosecution case commenced in 2001 and rested in 2004. The various Defences started from 2005
16 and the last one closed in 2008.

17
18 Mr. President, Your Honours, all the Defences have touched upon in the indictment of their closing
19 briefs -- in their closing briefs. They have all made comments about defect or lack of notice. It is our
20 submission, Mr. President, that over the years, the Tribunal -- over the years, the jurisprudence at the
21 Tribunal has laid out the requirements for an indictment. It must be clear and precise and provide
22 sufficient notice to the Accused of the charges laid against him or her. The jurisprudence,
23 Mr. President, Your Honours, is also clear that there are times when less precision may be acceptable
24 because the detail of the acts may often be unknown because the acts themselves are often not very
25 much in issue or because of -- on the sheer scale of the alleged crimes that makes it impracticable to
26 require a high degree of specificity in such matters as the identity of the victims and the dates of the
27 commissions of the crimes.

28
29 Your Honours, during the course of this trial, the Prosecution has effected hundreds and hundreds of
30 documents in terms of disclosure in a timely and consistent manner before commencement of trial or at
31 times during the course of trial. Mr. President, during the course of the trial, the Defence have had their
32 opportunity to challenge the indictments, which they did under Rule 72, or through the filing of various
33 motions during the course of the trial.

34
35 Your Honours, the Defence has also had their opportunity to formulate objections where they deemed
36 appropriate as evidence was led. The Trial Chamber ruled on these objections and appropriate
37 remedies were rendered, sometimes excluding Prosecution evidence or allowing the Defence additional

1 time to investigate. Thus, curing any possibility of prejudice that may have arisen.

2
3 It is our humble submission, Mr. President, Your Honours, that in addressing the various issues raised
4 by the Defence in their brief with respect to the indictments, you may wish to consider and we humbly
5 submit this to you, the following issues: Was the Accused afforded a fair trial after all is said and done?
6 Was the Defence able to meet the Prosecution case? Did the Defence know what to cross-examine
7 on? Was the Defence responsive to Prosecution allegations in the evidence they, themselves, called?
8 Was there enough time throughout the proceedings allowed to the Accused to conduct investigations
9 and prepare for -- investigations and prepare for evidence in the upcoming trial sessions?

10
11 Ultimately, Mr. President, Your Honours, the issue that has to be considered is that of substance and
12 not to fall. It is our submission that the indictment, the disclosures affected, the various decisions and
13 rulings rendered during the course of the trial, with respect to relevance and admissibility of evidence,
14 allowed the Accused to make full answer and defence. From the lengthy and informed
15 cross-examinations that were carried out by the Defences, it was evident, Mr. President, that all the
16 Defences had mastered their case and knew what they had to defend against.

17
18 In the final analysis, on the question of the indictments on Butare trial, Mr. President, we would like to
19 invite the Trial Chamber to refer to the Bagosora trial judgement of 18th of December 2008 in which
20 similar questions were asked in the Military I case for the Bagosora et al., case., Mr. President. I
21 specifically refer you pages 24 to 27 of this trial judgment from paragraphs 123 to 127.

22
23 I thank you for your attention, Mr. President, Your Honours. And if you have no questions, I now call on
24 my colleague, Ms. Schwarz, to address you on Pauline Nyiramasuhuko. Thank you.

25 MR. PRESIDENT:

26 Thank you, Learned Counsel.

27
28 Yes, Ms. Schwarz, Learned Counsel, you may begin your submissions.

29 MS. SCHWARZ:

30 Thank you, Mr. President, Your Honours. Mr. President, good morning. There may, Mr. President, be
31 some slight repetition with what Ms. Makwaia has just said but that will only be by way of introduction
32 as I move into my discussion of Pauline Nyiramasuhuko.

33
34 At first glance, Your Honours, one may wonder what connects the six Accused in the Butare trial,
35 beyond the fact that they are all alleged to have participated in crimes committed in the *préfecture* of
36 Butare in the period between April and July 1994. As we noted in our final brief, and as Ms. Makwaia
37 alluded to in her address, a genocide of the scale such as that which occurred in Rwanda

1 between April and July 1994, requires organisation --

2 MR. PRESIDENT:

3 Just a minute, Learned Counsel.

4

5 Learned Counsel, we will expect silence because the -- everybody's attentive, the slightest, you know,
6 speaking does disturb the proceedings, so take note of that. You may wish to use notes or piece of
7 paper if you want to have anything to exchange. We would like to hear fully every -- all the parties that
8 are submitting, fully.

9

10 Go on, Counsel.

11 MS. SCHWARZ:

12 Thank you, Mr. President. As I was saying, Mr. President, Your Honours, a genocide of the scale, such
13 as that which occurred in Rwanda between April and July 1994, requires organisation through the
14 levels of the political and military administration. From the top at the national level, down through the
15 *préfecture* and the *communal* levels, to the people on the ground.

16

17 In Butare, between April and July 1994, many people from different walks of life, including the six
18 Accused, came together in concerted acts and in a concerted agreement to commit the genocide of
19 Tutsi in Butare. As we noted in our opening statement, these six individuals played a prominent role in
20 implementing a plan that had been masterminded by the government, and a plan that had to be
21 implemented in Butare *préfecture*. It was the plan of the extermination of the Tutsi.

22

23 Now, Pauline Nyiramasuhuko, is, of course, the link to the top level of the political administration for the
24 Butare trial. And she is the link to the national government running the country during this time.

25 Pauline Nyiramasuhuko, as a result of her position as minister, was one of the individuals who ran
26 Rwanda during this horrific period.

27

28 Pauline Nyiramasuhuko was a woman in a position of authority at the national level. She had been
29 minister of family and women's development under the Habyarimana regime, and she continued in that
30 post under the interim government. Just interim government was lacking -- was a government lacking
31 any representation of Tutsi or anyone aligned with the opposition forces. It was a government of
32 members of the Hutu power alliance, and it was under the responsibility of this
33 interim government that the genocide of Tutsi in Rwanda occurred.

34

35 We've heard substantial evidence from various individuals, notably, Professor Guichaoua, concerning
36 Pauline Nyiramasuhuko's power and influence as a result of her position as a minister, as a result of
37 her membership in the MRND, and as a result of her own prominence in Butare *préfecture*. She was

1 respected by some, feared by others, obeyed by many. We heard testimonies from witnesses of her
2 giving instructions and orders to *Préfet* Nsabimana and others, including Joseph Kanyabashi, giving
3 orders to soldiers and *Interahamwe*, orders concerning the "dirt" at the *préfecture* office. I would refer,
4 Your Honours, to witnesses FAS, QBP, TA --

5 MR. PRESIDENT:

6 Slow down, Counsel.

7 MS. SCHWARZ:

8 QBP.

9 THE ENGLISH INTERPRETER:

10 Mr. President, if counsel would slow down, that would assist. Thank you.

11 MR. PRESIDENT:

12 Counsel, the interpreters ask you to slow down a bit, but take note of the time frame still allocated to the
13 Prosecution, but please slow down so we could hear you easily and the interpreter could do their work
14 smoothly.

15

16 Please go on, Counsel.

17 MS. SCHWARZ:

18 Thank you, Mr. President. We heard testimony from witnesses at crime scenes that
19 Pauline Nyiramasuhuko was in charge. Witness SS saw soldiers saluting Pauline Nyiramasuhuko at
20 the Ntahobali roadblock near her house. Witness SJ testified that Pauline Nyiramasuhuko had her own
21 *Interahamwe* and soldiers at her disposal. Witness SU told us that given that Pauline Nyiramasuhuko
22 was minister of family affairs, she exterminated families, even though she had the responsibility of
23 protecting these very same families.

24

25 According to Witness TA, Pauline Nyiramasuhuko had the power to save or to allow people to die. TA
26 stated, and I quote: "She has the power of preventing the *Interahamwe*, who were killing people, to not
27 kill people." Rather than save people, Your Honours, Pauline Nyiramasuhuko not only allowed people,
28 Tutsi to die, she actively participated in ensuring their death by ordering, instigating and aiding and
29 abetting others. From the *Interahamwe* thugs on the ground, to leaders of the *Interahamwe*, such as
30 her son, Shalom, to *communal* and *préfectural* authorities, such as *bourgmestres* and *préfets*. Because
31 of her position in government and her authority and influence in Butare, she could have prevented or
32 punished perpetrators of crimes; she did not.

33

34 Now, Your Honours, Mr. President, Pauline Nyiramasuhuko, and some of her witnesses, as do most of
35 the Accused, claim that this period between April and July 1994, when hundreds of thousands of Tutsi
36 were killed, that this was a period of war, a time of chaos. The government and other authorities had
37 no power or control over bandits, deserting soldiers and the anarchy they alleged prevailed. Let's not be

1 fooled, Your Honours, during this time, the interim government, of which
2 Pauline Nyiramasuhuko was an active member, did, indeed, run the country, and did, indeed, have
3 power and control.
4

5 As we've heard from Professor Guichaoua and from Pauline Nyiramasuhuko, herself, the
6 interim government continued to function and operate for the whole period between 9 April and
7 14th July 1994.
8

9 Pauline Nyiramasuhuko's diary, Exhibit P. 144, as well as her notes of cabinet meetings, some of which
10 are exhibits and her testimony on the meetings, confirms that the interim government, even with the war
11 with the RPF underway, was able to continue to hold regular meetings often, dismiss and appoint
12 political officials and issue directives and instructions to subordinates in the political hierarchy and down
13 to the local population, which were then carried out.
14

15 Before going further on this, Mr. President, I would like to make a few comments on Exhibit P. 144 and
16 the testimony of Prosecution expert witnesses. As the Trial Chamber is aware, the Defence vigorously
17 objected to the admissibility of Pauline Nyiramasuhuko's diary and any analysis of the diary by
18 Professor Guichaoua. Their appeal on diary's admissibility was dismissed by the Appeals Chamber
19 in October 2004. The final brief of Pauline Nyiramasuhuko devotes over 300 pages to a discussion on
20 expert testimony and why the testimony of Alison Des Forges and Professor Guichaoua should be
21 disregarded. I will come back to some of their submissions at a later point.
22

23 At this stage, I would like to address paragraph 448 of the Defence final brief which submits --

24 MR. PRESIDENT:

25 Page?

26 MS. SCHWARZ:

27 It's Paragraph 448 of the -- I've left it as paragraphs because the paragraph numbers are the same in
28 English and French, but for the English, page 111.

29 MR. PRESIDENT:

30 Yes, you may go on.

31 MS. SCHWARZ:

32 I would like to address 448 of the Defence final brief, which submits that paragraph -- Guichaoua's
33 expedition on diary is entirely outside his competence. The Trial Chamber will recall that
34 Professor Guichaoua was qualified as an expert in political science. If we still stay with the Defence
35 final brief, at their paragraph 446, they note that political science is the branch of learning concerned
36 with the study of the of principles and conduct of government.
37

1 Your Honours, Mr. President, an analysis of a diary or agenda or notes of meetings made by a minister,
2 in the government under study are hugely relevant to the study of government of contact -- sorry. To
3 the study of the conduct of government and the study and field of political science. Obviously, an
4 expert in political science, such as Professor Guichaoua, can and should analyse, comment on, and
5 provide an opinion on these types of documents and how they assist in understanding the principles
6 and conducts of the government and its members under review.

7
8 Returning to the activities of Pauline Nyiramasuhuko and the interim government, Your Honours, there
9 is no doubt that as suggested by Professor Guichaoua, in his report which is Exhibit P. 136, and also in
10 his testimony, and as clearly confirmed by Pauline Nyiramasuhuko, herself, in her testimony,
11 Pauline Nyiramasuhuko was a fully informed and an incredibly active member of this interim
12 government. She assisted in developing strategy, fully supported the implementation of the strategy.
13 Throughout her testimony she refers to "we the interim government. We the interim government did
14 this. We did -- the interim government did that". Clearly, she sees herself completely on side with the
15 interim government and its policies and plans, and she assists in putting them into play.

16
17 Your Honours, the evidence does not support any claim of anarchy as put forward by the Defence. The
18 evidence adduced in this trial confirms that massive violence and destruction that erupted in Butare
19 *préfecture*, specifically after April 1994, did not unfold in the midst of anarchy and chaos and violence
20 carried out by unruly bandits and thugs. The violence was organised, systemic, and the starting point
21 for Butare was when President Sindikubwabo arrived on the 19th of April 1994 with
22 Pauline Nyiramasuhuko and seven other ministers of the interim government to install
23 Sylvain Nsabimana as *préfet* and urged all in Butare to cross the line and start the genocide in Butare.

24
25 Now, Your Honour, the Prosecutor is very aware of the law regarding conspiracy to commit genocide,
26 particularly when inferring such a conspiracy from the evidence adduced as stipulated in the
27 *Media Appeals* judgement. A finding of conspiracy can be made, when it is the only reasonable
28 inference that can be made. Is there any other reasonable inference that the Trial Chamber could
29 make in this case, but that Pauline Nyiramasuhuko, as an active member of the interim government,
30 and as a influential authority figure in Butare, was united with others in agreement, whose common
31 purpose was to further the genocide in Butare?

32
33 Now, according to Pauline Nyiramasuhuko, the massacres were not supposed to take place. She says
34 the interim government was opposed to the massacres, that they wanted security. They stood for
35 peace. According to her, the intent of the interim government on 19th April 1994, as well as at all times,
36 was to send out a message of peace to the population in the midst of the reality of a war.

1 Your Honours, is this a reasonable inference? Let's look at the evidence. The president's plane is shot
2 down, 6th of April 1994. Violence erupts on a massive scale in many parts of Rwanda. It is violence
3 directed against Tutsi and Hutu moderates. By mid April there are some killings in a couple of the
4 twenty *communes* of Butare *préfecture*. But it is not, as the Defence has alleged, the situation that
5 killings were taking place in virtually all of the *communes* except Butare-ville and its environs. The
6 scale of the violence in Butare by this point is clearly not at the same level as in the rest of the country.
7 At this time, there is also a war going on between the RPF forces and the government and the
8 Rwandan army. There is a functioning interim government with no Tutsi representation, of which
9 Pauline Nyiramasuhuko is an active and involved member. By the end of the first week of the
10 interim government's existence, many, if not most, of the opposition leaders in Rwanda have been
11 killed. As early as 9 April 1994, according to Pauline Nyiramasuhuko's diary, again, which is
12 Exhibit P. 144 and her notes marked as Exhibit D. 346, Pauline Nyiramasuhuko and other members of
13 the interim government are aware that massacres are going on and are concerned about the issue of
14 accomplices.

15
16 As Your Honours are aware, words such as "Accomplice, *Inyenzi*, *Inkotanyi*", and the meaning of such
17 words have been discussed and testified on by many factual and expert witnesses in this trial.
18 Paragraphs 36 to 49 of the Prosecutor's final brief on Pauline Nyiramasuhuko, which is pages 38 to 41,
19 provide an overview of some of that evidence and list the witnesses who support this. And
20 Your Honours, I do not plan to repeat it at all. Your Honours are fully aware that based on the
21 evidence, both factual and expert, the Prosecutor submits that there was really no distinction between
22 RPF Accomplice, *Inyenzi* or *Inkotanyi*. When any of these words were used, the understanding was
23 Tutsi.

24
25 Interesting enough, Pauline Nyiramasuhuko agrees at paragraph 525 of her final brief, she states and I
26 quote "The government, of which Pauline Nyiramasuhuko was a part, knew that the killings had an
27 ethnic character. They knew that the population did not distinguish between the RPF enemy and the
28 Tutsi who lived in Rwanda at the time the hostilities resumed".

29
30 Now, Your Honours, what Pauline Nyiramasuhuko and this interim government did in Butare, knowing
31 that the population is not making any distinction between RPF enemy and the Tutsi who live in
32 Rwanda? First of all, in the middle of ethnic violence directed against Tutsi and moderate Hutu raging
33 in many parts of Rwanda, the members of the interim government decide to remove the only Tutsi
34 *préfet* still alive in Rwanda at the cabinet meeting of 16th to 17th April 1994. Pauline Nyiramasuhuko
35 was in attendance and participated in this meeting. This Tutsi *préfet*, *Préfet* Habyarimana, was one of
36 the few *préfets* who had been able to limit the ethnic killings in his *préfecture*. In his place, the
37 members of the interim government decide to appoint a Hutu, Sylvain Nsabimana.

1 On April 19th 1994, President Sindikubwabo and eight members of the interim government, including
2 the Accused, Nyiramasuhuko, travelled to Butare to attend the installation of the new Hutu *préfet*.
3 Again, let's keep the context in mind, ethnic violence is raging underway in most of the country. Does
4 the president, President Sindikubwabo, in his speech, which is Exhibit P. 151 say, "Don't start killing the
5 Tutsi in Butare *préfeture*"? The president talks about everyone being his neighbour's keeper. He talks
6 about the people of Butare not understanding the instructions of the interim government. He says
7 "When I addressed Rwandan citizens recently, on the 17th, I asked them to understand, to understand
8 the full weight of the messages in question, because these were not ordinary words. We are at war".

9
10 The President talks about everyone's duty to protect the *commune*. He talks of everyone applying
11 themselves to the work. He talks of traders who have gone to have training and the "that is none of my
12 business" types and gives instructions to get rid of them for us. One would think, given the context and
13 what is happening in the country, it would have been incumbent on the president to say, at the very
14 least, "Don't start killing" or "Stop killing Tutsi", but no, the president does not say this. It is also true
15 that he does not say, "Kill the Tutsis". But the president does -- what the president does, the
16 Prosecutor submits, is that he talks in the double speak that was often used throughout the genocide.

17 *(Pages 1 to 19 by Deborah Gentile)*

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1 1030H

2 MS. SCHWARZ:

3 During the speech -- let me rephrase that, please.

4
5 He talks in the double-speak that was often used throughout the genocide. The instructions in the
6 double-speak were clear: "Listen carefully and clearly to what we are saying and start doing the work
7 that is going on in the rest of the country."

8
9 Two weeks after the death of President Habyarimana, there is little doubt of what work is going on in
10 the rest of the country. There is a functioning interim government and large scale massacres of Tutsi
11 occurring country-wide. This, Your Honours, is not only the opinion of expert witnesses called by both
12 the Prosecutor and Filip Reyntjens, who was called by the Defence. Factual witnesses understood the
13 same message.

14
15 Now, Pauline Nyiramasuhuko may not have spoken words of support to the president's message, but
16 she was speaking on behalf of the government to which she belonged, a government which fully
17 supported the objectives he outlined, objectives that included getting the subordinates and the political
18 hierarchy of Butare and the civilian population on side.

19
20 The support of Pauline Nyiramasuhuko and the interim government is apparent, I submit, because of
21 the presence of so many ministers at this ceremony. Their support also becomes increasingly apparent
22 once we look at the actions of Pauline Nyiramasuhuko and the interim government for the remainder of
23 the genocide in Butare.

24
25 For example, the Trial Chamber heard evidence of directives issued by Prime Minister Kambanda on
26 the 27th of April 1994 providing instructions on restoring security in the country. This is Exhibit P. 118.
27 Experts such as Alison Des Forges and Professor Reyntjens provided their opinions on what this
28 directive was about. Professor Reyntjens called it a good example of double-speak. Alison Des Forges
29 talked about it conveying a double message.

30
31 In the directive we see, once again, the use of words such as enemy, RPF, *Inkotanyi*, accomplices and
32 a new addition of the innocent population. What other inference, Your Honours, can be drawn when
33 the interim government issues instructions about the enemy and everyone who hears these instructions
34 knows that they relate to the Tutsi population as a whole.

35
36 And, Your Honours, these instructions get transferred down from the interim government at the top to,
37 in this case, Prefect Nsabimana and later Prefect Nteziyayo and from Prefect Nsabimana to the

1 *bourgmestres*, such as Joseph Kanyabashi, Élie Ndayambaje and *conseillers* and the civilian
2 population, including down to the militia and the *Interahamwe*, such as Shalom Ntahobali.

3
4 This is exhibited from Exhibit P. 119, which is a message aimed at restoring security from
5 Sylvain Nsabimana dated 27th April 1994. It transfers down the instructions and calls on all to avoid
6 doing harm to another person without proof that he or she is a real accomplice of the *Inkotanyi*.

7 MR. PRESIDENT:

8 Could you please repeat the date of that directive. It doesn't appear to have --

9 MS. SCHWARZ:

10 It was, Mr. President, Exhibit P. 119. The date is 27 April 1994.

11 MR. PRESIDENT:

12 All right. It's the date that we wanted to see because it was not reflected in the transcripts. Please go
13 on, Learned Counsel.

14 MS. SCHWARZ:

15 Your Honours, Mr. President, if everyone understands "accomplice" or "*Inkotanyi*" to be Tutsi, then all
16 that is needed is proof that the individual is Tutsi in order for harm to be done to him or her.

17
18 And from these instructions from the interim government, a civil defence programme is elaborated on
19 with roadblocks manned by soldiers, militia, civilians, with weapons distributed to Hutu youth, with
20 training provided. And what is the goal of this programme and these roadblocks? According to the
21 instructions, it is re-establishing security, protecting against the enemy, not doing harm to anyone
22 unless there is proof that he or she is a real accomplice.

23
24 So who is to be protected against? Pauline Nyiramasuhuko throughout continues to be an active
25 member in the interim government. And, Your Honours, there is no evidence of any concrete action
26 taken by her or by any other member of the interim government to put a stop to the massacres that
27 were underway. Why?

28
29 The Prosecutor submits that it is because Pauline Nyiramasuhuko and others, including members of
30 the interim government, were all part of a conspiracy that had as its common purpose the very
31 massacres that were underway.

32
33 Towards the end of April/beginning of May, the interim government embarks on what it called a
34 pacification campaign or a restoration of security campaign. Though she denies being involved in
35 pacification in Butare, Pauline Nyiramasuhuko was clearly involved in this campaign. She assisted in
36 drafting the 27th April so-called pacification document and, according to her testimony, was responsible
37 for travelling to Gisenyi and Kigali rural for pacification.

1 It is worth noting, Mr. President, Your Honours, how easy it appears to be for Pauline Nyiramasuhuko to
2 travel around to different parts of Rwanda throughout April to July and including this period, end
3 of April/beginning of May, for pacification and for other purposes. This last period, end
4 of April/beginning of May, coincides with the time period that a number of Tutsi refugees place
5 Pauline Nyiramasuhuko at the *préfecture* office ordering atrocities on Tutsi who have fled to
6 the *préfecture* office because they think they will be safe.

7
8 Now, Your Honours, in coming to the conclusions on what pacification was all about, the Trial Chamber
9 has Pauline Nyiramasuhuko's testimony, André Guichaoua's testimony, Alison Des Forges's testimony,
10 and the reality, as testified to by factual witnesses, on what was actually happening on the ground.

11
12 Let's look at what Pauline claims -- Pauline Nyiramasuhuko claims. She says in her brief pacification
13 was, and I quote, "a desperate attempt by the government to restore calm to the population to convince
14 the population to stop the killings. The evidence shows that there were killings by members of the
15 population against members of the same population," end quote. And that was in her brief at
16 paragraph 525.

17
18 First of all, Your Honours, I submit that the evidence does not show that there were killings by members
19 of the population against members of the same population. This was ethnic violence on a massive
20 scale. It was members of the Hutu ethnic population killing members of the Tutsi ethnic population.
21 They were not seen as members of the same population during this time.

22
23 Alison Des Forges offers, I submit, the only reasonable analysis for this pacification campaign. She
24 noted that, "Yes, it is possible that some authorities may have believed in pacification as an attempt to
25 restore calm at the beginning, in other words, shortly after the president died." However, she goes on
26 to note that "Surely, over a period of time, for the people who stood on that football field and said 'the
27 killing is finished,' they must have understood how exactly false the idea of pacification was," end quote.

28
29 Alison Des Forges goes on to state, "So I think you have to examine very carefully the sincerity or the
30 supposed sincerity of authorities in continuing to make these speeches even though it is patently
31 obvious that people are not being protected, that Tutsi are still being targeted," end quote.

32
33 Now, Alison Des Forges -- I backtrack -- Mr. President, I refer you to the Prosecutor's brief on
34 Pauline Nyiramasuhuko, paragraph 96.

35
36 Alison Des Forges, when she was talking about this, was referring to Joseph Kanyabashi and
37 Sylvain Nsabimana at Ngoma parish at the end of April. But it equally applies to all authorities involved

1 in so-called pacification. Look at the results of the pacification campaign with respect to
2 Pauline Nyiramasuhuko. During this so-called pacification campaign, Tutsi go to the *préfecture* office
3 thinking they will be safe and end up terrified, abducted, raped or killed.

4
5 The Prosecutor submits, Your Honours, that, first of all, the evidence cannot be examined in isolation,
6 and upon a careful examination of all the evidence, the only inference that can be made by the
7 Trial Chamber is that the interim government's so-called pacification, like its instructions to restore
8 security, like its issuing more roadblocks, elaborating on civil defence, encouraging the distribution of
9 weapons to Hutu, that all these together were part of an ongoing strategy designed to commit genocide
10 of Tutsi.

11
12 Now, within this strategy, Mr. President, Your Honours, there's also the issue of the --

13
14 Within this strategy, Mr. President, there is also the issue of the relationship between
15 Pauline Nyiramasuhuko and the *Interahamwe*. From all the evidence presented in this trial, there really
16 can be no doubt that the *Interahamwe* was an organised, functioning and frightening militia made up of
17 Hutu young men. They were killers. There really can be no doubt that members of the *Interahamwe*,
18 these young Hutu men, committed many of the atrocities that occurred in Butare *préfecture* and in
19 Rwanda.

20
21 Now, before these atrocities commenced in full in Butare *préfecture*, we find, as testified to by
22 Witness FA, that a certain important *Interahamwe* named Kazungu and others were holding meetings in
23 Pauline Nyiramasuhuko's residence at *Hotel Ihuliro* during the first two weeks after the
24 president's death discussing the means to implement the genocide in Butare.

25
26 We see Pauline Nyiramasuhuko, during a break in the cabinet meeting at Murambi, M-U-R-A-M-B-I, on
27 the 7th of May 1994, holding discussions with Robert Kajuga and others of the *Interahamwe* on how the
28 situation is controlled by the *Interahamwe* and how the *Interahamwe* need *laissez passers* so their cars
29 can move around.

30
31 Why, first of all, is the *Interahamwe* hanging around while an interim government cabinet meeting is
32 going on is clearly a question. And five days after this cabinet meeting we see Pauline Nyiramasuhuko
33 and MRND politicians in power holding a meeting and discussing what kind of assistance can be given
34 to the *Interahamwe*.

35
36 The Prosecutor submits, Mr. President, that there is clearly a connection with these meetings that only
37 leads one to conclude that Pauline Nyiramasuhuko has a close and unique relationship with the

1 *Interahamwe*.

2

3 When we turn to look at the evidence of Pauline Nyiramasuhuko --

4 MR. PRESIDENT:

5 Just a minute, Counsel. Just a minute. We just want to be sure, Learned Counsel, whether the witness
6 you referred to previously, the last witness, was FA, as appears in the transcripts. We just want to be
7 sure.

8 MS. SCHWARZ:

9 That is correct, Mr. President. F as in "Frank," A as in "apple."

10 MADAM PRESIDENT:

11 Okay, thank you. You may go on.

12 MS. SCHWARZ:

13 As I was saying, Mr. President, this clearly shows a connection that only leads one to conclude that
14 Pauline Nyiramasuhuko had a close and unique relationship with the *Interahamwe*.

15

16 When we turn to look at the evidence of Pauline Nyiramasuhuko's activities in Butare and at
17 the *préfecture* office, we will see exactly the relationship between Pauline Nyiramasuhuko and the
18 *Interahamwe*, including her son Shalom. It was a relationship that involved the *Interahamwe* following
19 orders given by Pauline Nyiramasuhuko.

20

21 To conclude on this part, Mr. President, from the evidence we have heard, it is clear that at no point did
22 Pauline Nyiramasuhuko say or, more importantly, do anything that would lead to any other conclusion
23 than that she was in agreement with the programme of genocide of the interim government. Given the
24 evidence adduced by factual and expert witnesses and the reality of how the genocide unfolded in
25 Rwanda, and specifically in Butare *préfecture*, the only reasonable inference that can be made is that
26 the interim government and its members were key players in planning the genocide and ensuring its
27 furtherance throughout the whole country. The Prosecutor submits that the only reasonable inference
28 to be made is that Pauline Nyiramasuhuko was fully and actively in agreement with this programme or
29 objective to destroy, in whole or in part, the Tutsi population.

30

31 Mr. President, I have concluded with that section. I will be moving on to Pauline Nyiramasuhuko and
32 her activities at the *préfecture* office. Would you like me to continue until 11 o'clock? Just so I can plan
33 accordingly on when I will stop.

34 MR. PRESIDENT:

35 Learned Counsel, we plan you will continue up until 11 o'clock, and then we will take the usual break so
36 that you can be sure and organise your work accordingly.

37

1 MS. SCHWARZ:

2 Thank you, Mr. President.

3

4 As Your Honours are aware, the Prosecutor has focused his case against Pauline Nyiramasuhuko on
5 her involvements committed -- on her involvement in crimes committed at the *préfecture* office in Butare
6 between 19 April and late June 1994.

7

8 While this is a focus, it is important to keep in mind that Pauline Nyiramasuhuko is not just charged with
9 crimes at the *préfecture* office. She is also charged with criminal responsibility for crimes at the
10 roadblock near her house and with planning, ordering, instigating and aiding and abetting massacres of
11 Tutsi throughout Butare *préfecture*.

12

13 For reference, our summary of the evidence on the *préfecture* office is detailed in the final brief from
14 paragraph 144 to 260. In the English that is pages 72 to 103.

15

16 The final brief is detailed on the evidence of the witnesses regarding what Pauline said and did and
17 what the consequences --

18 THE ENGLISH INTERPRETER:

19 Mr. President, with all due respect, could counsel speak a little slowly for the interpreters.

20 MR. PRESIDENT:

21 Could you slow slightly -- slow down a bit for the interpreter. That's what they request.

22 MS. SCHWARZ:

23 My apologies to the interpreters. I am trying. I forgot that time. I will slow down.

24

25 The final brief, Mr. President, is detailed on the evidence of the witnesses regarding what
26 Pauline Nyiramasuhuko said and did and what the consequences of her actions were on different
27 occasions that she went to the *préfecture* office; namely, it's the Prosecutor's submission that, following
28 Pauline Nyiramasuhuko's orders and incitements and instigations, Tutsi men, women and children were
29 beaten, abducted and killed by *Interahamwe*, some soldiers and her son Shalom Ntahobali.

30

31 The evidence is equally clear, we submit, that following Pauline Nyiramasuhuko's orders, her son
32 Shalom and *Interahamwe* raped young Tutsi girls and women, and while the rapes were going on
33 Pauline was nearby.

34

35 It is interesting to note, Your Honours, that Pauline Nyiramasuhuko's final brief is similarly detailed on
36 the evidence of Prosecution witnesses at the *préfecture* office. Her brief goes into minute detail to point
37 out alleged inconsistencies with prior statements and supposed contradictions amongst the witnesses.

1 One of the essential arguments made by the Defence seems to be that as many of the
2 Prosecution witnesses lived in the same place at the same time, they should have all experienced the
3 events in a similar way. Following from this, it appears to be the Defence contention that all
4 Prosecution witnesses lied, fabricated evidence or colluded amongst themselves.

5
6 Take, for example, paragraph 16 of Pauline Nyiramasuhuko's final brief, which asks, in relation to
7 Witnesses TA, SJ, QBQ and RE -- the brief asks, "How could people who had lived in the same place
8 at the same time have experienced these events in such a different way?"

9
10 Your Honours, Witness TA testified that while she was at the ***** she was raped one
11 evening by nine *Interahamwe*, including Shalom, and that she was raped on a number of other
12 occasions over different days by Shalom and other *Interahamwe*.

13
14 Your Honours, it's not complex law; it's not rocket science. It's simple common sense. TA experienced
15 events in a different way than others at the *préfecture* office who were never raped repeatedly on a
16 number of different days.

17
18 Your Honours, these witnesses were living on the grounds of the ***** between April and
19 end of June 1994. Some were there for two months, some for only one month. Some came and went.

20
21 There is no evidence to show that any were at the exact same spot at the exact same time. There is no
22 evidence -- for example, paragraph 87 of Pauline Nyiramasuhuko's final brief seems to suggest that
23 QBP and TA were together at all times. The Prosecutor submits that QBP's testimony is much better
24 understood as indicating that QBP and TA were at the same sites, not that they were joined together at
25 the hip while atrocities and rapes were being ordered or were going on.

26
27 Your Honours, there is no evidence to show that the witnesses knew all the same people who were in
28 refuge at the *préfecture* office or all the same people who came to attack the refugees. There's nothing
29 to suggest that all the witnesses were asked exactly the same questions in interviews with
30 ICTR investigators or when testifying before this Trial Chamber and answering questions in either direct
31 or cross-examination.

32
33 Throughout its brief the Defence is suggesting -- not just suggesting, is alleging collusion. I draw the
34 Trial Chamber's attention with respect to paragraph 303 of the *Zigiranyirazo* trial judgement. In that
35 judgement the Trial Chamber stated their relationships as neighbours or extended family or their
36 membership in *Ibuka* do not adversely affect their evidence. The Chamber considers that had their
37 evidence been rehearsed, there would have been far greater uniformity in their testimony.

1 Your Honours, the witnesses who testified on events at the *préfecture* office testified to what each
2 individual personally saw, heard or understand. They were credible. They had up to -- let me rephrase
3 that.

4
5 They were credible. They held up to extensive, lengthy, challenging and often aggressive
6 cross-examinations. They were consistent in their testimony on the material facts, even though they
7 experienced the events of the *préfecture* office in unique and individual ways.

8
9 Your Honours, Mr. President, a number of witnesses testified to words they heard
10 Pauline Nyiramasuhuko use, words that were clearly intended to incite or instigate local authorities to
11 do something about the Tutsi refugees at the *préfecture* office.

12
13 TA, who arrived at the end of April, heard Pauline Nyiramasuhuko about a week after she arrived
14 saying, "The dirt should be got rid of." Pauline Nyiramasuhuko was talking to refugees, but it is
15 important to note that, according to TA, Pauline also wanted those in the *préfecture* office to hear. TA
16 understood dirt to mean Tutsi.

17
18 That is at -- you can also find that, Your Honours, at paragraph 148 of the Prosecutor's final brief
19 relating to Pauline Nyiramasuhuko.

20
21 QBQ arrived at the end of April, and about three days after her arrival she saw Pauline Nyiramasuhuko
22 accompanied by the prefect in the morning saying, "What are these snakes doing here? It is necessary
23 to clear the filth -- dirt from this place."

24
25 Witness SJ came at the end of April, and one day between -- in the morning in the first two weeks she
26 was there Pauline Nyiramasuhuko came out of the prefect office and said to the prefect and others
27 present, "This dirt has to be cleared. I should not find this dirt again." According to SJ,
28 Pauline Nyiramasuhuko was speaking to the prefect, others present, including police, *Interahamwe* and
29 civilians.

30
31 SU arrived at the end of May, 28th May. She heard Pauline Nyiramasuhuko talking to the prefect and
32 Joseph Kanyabashi, among other local authorities, and upon leaving saying, "It is only dirt that I see
33 here in this *préfecture*. Elsewhere the dirt has been removed."

34
35 SU testified that another day Pauline Nyiramasuhuko found a piece of clothe and talked about
36 RPF accomplices and said to the authorities present, including Joseph Kanyabashi and the prefect, that
37 the clothe was an RPF ornament and that the refugees were Rwandan Patriotic Front accomplices and

1 that the Rwandan Patriotic Front had infiltrated and that the refugees ought to be exterminated. That
2 you can find at page 78 of our final brief, paragraph 163 English.

3
4 Witness SS heard Pauline Nyiramasuhuko say to local authorities and officials at the *préfecture* office,
5 "I don't understand. It's these refugees here who threw this clothe. The refugees are accomplices of
6 the *Inkotanyi*."

7
8 There are other examples, Your Honour, but I will leave it there for now. They are in our final brief in
9 the pages I already mentioned.

10
11 Your Honours, the Prosecutor submits that the evidence has established that words, such as
12 snake, dirt, *Inyenzi*, accomplice, RPF and others, were used throughout to describe the Tutsi in a
13 demeaning and insulting and threatening way. The words were used by officials, by *Interahamwe* and
14 Pauline Nyiramasuhuko on different occasions that she went to the *préfecture* office.

15
16 The message of her words was clear, and it clearly shows Pauline Nyiramasuhuko's genocidal intent.
17 "Get rid of the Tutsi at the *préfecture* office and in Butare *préfecture*."

18
19 Your Honours will recall that a number of witnesses testified to Pauline Nyiramasuhuko's orders and
20 instigations at the *préfecture* office on different occasions. The witnesses testified to
21 Pauline Nyiramasuhuko arriving at the *préfecture* office with Shalom Ntahobali, *Interahamwe* and
22 soldiers and ordering these individuals to carry out crimes on Tutsi refugees. Sometimes the orders
23 were to separate the Tutsi and take some away. Sometimes the orders were to kill the Tutsi.
24 A number of times the orders were to rape Tutsi women and girls. As is clear from the evidence, her
25 orders were obeyed. The evidence is abundant, and I will not repeat it here.

26
27 I draw the Trial Chamber's attention to pages 72 to 91 of our final brief and the evidence of a number of
28 witnesses, including TA, SU, SS, F as in "Frank," AP as in "Peter," QBQ, TK.

29
30 Mr. President, I am aware of the time. I am just about to finish this section, if I can go on for
31 two or three more minutes.

32 MR. PRESIDENT:

33 Yes, Counsel, you may go.

34 MS. SCHWARZ:

35 Your Honours, what is clear from the testimony of these witnesses is that they are not all talking about
36 the same day or time that Pauline Nyiramasuhuko was at the *préfecture* office and uttered inciting
37 words or ordered atrocities to be committed. What is also clear from the testimony of these witnesses

1 is that Pauline Nyiramasuhuko, along with Shalom Ntahobali, was seen as the person in charge while
2 these crimes were being perpetrated. She ordered *Interahamwe* militia and soldiers who arrived with
3 her to carry out horrendous acts on the Tutsi refugees at the *préfecture* office. Crimes were then
4 carried out. Pauline Nyiramasuhuko did nothing to stop them. Her position in government gave her the
5 material ability to prevent or punish or, at the very least, report. She did not.

6
7 And, Mr. President, I will be turning to a new section, so if it's convenient, now would be a time to take
8 the break.

9 MR. PRESIDENT:

10 Yes. Thank you, Learned Counsel.

11
12 Well, it would appear the witnesses you have just named in your most recent submissions in the
13 English transcripts does not appear to be quite complete. We have TA, SU, SS and then --

14 MS. SCHWARZ:

15 FAP, QBQ, RE -- R as in "Romeo", E as in "England"-- and then TK.

16 MR. PRESIDENT:

17 Okay.

18 MR. POUPART:

19 She didn't say RE. That's the problem.

20 MS. SCHWARZ:

21 My apologies. It was in my notes. I must have missed it.

22 MR. PRESIDENT:

23 We are trying to also check also the French record. I think, as pointed out by
24 Learned Counsel Mr. Guy Poupart, it was not recorded.

25

26 All right. We will take the break now, and we will resume the proceedings at half past eleven. Registry,
27 take note of the timeframe, please.

28 MR. KIYEYEU:

29 Yes, my Lord.

30 MR. PRESIDENT:

31 The proceedings stand adjourned.

32 (*Court recessed from 1100H to 1130H*)

33 MR. PRESIDENT:

34 The proceedings are resumed.

35 MS. BERGEVIN:

36 Mr. President, with your permission.

37

1 MR. PRESIDENT:

2 Yes, Learned Counsel.

3 MS. BERGEVIN:

4 It's very, very short. It's just that Ms. Schwarz has referred to pages in her last quote, pages 72 to 91,
5 and I'm just asking that we refer to paragraphs because the paragraphs are always the same, whereas
6 the pages, we have three copies of the Prosecutor's brief with different pages, depending on how it was
7 done by the registrar. So I think the best thing would be really to always have the paragraph so that we
8 can find it easily. Thank you.

9 MR. PRESIDENT:

10 Yes. Thank you, Learned Counsel. Ms. Schwarz.

11 MS. SCHWARZ:

12 Thank you, Mr. President. Yes, I agree with the recommendation made by Counsel Bergevin, and
13 I will -- I believe -- if I could just have ten seconds to see if I have the actual paragraph numbers in my
14 notes right now. Paragraphs 144 to 211.

15 MR. PRESIDENT:

16 And that is of the Prosecution's closing brief.

17 MS. SCHWARZ:

18 The Prosecution's closing brief for Pauline Nyiramasuhuko, and it's dealing with the evidence on
19 the *préfecture* office.

20 MR. PRESIDENT:

21 Thank you, Learned Counsel. You may continue with your submissions.

22 MS. SCHWARZ:

23 Your Honours, the Butare trial is a landmark trial for a number of reasons. Once your final judgement is
24 made, Rwandans, the international community, victims and accused from Rwanda and from other
25 conflicts in different parts of the world will focus on different aspects of this case. I submit,
26 Your Honours, that one of the key issues that makes this a landmark case is whether
27 Pauline Nyiramasuhuko will be the first woman to be convicted of rape as a crime against humanity.

28
29 Our final brief is extensive on the evidence concerning the times when Pauline Nyiramasuhuko uttered
30 some of the most frightening words that could come out of the mouth of a woman, a mother and the
31 person who was in charge of the department that had the protection of family and women as its key
32 mandate.

33
34 Pauline Nyiramasuhuko ordered the *Interahamwe* and her son Shalom to rape the Tutsi women and
35 girls. According to SS, Pauline Nyiramasuhuko said, "Start from one side, and take the young girls and
36 women and go and rape them because they refused to marry you." Witness FAP testified that she
37 heard Pauline Nyiramasuhuko say, "Take the young girls and the women who are not old, start by

1 raping them before killing them because they refused to marry Hutu." QBQ heard
2 Pauline Nyiramasuhuko order the *Interahamwe* and Shalom to rape the women and girls and kill the
3 rest. QBP heard Pauline Nyiramasuhuko tell the *Interahamwe* who were with her, "I can see that there
4 is a lot of dirt here at the *préfecture*, such as the Tutsi women who previously were arrogant and who
5 did not want to marry Hutus. It is up to you Hutus to do whatever you will with them."
6

7 And what happened after these orders were given at the *préfecture* office? According to the witnesses,
8 young Tutsi girls and women were dragged away by Shalom and *Interahamwe* and raped at the back of
9 the *préfecture* office or in the *préfecture* compound, according to FAP, who spoke with one of the rape
10 victims after the rape victim told her it was better to be killed than raped by four or more men.
11

12 According to QBP, Pauline Nyiramasuhuko seemed to take pleasure in ordering the rapes. According
13 to Witness TA, Pauline Nyiramasuhuko was there giving orders when TA was dragged to the back by
14 Pauline Nyiramasuhuko's son Shalom, raped by him, then passed off to another seven *Interahamwe* to
15 be raped.
16

17 And where was Pauline Nyiramasuhuko while these rapes were going on? Standing by a vehicle at the
18 front of the *préfecture* office waiting for the men to be finished. And once they were finished brutalising
19 the Tutsi women and girls, Pauline Nyiramasuhuko drove off with the attackers.
20

21 Your Honours, in an entirely different location than the *préfecture* office, we heard testimony from
22 Witness FAE that Pauline Nyiramasuhuko not only incited -- not only ordered rape but also directly and
23 publicly incited rape and genocide of Tutsi women. Pauline Nyiramasuhuko handed out a box of
24 condoms to a man who gave them to another person and incited rape and violence when she said,
25 "Distribute these condoms to our young men for them to rape the Tutsi, and after having raped them
26 they should kill them." That is in paragraph 322 of our final brief.
27

28 Your Honours, there can be no doubt in your minds that Pauline Nyiramasuhuko was in a position of
29 authority and had effective control over the men she was with at the *préfecture* office and over other
30 individuals throughout Butare. She was a minister. She was an influential figure in Butare. According
31 to FAE, when Pauline distributed the condoms, she arrived in a car with a gun between her legs. Local
32 authorities from *bourgmestres* and prefects listened to her. Soldiers and local thugs obeyed her orders.
33 She played a pivotal role in ensuring the genocide unfolded in Butare. She played a key role in
34 ensuring its execution by ordering *Interahamwe* and others to commit atrocities, and these individuals
35 obeyed.
36

37 Did she have the material ability to prevent or punish the commission of the crimes, all the crimes,

1 including the rapes by her son and the *Interahamwe*? Considering that she was one of the key
2 individuals ordering the crimes committed, and considering that individuals then followed her orders and
3 carried out the crimes, it is difficult to conclude anything other than that these same individuals may well
4 have stopped committing atrocities, rapes, murders on Tutsi men, women and children if
5 Pauline Nyiramasuhuko had shouted "Stop".
6

7 In any case, Pauline Nyiramasuhuko, in her position of authority and her access to officials at all levels
8 of government, at the very least had a duty to take some measures to prevent, punish or report on the
9 perpetrators of the crimes. The evidence is abundant she did not. The Prosecutor submits,
10 Your Honours, with respect that Pauline Nyiramasuhuko should, indeed, be the first woman to be
11 convicted of rape as a crime against humanity and liable under Article 6(3).
12

13 Mr. President, Your Honours, I turn to another issue at this point. As Your Honours are aware,
14 Pauline Nyiramasuhuko has advanced an alibi for some of the time period in issue, namely, from the
15 end of May to July 1994. The Prosecutor was notified of the intention to enter the alibi after the close of
16 the Prosecutor's case. The Prosecutor submits that this is a concocted alibi created after the
17 Prosecution case to cast out the Prosecution witnesses who testified that Pauline Nyiramasuhuko was
18 at the *préfecture* office end of May/early June.
19

20 In addition, the Prosecutor submits that even if one were to believe everything said by
21 Pauline Nyiramasuhuko and her witnesses, this so-called alibi does not negate anything testified to by
22 the Prosecution witnesses and it does not cast any reasonable doubt.
23

24 The evidence establishes that Pauline could easily have been in Butare on a given day and in Gitarama
25 later the next -- Gitarama later that day or the next, as Gitarama is only about an hour from Butare.
26 Gisenyi, Muramba -- let me rephrase that; that was confusing. Muramba, M-U-R-A-M-B-A, Gisenyi is
27 farther away. But even with the alibi presented, it remains unclear exactly when
28 Pauline Nyiramasuhuko was in Gisenyi and in Butare.
29

30 According to the notice of alibi the Prosecutor received, the only person to testify on it would be one of
31 Pauline Nyiramasuhuko's daughters, Denise. The notice advised that she would testify that
32 Pauline Nyiramasuhuko was in Murambi, M-U-R-A-M-B-I, which is in Gitarama, from the end of
33 May 1994 to around 3 June 1994. The notice then advised that Pauline Nyiramasuhuko was in
34 Muramba, M-U-R-A-M-B-A, Gisenyi from around 4 June 1994 to early July 1994.
35

36 The notice thus leaves in question Pauline's whereabouts from 3 to 4 June. Did she return to Butare
37 around this time? Is it possible? When we turn to the testimony of Denise and Pauline Nyiramasuhuko

1 and other witnesses, the alibi does not stand up. It was confirmed by both Denise and
2 Pauline Nyiramasuhuko that Pauline was in Butare on the 30th and 31st May. She went to Murambi in
3 the afternoon of 31st May. Their testimony also confirms that they left Murambi for Muramba in Gisenyi
4 on 1st or 2nd June. They both confirm Pauline was back in Butare on the 24th of June.
5 Pauline testified she also came back to Butare on the 11th of June. Denise testified that they came
6 back to Butare after a week in Muramba, which could be around the 8th or 9th of June. So that is one
7 issue on the alibi.

8
9 More importantly, other family members bring it into doubt. Clarice, Pauline Nyiramasuhuko's other
10 daughter, said Pauline Nyiramasuhuko came to Butare at the end of May to take Denise and the
11 granddaughter to Murambi. Clarice then went on to say that Pauline Nyiramasuhuko came back two or
12 three days later to the *Hotel Ihuliro* in Butare to say that they were now going to Muramba. Clarice's
13 testimony puts Pauline Nyiramasuhuko right back in Butare around the time that Prosecution witnesses
14 at the *préfecture* office are saying Pauline Nyiramasuhuko was there.

15
16 Another witness, WBUC, also said Pauline Nyiramasuhuko came back to Butare about a week after
17 she left with Denise and the granddaughter. They came back on their way from Murambi to Muramba.

18
19 Put simply, Mr. President, we submit that the alibi is concocted and raises no doubt and offers no
20 challenge to the credible testimony of Prosecution witnesses placing Pauline Nyiramasuhuko at
21 the *préfecture* office end of May/early June.

22
23 Another aspect of the Defence final brief focuses on the expert Prosecution witnesses who were called
24 to testify. Specifically there is a major focus on Alison Des Forges and Professor André Guichaoua.

25
26 First of all, I would like to point out that there are a number of inaccurate footnotes or misstatements
27 that make it somewhat difficult to follow. It may have been a translation issue. I'm not sure. But,
28 for example, the brief continuously refers to Professor Guichaoua being called as an expert in social
29 politics and states that there is no expert field of social politics. Those are at paragraphs 369 and 374
30 of the Defence brief. The record is clear Professor Guichaoua was called as an expert in
31 political science or political sociology. There is such expert field.

32
33 The brief argues continuously that the opinions offered by the Prosecution experts are irrelevant and
34 inadmissible. The jurisprudence is, the Prosecutor submits, clear. The Trial Chamber has the
35 discretion to admit any evidence it deems probative and relevant, and then it will determine the weight
36 to be given. The Trial Chamber in this case and in its discretion deemed the Prosecution experts to
37 have expertise and be able to provide testimony that would be relevant to the trial. The issue is not at

1 this point relevance or irrelevance. The issue is what weight their testimony and opinions will be given.
2 The Prosecutor submits that the expert witnesses who testified for the Prosecution offered impartial,
3 unbiased opinion and their opinions are supported by the facts adduced in this case.
4

5 The Defence brief argues continuously that Pauline Nyiramasuhuko's rights were violated as she was
6 not able to review and cross-examine on the sources of Alison Des Forges and Guichaoua's testimony.
7 The Prosecutor submits that this is really quite ludicrous. Alison Des Forges was cross-examined for
8 four days by Pauline Nyiramasuhuko's counsel. Guichaoua was cross-examined for ten days. Both
9 Alison Des Forges' and Guichaoua's reports are extensively sourced. For Guichaoua there are around
10 400 footnotes, numerous annexes and detailed descriptions of how he came to the conclusions he did.
11 Alison Des Forges' report contains footnotes and likewise is detailed on how she formed her opinions.
12 Yes, there are confidential sources that the experts did not or could not disclose, but the experts
13 testified on this and offered explanations. As with any evidence, the Trial Chamber will determine what
14 weight the opinions will be given to their testimony.
15

16 Another example I would like to point out at paragraphs 396 to 399 of the Defence brief. The Defence
17 submits that Alison Des Forges's testimony should be disregarded in the whole for irrelevance or limited
18 to her opinions that belong to her field of expertise. First of all, the Prosecutor submits that pretty much
19 all of Alison Des Forges's testimony is based on her research in her field of expertise. But leaving that
20 aside, looking at paragraph 397 of the Defence brief, it goes on to note that evidence from
21 Alison Des Forges has not been considered relevant by another Trial Chamber, and it offers as support
22 at footnote 607 two judgments in the Karemera case.
23

24 The Defence final brief goes on to provide a quote as support for its proposition on Alison Des Forges,
25 and I quote -- sorry, let me rephrase that -- provides a quote from one of the Karemera decisions as
26 support for its proposition on Alison Des Forges, and I am quoting from the Trial Chamber decision in
27 Karemera. I will provide the reference. It's in my brief. And it is at paragraph 398 of the Defence final
28 brief. The quote from Karemera is, "The Chamber is not persuaded that the interdisciplinary field of
29 sociopolitical science is sufficiently organised or recognised as a reliable body of knowledge or
30 experience which the witness could potentially provide assistance to the Chamber."
31

32 This quote is in fact from the Karemera trial decision denying any expert qualification to one
33 Charles Ntampaka. And they denied it on the basis of Ntampaka's CV. It was he, the Trial Chamber
34 found, who was not able to give assistance to the Chamber, not Alison Des Forges. In fact, in relation
35 to Alison Des Forges, the Karemera Trial Chamber, in its decision at paragraph 19 of
36 25 October 2007 -- the Trial Chamber noted in relation to Alison Des Forges the following: None of the
37 Accused dispute, as such, the general qualifications of Alison Des Forges as expert in African history

1 and in particular the Great Lake Region in Rwanda. The Chamber agrees that her expert status to that
2 scope is beyond reasonable dispute and has been recognised in many instances over the years.

3
4 The question for the Karemera Trial Chamber with respect to Alison Des Forges was whether, given the
5 Karemera trial Chamber's decisions on judicial notice of genocide of Tutsi in Rwanda, on their decision
6 of judicial notice of widespread systematic attacks on Tutsi in Rwanda and on the basis of evidence the
7 Karemera Trial Chamber had already heard from officials in the government and from the MRND -- the
8 question for the Trial Chamber was whether, with all of that, it still needed to hear expert testimony from
9 Alison Des Forges. In the Karemera Trial Chamber decision, they decided not, for the reasons I have
10 just stated, and not for any other reason.

11 MR. PRESIDENT:

12 Could the name that you spelt out, you mentioned, with regard to the issue being denied to testify as an
13 expert, could that be spelt out, please? State it and then it should be spelt out.

14 MS. SCHWARZ:

15 Yes, Mr. President. Ntampaka, N-T-A-M-P-A-K-A. And if I have just ten seconds, I can find the
16 reference to the decision.

17 MR. PRESIDENT:

18 Yes.

19
20 All right. You may go on. I think it is recorded, the date of that decision that you've made reference of
21 in the Karemera trial on the 25th --

22 MS. SCHWARZ:

23 25th of October 2007 is the decision relating to Alison Des Forges. The decision relating to
24 Charles Ntampaka is 26th September 2007.

25 MR. PRESIDENT:

26 That's a different decision.

27 MS. SCHWARZ:

28 They are two different decisions.

29 MR. PRESIDENT:

30 Oh, okay.

31
32 You may go on.

33 MS. SCHWARZ:

34 Mr. President -- and I am coming to my conclusion now -- our conclusions on the various counts
35 charged against Pauline Nyiramasuhuko, genocide, crimes against humanity and war crimes in respect
36 of the crimes at the *préfecture* office and others in different parts of Butare, are all detailed in the final
37 brief.

1 The Prosecutor submits that the evidence of the words she uttered, the orders she issued, the
2 instigations she made leave no doubt but that Pauline Nyiramasuhuko had the intent to commit
3 genocide and did, in fact, plan, prepare, order and instigate genocide in Butare. She had effective
4 control over those who perpetrated the crimes and could have prevented or punished or, at the very
5 least, reported on. She did not.

6
7 The Prosecutor also submits that there is clearly a nexus between the crimes alleged against
8 Pauline Nyiramasuhuko and her orders and instigations and the armed conflict that was underway with
9 the RPF and that she could be found guilty of war crimes as well. The crimes committed during the
10 genocide took place in the midst of instructions from the interim government of which
11 Pauline Nyiramasuhuko was an active member, instructions to unmask the enemy and his accomplices,
12 to not do harm to anyone without proof he was an accomplice, all of this during a time when enemy,
13 accomplice and other such words were synonymous with the Tutsi population.
14 Pauline Nyiramasuhuko's involvement in planning and orders and instigations she made at
15 the *préfecture* office and in other locations reinforced the notion that the crimes were committed under
16 the guise of the armed conflict.

17
18 For example, and as I mentioned before, according to SU, Pauline Nyiramasuhuko, upon finding a
19 piece of clothe at the *préfecture* office, stated the refugees were RPF accomplices and ought to be
20 exterminated. And finally, Your Honours, the evidence also clearly shows that Pauline Nyiramasuhuko
21 was aware of the widespread or systematic attempts against the Tutsi that were underway throughout
22 the period between April and July 1994. She may testify that she was not briefed on the massacres
23 that were underway. She may refuse to admit that it was Tutsi and moderate Hutu who were
24 specifically targeted during this time. But, Your Honours, based on all the evidence you have heard
25 over these seven years of trial, it is inconceivable that Pauline Nyiramasuhuko, in her position as
26 minister of the interim government, did not know that Tutsi were being attacked and killed on a massive
27 and systematic scale in Rwanda and Butare during this time.

28
29 Thank you, Mr. President, Your Honours. I have completed my submissions, and I will hand the floor
30 over to my colleague Lansana Dumbuya, who will make submissions concerning Shalom Ntahobali.

31 Thank you very much.

32 MR. PRESIDENT:

33 Thank you, Learned counsel.

34

35 Next, Counsel.

36 MR. DUMBUYA:

37 Good afternoon, Your Honour. If I'm not mistaken, I think it's now exactly twelve.

1 MR. PRESIDENT:

2 Yes, about twelve by the clock that we use and which is in front of us so --

3 MR. DUMBUYA:

4 As Your Honours, please. Your Honours, after several years of trial in this courtroom, the Prosecutor is
5 certain that he has sufficiently been able to prove beyond reasonable doubt that the
6 Accused, Arsène Shalom Ntahobali, committed the crimes as charged in his indictment.

7
8 Your Honours, the basis of my argument this afternoon is not intended to produce the brief as filed
9 before this Chamber *ipsissima verba* but an endeavour to briefly emphasise certain key points and to
10 also comment on certain aspects of the Defence closing brief.

11
12 Your Honours, when the Prosecutor made her opening remarks on the 12th of June 2001, she stated
13 that Ntahobali was crucial in the execution of the massacres in identifying venues where the Tutsis
14 were sorted out at roadblocks. She also stated, Your Honours, that there were roadblocks manned by
15 civilians, soldiers and militiamen and that the Accused Ntahobali played a crucial role in carrying out
16 that kind of work and also that he was engaged in sorting out people and even killing them in Butare.

17
18 Your Honours, I submit that during the indictment period Ntahobali was a powerful and influential
19 person in Butare and was perceived by *Interahamwes* and victims alike as a person of authority within
20 the *Interahamwes* in Butare town.

21
22 You have listened to Prosecution Witnesses TK, TA, SX, QCB, who over the years testified to
23 Ntahobali's being a leader of *Interahamwes* in Butare and having control and authority over them.

24
25 Your Honours, sometimes as we have heard from SJ in this courtroom, this witness, Your Honour,
26 referred to Ntahobali as a chief. I submit, Your Honour, that a chief represents a symbol of authority,
27 and Ntahobali, the Accused, was one such authority in the eyes of his subordinate *Interahamwe*. And
28 to some extent, Your Honours, the expert witness Alison Des Forges, of blessed memory, in her report
29 and in her testimony also referred to Ntahobali as a leader.

30
31 It is our submission that the evidence before you demonstrates beyond reasonable doubt that the
32 Accused Ntahobali did not act alone. Rather, Your Honours, he acted in concert with his mother, who
33 was also a minister in the interim government, Nyiramasuhuko. He also acted, Your Honours, with
34 Sylvain Nsabimana, who was the *préfet*, Alphonse Nteziryayo, who, Your Honours, conspired among
35 themselves to execute a plan with the intent to exterminate the Tutsi population in Butare *préfecture* as
36 part of a nationwide plan to destroy the Tutsis of Rwanda.

37

1 Your Honours, the role played by the Accused Ntahobali as a leader of the *Interahamwes* in
2 Butare town was instrumental in the overall success of the plan to destroy the Tutsi population in
3 Butare. In coordination with his mother Nyiramasuhuko, who was also a minister, the *préfet*
4 Nsabimana, soldiers and *Interahamwes*, Your Honours, the Accused abducted, attacked and killed
5 Tutsi civilians at the *préfecture* office, the EER school, the woods next to the EER, the roadblock near
6 the *Ihuliro hotel*, which was also his residence, and also, Your Honours, at the
7 Butare University Hospital.

8
9 Your Honours, Ntahobali's part in the genocide was to enthusiastically lead the killing campaign
10 directing and personally participating in direct attacks against Tutsis at a number of locations, including
11 the *préfecture* office, the EER school, the roadblock near his house and the Butare University Hospital.

12
13 Your Honours, from the depth and extent in his participation in the killing campaign combined with
14 evidence that he worked with his mother -- combined with evidence that he worked with his mother, the
15 *préfet* Nsabimana and *Interahamwes*, such as Kazungu, Your Honours, it can be inferred that Ntahobali
16 had agreed to participate in an effort to consolidate and strengthen the political power of the interim
17 government by eliminating the Tutsi ethnic group.

18
19 Your Honours, we've had evidence where Ntahobali is said to have driven a vehicle in which
20 Tutsi refugees were transported to be killed. Your Honours, for these assertions, Your Honours, I direct
21 your attention to chapter 4 of the Prosecution closing brief, paragraphs 10 to 29, where it was said the
22 Accused transported people in a vehicle to be killed. In many instances, Your Honour, the Accused
23 worked on the instruction of his mother Nyiramasuhuko, who remained a loyal minister in the interim
24 government and who in her testimony did not seek to distance herself from that government but rather,
25 Your Honours, demonstrated that she remained close to that government throughout the period of the
26 genocide.

27
28 Your Honours, the attacks and killings in which Ntahobali participated was carried out in a
29 methodological and systematic manner, which further supports the conclusion that they were carried
30 out according to a pre-existing plan or agreement.

31
32 When you look at the repeated attacks and abductions at the *préfecture* office, Your Honours, where
33 Tutsis had taken refuge in the then hope that they would receive protection from the authorities, as
34 testified to by Witness QY, TA, QBQ and FAP, Your Lord, these activities, Your Honours, could only
35 have been carried out pursuant to a pre-existing plan.

36
37 Prosecution Witness TA testified that Ntahobali came to the *préfecture* office more than eight times to

1 attack, abduct and load Tutsi refugees seeking refuge to be transported elsewhere to be killed. It is our
2 submission that only through prior planning and concerted action could so many Tutsis have been
3 repeatedly abducted from locations such as the *préfecture* office and the EER school, forcibly loaded in
4 vehicles, driven to killing sites. Your Honours, the Accused Ntahobali was a central and enthusiastic
5 participant in that killing campaign.

6
7 Your Honours, we've had evidence that after the death of the president on the 6th, meetings were held
8 in Ntahobali's house in Butare town. Your Honours, Kazungu, one of the *Interahamwes*, reported to
9 witness -- Prosecution Witness FA after the first meeting that instructions with regards to the killings of
10 Tutsis had been given in that meeting. My Lord, after attending the second meeting, this same
11 *Interahamwe*, Kazungu, told Witness FA that the issue of identity cards was discussed.

12
13 It was, therefore, no surprise, Your Honours, that after this second meeting a roadblock was set up in
14 front of Ntahobali's house. The Chamber has heard evidence, a great deal of evidence, Your Honours,
15 of Ntahobali and this *Interahamwe* Kazungu's presence at this roadblock and of their participation in the
16 abduction of Tutsis from that roadblock.

17
18 The Prosecution submits that it is highly unlikely that the Accused Ntahobali, who was residing at the
19 Ihuliro hotel at the material point in time, was unaware of the meetings at his house involving so many
20 people and the issues discussed. It is, therefore, the Prosecutor's submission, Your Honours, that the
21 Chamber may infer, from the manner, scope, size, frequency and methodology of the attacks
22 conducted by the Accused Ntahobali and his *Interahamwes* with whom he worked as well as other
23 evidence stated in the Prosecutor's brief, the existence of the plan or agreement between Ntahobali
24 and one or more of the accused persons and/or other persons to commit genocide.

25
26 Your Honours, the Prosecutor has been able to prove beyond reasonable doubt that the Accused
27 Ntahobali committed genocide where he participated in killings at the *préfecture* office, the EER school,
28 the EER woods and the roadblock near his house. You have listened to evidence in this courtroom of
29 the various killings of Tutsis by the Accused Ntahobali.

30
31 Your Honours, the evidence of events at the *préfecture* office, as testified to by
32 Prosecution Witnesses QCB, TA, FAP and RE, is not a pleasant subject to recount before
33 Your Honours, where Tutsi civilians taking refuge at the *préfecture* office were hunted down, killed in
34 cold blood simply, Your Honours, because they were ethnic Tutsis. Your Honours, you have heard
35 evidence from Witness TB and SX that Ntahobali killed a Tutsi girl with an axe after raping her.

36
37 Your Honours, the Accused gave orders to his subordinate *Interahamwe* to kill persons who were

1 Tutsis. He personally killed a Tutsi woman who refused to be raped at the *préfecture* office. He also
2 personally killed two Tutsis by the name of Lwabugili and Phillipe with a jackknife.

3
4 Your Honours, let me at this point draw your attention to paragraph 275 of the Defence closing brief in
5 relation to this issue and what they were --

6 MR. PRESIDENT:

7 Could we have those names that you have mentioned spelt out because they are not -- because the
8 record doesn't reflect them.

9 MR. DUMBUYA:

10 They are Lwabugili -- as the transcript reveals, Your Honours, it's spelt L-W-A-B-U-G-I-L-I.

11
12 And Phillipe, Your Honours, is spelt F -- as in Phillipe in French, Your Honours -- P-H-I-L-L-I-P-E.

13 MR. PRESIDENT:

14 As you go along, Interpreter, perhaps you can assist counsels whenever they have unfamiliar names
15 which might be unfamiliar, maybe spelt out as a matter of course so that we assist the court recorders
16 with getting the proper spellings of these names. Please go on, Counsel.

17 MR. DUMBUYA:

18 Your Honours, in the Defence closing brief at paragraph 275 this issue of the killing of Lwabugili and
19 Phillipe was mentioned, and the argument proffered therein, Your Honours, was that Exhibit D. 449 was
20 tendered by the Defence when the Accused Ntahobali was testifying in relation to that killing. And,
21 My Lord, this was a judgement of the war council of the Republic of Rwanda in Butare.

22
23 My Lord -- Your Honours, sorry, I've been used to addressing the Judges My Lords -- Your Honours, if
24 you look at paragraph 41 of that judgement, that is Exhibit 499 -- D. 499C, My Lord, paragraph 41 --

25 MR. PRESIDENT:

26 What's the number of the exhibit? You said previously --

27 MR. DUMBUYA:

28 Exhibit D. 4 --

29 MR. PRESIDENT:

30 Was it not Exhibit D. 449?

31 MR. DUMBUYA:

32 449C, yes, which is the English version.

33
34 Your Honours, I would be directing your attention, Your Honours, to the paragraph that mentions these
35 two individuals, that is, paragraph 41 of this exhibit, paragraph 161, paragraph 164, paragraph 167,
36 paragraph 194, 202. And, Your Honours, under deliberation, Your Honours, I will direct your attention
37 to paragraph 19, and under the ruling, Your Honours, under the ruling I will direct Your Honours to

1 paragraph 8. These are the salient paragraphs, Your Honours.

2
3 Your Honours, it is my submission, Your Honours, that this judgement, in fact, supports the evidence of
4 the Prosecution. Your Honours, if you look at the testimony of Witness TN, it was clearly indicated,
5 Your Honours, that these two individuals were killed in the presence of soldiers. In fact, it was one of
6 the soldiers who handed over the knife to the Accused Arsène Shalom Ntahobali to kill Lwabugili and
7 Phillipe. Your Honours, it is our submission that the fact that this judgement stated that
8 Corporal Baptiste Nzisabira -- B-A-P-T-I-S-T-E and N-Z-I-S-A-B-I-R-A -- Your Honours, the fact that this
9 judgement indicated clearly that Nzisabira is guilty of the murder does not relieve the Accused of
10 criminal responsibility before this Tribunal.

11
12 Your Honours, if you look at the testimony of the two witnesses, the two key witnesses whom the Court
13 relied on, My Lord, they clearly indicated that, in fact, those who killed Lwabugili and Phillipe were
14 soldiers from the Presidential Guard and also civilians. And this was exactly the testimony of
15 Witness TN. And, My Lord, in fact, what they are saying here is that what was narrated by Witness TN
16 is exactly -- was exactly a true picture, but they are saying that it was not Ntahobali. Your Honours, we
17 submit that Ntahobali was part of those civilians, and the judgement, which, specifically the last
18 paragraph I indicated to you, Your Honours, clearly stated, Your Honours, that -- if I may just -- it is very
19 short -- that the Court finds Corporal J. Baptiste Nzisabira guilty of murder of the people, including
20 Lwabugili, Your Honours. But the evidence before them, My Lord, did not say that in fact he was the
21 only people among the killers. Your Honours, that is our submission in relation to that argument
22 proffered.

23
24 I have directed your attention to the various paragraphs where two of the witnesses in fact gave
25 different testimony in relation to the actual manner of killings. But then the Chamber, the Court, found
26 that the Accused then was guilty. And, Your Honours, we also want to draw your attention that the
27 Accused here, Ntahobali, was not before that Court, neither any other civilians. It was only a soldier.
28 In fact, it was a Court for the military. If they had appeared with all the other civilians, then,
29 Your Honours, probably the decision would have been otherwise.

30
31 Your Honours, the Accused Ntahobali attacked, beat, terrorised and undressed Tutsi civilians at
32 the *préfecture* office, cutting and slashing at them with bladed weapons, killing some and then loading
33 survivors to be taken away.

34
35 Sometimes, Your Honours, before they met their death they were attacked with machetes, mutilated
36 with these bladed weapons, killing some and then loading survivors to be taken away. My Lord, I would
37 draw your attention to the testimony of Witness TK, Witness SS, Witness QJ, and also, Your Honours,

1 the expert witness Alison Des Forges.

2
3 What more can be so glaring, Your Honours, when evidence was produced by
4 Prosecution Witness QCB that on 28 April Ntahobali held a discussion with *Préfet* Nsabimana at the
5 *préfecture* office and shortly thereafter Ntahobali abducted 30 Tutsi civilians at the *préfecture* office and
6 compelled them at gunpoint to board a vehicle. They were then taken away. Your Honours, this
7 witness, QCB, understood from his observations that Ntahobali had later killed these refugees.

8
9 Your Honours, the Accused, in engaging in this conduct, did not only commit the atrocities of genocide
10 but that he had the specific intent to commit genocide. What more do we need to establish the specific
11 intent, Your Honours, than, to just briefly remind Your Honours, that Ntahobali specifically issued orders
12 to *Interahamwes* to abduct Tutsis from the *préfecture* office, the EER school, the roadblock near his
13 house and the Butare university hospital, his (*inaudible*) when he ordered his subordinate *Interahamwe*
14 to do what they wanted to do with Tutsi girls before killing them and that they should not spare anyone
15 or that they should not treat Tutsi refugees leniently is a clear manifestation of his intent. Your Honour,
16 I direct your attention to the testimony of Witness SJ and TK. And also, Your Honours, when the
17 Accused declared that they were going to kill and that they were going to start with Rwamukwaya's
18 family, Your Honour, the testimony of Witness FA, the intent of the Accused may also be inferred from
19 the fact that he personally repeatedly drove a vehicle to the *préfecture* office where he repeatedly
20 attacked, abducted, raped and killed Tutsis, and also, Your Honours, from the fact that he participated
21 in separating Hutus from Tutsis at a roadblock in front of his house where Tutsis were attacked, raped
22 and killed simply, Your Honours, because they were ethnic Tutsis.

23
24 My Lord, his intent can also be inferred from the fact that he, the Accused, personally handed Tutsi over
25 to *Interahamwes* to be killed after having checked their identity cards. For this, Your Honours, I direct
26 your attention, Your Honours, to Witness SX and Witness TB. It is, therefore, Your Honours,
27 abundantly clear that there is a causal link between Ntahobali's orders and the perpetration of crimes
28 by his subordinates. The accused persons at the *préfecture* office, the roadblock near his house, the
29 EER school and the Butare University Hospital and his physical perpetration of crimes in these
30 locations sufficiently assisted and encouraged *Interahamwes* and soldiers to kill Tutsis.

31
32 Your Honours, the Accused was so determined to kill all Tutsis within Butare town that he did not limit
33 his activities at the *préfecture* office but went to other places, such as the EER where Tutsis took refuge
34 to conduct the same inhuman activities of abducting, raping, and killing Tutsis.

35
36 Your Honours, the testimony of Witness RE, Witness TG, clearly indicates, Your Honours, how people
37 were killed down the EER forest.

1 Your Honours, Witness TB and QY also testified how the Accused Ntahobali was involved in killing
2 people down the EER forest. In these circumstances, Your Honours, the Accused could be found guilty
3 for the crimes of complicity in genocide as an alternative to genocide.

4
5 Your Honours, the Prosecutor submits that the evidence as presented before you is such that the
6 Chamber can safely be assured that the Prosecution has been able to prove beyond reasonable doubt
7 that the Accused committed crimes against humanity where he conducted a pattern of frequent
8 massive large scale widespread or systematic attacks conducted with considerable seriousness on a
9 large group of refugees at the *préfecture* office, the EER school and the roadblock near Ntahobali's
10 residence and also Butare University Hospital.

11
12 Your Honours, while Ntahobali and his mother Nyiramasuhuko were involved in attacking Tutsis in
13 these various locations already highlighted, Nsabimana, the *préfet*, Kanyabashi, the *bourgmestre*,
14 Nteziryayo and Ndayambaje were also involved in other attacks in Kabuye hill, Mugombwa church and
15 Ngoma church within Butare as part of a widespread or systematic attack against Tutsis. There is no
16 doubt, Your Honours, that the civilian population in Butare *préfecture* was the primary target of these
17 attacks conducted by the Accused Ntahobali and his subordinates. There is no doubt that these
18 attacks, killings, rapes and inhuman acts were conducted on these civilians simply, Your Honours,
19 because they were ethnic Tutsis.

20 *(Pages 20 to 43 by Claudette Ask)*

1 1230H

2 MR. DUMBUYA:

3 Your Honours, the Accused, as the evidence shows, murdered many Tutsis in Butare town and Tumba
4 *secteurs*. The Accused, as a leader of a group of *Interahamwes* in Butare town, not only attacked and
5 abducted civilians at the *préfecture* office, but that he actually killed and supervised the killings of
6 refugees at these locations. He personally led attacks at the *préfecture* office where they abducted,
7 undressed and killed Tutsi civilians and loaded both the living and dead onto a truck before taking those
8 who were alive to killing sites.

9

10 My Lord, I just draw your attention, Your Honours, briefly to paragraph 10 to 23 of the
11 Prosecution -- paragraph -- sorry, Your Honours, chapter 4 -- chapter 4 of the Prosecutor's closing brief,
12 paragraph 10 to 23, and also paragraph 43.

13

14 Your Honours, the Accused committed murder where he personally killed a woman on the veranda of
15 the *préfecture* office because, Your Honours, she refused to be raped.

16

17 My Lord, I direct your attention to the testimony of Witness FAP and Witness RE. My Lord, this same
18 witness, FAP, also, My Lord, testified that Ntahobali killed a girl who resisted him in the presence of his
19 mother, Nyiramasuhuko.

20

21 My Lord, the Accused abducted a girl at the roadblock near his house and took the girl to a bridge
22 nearby where he brutally raped her and then killed her with an axe. My Lord, the witness who testified
23 to this, Witness SX, observed wounds on the girl's body, and also, Your Honours, the testimony of
24 Witness TB in this regard, and QCB.

25

26 My Lord, he also gave orders that a Tutsi, Ruvurajabo, who -- My Lord, if I may spell,
27 R-U-V-U-R-A-J-A-B-O. The Accused also gave orders that this Tutsi gentleman be killed at the
28 roadblock near his house.

29

30 My Lord, an old man also described as an *Inkotanyi* was killed in the Accused and Nyiramasuhuko's
31 presence. My Lord, the testimony of Witness FA, My Lord, the Accused also handed over a soldier at
32 this roadblock to be killed.

33

34 Your Honours, in participating collectively with soldiers, his mother, Nyiramasuhuko, and *Interahamwes*,
35 and directly ordering them to commit these crimes and also sometimes helping them, either by way of
36 transporting soldiers and *Interahamwes* or transporting Tutsi civilians to killing sites, the Accused is
37 liable for having committed, ordered, My Lord, or, otherwise aided and abetted in the execution of

1 murder.

2
3 Your Honours, there is abundant evidence from several Prosecution witnesses that the
4 Accused Ntahobali and his mother, Nyiramasuhuko, soldiers and *Interahamwes* abducted Tutsi
5 refugees from the *préfecture* office several times and took them away to be killed elsewhere. My Lord,
6 according to FAP, Prosecution witness, when the vehicle came back after the abductions, there were
7 only *Interahamwes* in it, which led this witness to conclude that those Tutsis taken away had been
8 killed.

9
10 My Lord, those who managed to return to the *préfecture* office reported to Prosecution Witness SJ that
11 victims who were taken away with this vehicle, Your Honours, were encircled, hit with clubs and
12 machetes and thrown alive into a hole or a mass grave.

13
14 Your Honours, the Accused, in exhibiting this intent, his intent to exterminate Tutsis, clearly gave orders
15 to his subordinates, *Interahamwes*, to spare no one. My Lord, for this I direct your attention to
16 chapter 4, paragraph 7 of the brief -- Prosecutor's brief.

17
18 My Lord, let me just direct your attention, Your Honours, to Witness QCB's testimony. This witness
19 happened to be present when the Accused Ntahobali ordered that Tutsis arrested at the fifth roadblock,
20 which was near the EER, be taken to the same place where others were taken to, that is, the EER road.
21 This witness followed them and witnessed a mass killing of Tutsis at the EER road where they were
22 undressed and killed with clubs and machetes. My Lord, this witness indicated that about 200 people
23 were killed.

24
25 It is the submission of the Prosecutor, Your Honours, that it is the unavoidable conclusion from all the
26 evidence, both direct and circumstantial, that the Accused is responsible for mass killing as part of a
27 widespread systematic attack against Tutsi civilians on ethnic grounds.

28
29 Your Honours, the Accused did not only abduct, attack and kill Tutsi refugees in various places, as
30 already stated, but he sometimes raped Tutsi girls and women before killing them. The Accused raped
31 Witness TA at the *préfectural* office. According to this witness, the Accused attacked her and hit her
32 with the side of a blood-stained machete, causing her to fear that he was going to slit her throat.

33
34 Your Honours, the Accused pulled Witness TA from the other refugees and told her that if she refused
35 to take off her clothes he was going to kill her. He then laid Witness TA on the ground and raped her.
36 Your Honours, as if that was not enough suffering, the Accused then handed her to other *Interahamwe*
37 who also continuously raped Witness TA.

1 Your Honours, looking at the Defence closing brief, the Defence argues that it is impossible that so
2 many people could have raped Witness TA and then she was still alive. Your Honours, they have
3 argued that Witness TA -- that the fact that Witness TA survived so many rapes means, My Lord, that
4 she is not speaking the truth.

5
6 My Lord, the Prosecution submits that far from evincing a lie, this evidence shows the extent of the
7 suffering inflicted by the Accused Ntahobali on Witness TA. My Lord, that Witness TA survived, is a
8 testimony to human resilience and not to a capacity to tell untruths.

9
10 Your Honours, the Accused Ntahobali also abducted Witness TN and six other young Tutsi girls took
11 them to Ihuliro hotel and ordered them to have sex with him, and that whosoever refused would be
12 killed. My Lord, these young Tutsi girls were held in a room behind a padlocked door where the
13 Accused subsequently came with soldiers, took the girls out of the room and raped them, and then
14 returned them again to the room. At a point during the act of raping Witness TN, the Accused cut her
15 skirt off and forced a brush handle into her vagina. This witness revealed before you that she felt great
16 pain and started bleeding. Later, Your Honours, as if that was not enough suffering, the Accused
17 ordered her to have sex with other soldiers; that, "If you are tired, you can also use brush handles."
18 And, indeed, Your Honours, these soldiers adhered to the instructions of the Accused Ntahobali and
19 used a brush handle during the process of raping Witness TN.

20
21 Your Honours, Witness QBQ also testified about rapes at the *préfecture* office. Your Honours,
22 sometimes in raping or killing their victims, the Accused Ntahobali and his subordinate *Interahamwes*
23 perpetrated inhumane acts through coercive public nudity and behaviour extorted through threats.

24
25 Several witnesses, including Witness QY, Witness TK, Witness FAP and Witness TA, testified that
26 when the Accused Ntahobali and his mother, Nyiramasuhuko, came to the office -- the *préfecture* office
27 to abduct Tutsi refugees, they were forced to undress in public before they were boarded into a vehicle
28 to be taken away. The Accused and his subordinates terrorised Tutsi refugees at the *préfecture* office,
29 cutting and slashing them with machetes, loading them in vehicles before taking them to their deaths.

30
31 Your Honours, the gravity of the inhumane nature of loading people in vehicles at the *préfecture* office
32 was described by Witness SJ in the following terms:

33
34 "They hit people and threw them into a pickup and then they were thrown into the vehicle just like bags
35 of beans, which were thrown into the car. And after having taken these people, the pickup left."

36
37 Your Honours, the Accused and his subordinates, in most cases, chose certain methods of raping their

1 victims, methods, Your Honours, that caused serious mental and physical sufferings and constituted a
2 serious attack on human dignity. The added agony, suffering and indignity of gang raping was so
3 inhumane, Your Honours, that a victim reported that it was better to be killed than to be raped by
4 four men.

5
6 Your Honours, when Ntahobali wanted to rape a girl, he took the girl from the roadblock to the bridge
7 and stood on one side while his accomplice, Jean Pierre, also stood on the other side. They asked the
8 girl to run back and forth, beating her back and forth, and, later, Your Honours, the Accused Ntahobali
9 brutally undressed this girl, raped her and then killed her with an axe.

10
11 The Prosecutor, Your Honours, urges the Trial Chamber to consider this form of acts as very serious
12 with very high degree of gravity, taking into consideration that these people were Tutsi civilians who had
13 the right to seek refuge in times of imminent danger to their lives. It is a fundamental right to seek
14 sanctuary. Your Honours, it is inhumane to deprive citizens of the ability to rely on their public
15 institutions for sanctuary.

16
17 Your Honours, the Prosecutor submits that there is abundant evidence that Ntahobali was directly
18 involved in the commission of persecutory acts against Tutsis at the *préfecture* office, the roadblock
19 near his house, the EER school, the EER woods and Butare University Hospital, thereby,
20 Your Honours, causing gross or blatant denial of their rights.

21
22
23 Your Honours, looking briefly at the Defence, one could clearly see -- at the Defence case, one could
24 clearly see that the Defence is saying, firstly, Your Honours, that the indictment is so bad that it cannot
25 be cured at all. My Lord, that aspect has already been dealt with by my learned colleague,
26 Ms. Holo Makwaia.

27
28 My Lord, secondly, they are saying that even if Your Honours say that the indictment has been cured,
29 then witnesses are all lying against Ntahobali, or that if you believe a witness, then their stories are so
30 inconsistent that you should not give weight to their testimonies. Yet, Your Honours, they also asserted
31 that the witnesses colluded.

32
33 My Lord, I support, My Lord, what has already been proffered by my learned colleague,
34 Ms. Madeleine Schwarz. My Lord, I will only comment that, Your Honours, these witnesses did not say
35 they were -- they went to the *préfecture* office at the same time and that they were directly at the same
36 location when they made their observations. Even those who might have been, Your Honours, in the
37 same location may not tell the same story with the same sequence and precision. What is important,

1 Your Honours, I submit, is that the key issues forming the basis of the Prosecution case is established.

2
3 What I am trying to do here, Your Honours, is simply to ask the Chamber that you have the record fully
4 before you and that it is for Your Honours to assess the evidence, to determine the credibility of the
5 witnesses, the weight that ought to be attached to each piece of evidence, and to come to a
6 determination on the issue before you, based upon the assessment of the evidence as a whole.

7
8 Your Honours, one of the Accused Ntahobali's principal defences is that he claims to have been in
9 Cyangugu during the week beginning 27th May 1994 to 5th June 1994, and hence, Your Honours,
10 unable to commit the crimes alleged in Butare during that period.

11
12 It is, however, interesting to note, Your Honours, that the Defence for Ntahobali is not asserting, let
13 alone establish, that he was not -- that the Accused was not in Butare town during the period
14 19th April to 27th May. They are not asserting that. They are not disputing that. My Lord, we submit
15 that this period is the period which forms the greater part of the killing of Tutsis in Butare town. This,
16 I submit, Your Honours, is a critical point.

17
18 My Lord, looking at the Defence case, the Prosecution has identified four witnesses which the Defence
19 appears to be relying on as alibi witnesses. My Lord, they appear to be the wife of the Accused -- the
20 wife of the Accused, Beatrice Munyaneza; Defence witness for Ntahobali, NMBNP; Witness WDUSA,
21 W-D-U-S-A; and, of course, Your Honours, the Accused himself. Though, Your Honours, I briefly want
22 to note that the only witnesses for which notice was given was Beatrice Munyaneza and Witness
23 WDUSA as alibi witnesses. Witness NMBNP indeed testified to some extent in relation to the alibi, but
24 no notice was given in relation to that witness.

25
26 Your Honours, I just want to draw your attention to key points, which I do not intend to elaborate on as
27 they are already elaborated on in the brief, but merely to state, Your Honours, that the alibi raised by
28 the Defence was raised at an extremely late stage in the proceedings, well after the limit set out in
29 Rule 67A for alibi notification. My Lord, up to date, neither the Accused himself nor the Defence have
30 provided to the Chamber a convincing explanation as to why the alibi was first raised at such an
31 extraordinarily late stage.

32 MR. PRESIDENT:

33 What would be that ordinarily late stage?

34 MR. DUMBUYA:

35 Your Honours, the alibi -- My Lord, the alibi -- My Lord, the Accused waited until the
36 29th September 2005, almost four years after the trial began, to give notice that he would rely on an
37 alibi. My Lord, it was not referred to in his pretrial brief, dated 31st December 2004, nor in his amended

1 pretrial brief, dated 1st August 2005, My Lord, and also this notice was given after the close of the
2 Prosecution case. And, therefore, Your Honours, these issues relating to the alibi were never put to
3 Prosecution witnesses. In fact, Your Honours, it was not raised during the opening statement of the
4 Ntahobali Defence.

5
6 My Lord, all these can be taken into account when weighing the credibility of his account of being in
7 Cyangugu. My Lord, we submit that the Accused's purported alibi evidence is entirely without merit and
8 should be given no weight whatsoever for the reasons I intend to briefly draw your attention to.

9
10 My Lord, the Accused's evidence stood in stark contrast to an account he had given in a pretrial
11 interview on 26th July 1997. This interview, it's my submission, was much earlier in time than his
12 testimony and was conducted, Your Honours, at a time when it might be expected his recollection of
13 details would have been much fresher.

14
15 My Lord, the Accused stated that he told his lawyer about the alibi, though he was extremely vague
16 about when this was done. My Lord, I submit that if this had been done earlier on, one would have
17 expected the Defence to have put this matter during cross-examination, the very least, Your Honours,
18 in his pretrial brief or during his opening statement. This being the case, and it being such a crucial
19 defence to his case, we submit that his failure indicates a lack of credibility to the story.

20
21 Your Honours, when it was put to the Accused during his testimony in Court that -- My Lord, if you -- let
22 me just draw your attention to the transcripts at once, transcript of 24th May 2006, My Lord,
23 24th May 2006 --

24 MR. PRESIDENT:

25 English?

26 MR. DUMBUYA:

27 English, Your Honours, pages 28 to 29.

28
29 Your Honours, when it was put to the Accused during his testimony in Court that when he was
30 questioned on the 26th July 1997, he said he had gone to Cyangugu to see the husband of his
31 sister-in-law, who had fallen sick. Your Honours, the Accused replied that he did not -- that he did get
32 sick and he had visited him, but he had gone from Gisenyi. My Lord, when further probe was done into
33 this issue, the Accused said he had mixed up events because of the circumstances under which the
34 questioning took place and that he had mixed up the two trips. My Lord, it was further put to him that
35 when he was questioned on the 26th, he only mentioned leaving Butare on one occasion to go to
36 Cyangugu to visit someone who was ill.

37 My Lord, the Accused stated that he went to Cyangugu on two occasions because he crossed the

1 border from Cyangugu. And, My Lord, in this respect, the issue was during the period April to July, and
2 yet the Accused, in trying to cover up, decided to bring this last-minute explanation that he crossed the
3 border, that was when he was going away, My Lord, which was not a point at issue.

4
5 My Lord, the Accused also suggested that in his statement, My Lord, when further probe was made into
6 this same issue, that if his statement had been read to him he would have had the opportunity -- or
7 been able to correct that passage about visiting the man who was ill. My Lord, the transcript was put to
8 him again that he went to Cyangugu once to visit his sister-in-law's husband. My Lord, the Accused at
9 that point accepted that he had not mentioned he had gone to Cyangugu in order to join his wife
10 because he had a quarrel with his sister. My Lord, the Accused said in his mind he was unable to
11 differentiate the two occasions. My Lord, he said he hadn't talked about the quarrel with his sister
12 because it was a personal problem. My Lord, it is the submission of the Prosecution, My Lord, that an
13 alibi defence is such a crucial element in the Defence case that the details relating to that alibi could not
14 be a personal problem and that it ought to have been given to the investigator, or, at least, to the
15 Prosecutor at the earliest opportunity the Accused had.

16
17 My Lord, if I may draw your attention to a last point in this issue. When the transcript of the interview
18 was put to the Accused again by the gentleman who was interviewing him, who was Petit, My Lord, this
19 is what the Accused stated:

20
21 "Well, you see, we may. A person may tell you that he saw me when, in fact, it wasn't me. They will
22 describe what I said, what I look like and all that in one way or another, what hour, et cetera, et cetera.
23 And maybe on that day I was in Cyangugu, but on the day he said he saw me maybe I was somewhere
24 else."

25
26 All that, My Lord -- these are the answers which were given, and all those answers, Your Honours, was
27 "maybe, maybe." My Lord, the Accused agreed that the subject of going to Cyangugu to meet his wife
28 was never discussed.

29
30 Your Honours, when you look at all the testimonies of the alibi witnesses, for example, the testimony of
31 one of the alibi, Witness WDUSA, who, Your Honours, indicated that --

32 MR. PRESIDENT:

33 We will be stopping at one o'clock to take the lunch break, so you may wish to organise your work. We
34 will come back and you will proceed from there. Just a minute.

35
36 Okay, we will take the break. But before we do so, we would like to get a clarification from
37 Learned Counsel, Mr. Dumbuya. The references you are making with regard to that interview, that prior

1 statement, are those the issues that were put to the Accused person in cross-examination when he was
2 being cross-examined on the basis of the alleged -- on the basis of the prior statement?

3 MR. DUMBUYA:

4 Indeed, Your Honours.

5 MR. PRESIDENT:

6 Okay, because we want to be sure about that because the document was admitted only for that
7 purpose and only those elements that were specified in the course of the cross-examination that formed
8 part and parcel of the evidence, not the rest of the document as such. So we just want to be sure. Is
9 that what you are addressing, Learned Counsel?

10 MR. DUMBUYA:

11 Indeed, Your Honours. And, Your Honours, if I may just advise, I barely have about 10 minutes to go.
12 It's very short, Your Honours.

13 MR. PRESIDENT:

14 All right. Okay, I think we will take it -- all right, Mr. Dumbuya, we will take a break and when we come
15 you will have your 10 minutes. Is that so? We take note of that.

16 MR. DUMBUYA:

17 If Your Honours pleases.

18 MR. PRESIDENT:

19 All right. We resume at 2:30 in the afternoon. Until then, this proceeding stands adjourned.
20 (*Court recessed from 1302H to 1431H*)

21 MR. PRESIDENT:

22 Yes, the proceedings are resumed.

23
24 Yes, Mr. Dumbuya, Learned Counsel, you may continue with your oral argument. Yes, Counsel, you
25 may begin.

26 MR. DUMBUYA:

27 Good afternoon, Your Honour.

28
29 Your Honours, I would like to draw your attention -- I am sorry, but specifically I have highlighted this
30 issue, but I just want to stress that with regard to Exhibit 449, P (*sic*), that I would stress the issue again
31 of drawing your attention, apart from the last point which I indicated, I drew your attention to the finding
32 of these killings, but I want to just stress that it's important for you to note specifically the deliberation of
33 the Court, at paragraph 19 of the deliberation in which the Court then notes that Corporal Nzanzibira is
34 charged with killing people at the *secteur* office, including Rwambugiri, that witnesses -- that's the only
35 two witnesses who testified on this -- in this regard. Witnesses Evariste, My Lord, and Laurence stated
36 that they saw the Accused amongst the assailants who killed these people, My Lord. That's very
37 important, Your Honours, because they saw this Accused amongst the assailants. So he was not the

1 only person who was involved.

2

3 Your Honours, I was dealing with the issue of the alibi and, Your Honours, if you look at the testimony
4 of the Accused, Ntahobali, he stated that in Cyangugu he saw Witness WDUSA on three occasions in
5 drinking places in Cyangugu hotels, and yet, Your Honours, he did not give the names of these hotels,
6 and even this witness himself, WDUSA, could not offer exact dates as to when he saw the Accused on
7 those three occasions.

8

9 Further, Your Honours, the evidence of this witness, WDUSA, was inconsistent with that of other alibi
10 witnesses. For example, Your Honours, the Accused's wife who testified, that's Beatrice Munyaneza,
11 stated that they met at the *Hôtel Chute*, whereas, Your Honours -- that's what Beatrice said, the wife of
12 the Accused, whereas this witness, WDUSA, stated to this Court that, in fact, it was *Hôtel Ituze*.

13 My Lords, these are two different places in Cyangugu and two different hotels in two different places,
14 Your Honours.

15

16 Your Honours, it seems that the Accused Ntahobali remembered the date 27th May 1994 quite well
17 because, Your Honours, in his testimony he stated that, it was the grassroots operation. He also
18 remembered going to the bank. Yet, Your Honours, he was unable to say if it was the 27th May or the
19 26th May (*inaudible*). And, Your Honours, the wife, Beatrice Munyaneza, also had her own dates. She
20 would say it was the 27th or the 28th.

21 MR. PRESIDENT:

22 Yes, Learned Counsel, could you please go back to the names of the hotels. I think there's *Hôtel* --

23 MR. DUMBUYA:

24 I am sorry, Your Honours, *Hôtel Chutes*, C-H-U-T-E-S, Chutes.

25 MR. PRESIDENT:

26 Okay.

27 MR. DUMBUYA:

28 That was what Beatrice said, but the witness, WDUSA, said that it was *Hôtel Ituze*, which is, I-T-U-Z-E.

29 These are two different hotels, My Lord, in Cyangugu.

30 MR. PRESIDENT:

31 Just a minute, Counsel. Could you also spell out the hotel, or maybe the interpreter could do so? Is it

32 *Hôtel Ituze* or what?

33 MR. DUMBUYA:

34 Yes, Your Honours, it's *Hôtel Ituze*, which is I-T-U-Z-E.

35 MR. PRESIDENT:

36 Yes, go on, Learned Counsel.

37

1 MR. DUMBUYA:

2 Your Honours, you would also recall the testimony of the Accused again where he testified that he was
3 ill around 28th. In fact, that's part of their defence, that the Accused was sick around 28th April and
4 that, Your Honours, he spent about seven days with a drip.

5
6 Your Honours, when it was put to him that his father, mother and two other witnesses he relied on had
7 never mentioned he was sick, especially witnesses who were at the point in time residing at the
8 Ihuliro hotel, My Lord, the Accused answered that it was because they were not asked. And when it
9 was also put to him that, "Well, you could have informed the investigator when you were being
10 interviewed in July 1997," My Lord, his response was also that, My Lord, he was not questioned in that
11 regard.

12
13 My Lord, I submit that the issue and details of an alibi is one for the Accused to submit to the Chamber
14 and to give prompt and adequate details where it is required.

15
16 Your Honours, I want to submit finally at this point that the Prosecutor has been able sufficiently to
17 prove beyond reasonable doubt that the Accused, Shalom Ntahobali, committed the offences, as
18 charged in his indictment.

19
20 Your Honours, I would end up with a last word in relation to the *préfectural* office, the EER,
21 Butare University Hospital and the Ihuliro hotel. My Lord, these places are places which are so close to
22 each other, as you heard from witnesses, Prosecution witnesses, Your Honours, they are so close to
23 each other that, I submit, they're distances which one can cover with -- just within one around, My Lord,
24 in about 20 minutes.

25
26 Your Honours, I have made this statement -- this submission in relation to the Defence's closing brief
27 where they asserted that the Accused could not have moved in so many places. One would begin to
28 wonder that these are places that are so far off from each other. My Lord, I submit that this is not the
29 case and that the Butare University Hospital and Ihuliro hotel and places like ESO and the EER and the
30 *préfecture* office are very, very close to each other, as you've heard from Prosecution witnesses.

31
32 My Lord, at this point, My Lord, I submit that, except you ask of me to further elaborate on any other
33 issue, this is the end, My Lord, of my argument this afternoon. Thank you, Your Honours.

34 MR. PRESIDENT:

35 Thank you. Thank you, Learned Counsel.

36

37 Who is next?

1 MS. WHEST:

2 Good afternoon, Mr. President, Your Honours. My task today is to address you with relation to the
3 charges against Sylvain Nsabimana, first, to give you a quick overview of Sylvain Nsabimana, the
4 person.

5
6 In 1994, Sylvain Nsabimana was a well-respected and educated Rwandan. You heard him testify that
7 he had studied abroad, the Soviet Union, Canada, Mexico, Denmark. This made him influential.

8
9 You heard him testify that he had been in charge of various projects in Rwanda, such as coffee, an
10 important money earner at that time. This made him influential.

11
12 You heard him testify that when multiparty politics began in 1991, he became a member of the PSD,
13 the Social Democratic Party. He was an elected member of the PSD regional committee in Kigali. He
14 organised rallies at the *secteur* level for the PSD. He was present at the CND to elect the executive
15 committee. He was, therefore, a politically active member of Rwandan society. This made him
16 influential.

17
18 When he was testifying about multiparty politics in 1991, Sylvain Nsabimana said in evidence, and I
19 quote: "At the time, each and every one was seeking alliances here and there, and people could even
20 have deals with the devil." This he said in examination-in-chief on the 11th of September 2006.

21
22 For most of his life, Sylvain Nsabimana was careless with the truth or, in other words, he was a stranger
23 with the truth, for example, beginning with his date of birth.

24
25 In evidence, he gave his date of birth as being the 29th of July 1951. He had used a false date of birth
26 since the age of 14. He had obtained a false birth certificate in which his age was reduced by two years
27 in order to qualify him to sit for an examination for which he had already passed the age limit. He also
28 admitted that he has, since that age of 14, been using documents based on that false birth certificate.

29
30 He was appointed *préfet* of Butare *préfecture* by the president of the republic himself on the
31 19th of April 1994 at a big ceremony attended by the president, government ministers and many other
32 authorities, including the Accused. The president gave him a mission to help eliminate the Tutsi ethnic
33 group and he embraced that mission enthusiastically for the approximately 60 days he was *préfet* and
34 even beyond. Why do I say, "And even beyond?" Because he continued to go to meetings after the
35 17th of June 1994, the day it was announced over the radio that he was removed as *préfet*. He went to
36 meetings in Ndora and Muganza *communes* on the 22nd of June 1994, when he didn't have to.

37

1 You heard Sylvain Nsabimana testify that on the 22nd of June he went to the *préfecture* office and
2 asked Alphonse Nteziryayo, the new *préfet*, for petrol. He obtained the petrol, which shows that he was
3 still highly regarded by the administration, even though he had been removed by the interim
4 government a few days before.

5
6 Sylvain Nsabimana testified that Alphonse Nteziryayo told him he was going to Ndora.
7 Sylvain Nsabimana went to Ndora for the meeting, which was for the swearing-in for the new
8 *bourgmestre*, Fidélé Uwizeye. I will spell that. Fidélé, F-I-D-E-L-E; Uwizeye, U-W-I-Z-E-Y-E.

9
10 Sylvain Nsabimana heard that Alphonse Nteziryayo was also going to Muganza and he decided to go
11 to that meeting also. He was no longer *préfet*, yet he went to these meetings. He said in evidence that
12 it was to complete an investigation into two deaths that he did not complete while he was *préfet*. It is
13 interesting to note that the deaths he was investigating, those two deaths, were of Hutus.

14
15 Sylvain Nsabimana testified that he was unable to say what Alphonse Nteziryayo said in his speech in
16 Ndora, even though he was there from the beginning to the end of meeting. He said that he was not
17 concentrating.

18
19 Your Honours, this is evidence from a well-educated Rwandan man, seated among the dignitaries at
20 the meeting. His inability to remember is a thread which Your Honours would have noticed ran
21 throughout his testimony. Yet the Defence of Sylvain Nsabimana demand that the poor, illiterate,
22 hungry Tutsis, sleeping outdoors at the *préfecture* office during the April rains should be able to
23 remember precise details of the times and locations, for example, in the grounds of the *préfecture* office
24 where an abduction occurred, for example, that of Donat and Pierre, amongst others. Donat, I will
25 spell, D-O-N-A-T; and Pierre is the French for "Peter", P-I-E-R-R-E.

26
27 Sylvain Nsabimana's role in the genocide plan of 1994 was to convene and attend meetings and do all
28 in his power to achieve the mission he had been assigned. You would recall that
29 President Sindikubwabo stated that Nsabimana had promised to do his utmost in discharging his
30 duties, had asked for support, and this support was promised by the president. This, Mr. President, is
31 to be found in Exhibit P. 151B, Prosecution Exhibit P. 151B. This was tendered into evidence by
32 Professor André Guichaoua on the 29th of June 2004. The president's words were, and I quote:

33
34 "I am happy with the installation ceremony of the *préfet* that I attended. I was myself part of the
35 population under his care. He has just promised us to do his utmost in discharging his duties. He has
36 also asked for our support. Mr. *Préfet*, you can be sure of my support in advance."