

THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

CASE NO.: ICTR-99-54-A
APPEALS CHAMBER

JEAN DE DIEU KAMUHANDA
v.
THE PROSECUTOR
OF THE TRIBUNAL

THURSDAY, 19 MAY 2005
0910H
APPEALS HEARING

Before the Judges:

Theodor Meron, Presiding
Mohamed Shahabuddeen
Florence Ndepele Mwachande Mumba
Wolfgang Schomburg
Inés Monica Weinberg de Roca

For the Registry:

Mr. Christopher Fry
Mr. Emmanuel Mwanja

For the Prosecution:

Mr. James Stewart
Ms. Amanda Reichman
Mr. Neville Weston
Ms. Innke Onsea
Mr. Abdoulaye Seye

For the Accused Jean de Dieu Kamuhanda :

Ms. Aïcha Condé

Court Reporters:

Ms. Sithembiso Moyo
Ms. Verna Butler
Ms. Gifty C. Harding
Ms. Donna M. Lewis
Ms. Karen Holm

I N D E XWITNESSFor the Prosecution:

WITNESS GEK

Examination-in-chief by Mr. Stewart	2
Cross-examination by Ms. Condé (<i>commenced in closed session</i>)	12
Re-examination by Mr. Stewart (<i>commenced in closed session</i>)	22

PROCEEDINGS

1

2 MR. PRESIDENT:

3 We will now resume our session and proceed to the examination of Prosecution rebuttal Witness
4 GEK -- GEK, and the Court is now ready to call Witness GEK.

5 MR. STEWART:

6 Mr. President, good morning. While we await the arrival of the next witness, may I ask that certain
7 documents that were referred to in cross-examination yesterday evening be marked as the next series
8 of exhibits, as a housekeeping matter.

9 MR. PRESIDENT:

10 Yes, would you proceed?

11 MR. STEWART:

12 The next document should be the *pro justitia* statement to the Rwandan authorities of Witness GAG in
13 your binder, as this appears in both English and Kinyarwanda under the label GAG2. So that should be
14 the next exhibit. I am not sure what number we are at. It should be Exhibit 6, if I am not mistaken, but
15 we need confirmation from the registry.

16

17 The next exhibit should be the statement to the Prosecution investigators of 5 May 2005, and that is in
18 your binders under the label GAG3. And the final exhibit -- for completeness, because it was referred
19 to in cross-examination -- is a document entitled "Additional information from Witness GAG" dated
20 16th May 2005, and it was given in the context of disclosure to counsel for the Appellant. But for
21 completeness of the record, it should be part of the record -- whatever use you want to make of it, and it
22 is in your binders as well.

23 MR. PRESIDENT:

24 I take it that the Defence has no problem with that.

25 MS. CONDÉ:

26 No problems, Mr. President.

27 MR. PRESIDENT:

28 Madam Condé, now we are ready to proceed.

29

30 Thank you, Mr. Stewart. We are now ready for Prosecution Witness GEK.

31

32 Witness GEK, you are on the stand. May I ask you please -- first, can you hear me?

33 THE WITNESS:

34 Yes, I can hear you.

35 MR. PRESIDENT:

36 And do you understand?

37

1 THE WITNESS:

2 I can hear you.

3 MR. PRESIDENT:

4 May I ask you please to stand up and read the solemn declaration given to you by the usher?

5 *(Declaration made by Witness GEK in Kinyarwanda)*

6 MR. PRESIDENT:

7 Thank you, Witness.

8

9 Thank you, Mr. Usher.

10

11 Mr. Stewart, your witness.

12 MR. STEWART:

13 Thank you, Mr. President. I propose to proceed as we did yesterday, I will do as much as I can in our
14 current open session, and then when I come to areas of concern with respect to the identification --
15 potential identification of people who are protected, I will alert the Chamber to that. I have one other
16 area that I am going to alert you to as well, which is sensitive and I will explain that when I come to it.

17

WITNESS GEK,

18

first having been duly sworn,

19

testified as follows:

20

EXAMINATION-IN-CHIEF

21 BY MR. STEWART:

22 Q. Good morning, Witness.

23 A. Good morning, Prosecutor.

24 Q. I am going to use the pseudonym GEK when I address you, Witness, and I will avoid identifying you in
25 open court.

26 A. That is okay.

27 Q. I want to deal very briefly with a criminal conviction and appeal that affects you. I understand that you
28 are in prison in Kigali, Rwanda, at the present time.

29 A. That is correct.

30 Q. I understand you have been convicted in the Rwandan court of participation in a murder?

31 A. That is correct.

32 Q. Have you appealed your conviction?

33 A. Yes, I have lodged an appeal.

34 Q. Has your appeal been decided yet?

35 A. I don't know what you mean when you talk about a decision on my appeal or whether you are talking
36 about my appearance before the court of appeal.

37 Q. Well, I suppose I am asking about both. Have you ever had a chance to have your appeal heard yet?

- 1 Perhaps that is a better question.
- 2 A. I have already appeared before the court of appeal, but a decision has not yet been made.
- 3 Q. Thank you. I would like now to come to your background very briefly. You are a citizen of Rwanda?
- 4 A. That is correct.
- 5 Q. You testified at the trial of Kamuhanda here in Arusha under the pseudonym GEK; is that right?
- 6 A. That is correct.
- 7 Q. You testified at the trial of Kamuhanda in Arusha in September 2001, and you were recalled to testify
8 again in January 2003; is that right?
- 9 A. That is correct.
- 10 Q. Witness GEK, I understand that you are a witness in other proceedings before this Tribunal as well?
- 11 A. That is correct.
- 12 Q. Since the time you finished your testimony in the Kamuhanda trial, have you had to return to Arusha to
13 testify in the trial of another accused before the Tribunal?
- 14 A. Yes, I have been here to testify.
- 15 Q. Now, I am going to come back to this later, perhaps in closed session, depending on the direction of the
16 Chamber. So I want to leave that for the moment, Witness. Do you follow me?
- 17 A. Yes, I do.
- 18 Q. What I would like to ask you now in open session is this: Witness GEK, when you testified at
19 Kamuhanda's trial in September 2001, and again, in January 2003, did you tell the Judges of the
20 Trial Chamber the truth?
- 21 A. Yes, I told them the truth.
- 22 Q. Now, I would like to move on in open session to certain allegations that are being made and ask you
23 about those allegations. But first, let me ask you some background questions. Did you ever operate a
24 bar?
- 25 A. I had a drinking joint as part of my house. I wouldn't say really it is a bar, because a bar is something
26 big -- very big.
- 27 Q. You said that this was in your house, how much space in the house did it occupy?
- 28 A. I would say a room in my house.
- 29 Q. And was this small drinking establishment open everyday?
- 30 A. That drinking establishment was open only during the market days, normally on a Thursday (*sic*).
- 31 Q. And why did you open it on those days?
- 32 A. It wasn't open on those days; it was open only on Tuesday.
- 33 Q. My question is: Why did you open it on that particular day, why on the market day?
- 34 A. It is because Tuesday was a market day.
- 35 Q. Perhaps the answer is obvious, but why did you open it on the market day? What was the interest you
36 had in opening it on a market day in particular?
- 37 A. It got a lot of customers to come and drink in my drinking establishment.

1 Q. All right. And during -- what time period -- I am talking in terms of years, if that is appropriate, did you
2 have this small establishment?

3 A. As from 1995 right up to 1996, it was operating. In 1997 I got a job and I stopped operating that
4 drinking establishment.

5 Q. All right. Now, I am going to come to some questions about particular individuals in closed session,
6 Witness GEK, but I just want to go through some allegations and --

7 MR. STEWART:

8 Mr. President, I appreciate that some of these allegations have singularly failed to materialise in
9 testimony, but for the sake of thoroughness, I am going to take them from the statements that you have
10 and put them to the witness.

11 BY MR. STEWART:

12 Q. So just bear with me, Witness, I will read the first one. "It has been alleged that meetings were held in
13 your bar and that you told people at the meetings that Kamuhanda had prepared and directed the
14 attack on the refugees at the Protestant Parish of Gikomero; is this true?"

15 A. Well, that is not correct. I never convened any meeting.

16 Q. It is alleged that you told the people at the meetings that you had witnessed the preparation of this
17 attack and that the arms that had been used in the attack had been stockpiled at your house; is this
18 true?

19 A. That is not correct, because in my evidence, I never said that arms or weapons were stored at my
20 house.

21 Q. It is alleged that you told people to go back to their *cellule* of origin and sensitise other people who had
22 lived through the massacre at Gikomero Protestant parish to come and charge Kamuhanda by saying
23 that he was at the site of the massacre; is this so?

24 A. No, that is not correct. And those who testified were survivors from that school and those are the
25 people who knew what happened at that place.

26 Q. It has also been alleged that you orchestrated a lie and incited people to say Kamuhanda was
27 responsible for the massacre at the Gikomero Protestant parish, what do you say to that?

28 A. That is not true. I could not encourage people to appear here and say that he was at the school,
29 whereas those people were survivors from the school. It was not of any interest to me to do so. I think
30 the people who came and testified were adults, mature people. I couldn't be encouraging people to
31 engage in telling such lies. They came -- I couldn't encourage them to come and testify along those
32 lines. After what happened in Rwanda, if someone were going to tell you that he had been told a lie,
33 you better not believe him.

34 Q. It is also -- it has also been alleged that you persuaded people to testify that it was Kamuhanda who
35 directed the attack and gave the orders to start the killing by saying "*Mukore*," what do you say to that?

36 A. Those who were saying that are liars. I am testifying on the event about which I am sure if those
37 people claim or allege that I am the one who encouraged them to say what they said, that is not true. I

- 1 was not at that school where he is alleged to have issued the orders for a beginning of the massacres.
- 2 Q. Finally, Witness GEK, it has been alleged that people were supposed to testify that it was a person who
3 is now dead by the name of Nzaramba, who pointed out Kamuhanda and said: "Now that Kamuhanda
4 has arrived, it is finished for us Tutsis." Did you have anything to do with such an alleged plan?
- 5 A. I don't even know Nzaramba, and I wasn't there when he is alleged to have said what he said. So, I
6 cannot dare say that I know anything about it.
- 7 Q. Now, Witness GEK, after the war, I suppose after July 1994, did you ever speak to other people about
8 what had happened to you during the time of the conflict, what had been your experience?
- 9 A. In view of the fact that I was a survivor and there were other members of my family who were survivors,
10 it is obvious that we talked about these matters, particularly during the burials and particularly when
11 those people came to visit me.
- 12 Q. Now, the Appeals Chamber knows that you testified at Kamuhanda's trial and gave evidence against
13 him. Before that happened -- before you came to Arusha, do you know whether other people in the
14 area where you lived knew that you were the person who had evidence against Kamuhanda?
- 15 A. I can't say so, but in view of the evidence that I gave and which was broadcast by radio stations, and
16 when people were saying that I was the wife of Kamuhanda's cousin -- it is possible that people were
17 aware or people spoke about it, but I know nothing.

18 MR. STEWART:

19 Mr. President, clearly, I need to ask this witness about certain specific individuals that we have been
20 hearing about, and that I expect should be done in closed session. But there is another matter I wish to
21 raise with her, and given the nature of the evidence and my friend is aware of this evidence, it relates to
22 an approach made to the witness. I would prefer to deal with it in open session, but there are certain
23 very sensitive issues involved in this evidence and a safer course -- I am sorry to be speaking so
24 critical, but we are in open session. The safer course would be to do it in closed session, for the
25 protection of those involved.

26 MR. PRESIDENT:

27 I think it would be better now to go into closed session. I see no objection from the Defence.

28

29 Closed session, please.

30 *(At this point in the proceedings, a portion of the transcript [pages 6 to 24] was extracted and sealed
31 under separate cover as the session was heard in camera).*

32 *(Pages 1 to 5 by Sithembiso Moyo)*

33

34

35

36

37

1 (Court resumed at 1110H)

2 MR. PRESIDENT:

3 We are in open session. You may be seated. Okay, let me remind you -- let me remind you where we
4 stand now. We heard the Witness GEK and we are now back to Madam Condé who wanted to present
5 a motion to the Court. Madam Condé, if you have a motion, I would appreciate it if you would read it
6 slowly to us.

7 MR. STEWART:

8 I do apologise, Mr. President. Before Madam Condé launches on her motion, I was just going to
9 suggest, if you would, that we mark certain exhibits, as housekeeping, just to tidy up the exhibits.

10 MR. PRESIDENT:

11 Yes, sure.

12 MR. STEWART:

13 The transcript of the interview of 10th May 2005 of the Prosecution investigators with Witness GEK,
14 which is labelled GEK-3 in your binder, was used in cross-examination and I suggest that it should be
15 marked as an exhibit for whatever use you wish to give in your deliberations. That would be the next
16 exhibit.

17 MR. STEWART:

18 Mr. President, last night we had a search done of our databases in an effort to locate any statement
19 that may have been given by Witness GAX, recanting her evidence, and we have the printout of the
20 result of that search. We had disclosed to Ms. Condé, and there were certain documents referred to in
21 the printout that my colleague Mr. Seye has now shown to Ms. Condé's assistant. We can produce the
22 same document, if necessary, to the Chamber. We would be glad to. But I just wondered if we could,
23 on consent, mark the result of the search and I will just go through the entries so that you are clear on
24 what they are. The interest, of course, is that there is nothing in our database relating to the incident
25 that she described in her evidence. Now, in complete fairness and honesty, I have to say that, given
26 that the process is a human process, there is always the possibility that a document doesn't find its way
27 into the database. That's been known to happen before, but normally anything that has been received
28 from a witness is entered into the database and is available upon a search. The search has been done
29 and there is nothing in our database, and I just wanted the Chamber to, at least, have the result of that
30 search. If Ms. Condé agrees, I can produce that to the registry to have it marked, and we have enough
31 copies, of course, for you.

32 MR. PRESIDENT:

33 Madam Condé.

34 MS. CONDÉ:

35 No, objection, Mr. President. Except for the list of the documents, I don't see the purpose of tendering
36 that document. I don't know what it is about. I have a witness who says that she was heard by the
37 investigators. That document was not disclosed to me. I don't know whether it exists or not. My client

1 says something was signed. I don't think it proves anything. I don't see the purpose of this. I am
2 asking that that list be excluded. Now, if I have something that was -- if there was a document which I
3 could have considered or examined with my client, if it was merely to have a list where this name does
4 not appear, really, Mr. President, I find myself bound to object to the tendering of that document.

5 MR. PRESIDENT:

6 Okay, there is no consent, so let's go on.

7 MR. STEWART:

8 All right, Mr. President, I would then ask you and the Chamber to accept whether there is a consent or
9 not. And I might just clarify that Ms. Condé has all of documents that are listed in the database search,
10 except for a document entitled "Internal memo" and the French translation of that internal memo, and
11 those have been shown to her assistant, and that's the document I am prepared to produce to you,
12 even though normally it is protected by Rule 70(A), so that you are satisfied that we are not hiding
13 anything. The document only goes so far as to establish that there is nothing in our databases that
14 supports what GEX said and, in my submission, that is some evidence that is important for you to have.

15 MR. PRESIDENT:

16 Why don't you submit the document to the Bench. We will rule on that later.

17 MR. STEWART:

18 All right. Thank you very much. If I might just produce the document to the registry to be marked --
19 what's the word for it -- contingently, and I will produce copies of this document for the members of the
20 Bench. If you wish, I can just explain what the entries mean, if that would assist the Bench, and then I'll
21 sit down.

22 MR. PRESIDENT:

23 I don't think that we need explanations about this document.

24 MR. STEWART:

25 All right.

26 MR. PRESIDENT:

27 Our hearing time is at a premium.

28 MR. STEWART:

29 Thank you.

30 MR. PRESIDENT:

31 Now, Madam Condé, we have not yet decided to admit this document. We will give you our ruling on
32 that later, so if you would proceed now to your motion. You advised us that you would want to make a
33 motion. Let's have the motion now.

34 MS. CONDÉ:

35 I will be arguing that motion but, before that, you will recall that I had said here that it was in July 2003
36 that we learned that GEX intended to recant. I think it was in March 2004 that she was met. Now,
37 when she came here, she said, prior to expressing her intention to recant, she had then -- had then met

1 with the Prosecutor and given a document. Now, I see here there is a memo, addressed to the
2 Prosecutor, dated 16th January 2003. Now, if I don't have that memo, I don't see the purpose of that
3 memo. It might be something crucial. If you are going to rule on the basis of that document, I would
4 like to have a copy of the memo.

5

6 Now, let me get on with my motion.

7 MR. STEWART:

8 It's an external memo relating to the transmission of the *pro justitia* statements of a number of
9 witnesses. A number of them were used in the trial to cross-examine Defence witnesses. But, we will
10 produce the memo to the counsel for the Appellant and the Bench so there can be no question. Thank
11 you.

12 MR. PRESIDENT:

13 Thank you. Let's go to the motion, Madam Condé.

14

15

16 MS. CONDÉ:

17 Yes, Mr. President. Mr. President, when Witness GEK was heard, she said that two persons working in
18 the Tribunal asked her whether she would accept to withdraw her statement in exchange for something.
19 If that were to be the case, these are accusations of an extreme gravity. Furthermore --

20 MR. STEWART:

21 We went into closed session just to protect people against speculation. This will run around the entire
22 institution. Ms. Condé is an experienced counsel. She saw what we did. Does she not understand --

23 MR. PRESIDENT:

24 One second, Mr. Stewart.

25

26 Your motion will not refer to any names, will it?

27 MR. STEWART:

28 Thank you, Mr. President.

29 MR. PRESIDENT:

30 I am embarrassed -- I mean, I am not happy about having a motion presented in a closed court,
31 Mr. Stewart.

32 MR. STEWART:

33 I understand perfectly. I understand the pressures that weigh on these matters.

34 MR. PRESIDENT:

35 The counsel for the Defence assures us that she will not, in an open court, refer to names, and I think
36 on that basis you have no problem.

37

1 MR. STEWART:

2 The less said about who the people are, even in terms of their function, the better. That's my --

3 MR. PRESIDENT:

4 You know who those people are and their functions so you can be fairly abstract about it. Please,
5 proceed.

6 MS. CONDÉ:

7 So I was saying, Witness GEK stated that two persons working within this Tribunal approached her and
8 that these two people tried to obtain a statement, contrary to the testimony she had given before the
9 Court. And since -- prior to my (*sic*) interruption by the Prosecutor, in my view, as I was saying, this
10 was an accusation of the extreme gravity. If they turn out to be substantiated, it would require that
11 people be seriously penalised, but that's not all. The allegations made by the lady create a doubt in
12 connection with Mr. Kamuhanda's defence. For sure, she did not say that it was either counsel for or
13 legal assistant of the Defence team who conveyed that message. She talked about the wife and the
14 brother of my client. But indirectly, or impliedly, the wife and the brother of my client could bring up
15 such information and if that turns out to be right, it would have certain professional consequences. In
16 fact, I could be disbarred, and people may be encouraged to make false accusations, so it is a threat or
17 a danger to both officials of the Tribunal, and it is a danger for me. I could be disbarred. Because you
18 might have noticed that I am a member of the Bar in London and I am supposed to conduct myself in a
19 manner that is above reproach, and that creates problems for me.

20
21 Again, previously, I got the document on Monday, on the 16th of this month. On the basis of that
22 document I went to meet the boss of those two people, and I told him that this is what appeared in the
23 document and I felt it was serious and it was necessary for me to call those two people, for them to
24 come here and explain themselves. Further, we tried to look for the people concerned, to inform them
25 that they might be called, to tell them to be ready. I didn't know how this was going to happen. He said
26 that, "There is a witness who will be appearing on the 18th and if that witness does make reference to
27 both of you, I will be calling you to appear here and explain yourselves." They told me that he would be
28 ready to appear and explain themselves (*sic*). I am submitting that what is being produced as
29 testimony by this witness is completely false. I say she has lied. She has lied and I'm -- her credibility
30 is in question. I believe we should check on this so that we can determine whether what it is she is
31 saying is correct.

32
33 When my -- when I was filing the motion regarding the appearance of these new witnesses, you held
34 that two others had to come because my two witnesses made reference to them. So I think that
35 contrary submission had to apply. If GAA and GEX had to appear before you on the 18th, it would have
36 been necessary for GAG and GEK to come and explain themselves as rebuttal witnesses, and you then
37 draw your conclusion and consider that GEK does make mention of people. It would be proper for

1 those two people she has mentioned to come and appear before you to explain themselves.
2 Okay. Let me continue by saying -- sorry, I lost the thrust. Sorry, I went slightly astray. I am
3 submitting, therefore, that it would be necessary for those two people to come and explain themselves
4 here. The Prosecutor just told us that he carried out investigations. What investigations? What
5 evidence do they have that they did anything whatsoever? For sure, the learned colleague -- and
6 whatever he says, I consider is true, but unless I am shown a memo which says that there is an attempt
7 to investigate whether there is serious misconduct on the part of his various officers, the submissions
8 are not enough. I believe that those officials need to appear before you and -- to be sure about who
9 has lied. I think that's enough. I would seek that you call those two officials.

10 MR. PRESIDENT:

11 Could I have your response to that, Mr. Stewart?

12 MR. STEWART:

13 Yes, Mr. President. First of all, in closed session, I indicated to the Chamber what my intention was.
14 My friend has misquoted me, but the Chamber is aware of what I said. I needn't deal with that. In
15 terms of any consequences, the issue is a delicate one. In many ways, I am very sorry that we are
16 here, but we have to go where the evidence takes us. And one of the concerns that we have, and it
17 must be obvious to the Chamber and it's something that I will be making submissions about shortly, is
18 that there is an effort -- and I am not going to go any further than the evidence actually takes us, but on
19 the basis of evidence you've heard, there does appear to be an effort to contact people and either
20 induce or pressure them to change their testimony in this case, and that's not evidence that I, in my
21 submission, could simply keep from the Chamber. It is part of a whole piece.

22
23 Now, my friend brought her motion. The Chamber ruled to hear those two witnesses and, given what
24 we anticipated -- and I say "anticipated" -- those witnesses were going to say, and I'll be making
25 submissions shortly that, in fact, they didn't deliver what was suggested that they were going to say --
26 the Prosecution felt that it was critical for the Chamber to hear the two witnesses we called in rebuttal.
27 So you have heard them. But they come as a whole, and part of their experience is the evidence that
28 they gave you with respect to approaches to get them to change their testimony.

29
30 Now, frankly, I am -- we are in your hands. If you feel it's important to hear these two individuals and
31 that they are willing to come, then fine. I --

32 MR. PRESIDENT:

33 Do you happen to know if they are in Arusha and are available?

34 MR. STEWART:

35 I don't.

36 MR. PRESIDENT:

37 You don't know.

1 MR. STEWART:

2 I don't --

3 MS. CONDÉ:

4 I have the answer. Regarding the gentleman, the gentleman is in Arusha and he has been informed
5 that he will be called -- well, it does happen that the other person is on holiday, vacation, the lady. And
6 so I wasn't able to get in touch with her. And when the Prosecutor interrogated the witness, she said
7 that it was the gentleman who got in touch with her first, and he is available here.

8 MR. STEWART:

9 I'm sorry; I was about to continue with my submission. I didn't get a chance to finish. I was just going
10 to suggest to you that, in deciding whether to hear the witnesses, I would submit you should take into
11 account their rights if there are going to be consequences. So they need to be advised of those rights
12 so they are not put in jeopardy in the witness box.

13
14 And the other question is: what do you anticipate we will accomplish by hearing them in terms of the
15 actual issues that you have got to deal with? And the issues that you have got to deal with are: did
16 GAA tell the truth when he said that he lied at the trial; and is there any evidence whatsoever before
17 you now that there was a concerted effort to mount a false case against Kamuhanda? Those are the
18 issues that you have to decide in the context of this hearing. It's not a general inquiry. So I just make
19 that submission to you in an effort to assist you in the exercise of your discretion.

20 MR. PRESIDENT:

21 Thank you, Mr. Stewart.

22
23 Here is what I propose. I suggest that we now proceed to the submissions of the Defence and the
24 Prosecutor. In light of the evidence that we have heard since yesterday, we really have been through
25 these points now for a long time. While, yesterday, we suggested that each of you should have 30
26 minutes, I really would be grateful if you would do it much faster. We are running quite late. I think that
27 you could each do with 15 minutes. If you have to exceed, then do.

28
29 We will later, during the lunchtime break, prepare our decision on the motion by the Defence and
30 announce it when we reconvene this afternoon.

31
32 So the Defence, you want to start with your summary?

33 MS. CONDÉ:

34 Yes, Mr. President, Your Honours. But a motion -- I have requested that Witness GAA and GEX be
35 heard by you. The objective of my motion was to demonstrate that the evidence advanced by the
36 Prosecutor concerning the Gikomero parish and, especially, the decisions -- the conclusions of the
37 Chamber regarding Mr. Kamuhanda's presence at the Gikomero parish were tainted with errors.

1 Witness GAA -- let me say it the other way. In its ruling the Chamber relied on the principle that
2 Mr. Kamuhanda was, indeed, at the parish insofar as three persons who claimed to have known him
3 before the events had seen him at the location. We are dealing with GAA, GAS, his brother, and GES.
4 GAA informed you that when he came before the Trial Chamber he had lied. Whatever the reasons for
5 his lying, as far as he was not at the parish, it would seem that one of the elements on which the
6 Chamber relied to convict my client is that it relied on GAA in its judgement to conclude that
7 Kamuhanda was present. It also relied, explicitly, on the statement made by GAF, according to which
8 he knew Kamuhanda.

9
10 Now, what does GAA tell us? He told us that his father -- his brother, because GAA is his brother, he
11 told us that his brother spoke to him and that his brother also indicated to him that he lied.

12 *(Pages 25 to 31 by Verna Butler)*

13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37

1 1138H

2 MS. CONDÉ: (*Continuing*)

3 As for GES, the problem was too find out -- I'm sorry, the problem was to find out how far he was able
4 to identify Kamuhanda at the parish. And he stated, "I can identify him there since -- from where I was
5 working since the two beings were opposite one another. Mr. Kamuhanda said that that was false, that
6 the two buildings were not opposite one another, and the Chamber ruled as it did on this evidence. And
7 this is part of the Appeals documentation, I don't need to come back to this. But, insofar as the three
8 witnesses on which the Chamber relied to say that, yes, people who saw him -- who knew him saw him
9 in that location, and that two of them we know made false statements and we know that the situation for
10 the third is that we need to find that the presence of Kamuhanda at the parish is not correct. Then there
11 are other witnesses who said, "Yes, I didn't know Kamuhanda when I came to testify before you --
12 before the Chamber."

13
14 What did GEX say? GEX says, "I didn't know Kamuhanda either when I knew -- when I came to testify"
15 -- I do beg your pardon, "when I accepted to testify. And it was wrongly that I indicated that he was at
16 the parish, intentionally, yes, but it was false. In other words, I knew that I was saying wrong, but I was
17 saying that wrong thing with full awareness of the fact, because, because because..." and she gave her
18 reasons.

19
20 From that point on what do I say? In its ruling, the Chamber states that the ten others didn't know
21 Kamuhanda, but insofar as the three first witnesses saw him on the location and that the testimony of
22 the ten others corroborates that of the three, we agree that the identification at the location was correct.
23 Let me move on to the development of the issue of identification in my brief, and I said that I would
24 speak about this later on in the day, so I don't believe that it is needful for me to go into it further. What
25 I wish to say now is as follows -- I'm sorry, it is the English booth which is asking me to slow down,
26 Your Honours.

27
28 What I want to say now is as follows: If the witnesses of the second group were deemed credible
29 merely because they corroborated the first group, if it does appear from the testimony of GEX that a
30 certain number of individuals indicated that they were at the parish when -- whereas they were not, from
31 that point in time, the corroboration of the recital or the evidence does not lead to the conclusion of the
32 credibility of that testimony. It, in fact, leads to a serious doubt on the credibility of these ten and it is
33 therefore corroborated by GAA who says, in fact, that yes, there was an attempt -- a plot.

34
35 What was said by GEK? He says, yes, there was an agreement. He spoke to those people, and GEX
36 tells you the same. I thought that I was going to put a case before the Trial Chamber that it's somewhat
37 strange that people who were in a parish who experienced things that were particularly horrible in that

1 place, when they are presented with a photograph of the place they are not able to recognise it. Now,
2 photographs were exhibits from the Prosecutor. It is the Prosecutor who presented that evidence to the
3 first witnesses and we decided to show photographs to others, and they said they don't know the place.
4 They did not recognise it -- the place, given that everyone agrees that the place had not changed. If we
5 were to believe GAA and GEX, some were not on the spot; maybe we will have the explanation for why
6 they did not recognise the buildings.

7
8 I did not have the time between yesterday and today to make reference to the transcripts to find out
9 which were the Prosecution witnesses who mentioned Nzaramba. I know only that some Prosecution
10 witnesses said that it is Nzaramba who told them the same. Now, this is something which comes to
11 shed doubt on the credibility because GEX said that we agreed on the use of the word or name
12 Nzaramba. So I'm asking you to draw your conclusions, given the testimony of GAA and GEX,
13 considering the fact that these new -- this new evidence casts serious doubt on the Prosecution case.

14
15 The Prosecution, to challenge my argument, called GAA, GAG and GEX -- GEK, I beg your pardon.
16 Can someone tell my client to stop interrupting me?

17
18 The Prosecution called GEX -- who did he call? GAG and GEK. GAG came before you and she mixed
19 up everything. Everything was confused. We couldn't find our way around her. Every time we said
20 something, it was contrary to what she had said previously. She did not speak the truth at the parish,
21 much less so because when she was presented -- she did not speak the truth about the events at the
22 parish because when we presented her with the testimony before the Rwandan authorities concerning
23 the pastors of the parish, she mentioned people and she didn't mention Kamuhanda. Question from
24 the Defence is -- to GAG: "Why in 1995 did you not mention Kamuhanda?" "Because I didn't know him
25 then."

26
27 Mr. President, Your Honours, these are her very own words, "I didn't know him then." And I answered,
28 "If you didn't know him since you were supposed to have seen him earlier, at least, that's what you had
29 said before the Chamber." GAG who was claiming to have known and seen Kamuhanda at the parish,
30 giving her testimony before the Chamber, as far as I am concerned, I am convinced here and now that
31 she did not see GAG at the parish, given the questions that I put to her in cross-examination.

32
33 Now, we are left with GEK. I do not believe what she says. I'm sorry, but I am repeating it that GEK is
34 a huge, big liar, and this is nothing but the truth. She is a liar. And because she is a big, liar that I said
35 that these two persons that she had questioned be brought before you.

36
37 Briefly, I believe that I have kept to my time limits, and those are my submissions, Your Honours.

1 MR. PRESIDENT:

2 Thank you. Before we go to Mr. Stewart, I would like to ask you a question or two and if any of my
3 colleagues would like to join me.

4
5 Madam Condé, we spoke a lot here about an alleged plot by Prosecution witnesses to frame
6 Kamuhanda, but such a plot would have required a very large scale collusion and careful
7 synchronisation of stories and details by more than ten witnesses. Isn't such a massive collusion
8 unlikely, particularly since there has not even been a hint of its existence for at least seven years?

9 MS. CONDÉ:

10 Well, if you want, I could get on the explanation that was given to you by GEX. Now, GEX told you that
11 it was not a plot, these were people who were provided with the wrong information, false information;
12 people who believed in such information; people who felt sad, who lost relatives and who wanted to
13 avenge themselves, who sought vengeance.

14
15 Now, the first two witnesses who appeared yesterday, they provided enough proof that that was the
16 case. Maybe it was not a plot. We may use some other word, but the fact is that people were misled,
17 knowingly or unknowingly, so that they can appear here and testify.

18 MR. PRESIDENT:

19 Thank you, Madam Condé.

20
21 Any of my colleagues would ask questions of the -- no, we will now go to Mr. Stewart.

22 MR. STEWART:

23 Thank you, Your Honours.

24 MR. PRESIDENT:

25 Excuse me, Judge Shahabuddeen has a question.

26 JUDGE SHAHABUDDEEN:

27 Madam Condé, if the two persons whom you propose to call as witnesses did come, and in their
28 evidence they called the names of ten other persons, what -- and Mr. Stewart asked us to call those ten
29 other persons, and those ten other persons came and they called one hundred other persons' name,
30 would we have to call all of them, bearing in mind that this is a 115 motion which is intrinsically of an
31 exceptional nature as preliminary to the hearing of an appeal which we have not embarked on yet?

32 MS. CONDÉ:

33 I hope I've understood -- or I believe I have understood your question. My answer would be the
34 following: From my view, we are not engaged in a competition as to credibility. That's not what we are
35 trying to -- it's not a test of credibility here.

36
37 Now, there are people who stand by their testimony, and then the Prosecutor calls some others, and I

1 call others, that's not the case here. The issue is whether those who testified before you yesterday told
2 the truth, and they did indicate to you that they had lied. And that -- if that were the case, does that
3 affect the findings of the Trial Chamber? The answer is yes. It is yes because one of those, on whose
4 testimony it relied, had recanted. Now, there were two others left, that is, GAF and GEX -- GAF and
5 GES.

6
7 When you look at what their -- their testimony, there is inconsistency. Now, if there is inconsistency,
8 now the witnesses that I call, rightly or wrongly, and if they corroborate what was said by the first group,
9 who are they corroborating -- which evidence are they corroborating? GAA has retracted; GES has not
10 -- has also withdrawn and the dissenting opinion of Judge Makutu is quite interesting. So it thus would
11 mean, therefore, that the case of the Prosecutor collapses or, at the very least, serious doubt is cast on
12 it.

13 MR. PRESIDENT:

14 Thank you, Madam Condé.

15

16 Mr. Stewart.

17 MR. STEWART:

18 Thank you, Mr. President, Your Honours.

19

20 The position of the Prosecutor on the Rule 115 hearing is simply this: The evidence adduced from GAA
21 and GEX can have no impact on the outcome of this appeal for the following reasons:

22

23 The Chamber decided that GAA should be heard in order to assess the credibility and reliability of his
24 new evidence on two points. First, GAA's evidence that he lied about his presence at Gikomero parish
25 on 12 April 1994; and, secondly, GAA's evidence that other witnesses might also have lied in that
26 regard.

27

28 Now, this new evidence, as you know, is contained in GAA's recantation statement of 17 March 2004
29 that was filed with the application. It's now Exhibit 1, I believe.

30

31 The discrepancies: The discrepancies between GAA's recantation statement and his testimony at this
32 hearing are, in my submission, so enormous as would suggest that words were simply put into the
33 witness's mouth, words that he was incapable of repeating here before you. Based on GAA's
34 testimony, I submit that the suggestion, the allegation that there was an orchestrated plan to have
35 people testify falsely against the Appellant has completely collapsed. GAA denied that he was part of
36 any meetings to discuss evidence; and yet that's in his statement. GAA does not claim to know or
37 believe that anyone was lying. GAA does not allege that GEK was attempting to get witnesses to testify

1 falsely about Kamuhanda. So that second point that you were concerned about, that we were all
2 concerned about, whether people were lying, there was some kind of effort being made to gather
3 people together to go to Arusha and lie about Kamuhanda, in my submission, that allegation has
4 disappeared. There is no evidence to support it. GAA did not make the allegation when he was under
5 solemn declaration before you. That brings me to the first point that was of concern to the Chamber,
6 namely, that GAA lied, in other words, about the massacres -- about his presence at the massacre; in
7 other words, the truthfulness of his recantation. And my submission to you is that the recantation is not
8 credible. And I would ask you to consider the following points:

9
10 You will have the opportunity to go through the transcript of the hearing, and so I am going to touch on
11 the key points that strike the response of the Prosecutor as significant. You may find out this, but I
12 would ask you to consider: GAA has been consistent about his presence at the massacre from 1995
13 through 2001 and probably beyond. I would refer you to the statement he gave to the Rwandan
14 authorities relating to Pastor Nkuranga. Clearly, he puts himself at the massacre. He admitted that,
15 and he claimed he was lying. He certainly told the Office of the Prosecutor investigators that he was
16 present in his statement of 6th July 1999, and he testified to that, in fact, before the Trial Chamber in
17 September 2001. Now, suddenly, in 2004 GAA takes a sharp turn recanting his evidence.

18
19 But if you examine GAA's recantation statement and compare it with his actual trial testimony, he
20 purports to recant evidence he never gave. In his March 2004 statement, he says that he testified
21 before the Judges that he saw and heard Kamuhanda say "*Mukure*". He also says that he lied when he
22 said that he saw Kamuhanda at the parish on 12 April 1994 giving to the *Interahamwe* the order to start
23 killing the Tutsi refugees. But if you examine the transcript, the trial record, GAA never testified that he
24 saw and heard Kamuhanda give orders to the *Interahamwe* by saying "*Mukure*". What he did testify to
25 was that Hutu shouted that Kamuhanda was here and they should get to work. And I will refer the
26 Chamber to the transcript of 19 September 2001, pages 115 to 116, and please also note paragraph
27 234 in the trial judgment, where this is summarised.

28
29 The further point I would ask you to consider is that GAA's statement to the Prosecutor and his trial
30 testimony is rich in detail. It is rich in small details that, in my submission, gives it the ring of truth. It
31 hangs together, it makes sense, there is nothing inherently improbable about it, and GAA was able to
32 maintain his account under cross-examination. His account withstood cross-examination. In any event,
33 the Trial Chamber, which saw him and assessed him, found him to be a credible witness.

34
35 Now, my submission to you, which may seem to run counter to what I have just said but doesn't, is that
36 before you he was not a credible witness. I would submit you saw quite a different person, at least if
37 one can gather how he impressed Judges at the Trial Chamber. And my submission is that he wasn't

1 telling the truth, and that is why he appeared to be such a poor witness.

2
3 A further point is that GAA never approached the Office of the Prosecutor to report his change of heart.
4 He never did anything. GEX persuaded him to see the Appellant's counsel. I would submit that on the
5 evidence you heard, it is obvious that GEX has operated a powerful influence upon GAA: They pray
6 together; they both decided to state that they had found God and to ask forgiveness for having lied;
7 GEX and GAA went to the notary together. At first GAA said he went alone, but then he admitted going
8 with GEX. They gave their statements on the same day, 17th March 2004. In their statements, they
9 both blame GEK as being the author of what they did, but G -- both of them, in fact, failed completely to
10 follow through with these allegations in their testimony. There are remarkable parallels between the
11 two statements, although GAA, of course, never testified in accordance with his statement at this
12 hearing. And I would submit that there really is a genuine concern here that the two are colluding
13 together to undermine the case that was established against the Appellant. In my submission, GAA's
14 recantation evidence is not credible.

15
16 I would also submit to you, and my friend just referred to this, that GAA's attempt to get in hearsay
17 evidence about an alleged desire to recant on the part of his elder brother, who was also a witness, is
18 utterly inadmissible.

19
20 Let me acknowledge that the Chamber may take a different view of GAA as a witness. The Chamber
21 may consider that GAA is a dangerous witness who has very little grip on the truth. If the Chamber
22 takes that view, then, at the very highest on the basis of GAA's testimony, you have a private personal
23 decision to lie out of a desire for vengeance, out of a desire to see a person who the witness believed
24 was guilty, punished. And it is absolutely clear on GAA's testimony that he did not communicate the
25 falsity of what he was going to say to anybody. And the question was put to him by the Chamber -- in
26 fact, several questions were put to him on this issue, with respect to what GAA claimed GEK would
27 have understood, and GAA was clear that as far as he was saying, GEK would have believed that he
28 was a survivor of the massacre and would not know -- have known that he wasn't present and that any
29 evidence she gave about being present would be false.

30
31 So what I'm saying is that you have a private decision to lie, if that's the view you take, I'm suggesting
32 that it's not the view you should take, but if you do -- if you do take that view, you've got this private
33 decision to lie and you can simply excise GAA's evidence from the body of evidence the Trial Chamber
34 had, and it's our submission that there is still substantial support for the convictions.

35
36 Now, I'm not going to saying any more about this issue now, because it is an issue that has to be
37 addressed in the main appeal, and my colleagues Mr. Weston and Ms. Reichmann will address that as

1 necessary when they respond to the appeal. But I just wanted to make that point.

2
3 Now, in making my submissions to you I have to acknowledge and recognise that you, having assessed
4 the evidence, may take a different view, and I just wanted you to have that submission that at the most,
5 if GAA's recantation is truthful, what you heard was, I would say, a wicked but a private decision to lie
6 that was communicated to no one else and it's not part of some wider plan.

7
8 What about GEX? The Chamber decided to hear GEX to assess, in its assessment of the credibility
9 and reliability of GAA's new evidence. And her evidence, of course, is contained in her recantation
10 statement of 17 March 2004, and I believe that's Exhibit 4. Now, I would submit that there is, of course,
11 little of GAA's evidence for her testimony to support, and you'd understand my position there.

12
13 GEX herself failed completely in her examination-in-chief to reproduce the allegations against GEK.
14 And when you examine the transcript of the hearing, you'll see that I did not touch this point in
15 cross-examination for obvious reasons: she didn't make it. There was nothing for me to cross-examine
16 about. Now, questions were put to her by the Chamber, and in response to certain of those questions,
17 GEX allowed herself to engage in what I submit was the crankiest speculation concerning GEK,
18 alleging that she was the origin of it all. And I would submit to you that such evidence is absolutely
19 worthless, and cannot form the basis of any decision of this Chamber, absolutely worthless. It is
20 nothing better than gossip and opinion, and, in my submission, has absolutely no weight.

21
22 GEX is quick to suggest that other witnesses have lied, but I would submit that she cannot know this.
23 Her evidence, in my submission, is incredible. In her recantation statement she does not mention any
24 of the persons she identified at the hearing beyond GAG and GEK. She speaks about GAG and GEK,
25 and as I've noted, she failed to reproduce the allegations, particularly against GEK. But at the hearing
26 she suddenly had all sorts of names for you of people she said lied. She cannot know this. There is
27 nothing in her original statement to suggest this. It's all on generalities.

28
29 Now, I would submit that a very telling point is that GEX claimed that there were certain elements that
30 were critical to the lie; namely -- and you'll remember this -- a man who was killed at the parish by the
31 name of Ngaramba, had pointed Kamuhanda out and said that, "Now that Kamuhanda was there, it
32 was finished for the Tutsi." And furthermore, that Kamuhanda directed the attack and gave the order to
33 start the killing by saying *mukure*. But these elements do not appear in her statement to the Office of
34 the Prosecutor of the 22nd September 1999, which is now Exhibit 5. They are not there. And -- of
35 course she did not testify. She was not called to testify; you are simply dealing with her statement. And
36 she denies saying what is reported in her statement to the Prosecutors, namely, that local traders said
37 that Kamuhanda was there. And if I understood her evidence correctly, she even denied ever telling

1 anybody that *mukure* was part of the lie. So she is contradicting what is in her recantation statement, if
2 I understood her statement correctly.

3
4 GEX also disowns the account we see in her recantation statement that she went to the Office of the
5 Prosecutor investigators, who referred her to the WVSS, which then put her on to the Defence
6 investigator. That was an incredible story I was going to submit, but she disowned it. And, in my
7 submission, she was evasive about how it was that the Defence investigator reached her. So in my
8 submission, her evidence in this hearing relating to her recantation and the other things that she alleges
9 is incredible and unreliable.

10
11 However, I do note that in answer to questions from the Chamber, GEX testified that GEK never
12 approached her to testify falsely about Kamuhanda, and she never saw her approach anyone to testify
13 falsely.

14
15 Now, I'm aware of the time and if you'd just grant me the indulgence there is a small point I want to
16 make, but it is important.

17
18 Mr. President, Your Honours, the Trial Chamber in this case issued an order on 7th July 2000, relating
19 to the protection of witnesses. In the order, they specified that these protection orders would remain in
20 force after the termination of the trial, and you will see in item (i) in the order a requirement that if any
21 representative of the Defence wishes to contact a protected Prosecution witness, they must do so on
22 notice to the Prosecutor -- reasonable notice to the Prosecutor by application to the Chamber or a judge
23 thereof. And I would suggest that on the evidence of both GEX and GAA, there has been a very clear
24 violation of that order. And that has got to have some impact on the credibility of the entire application,
25 in my submission.

26
27 Now, I am not going to take your time dealing with the rebuttal witnesses that I called. You saw them,
28 you are in a position to assess them. Both of them insist that they told the truth, both of them denied
29 being involved in any effort to put a case up against Kamuhanda.

30
31 GAG was found to be a credible witness by the Trial Chamber. In my submission, she was a credible
32 witness before you.

33
34 GEK, was found to be a highly credible witness by the Trial Chamber, and I would refer to you
35 Paragraph 272 of their judgment. And in January 2003 her conviction for murder and the
36 circumstances around that were explored in cross-examination when the witness was recalled. So the
37 Trial Chamber knew about that, and yet they found her to be a highly credible witness.

1 Now, the Chamber knows perfectly well that people can do bad things or be involved in bad things even
2 if they haven't done them and claim that they are innocent, and still be honest, credible witnesses in
3 relation to other issues. And I would submit to you that GEK was indeed a highly credible witness. She
4 did not flee from answering questions, she was not evasive, she was precise, she was concise and she
5 attempted, in my submission, to be as helpful and accurate as she could be. I would submit that the
6 evidence of GEK, who, in a sense, was the person I'm sure you wanted to hear from, is a most salutary,
7 counterbalance and counterweighed from what you heard from GAA and GEX.

8
9 My closing submission is this: The onus in this hearing is on the Appellant to satisfy you that GAA did,
10 in fact lie when he testified at the Appellant's trial. And really, I would submit, they have failed so utterly
11 to support the other allegation that I did need not even refer to them. My submission is that the test you
12 apply in a situation like this ought to be a stringent one. It is just too easy for people, after the fact, to
13 be influenced or intimidated or pressured into recanting. And evidence of recantation, in my
14 submission, ought to be convincing and persuasive evidence. And, in my submission, you do not have
15 such evidence before you, and the recantation evidence, in my submission, should have absolutely no
16 impact on the outcome of the appeal. Thank you.

17 MR. PRESIDENT:

18 Mr. Stewart, thank you very much for your argument. I have some questions to ask you, if I may.

19 MR. STEWART:

20 Yes.

21 MR. PRESIDENT:

22 The three witnesses who, based on prior knowledge, personally identified Kamuhanda at the Gikomero
23 massacre were GAF, GES and GAA?

24 MR. STEWART:

25 That's my understanding.

26 MR. PRESIDENT:

27 The eight corroboration witnesses, I will not repeat their abbreviations, testified only that they heard
28 other people at the massacre state that Kamuhanda was present. That is correct, isn't it?

29 MR. STEWART:

30 That's correct. That's my understanding.

31 MR. PRESIDENT:

32 Let's move on. None of the corroboration witnesses, the eight corroboration witnesses whom I
33 mentioned, made an in-court identification of the defendant as the man who had been pointed out to
34 them in Gikomero. That is correct, isn't it?

35 MR. STEWART:

36 Will you forgive me, let me consult with Mr. Weston.

37

1 MR. PRESIDENT:

2 Sure.

3 MR. STEWART:

4 I believe this is the point that he has -- is briefed on.

5 MR. PRESIDENT:

6 Would you like me to repeat it?

7 MR. STEWART:

8 No, no, I have it; I have it.

9

10 Mr. President, forgive me. Mr. Weston can address this. He believes that, in fact, one of them did
11 identify Mr. Kamuhanda, and there may have been some argument about the strength of such an
12 identification in a courtroom setting.

13 MR. PRESIDENT:

14 Okay, so we will hear that argument, but seven clearly did not out of the eight, right?

15 MR. STEWART:

16 It appears so.

17 MR. PRESIDENT:

18 Okay, let me then move on to my main question.

19 MR. STEWART:

20 Yes.

21 MR. PRESIDENT:

22 If the -- I had your correct confirmation answers to my previous questions, apart from one question that
23 was still left pending. Now, if we now decide to disregard GAA's testimony in court, after all he told us
24 and he insisted that he lied in court.

25 MR. STEWART:

26 Yes.

27 MR. PRESIDENT:

28 Then Kamuhanda's conviction for genocide would rest on one witness who was credited by the entire
29 panel of three Judges, one witness who was credited by only two Judges, and a lot of hearsay. That's
30 correct or not?

31 MR. STEWART:

32 Well, it isn't, and my colleague Mr. Weston I hope will be able to persuade you of that, and I don't want
33 to anticipate that -- what he is going to say, but the circumstantial case against Kamuhanda is a little
34 broader than that. And you'd recall the highly credible witness, and I believe another witness, put
35 Kamuhanda on the road going in the direction of the parish in a vehicle with armed people on board
36 very shortly before one could hear the detonations and gunfire. But with respect to what happened at
37 the parish, you are right; you are right.

1 MR. PRESIDENT:

2 Thank you.

3

4 Judge Weinberg, please.

5 JUDGE WEINBERG DE ROCA:

6 Mr. Stewart, there is one issue that bothers me. You offered GEK witness as a rebuttal witness to
7 corroborate the fact that there was pressure on witnesses to recant. Now, the pressure, according to
8 this witness, comes -- came from employees of the Tribunal. So you bring this witness, but before
9 bringing this witness, and knowing this, you do not investigate this because what counsel for Defence
10 assumes that she spoke with these -- one of these employees and with their chief that this was not the
11 case, then the whole rebuttal testimony of GEK would be of no importance. Is that so?

12 MR. STEWART:

13 Well, Your Honour, I don't believe that my friend claimed that anybody said it wasn't so. These matters,
14 I'm afraid, don't lend themselves to investigation over a few hours or a few days. There are procedures,
15 there are protections, there are operations that have to be undertaken if an investigation is to be
16 launched. It's an extraordinarily delicate matter. Now, I do take your point that one should not lightly
17 make such allegations, and, you know, what I believe or don't believe is irrelevant; however, I am under
18 an obligation to offer credible evidence to the Chamber, and I'll leave my submission there. Let me just
19 say that we take the matter very seriously.

20 MR. PRESIDENT:

21 We will have something, as a Bench, to say about that point later on, about the point raised by
22 Judge Weinberg.

23

24 Judge Mumba.

25 JUDGE MUMBA:

26 Thank you, Mr. President.

27

28 I just want to be clear in my mind. When the Prosecution decided to call in particular GEK as a rebuttal
29 witness, wasn't part of the rebuttal the allegations against her that she persuaded or incited people to
30 give evidence -- to give false evidence against Kamuhanda?

31 MR. STEWART:

32 Your Honour, that was the central issue -- that was the central issue, given what was being alleged in
33 the recantation statements.

34

35 Now, you've heard my submission that the allegations ultimately did not materialise in the form of
36 admissible evidence given under solemn declaration. And I indicated to the Bench that as a matter of
37 thoroughness I was going to put certain allegations to Witness GEK, even though they hadn't been

1 borne out in the actual evidence before you given by GAA and GEX, apart from what I've described as
2 GEK's speculation late in her testimony. But the purpose for our calling the witness primarily was to
3 deal with this allegation of some kind of an orchestrated plan. And we certainly covered that, I would
4 submit, in our evidence, and I would submit that it wasn't touched in cross-examination by my friend on
5 behalf of the Appellant. Now, the other issue – the other issue with respect to pressure on witnesses in
6 my submission, is a circumstance which is not without significance because, I would submit, it
7 demonstrates the vulnerability of these people. And when one comes to consider how persuasive
8 recantation evidence is, I would submit the Chamber has to be alert to how vulnerable witnesses can
9 be for all sorts of reasons.

10 JUDGE MUMBA:

11 Yes, I just wanted to follow it up again, Mr. Stewart, if you please.

12
13 Isn't the scenario we are dealing with to this effect that at the time the trial was taking place what type of
14 witnesses gave evidence before the Trial Chamber? Were they truthful witnesses or were they – were
15 the witnesses those incited to tell lies against the Appellant? I thought this is the central question here:
16 What type of witnesses presented evidence before the Trial Chamber?

17 MR. STEWART:

18 That's correct. And the way in which I have dealt with the hearing has been responsive to the evidence
19 before you. And the concern about witnesses coming forward and lying, in my submission, I don't want
20 to put it too strong, but in my submission it's disappeared. In essence, we were promised something.
21 Very serious allegations were made in a recantation statement or two recantation statements. The
22 witnesses came in before you to testify. One of them denied -- in essence, denied what is in his
23 statement, and the other never repeated what was in the statement until, in essence, plodded into
24 offering an opinion about Witness GEK.

25
26 I hope that is responsive to your question, Your Honour, but that's how the Prosecution sees the
27 situation before you with respect to this hearing. The issue is a fairly narrow one, and it has become a
28 lot narrower, given, in my submission, the failure of the evidence to materialise that was suggested as
29 being available.

30 JUDGE MUMBA:

31 The last point to wind up my thinking, and I'm seeking clarification, is that this being a Rule 115 motion
32 which is raised by the Appellant, isn't for the Appellant to show that, in fact, what they are alleging in
33 their motion could be true?

34 MR. STEWART:

35 It's, in my submission, for the Appellant to demonstrate to you that it is true. That's the sort of test that
36 should apply in a situation where the allegation is that witnesses who gave evidence under solemn
37 declaration -- and I'm thinking here of GAA -- in essence, promising to tell the truth, are now turning

1 around and saying that they lied. It's not, I'm sure, in Your Honours' own experience an uncommon --
2 and unfortunately, an uncommon feature of criminal proceedings, given that the people caught up in
3 them are human beings and, in some ways, fragile.

4 MR. PRESIDENT:

5 Thank you, Mr. Stewart.

6

7 Judge Shahabuddeen.

8 JUDGE SHAHABUDDEEN:

9 Just a short inquiry, Mr. Stewart. You mentioned a while ago that a convicted appellant who proposes
10 to tender recantation evidence has got to show that the recantation is true. Now, it just occurred to me
11 to ask you whether you have perhaps cited in your written material any supporting authorities for that
12 view or whether you have any to offer us now?

13 MR. STEWART:

14 I don't. I'm making the submission almost as a matter of first impression, certainly in this Tribunal. And
15 I make the submission because of the importance of protecting the integrity of justice. Now, the
16 Prosecution recognises that it would be a terrible injustice for an innocent man to be convicted, and one
17 has to be very careful to protect the rights of people. But the process depends on witnesses, and every
18 effort is made to produce witnesses who are impressed with the importance of telling the truth. Of
19 course, judges then assess them, and don't believe some and believe others. That happens all the
20 time, but for a witness then to turn around and, in essence, subvert the process and say, "I was just
21 kidding" -- I'm being flippant, forgive me -- but, "I told you this but I really wasn't telling you the truth; it
22 was something else," that's a very serious thing because it can undermine the entire integrity of the
23 process. You can't have witnesses coming in and testifying under solemn declaration and then turning
24 round and saying, "Oh, no, I didn't mean it." And one has to be aware of their context and their
25 vulnerability. And so I am just saying -- suggesting to the Chamber that before acting on such
26 recantation evidence, the Chamber must really be convinced that it is proper to do so.

27 JUDGE SHAHABUDDEEN:

28 Let me ask you a question. You mustn't --- you mustn't misunderstand me to be doubting your
29 proposition. I just want the benefit of any legal anchorage which you might be in a position to offer the
30 Bench.

31 MR. STEWART:

32 Well, I am --

33 JUDGE SHAHABUDDEEN:

34 What I mean is this, that I know that at trial -- well, we all know the standard of proof which is applicable
35 to the Prosecution. Are you saying that that is the standard of proof which the Appellant must meet
36 when he proposes to offer recantation evidence or is it sufficient for him to meet a slightly lower
37 standard of proof, or the same standard of proof that the Prosecution has to meet? He says, well, no,

1 the same standard of proof that he has to meet at trial if he goes on to say, "Well, there is reasonable
2 doubt about the Prosecution's case".

3 MR. STEWART:

4 Your Honour, I am not submitting that an Appellant -- and I am not talking about the Prosecutor, I'm
5 talking about an individual appellant who has been convicted -- would ever have to meet a standard of
6 proof beyond a reasonable doubt. Of course, that's the criminal standard of proof that applies to the
7 Prosecution case, and I am not suggesting that. This Chamber has, on a number of occasions, spoken
8 about the onus upon a party advancing a position to persuade the Chamber of its correctness, and it's
9 that kind of standard of proof that I am talking about. In a sense, the Chamber has never qualified it,
10 but we all understand that it is -- it is a burden that is not light. And all I am saying is that to meet that
11 burden in this case, the Chamber really has to have convincing evidence; it's not the criminal standard
12 of proof beyond a reasonable doubt. I wouldn't pretend that in international criminal law an appellant
13 has to meet such a burden in any argument that an appellant advances, but there is the onus of
14 persuasion with respect to any issue that an appellant is advancing before the Chamber and that's
15 really what I'm referring to.

16 JUDGE SHAHABUDEEN:

17 Let me ask you one last question: You speak of the Appellant having to convince the Court. Does that
18 exclude the possibility that he convinces the Court if his recantation evidence satisfies the Court that
19 there could be reasonable doubt about his conviction?

20 MR. STEWART:

21 Well, in my submission, and I say this very respectfully, that conflicts two separate issues. The first
22 issue, of course, is do you accept that there is a recantation, a -- there is a genuine recantation? And
23 then the next step is the one that the Chamber is used to taking and that is putting that with the
24 evidence that the Trial Chamber had, would this have made a difference to the outcome of the case?
25 And I suppose another way of putting it -- I hope I'm not misquoting what you've said in your judgments
26 -- would it make the decision that the Trial Chamber reached on the basis of what they knew
27 unreasonable? Now that this new piece of evidence is in the balance, evidence that you have, one has
28 to consider again the totality of the evidence, in my submission, and essentially apply a test which, in
29 my submission, has been well established by the Chamber. I would say a bit more, but then with the
30 controversies that is sometimes attached to it. But we do read with attention what the Chamber says,
31 and I would submit that then that second process is undertaken.

32 MR. PRESIDENT:

33 Thank you, Judge Shahabuddeen.

34

35 Let me, Mr. Stewart, we will not yet let you relax. Let's go back for a moment to Witness GAA.

36 MR. STEWART:

37 Yes.

1 MR. PRESIDENT:

2 Whatever the problems of the judgment, we will eventually assess to various aspects of this
3 recantation. Are you suggesting to the Appeals Chamber that we should still treat his testimony, which
4 was quite a critical one, in the trial court as true?

5 MR. STEWART:

6 Mr. President, my submission is that it is open to you to do that on the basis that the recantation
7 evidence you heard is untrue. But, I saw the witness as you did, and that's why I made the submission
8 to you about your reaction to the witness. Unfortunately, you didn't have the opportunity to see him
9 testify before, neither did I, for that matter. The Judges of Trial Chamber II did and they found -- and
10 they found him to be credible, notwithstanding certain difficulties with his evidence.

11

12 My submission to you is simply that at the end of the day, if you are concerned about that local, narrow
13 issue, did this witness -- was this witness one that could have been relied upon? Had the Trial
14 Chamber heard all of what he says now, would they have relied on his evidence? If you feel that they
15 would not have, then you move into the second phase of the inquiry that I was suggesting to
16 His Honour Judge Shahabuddeen, and you look at the whole body of the evidence and decide whether
17 or not the conviction can still be sustained.

18 MR. PRESIDENT:

19 Thank you, Mr. Stewart. We will now finally move from the evidentiary hearing under Rule 115 to the
20 hearing of the appeal, an appeal of Mr. Kamuhanda on the trial judgment, and we will assume that the
21 same appearances of the parties will continue.

22

23 Mrs. Condé, I presume you will continue? Let me just open and then *(inaudible)*

24 MR. STEWART:

25 Mr. President, there is a slight change. I don't have a speaking role in the next phase. My colleagues
26 Mr. Neville Weston and Ms. Amanda Reichmann will be carrying the response to the appeal, and they
27 will be assisted by Mr. Seye and Ms. Onsea. And I have to get out of their way -- get my papers out of
28 their way and allow them to come to the floor.

29 MR. PRESIDENT:

30 Thank you. So the same appearances for the Defence, but modified for the Prosecution.

31

32 And I would now just briefly, in three or four minutes, set the setting for the hearing and then we will see
33 how we go from there.

34

35 To remind you that the case on our agenda is Jean De Dieu Kamuhanda against the Prosecutor.

36

37 The Trial Chamber convicted Mr. Kamuhanda of one count of genocide and one count of extermination

1 as a crime against humanity. The Trial Chamber dismissed charges of complicity in genocide and
2 murder as a crime against humanity and acquitted Mr. Kamuhanda of rape, other inhumane acts as a
3 crime against humanity, and two counts of serious violations of Article 3 common to the Geneva
4 Conventions. The Trial Chamber sentenced Mr. Kamuhanda to prison for the remainder of his life on
5 both counts for which he was convicted, the sentences to run concurrently.

6
7 To save time, I will not summarise the grounds of appeal presented by Mr. Kamuhanda in his written
8 submissions. The Defence counsel has divided Mr. Kamuhanda's grounds of appeal into three
9 categories: Errors of law, errors of fact, and appeal against the sentence. Within these categories, the
10 Appeals Chamber itself has identified 15 separate grounds of appeal, and to save you time, I will not
11 read them now.

12
13 Now, in our scheduling order, we asked the parties, without prejudice to other issues on appeal, to
14 focus on the issue of the alibi.

15
16 Mr. Kamuhanda, we will recall, alleges that the Trial Chamber's assessment of his alibi was profoundly
17 fraud. He contended that the Trial Chamber erroneously found mutual contradictions among several
18 of his alibi witnesses when, in fact, their testimony was perfectly consistent. He also argues that the
19 Trial Chamber distorted the testimony of his alibi witnesses in order to undercut their credibility. He
20 further contends that the Trial Chamber erred by finding various factual elements of his alibi
21 inherently incredible.

22
23 Now, here is the order in which we will hear the arguments as explained in our scheduling order of
24 April 18th, but, of course, the times -- the hours mentioned there have been affected by the events and
25 the schedule of today, and we will modify it. But what I will not modify is the following: Counsel for
26 Mr. Kamuhanda will begin by presenting arguments for up to two hours, and I do hope that she can be
27 briefer than that. The Prosecution will be afforded 45 minutes to respond. The Prosecution will have
28 up to one hour and fifteen minutes to conclude in response to the Defence arguments, and the Defence
29 will have 30 minutes to reply. At the moment, all we have to decide is that -- to state that the Defence
30 in fact will have two hours to present her arguments. And the question is now whether to start that now
31 or after lunch.

32
33 What is the sense of the Bench on that?

34
35 We will have to give our ruling on the motion presented by Mrs. Condé, the counsel for the Defence. I
36 have indicated we will give that ruling today, and I wanted just to make it clear that when we are
37 reconvened after lunch, our very first item of business will be to give this decision on the ruling and, of

1 course, this will be before the Defence and the Prosecution will start their arguments on the merits of
2 the appeal.

3
4 So it may be convenient, in fact, because we have to work on that, to start our lunch break now and just
5 wait one second, I will consult my colleagues on the time.

6
7 Okay, here is how we will proceed: Since we need more time today for the lunch break because we
8 have to draft our decision, we will meet here -- we will reconvene at 2:30. The Court will now rise.

9 *(Court recessed at 1238H)*

10 *(Pages 32 to 48 by Gifty C. Harding)*

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37

1 (Court resumed at 1445H)

2 MR. PRESIDENT:

3 Please be seated.

4

5 Okay. Here is how I propose we proceed. First, I will read out to you a revised schedule, and I will be
6 grateful if you would write down the necessary. You will see that I have slightly cut down the time which
7 the Bench contemplated at first to give to you. I don't believe that you will have problems. If you have
8 to exceed the time by five minutes or so, we will not be too strict on that, but, please, do try to adhere.
9 We are starting 15 minutes late, so you will have just to adjust it.

10

11 Then after I have started, the Appellant's submissions on the appeal, one and a half hours. We will
12 then have a 15 minute-break; Prosecution's response to the Appellant's submissions, one and a half
13 hours; Appellant's reply, 15 minutes; brief personal address by the Appellant, which is optional,
14 maximum 15 minutes.

15

16 The next thing I will read is the decision of the Bench on the motion of the Defence.

17

18 Over the past two days, we have heard from two Defence witnesses under Rule 115, provisions for
19 hearing additional evidence on appeal. We have also heard from two Prosecution witnesses who were
20 presented in the rebuttal to the Appellant's additional evidence, and we are now presented with a new
21 motion by the Appellant to call yet two more witnesses who, the Appellant alleges, will challenge the
22 testimony of one of the Prosecution's rebuttal witnesses. I will briefly summarise the Appellant's
23 justification for this motion.

24

25 At today's Rule 115 hearing a Prosecution witness alleged that two Tribunal employees approached her
26 at the United Nations safe house where she was staying while testifying before this Tribunal in another
27 case. She further alleged that these two Tribunal employees offered to pay her money and give her
28 substantial assistance in other ways if she would come back to this Court and recant her trial testimony
29 in the Kamuhanda case. The Appellant would now like to call these two Tribunal employees,
30 presumably, for the purpose of getting them to deny having offered any bribes to the Prosecution
31 witness in question.

32

33 For two reasons, the Appeals Chamber is not persuaded that this is appropriate. First, this is a
34 Rule 115 hearing, which is intended to be a sharply delimited proceeding for entering discrete, specific
35 evidence into the record; it is not intended to be a trial within a trial that opens the door to the
36 exploration of every issue that might be raised during the hearing. Presenting these two witnesses
37 would be a rejoinder to a rebuttal to the Defence's original Rule 115 evidence, and there is no

1 guarantee that it would end there.

2
3 Second, the Appeals Chamber is not convinced that the witness's testimony will make a material
4 difference to the Defence's case. The Appeals Chamber simply does not believe that such evidence on
5 the record would be at all helpful in assessing the credibility of the Prosecution's rebuttal witnesses.
6 The Appeals Chamber does not foreclose the possibility that if sufficiently compelling or unexpected
7 evidence surfaces during a Rule 115 hearing, it might be required in the interests of justice to expand
8 the hearing beyond its original scope. But under the circumstances of this case the Appellant has failed
9 to convince the Chamber that such truly exceptional circumstances exist. The Appellant's motion is
10 denied.

11
12 I will now deal with matters pertaining to contempt and false testimony.

13
14 During the course of Rule 115 proceedings over the past two days, the Appeals Chamber has noted
15 significant discrepancies in testimony given by the witnesses, which may amount to false testimony. In
16 addition, the Chamber has been given reason to believe that there may have been attempts to pervert
17 the course of justice with respect to this appeal in the form of the solicitation of false testimony. Both
18 such forms of behaviour are specifically prohibited by the Rules of Procedure and Evidence.
19 Rule 77(A)(iv) provides that the Tribunal, in the exercise of its inherent power, may hold in contempt
20 those who knowingly and willfully interfere with the administration of justice, including any person who,
21 (iv), threatens, intimidates, causes an injury, or offers a bribe to, or otherwise interferes with a witness
22 who is giving, has given, or is about to give evidence in proceedings before a Chamber, or a potential
23 witness.

24
25 Rule 91(B) of the Rules of Procedure and Evidence provides, inter alia, that if the Chamber has strong
26 grounds for believing that the witness has knowingly and willfully given false testimony it may, one,
27 direct the Prosecutor to investigate the matter with a view to the preparation and submission of an
28 indictment for false testimony.

29
30 The Chamber wishes to make it very clear to the parties, to the witnesses, who have appeared before
31 us during the past two days, and to future witnesses, as well as to all others connected to these
32 proceedings, that the Tribunal will not tolerate such occurrences. The giving of false testimony before
33 the Court, as well as the interference with the testimony of other witnesses who may appear before the
34 Court, are unacceptable practices, both for the impact that they have on the trial as well as the impact
35 that they have on the Tribunal's mission to seek justice and establish the truth.

36
37 Accordingly, the Appeals Chamber refers the matter to the Prosecutor for general investigation and, in

1 particular:

2
3 1. directs the Prosecutor, pursuant to Rule 77(C)(i) of the Rules, to investigate allegations made
4 in evidence given before the Appeals Chamber during the Rule 115 hearing, to the effect that Tribunal
5 employees may have attempted to interfere with the witness who had given evidence in proceedings
6 before this Tribunal; and,

7
8 2. directs the Prosecutor, pursuant to Rule 91(B), to investigate discrepancies emanating from
9 the Rule 115 hearing testimony and the consequent possibility of false testimony with a view to the
10 preparation and submission of an indictment for false testimony.

11
12 The Appeals Chamber stresses that in so directing the Prosecutor, it leaves it to his discretion to take
13 the eventual steps and measures which he deems necessary and appropriate under the circumstances.

14
15 We have now finished with the rulings by the Chamber and we will proceed to do the hearing of the
16 appeal, and we start with the Appellant's submissions; one and a half hours. Madam Condé.

17 MS. CONDÉ:

18 Much obliged, Mr. President, Yours Honours. I had prepared myself to address the Court over a
19 two-hour period, and I will re-adjust so as to address the Court in one and a half hours.

20
21 My submissions will focus mainly on the alibi because that's the main area of concern. I will be dealing
22 with two other points very quickly before I get to the conclusions of the Chamber, dealing with the
23 Gikomero parish. I'll see how this will move as part of my submission, but that's not the way I had
24 intended to set them out, but this will develop as I speak.

25
26 And, from the outset, I would to like apologise to the English interpreters because maybe I will start too
27 quickly, be it as I get into the pace of things, I will keep a reasonable speed so as to enable the Court to
28 understand the content of my submissions.

29
30 Briefly, Kamuhanda's defence can be summed up as follows. He says that after the 6th of April he
31 stayed in his neighbourhood and he only left his neighbourhood on two occasions: on the 8th when he
32 went to look for his son who was spending his vacation in some other neighbourhood in the city; and,
33 then, on the 18th when the other neighbours in their neighbourhood decided to leave Kigali and move
34 to Gitarama. Those were the two occasions.

35
36 He also explained to the Court that, during that period, he did not stay at his house, and he had sought
37 refuge at the house of a neighbour with the pseudonym ALS. He further explained that some other

1 neighbour in the neighbourhood, pseudonym ALB, had also come and sought refuge at ALS's house for
2 the same concerns about security.

3
4 In support of his alibi defence, Kamuhanda called five people: ALS, who was the neighbour at whose
5 house he sought refuge; ALB, who was a neighbour in the neighbourhood with whom he engaged in
6 patrols; ALR, a neighbour who had sought refuge with him at ALS's home; and then ALM was there,
7 was also called, who had come by to see him on two occasions during that period.

8
9 One of the problems that we faced in dealing with the alibi defence, Your Honours, was that the
10 Trial Chamber worked in English, whereas we worked in French. And, in so doing, we referred (*sic*) in
11 preparing our submissions on the French version of the records, whereas the Trial Chamber relied on
12 the English version of the record in arriving at its findings or conclusions. And I submit that it is as a
13 result of this problem of language that the Trial Chamber and myself -- or that there were so many
14 errors committed by the Trial Chamber. Because I am submitted that that -- I am submitting that that
15 judgement is fraught with errors.

16
17 Before going any further, I need to tell you -- well, it's three o'clock. I need to tell you that
18 Mr. Kamuhanda spoke in French. Mrs. Kamuhanda, equally, whom I may call ALS or
19 Mrs. Kamuhanda, and ALB and ALR, whereas ALS spoke in Kinyarwanda.

20 *(Pages 49 to 52 by Verna Butler)*

1 1500H

2 MS. CONDÉ:

3 There is a consequence that flows from those submissions. The witnesses who spoke in French,
4 obviously, one would come to the conclusion that the authentic version would be French, and the court
5 reporters took down the statements. And we have recordings or tapings of those testimonies. The
6 English version goes through translation or interpretation. I'm not questioning or disputing the
7 interpretation.

8
9 ALS, as I stated, spoke in her mother tongue, which is the Kinyarwanda language. When she testified,
10 the interpretation was done in consecutive form that is from Kinyarwanda to French, then from French
11 to English. In other words, therefore, if there was any intermediary between what she said and what
12 was noted in the record, it moved firstly into French then into English. And, accordingly, it is the French
13 version that more faithfully reflects her submissions or her testimonies, because to get to the English
14 there are two intermediaries.

15
16 This aspect is extremely important because in order to dismiss the testimony of ALF and ALS, the Trial
17 Chamber said that it was Mr. Kamuhanda who had contradicted himself. It states in its judgment that
18 according to ALS, she was with Kamuhanda on a 24-hours -- on 24 hours, and according to his wife,
19 she never left him at all.

20
21 So we then looked into the Court records to find out whether the witness did, indeed, say what was
22 attributed to her. The five of us dealt with it, myself the co-counsel, the legal assistant, Nabou, a
23 colleague in Paris and Mr. Kamuhanda, who was made to work on this record. And at no point in time,
24 or in the record, do you have ALS saying that she spent 24 hours with the Accused.

25
26 Now, when you take those same records in respect of Madam Kamuhanda this time around, you will
27 notice that at no point, I do indeed say at no point, did that lady say that she left her husband. So, I
28 come to the following conclusion, because the issue in contention here is one of ascertaining whether
29 that stretch, that phrase on which the Trial Chamber relied on in saying that ALS and ALF were not
30 credible, whether those words were, indeed, pronounced by the witness. And the answer is, no. So
31 once those pronouncements on which the Trial Chamber relied were not made by the witnesses, you
32 would at that level reconsider the judgment.

33
34 But then the errors that the judgment -- that the Trial Chamber would make does not only -- are not only
35 confined to issues of language. The Trial Chamber felt that ALB and ALM contradicted themselves.
36 They said they were together seven days of the week, 24 hours each day. Whereas, both of them
37 spoke in French and there is no problem with that. If you take ALB and ALR, you would notice at no

1 point -- at no point in time did those two people say that they were together 24 hours each day, seven
2 days of the week. ALB said to the Trial Chamber, "I was at home. I was able to stay at my home
3 because my house was protected by high walls." ALR told the Court that, "I sought refuge at ALS's
4 house for security reasons." And that is enough at that stage to come to the conclusion that they were
5 not together 24 hours a day. And, further, they said that they only met at the time of patrols. Again,
6 those are two erroneous statements that were attributed by the Chamber to the witnesses.

7
8 As I told you, these did have tragic consequences because we had just five alibi witnesses, two were
9 rejected as a result of distorted testimonies and a confusion does arise in connection with the
10 testimonies of two others; and the third on ALR, well the Trial Chamber decides not to consider her
11 testimony. Why? Because ALR seemingly was influenced by a third party; to which we answered that
12 the Trial Chamber could not act in that manner, because according to the rules that it set out in the
13 judgment in 33 F(ii) 2, it says that the influence of a third party would not be enough for a testimony to
14 be discarded. I think it was a decision that was issued by the Appeals Chamber in the *Kupreskic* case.

15
16 Now, once the influence of a third party is not enough to allow for the dismissal of the testimony, the
17 Trial Chamber could not come to the conclusion that it was to set aside ALR's testimony because she
18 had been influenced by a third party. That testimony had to be considered, to see to what extent the
19 third party influence had distorted the said testimony, to ascertain whether ALR was credible before
20 coming to a conclusion. But in no circumstance would the Trial Chamber, on the sole ground that ALR
21 was influenced by a third party, dismiss her testimony.

22
23 So, from the outset, these are errors of law committed by the Trial Chamber in dealing with the alibi
24 defence. But it doesn't end there. It will further commit errors of fact, a lot of them. The Trial Chamber
25 says ALS's testimony was contradicted by Mr. Kamuhanda. Mr. Kamuhanda said that he saw ALS
26 during meals, which was indeed what he said. He said that he saw her in the morning during breakfast,
27 at lunch and at dinner time. And so we looked through the records of the hearing to ascertain whether
28 these -- that witness was saying the same thing as Mr. Kamuhanda. And I wish to refer you to the
29 session of 29th August 2002. And you would notice at that specific point that ALS does tell the Court
30 that she saw Kamuhanda at meal times, in the morning, at noon and in the evening. In other words,
31 therefore, ALS does not contradict the testimony of Kamuhanda, her neighbour.

32
33 As I pointed out to you, we did not work on the same records or transcripts. And it is possible, but I
34 don't know whether that is the case, that the Trial Chamber might have been misled by the English
35 version of the transcripts. But if that were to be the case, it cannot but be a misuse of language
36 because the Trial Chamber could not at the same time say in its judgment that ALS says that she spent
37 24 hours a day with Kamuhanda, and then in the very next paragraph or a couple of paragraphs further

1 down ALS said that she had never spent more than two hours without seeing Kamuhanda. That is
2 enough for one to come to the conclusion that if at some point in some sentence the witness had said
3 so, that could not have been what she was thinking because in summing up the pronouncements of the
4 witness, the Chamber did say that they didn't spend more than two hours. The Trial Chamber was also
5 going to say that Mr. Kamuhanda contradicted what was said by his wife ALF. And there I refer to the
6 transcript of 9 September 2002, pages 307 and 308. And Kamuhanda says something; "I used to see
7 my wife at breakfast and lunch and in the evening." And we checked in the transcripts and at that
8 specific point in the transcripts, it is stated that he came for breakfast, at lunch and around 6 p.m. for
9 dinner or to pick up some blanket.

10
11 And there, again, I am saying that if the Trial Chamber had been misled by the English version of the
12 transcript, it could not obviously be -- it could not but be a misuse of language because in the course of
13 ALF's testimony she had pointed out that when her husband was not with her, he was with the men;
14 which would imply, therefore, that he was not there 24 hours a day. And it was impossible for someone
15 not to see someone at some point in time. She may have to take a bath; she may have to go to bed
16 some time at night. So there, again, the Chamber erred in saying that ALF had been contradicted by
17 her husband.

18
19 Now, we get to ALR. I told you -- I think I am speaking too fast. I pointed out to you that the Trial
20 Chamber had held that ALF had been influenced by a third party and therefore her testimony was not
21 tenable in connection with the alibi. In other words, therefore, that witness was set aside or her
22 testimony was set aside to consider others. So that is the way things were. That was the situation.

23
24 The witnesses came, testified before the Court, and when they were testifying they said, "Well, I was
25 staying with Kamuhanda at ALS's house. We were together at that house. He went on two occasions
26 to look for his son. On the second occasion -- sorry, the first occasion was around the 9th, the second
27 one; she said was around the 12th, when we left for Gitarama."

28
29 Again, in the course of her hearing ALF -- ALR says to the Trial Chamber that she was heard by the
30 investigators of the OTP. And she did acknowledge that she had told the investigators of the OTP that
31 it was the 12th instead of the 18th. And so she -- he was questioned on this, would it be the 12th or the
32 18th? And ALR said, "Indeed, I had said it was the 18th. And then when I went home I told my wife
33 what had happened and my wife had told me, well, it was not the 12th, in fact, it was the 18th." So that
34 is an absolutely reasonable and plausible explanation by ALR. Well, he goes home and he says, "Well,
35 this is what I told them." And his wife says, "No, my dear, it was not on the 12th, it was on the 18th, you
36 were mistaken." So what is so strange about that? We can always find ourselves in the same situation
37 as ALR. That was a realistic explanation.

1 The next point wherein the Trial Chamber erred, in line with the case law here, testimony before the
2 court holds precedence over any statements made by the witness. So it was before the Court that he
3 talked of the 18th. It was before the Court that he talked about being misled and it was -- he talked
4 about having been mistaken when talking to the -- or being interviewed by the investigators. Now he
5 came and testified here, I don't quite remember the date, and that is my own misstate, it was his wife
6 and the corrections made by his wife which prompted his change of date instead of 12 it became the
7 18th. Why? Simply based on your own case law. It is not unusual for the memory or recollection of a
8 witness to improve as he submits on a particular matter or fact. In 1999 when he was interviewed by
9 the investigators, then he came and testified and he subsequently gave the date of the 18th before the
10 Court. So that is the way things transpired before the Court.

11
12 Another argument that we are raising, or in connection with Trial Chamber judgments, it puts before
13 ALR, not a written statement as we did with GAG earlier on today, but a summary of an interview that
14 that gentleman had with investigators. Investigators saw him, carried out a summary of whatever
15 interview they had, barely ten lines. He did not reread the document; he did not countersign the
16 document, and I am submitting accordingly that the Trial Chamber could not raise that issue of the
17 document -- of a document that ALR did neither sign nor read.

18
19 Finally, I submit that if you believe that the Chamber could rely on that written statement -- or the
20 summary of ALR's testimony, if you believe it can rely on that document, the Chamber did not go far
21 enough because it needed to examine the document to see whether the sequence of events, as related
22 by the witness, were the same. Let me remove the date of the 12th indicated in the document by the
23 investigators, and I will put in its stead the date of the 18th. And I read that document to see if that
24 tallies. If I superimpose that testimony with that of the statement, it matches because Kamuhanda left
25 only twice when he went to fetch his son and when he went to Gitarama. The date error is without any
26 incident because we recognise the fact that he only left Kigali twice, once to fetch his son and one time
27 to go to Gitarama.

28
29 Finally, and then I will be done with ALR, the other alibi witnesses have their testimony corroborated by
30 others and, of course, by Mr. Kamuhanda himself. I also told you that the Chamber had believed that
31 ALR and ALB had contradicted one another in what they allegedly said that they were together
32 24 hours per day, seven days a week. I also indicated that it was impossible insofar as one was living
33 in ALS's house and the other was living in his own house. But I will go further yet, and I am going to
34 submit that the Trial Chamber could not be content in saying that ALR and ALB contradicted
35 themselves. It needed to say how that contradiction came about. And I am relying on the Rules of
36 Procedure and Evidence, Rule 90 -- Rule 88, and Article 22 of the Statutes, for saying that the Accused
37 has a right to a reason to -- for a decision. And, therefore, the Chamber could not satisfy itself by

1 merely saying that ALR and ALB were contradicting one another. It needed to set out the grounds for
2 that finding.

3
4 I mentioned in my brief, and I won't return to that because of the time allocated to me, a certain number
5 of decisions to support this statement, to say that the Chamber was indeed, provided -- should have
6 provided a reasoned ruling. This is justified by the control that you exercise on the Trial Chamber's
7 decisions and rulings.

8
9 Now, the Prosecutor came to the help of the Chamber and he indicated in his brief in reply that ALB
10 and ALR did, indeed, contradict themselves because one said to the Chamber that they were on an
11 uninhabited plot, and the other said that they were under a tree. And I think an uninhabited plot can
12 have a tree on it. I don't see any contradiction there. It is also said that these two people contradicted
13 themselves because one indicated that they were in the middle of the road, and the other said that they
14 were in a place which was protected from bullets.

15
16 But further, I submit that the Chamber ought to have paid attention to the comments made by witnesses
17 regarding a film that we projected -- we showed, which was a film of the neighbourhood. And the
18 witnesses were relying on that document to say what they said. And there was no contradiction in the
19 statements of those particular witnesses.

20
21 Finally -- lastly let me recall the jurisprudence of this Tribunal where minor contradictions should not
22 make their testimonies be set aside. We wonder whether -- but, in any case, Kamuhanda left Kigali
23 only on two occasions; once to go to Gitarama.

24
25 The other argument presented by the Chamber to set aside our alibi is the system of control,
26 surveillance set up by the witnesses. What Mr. Kamuhanda said was cooperated by all of the alibi
27 witnesses because from the 8th of April 1994 they had set up a watching system in order to avoid
28 looting and having signals made to me (*sic*) to avoid looting and to give themselves courage.

29
30 They indicated to the Chamber the rhythm at which they were carrying out these patrols. They said
31 they would come together to carry out the patrols after breakfast. They stayed together until lunch time
32 and then they would separate again for the lunch. And then they would come back after lunch, they
33 would stay together and they were walking together in the streets, they were no longer in the houses.
34 Then they would come back after dinner. And after dinner, there were two neighbourhoods where they
35 would carry on with the patrols during the night. The Chamber said that the patrol system could not
36 only have the sole objective of avoiding looting, and that according to it the witnesses told -- no let me
37 repeat. The reciting by the witnesses was not credible.

1
2 And my response to that is that the Chamber could not act in the way that it did. I don't know what this
3 is called in your system, but in mine it is called the respect of interlocutory adversarial debates. And I
4 would cite the jurisprudence from Trial Chamber I in the *Bagilishima* case, where the Prosecutor was
5 said -- it was said that the Prosecutor did not contest the evidence provided. I am also mentioning the
6 *Akeyesu* case where this time it was the Defence which is blamed. It did not challenge the evidence
7 provided against *Akeyesu*. And let me also remind you of the *Rutaganda* case in the appeals, where it
8 is said that a party which does not challenge a witness on a particular issue is passively agreeing to the
9 veracity of the said evidence.

10
11 And what does the Prosecutor do? The Prosecutor will tell them that they were speaking about patrols;
12 isn't it true that these patrols were led by Juesh (*phonetic*), isn't it true that these patrols were led by
13 Kinishu (*phonetic*). Isn't it true that Kinishu (*phonetic*) and Juesh (*phonetic*) were *Interahamwes*. That
14 was the Prosecutor's argument of this case. At no point in time did they challenge the existence of the
15 patrol. At no point in time did they challenge the intensity of the patrols. All it did was to say that the
16 patrols were led by the *Interahamwe*, two *Interahamwe*.

17
18 Lastly on this case, the Chamber could not have acted in that manner because the Prosecutor in
19 cross-examination relied on documents which were tabled as exhibits, the first of which was a letter
20 which ALB had spontaneously written to a Parisian lawyer, Kuhteya (*phonetic*), who was dealing with
21 Mr. Kamuhanda in the transfer procedures for Arusha. And he wrote to Kuhteya (*phonetic*) to say that,
22 "It is impossible, we were together; we were carrying out patrols." And the Prosecutor, with regard to
23 this information, does not mention the fact that these patrols did not exist while cross-examining the
24 witness.

25
26 Let me go further. Before the Prosecutor began its case, or at least before it rested its case, he had all
27 of the alibi material. And on that occasion all of the witnesses spoke of the patrols. If it intended to
28 contest the reality, from the time where the Prosecution was involved -- was informed, it should have
29 presented submissions to challenge that evidence. And in failing to do so, it had admitted that the
30 Chamber could not go beyond what the Prosecution did in saying that the evidence was not credible.

31
32 Now, after having eliminated ALS, ALR -- set aside ALS and ALR, I have two, I have ALB and ALM.
33 ALM came because he knew Kamuhanda, because Kamuhanda was someone whom he held in high
34 esteem, and he believed that the allegations leveled against him were false. He, therefore, came to say
35 that "I live in Kacyiru, not in the same neighbourhood as Mr. Kamuhanda. But during the events I went
36 to go and see him twice in order to get news from him. And when I went to inquire, I found him on the
37 road where, in fact, Kamuhanda had indicated to the Chamber that they were to be found. But it is

1 obvious that all by himself he would not be adequate to provide the evidence according to which
2 Kamuhanda was not at Gikomero, so I only have ALB.

3
4 The Chamber considered that ALB was credible, but it also considered that ALB does not set aside the
5 possibility that Kamuhanda could have been found in Gikongoro because the other witnesses had
6 placed him in Gikomero, and this witness was judged to be credible. In the *Musema* Witness M was
7 deemed to be credible, Defence witness -- Prosecution witness, but the Chamber said that
8 Mr. Musema and his wife had casted a reasonable doubt on the evidence. Because it believed that
9 ALB was credible, it could not also consider that the Prosecution -- that the alibi was unlikely to be true
10 because in and of itself, this was enough to produce the evidence required.

11
12 Let me also say, because this seems to me to be important, that Mr. Kamuhanda, when he was
13 arrested, he accepted to speak with the investigators of the OTP and he told them that he was not in
14 Gikomero, and he mentioned to them the names of persons who could corroborate what he was saying.
15 The persons that he mentioned in November of 1999 when he was arrested are exactly the same who
16 came to testify, and who told the Chamber that what he said was true.

17
18 Let me also submit that apart from -- that from the time what Mr. Kamuhanda had respected the alibi
19 notice, I don't think I have already said that -- no. I'm going to say that when Mr. Kamuhanda was
20 arrested, immediately after the Prosecution disclosed the evidence to us, at that time it was only the
21 supporting materials, it was not, in fact, the witness statements, we had some brief summaries thereof, I
22 indicated that Mr. Kamuhanda had an alibi by situating him in December 2000. And since that time -- I
23 had not yet given my list of protected witnesses; I did, however, provide the notice of alibi. And I filed a
24 document in due form with the names and the places and the individuals who are going to come and
25 support the defence of alibi in March 2001. So it was -- it was up to the Prosecution in the framework of
26 its investigations to go to Kicyiru and find information which could come and counter the alibi. The
27 Prosecution decided not to do so and filed a motion. And in a decision on the 6th of February 2002, the
28 Chamber authorised the Prosecution to amend its list of witnesses.

29
30 In that motion, the Prosecutor indicated, and I will quote, "That I will call new witnesses to challenge the
31 alibi. That was not done. He went to look for other witnesses in Gikomero. And according to the
32 prosecution, I'm deducing. That this was the mass of evidence on Gikomero that can counter the alibi
33 defence, but it did not bring any evidence to support, or to counter, to challenge the defence of alibi.

34
35 The witnesses also told your Chamber that Gikomero was 40 kilometres away from Kigali. It is not a
36 tarred route, I have been told that it should have been. And they said that in times of peace, one
37 needed three hours to go there and back. And this was the time of war, so the journey would take

1 much longer. And the witnesses said that Kamuhanda never remained out of sight for so long. In other
2 words, if you superimpose the alibi witness testimony, you will see that Kamuhanda is either with the
3 women in the house, he is with -- or with the men outside, but if you put that end to end, you will realise
4 that he doesn't remain more than two hours and that he doesn't have the material time to go to
5 Gikomero and come back.

6
7 I don't know whether I have also told you that when the witnesses were heard, the testimony before the
8 Chamber corresponded to what they had indicated to the Prosecutor a few months earlier when they
9 had been met in the framework of investigations regarding alibi. This is September 2002, and I think
10 the Prosecutor met them in July 2001. I'm not very sure of the date, but he -- the Prosecution put the
11 questions, and the documents are found and there is no contradiction and there are no errors that are
12 detected, everything tallies.

13
14 Another submission I wish to make before the Chamber is the method adopted regarding the alibi. I
15 have also informed you that we only had five witnesses, not many, but not bad as a number. And when
16 the Chamber sets aside ALS and ALF, because -- ALR because he was -- because they are
17 contradicted by the wife or because they were influenced by a third party, there is an error which is
18 made by the Chamber in acting that way, because my evidence is chopped up. It is examining the
19 evidence in turn and I do not wish my alibi to be examined on a case-by-case basis. It should have
20 taken all of the information, all of the evidence I presented to constitute the alibi. And I mentioned a
21 decision of your Appeals Chamber in the *Musema* case in which you state, Your Honours, that it is the
22 accumulation of all of the testimony that should be taken into account. Taken individually, testimony
23 can be of little use, but it could be reinforced by other similar testimony. And this is what I am
24 proposing to the Chamber. This is how the alibi should have been treated by the Chamber; it should
25 have been taken globally.

26
27 Another supporting submission I have is that the evidence from the Prosecution was considered as a
28 whole. Let me explain. When the Chamber considered evidence dealing with Gishaka -- the Gishaka
29 parish, not Gikomero; this will be set aside by the Chamber by saying that this comes out of testimony
30 by Prosecution witnesses, without mentioning the defence witnesses. The Chamber said that the
31 evidence is not enough. In other words, we have a comprehensive evaluation or assessment. When it
32 looks at the events of the Gikomero parish, the Chamber will also proceed in a comprehensive manner,
33 because it comes out and says that it was the eight witnesses who did not know Kamuhanda came and
34 corroborated what was said by the three who knew him. And this is a comprehensive assessment of
35 the Defence -- in the Prosecution evidence. This should have been done also for the Defence. If the
36 Prosecution evidence is looked at comprehensively, the same should apply to the defence evidence.
37 Now, I am, indeed, aware of a decision which you rendered in the *Kayishema* case, in the *Kayishema*,

1 Ruzindana case in which you say that there is no appropriate method for the assessment of evidence.
2 However, you state in that decision, when the method leads to an unreasonable assessment, one
3 needs to find out whether the error committed in the choice of method for the appreciation of the
4 method did not lead to, or cause an error of fact which occasioned a miscarriage of justice. That is, the
5 method adopted by the Chamber was erroneous, and that, indeed, did occasion a miscarriage of
6 justice. If you place all of this in, because I'm concluding with this ground, if you were to place the error
7 as committed by the Trial Chamber in considering the alibi by ALS, ALF, ALR and ALB, take their
8 evidence, ALR was set aside. The Chamber said, "You don't remember anything, I'm going to put -- put
9 your evidence aside because it is your wife who helped you out."

10
11 If you look at this error by saying that the Chamber did, indeed, make a mistake, that the witness did
12 not say that; indeed, the Chamber made an error; it needed to have examined ALF's testimony. And
13 then to say whether they contradicted Kamuhanda, and I am saying, no, because we can see clearly
14 that the women were saying that they were seeing him at the same time. I have already explained that,
15 so I shall not repeat myself. And we can see from there that Mr. Kamuhanda has a solid alibi. And the
16 Chamber did not even examine the evidence presented by the Prosecutor. It should have seen that
17 this casts a reasonable doubt, given what the prosecutor presented as evidence.

18
19 When I was doing my research, Sainaboe, I think found a decision of the ICTY Trial Chamber a
20 Vasiljevic case. It is a decision of the 29th November 2002. In that case, the Appeals Chamber -- the
21 Trial Chamber says that the Accused had an alibi. It found that the Accused decided to testify even
22 before the alibi witnesses themselves testified, and it said that this was in his favour, in the favour of the
23 Accused. And this is an element which is in favour of Mr. Kamuhanda. He even testified before --
24 before knowing what his witnesses were going to say. And it seems that his witnesses corroborate him
25 in all ways. And it is, therefore, why I am saying that there was a poor assessment of the elements
26 concerning the alibi. And maybe I shall deal with the consequences on this a bit later, but in order not
27 to break my pace, I think -- Mr. President, when should I conclude by? I think I started at 3:15, if my
28 memory serves me right. I think I started to ten to three.

29 MR. PRESIDENT:

30 You started at ten to three.

31 MS. CONDÉ:

32 So, I'm now going to move onto another point, another ground which I have placed in my brief, and I
33 chose to use this because it seemed to me fundamental. Now, in regard to the alibi, there was another
34 crucial problem which I had referred to earlier when I said that Gikomero was three hours -- that
35 Gikomero was three hours away from Kigali. And the alibi witnesses had said to your court that it was
36 impossible for Kamuhanda to have gone there because of the fighting that was taking place and they
37 had not spent that much time without seeing him.

1 Well, Mr. Kamuhanda and his alibi witnesses stayed hidden in Kacyiru. If they were hidden in Kacyiru,
2 it is obvious that the Trial Chamber could not -- merely because they said that Gikomero was within -- it
3 was in a combat zone, they could not come to the conclusion that it was impossible to go to Gikomero,
4 but because it was also known that we had just wanted to provide witnesses in support of that
5 argument.

6
7 What did we do? We pointed out to the Court that there were two roads that can be used to go to
8 Gikomero from Kigali; one that went through Byumba and another went through Remera. Let me state
9 that I wasn't contradicted, or I wasn't challenged on this point. I had two witnesses on the Kigali and
10 Byumba, and I had two witnesses testify in regard to Kigali-Remera road. I also had three soldiers, two
11 who were in the field, and an intelligence officer at the time who came here to say that what was being
12 said by the civilians was, indeed, corroborated by the soldiers. And I thought I was providing evidence
13 that Mr. Kamuhanda could not go from Kigali to Gikomero during the period under consideration.

14
15 On that the Trial Chamber, for some reason which I have not yet understood, the Trial Chamber
16 decided to rely on three of the seven witnesses that I brought here in support of my case. I produced
17 seven witnesses and it ruled or relies on RKL RGM and RKF, and it forgets about the four other
18 witnesses that I produced here.

19
20 Now, of those three witnesses, the Trial Chamber said that, it didn't go to the site, they didn't go to the
21 location. And my answer to that is that they weren't at all of the places that they mentioned in their
22 testimony. But they stated, as part of their flight -- on their flight they met a lot of people who provided
23 them with information on the areas where they had not been themselves. That is called hearsay. They
24 also said that the position of the belligerents which they referred to so as to show that the road was
25 somehow cut off at certain points, and that was in the Remera *commune*. And my answer to all of that
26 is that you cannot just rule out my three witnesses merely because it is a case of hearsay. And above
27 all, there were not three witnesses, there were seven actually on this particular point. The first two were
28 corroborated by the evidence of which was corroborated by the three soldiers, and as for the others,
29 further corroborated by the three soldiers, talking about the impossibility of going to Gikomero, so they
30 just, as it were, distorted the evidence that I was producing. Well, let me remind you of the decision
31 that I had referred to earlier, the issue of the accumulation of testimony on a particular point, and if
32 those testimonies were taken individually, all separately, they may not be of much use.

33
34 Well, I conclude from the findings of the Trial Chamber that it committed an error of law by not ruling on
35 the testimonies of those four witnesses, and by acting in that manner, it violated Articles 19 and 20 of
36 the Statutes which states that the witness is entitled to have his or her case dealt with in a fair and
37 equitable manner. So, this is what you need to reconsider.

1 So, if it is distorted, the evidence is not adequately considered. And in that regard, therefore, the Trial
2 Chamber committed an error of law. I am aware of the case law in this respect, according to which the
3 Trial Chamber is not bound to set out all of the phases of its reasoning. I am aware of that. And I am
4 equally aware that you had answered to that. In other words, that you are not bound to set out -- or that
5 you are not bound to set out all of the phases of your reasoning and that there is a limit to that, and the
6 limit is the duty to provide reasons for the judgment. And I am saying that no reasons are provided for
7 that judgment or for that determination. Even without an alibi, I can go to Gikomero. And without the
8 alibi the Trial Chamber needed to motivate its decisions; it couldn't just dismiss those witnesses on the
9 basis that it did not have any such obligation.

10
11 Again, with respect to the impossibility of moving from Kigali to Gikomero, the Trial Chamber, while
12 pointing out that the three witnesses on which it relied -- or that their testimony was mere hearsay, and
13 that they just couldn't say that it was impossible to go to Gikomero, they committed further errors.

14
15 In the case of Kamuhanda, the Trial Chamber said that RKA moved on the 7th and 8th and 11th of April
16 in the neighbourhood, or in the environs of Kigali, not too far from there. Well, my answer to that is that
17 that gentleman told the Court that he had a vehicle and that he could not use his vehicle because of the
18 movement of refugees. And I said to the Trial Chamber that even if he could move on foot -- and
19 according to Prosecutor that gentleman was in the vehicle. And I said just because one of the persons
20 concerned could do it on foot, that didn't mean that the other person could go in a vehicle.

21
22 Further, regarding my witness, the intelligence officer, he says that he didn't have firsthand information.
23 And there I raised a point, which I had referred to when talking about the patrols. And I say to the Court
24 that when RKF came here to testify, Mr. Moore, who was the Prosecutor in charge of this case, did file
25 a motion before the Court. He said he wanted to be assisted by his investigators because my --
26 because the Defence witness was not an ordinary witness, he was too informed about the situation.
27 And then I said that the Trial Chamber is contradicting itself in connection with that witness. The Trial
28 Chamber said in its judgment that RKF's testimony is not enough to suggest that it was impossible to
29 go to Gikomero, and at the same time, in view of the fact that there was no firsthand information, you
30 know, the hearsay that I referred to earlier. Just a couple of lines further down the Trial Chamber picks
31 up the statement of that same witness, who is supposed not to have firsthand information, and puts it
32 before my own witness, and said, well, he could have used some secondary routes. And my answer to
33 that, either that witness does not have adequate information to support whatever he is saying, and in
34 that case you would not look into the issue of secondary roads, or he would have reliable information,
35 or enough information, and, therefore, you would come to the conclusion that would it be impossible to
36 move towards Gikomero.

1 I think one can take just one part of the statement and not the other one, but the problem is it is the
2 same line of reasoning. And, accordingly, you can't say one thing and the contrary of that. Maybe this
3 is better explained in my written brief, but that is the idea.

4
5 Finally, and I would have concluded with this particular line; several witnesses were brought before the
6 Court who lived in Gikomero who were there in April, the famous 12th of April. Those witnesses told
7 the Court that the refugees mainly came from Rubungo. And the Trial Chamber relied on those
8 witnesses to say, well, you see one could move around. And my answer to that was that be careful you
9 did say that the others did not go there. And, well, they didn't go to the place, they did not leave
10 Gikomero. Now, if you consider that those other people did not go to Gikomero and they did not have
11 enough information, you therefore could not rely on that to say that one could move or travel.

12
13 And, finally, it is reasonable to say that Gikomero and Rubungo are two *communes* that are just next to
14 each other, and people who sought refuge in Gikomero came from a neighbouring *secteur*, that is
15 Gikomero-Rubungo. And if they could rely on those witnesses, they would only restrict themselves to
16 the fact that they had provided evidence that one could move from Rubungo to Gikomero, and not
17 between Gikomero and Kigali.

18
19 Since I am going quite fast, I am still within the time frame. I will now talk to you about GEK's testimony
20 and how it is dealt with. To save time, I won't go into all of the arguments that I raised in support of that
21 point, particularly as you have my brief. And since you have limited the time I have, I will not raise the
22 issue of, you know, the fact that the immediate neighbours of GEK did not participate in the distribution
23 of weapons as she told the Court. I will also not talk about the fact that some of the witnesses had told
24 the Court that GEK was not at her home at the time when she says the distribution of weapons took
25 place and that she was in Kibungo. I will merely confine myself to two arguments in connection with
26 this witness, and in that regard, I will refer to my submissions in writing.

27
28 The first one -- the first argument that I raise is the two statements, solemn statements made by this
29 witness in this same case; I'm not talking about the other case, Karemera, where you rejected my
30 reference to Rule 115, I am confining myself to the Kamuhanda case. The trial starts on the 17th of
31 April, 2001, and, unfortunately, Judge Kama, who was presiding, fell sick. And we know what
32 subsequently happened, and the matter came to an end. It was subsequently that GEK was heard. In
33 September 2001 it was decided that the matter be resumed. GEK was called and everything started all
34 over again. And so she now testifies in this matter.

35
36 I will be brief -- good, found it, just a table that I drew up for you. Now, I said to the Trial Chamber, be
37 careful, GEK had testified before on this matter on the 17th of April. And when she did so, she said

1 things that were completely different from what she is telling you today in September 2001. And since I
2 am aware of your case law, according to which when there are inconsistencies between two solemn
3 statements made under oath, inconsistencies will visage the credibility -- will affect the credibility of the
4 witness. And I have Exhibit D. 14 containing all of those inconsistencies. And I told the Court this lady
5 is incapable of saying the same thing on two occasions. I got no response from the Trial Chamber.
6 They told me GEK is highly credible. And I said, highly credible because we more -- we spent virtually
7 five months trying to find out from the French version why we lost. And highly credible, that expression
8 was etched in my mind.

9 MR. PRESIDENT:

10 So, I said, well, let us find out whether GEK is highly credible. In April 2001 she says to your court,
11 Kamuhanda came with a green coloured vehicle, and I'm talking about the scene regarding the
12 distribution of weapons. In September 2001, she says to the Court, Kamuhanda came in a white
13 vehicle. In April 2001, she says when Kamuhanda came for the distribution of weapons there were
14 three people at home, and she makes mention of the three people concerned. Then when she then
15 comes in September 2001, she says there were four people, and she makes mention of all four
16 individuals. It is possible that when you tell someone, please mention who was there, so many more
17 people will be mentioned. It is possible that my witnesses this morning did not present an exhaustive
18 list, but in this case, she was not asked to mention the name. She was asked how many people were
19 there. In one case she said there were three; in some other case she said it was four. It is true that on
20 her own -- on that one alone I might say it is a minor inconsistency that could be overlooked, but then
21 there were others.

22
23 In April 2001 when Kamuhanda came to distribute weapons, she says my husband, that is GEK's
24 husband, refused to take a weapon. Says, well, how many weapons? She said my husband did not
25 want to take any weapons, and you will see it in my book of authorities, he says -- she says
26 somewhere, my husband refused to take any weapons. And then there was some other transcript
27 which I referred to. She says, when my husband -- sorry, refused to take any weapons. So there is no
28 dispute in that regard.

29
30 Now, when she comes in September 2001, and she is talking about this same incident; and then she is
31 told, well, Kamuhanda distributed weapons; she says, oh yes, oh yes, he did distribute -- he gave four
32 grenades to my husband. And my husband took the four grenades. And then I get to her narration of
33 the incident, that is of the day when Kamuhanda allegedly engaged in committing massacres in
34 Gikomero. She said, oh, he went pass Karekezi's house without halting. In September 2001 she says,
35 he came -- he parked the car at Karekezi's house; he discussed with them for a brief moment, And
36 there were people, *Interahamwe* who jumped into the car and they left.

37

1 And then again on the 12th of April, she was asked, did you witness any killings -- in April 2001? And
2 she said, no, no, no, I did not witness this. I was busy about some other things. And then she told us
3 what she was doing. Then there was a question put to her by Judge Sekule. So these killings you
4 talked of took place the next day? She says, yes, Judge, yes, Your Honour, it took place the next day.
5

6 Now, September 2001, the same witness appears to testify, and she says she witnessed massacres
7 occurring in front of her house on the very day that the weapons were distributed. What I sought, in
8 providing you with all of these inconsistencies, was merely to tell the Court, be careful, she is not
9 credible, the Court needs to reject that testimony. Well, that is not enough to convict. When it happens
10 to be a single -- one in the same witness, one needs to exercise lots of caution. And the Trial Chamber
11 would need to wait for some other witness to corroborate that version of facts, particularly, as some of
12 us came and said, I was there, I saw nothing of the sort and what she was saying is not possible. So
13 corroboration did not exist.

14
15 And that was what they had decided on in the case of the Media trial, in the case of Serushago, if there
16 is corroboration, fine, we maintain; if there is no corroboration, it is rejected. But in this case, it was
17 rejected. So there was no corroboration per se.

18 *(Pages 53 to 66 by Donna M. Lewis)*
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35

1 1600H

2 MS. CONDÉ:

3 Another argument that I am raising in connection with this witness is that the conclusions drawn from
4 the Trial Chamber are totally at variance with the testimony of the witness. And I am saying that the
5 conclusions of the Trial Chamber cannot be reconciled, are not in harmony with the testimonies of the
6 witness, and I will explain.

7
8 In April 2001, GEX, rather unusually, said that Kamuhanda came and distributed weapons alone in a
9 vehicle that he was driving. So we have that bracket in terms of time within which Kamuhanda came
10 alone in a vehicle which he was driving himself. And I said to the Court, you see, you cannot rely on
11 this witness because everyone agrees that Kamuhanda does not know how to drive a vehicle. And a
12 lot of witnesses, whether they be my own witnesses, alibi witnesses or witnesses testifying in regard to
13 the events at the parish, all said they had never seen Kamuhanda driving, let alone the fact that
14 Kamuhanda does not know how to drive. Well, the Trial Chamber tells me it's possible that GEK was
15 mistaken about the fact that Kamuhanda knew how to drive. And, so, that's it. If she was mistaken
16 about Kamuhanda's ability to drive, that meant that Kamuhanda did not know how to drive and he was
17 not -- she was not mistaken about that, about the fact that he was alone. And my question therefore is,
18 how could Kamuhanda go alone from Kigali to Gikomero in a vehicle that he was not driving? In other
19 words, could the Trial Chamber reasonably admit the fact that Kamuhanda was alone in a vehicle when
20 he went to Gikomero and at the same time come to the conclusion that he was not driving the vehicle?
21 The obvious answer is no.

22
23 Well, since one wants to seek in order to understand the cause of these errors, maybe I must -- I should
24 have approached it in a different way. In my own investigations, I found, I might say, my own answer to
25 the conclusions of the Trial Chamber in regard to all these inconsistencies. If the Trial Chamber had
26 found that GEK was credible, it was because this was the only witness it could rely on in order to arrive
27 at an evil intent. So they needed that *dolus malus* and they had none, no evidence, except GEK's
28 testimony, which says, "All the Tutsis should be killed," according to Kamuhanda.

29
30 Now, if you take the evidence regarding the parish, just the parish, and we start off from the principle
31 that the Prosecutor is right. Of course, I'm challenging that. Suppose the Prosecutor is right.
32 Kamuhanda gets there. He sees the crowd; he says, "*Mukore*," in other words, "Let's kill them." What
33 do I have? Extermination. The charge of genocide doesn't apply to be able -- for the genocide charge
34 to stand, there are other considerations. So that *dolus malus* or evil intent comes only from GEK. I
35 hope you would follow me in that reasoning. GEK was not credible. It was in error that the
36 Trial Chamber considered that it could rely on that testimony, firstly, to determine that Kamuhanda
37 distributed weapons, and as part of that distribution of weapons, there would be the moral element or

1 the evil intent. I look at my watch. I'll go rather quickly now on the events at the parish.

2
3 This morning and yesterday, you saw that there was an important discussion on the identification of
4 Mr. Kamuhanda at the parish, at the Gikomero parish. Five individuals who knew him, who lived with
5 him, said that he remained there. He didn't move; he didn't leave for Gikomero. And then, later, you
6 have 13 others who said that, "No, no, no; yes, he did come to Gikomero." The only problem is that,
7 out of the 13, there are only three who came to know him. Ten others -- two would be found not
8 credible -- 10 others were kept only because they corroborate the first three.

9
10 Now, what I'm saying to the Chamber is this: Careful now. He couldn't rightly have identified
11 Kamuhanda. They didn't know him, therefore, nothing could enable us to say that these people who
12 said, "Look, there's Kamuhanda" was my client, Jean de Dieu Kamuhanda. It could have been Peter,
13 Paul, or anybody else, Mr. Smith. It couldn't have been Jean de Dieu Kamuhanda.

14
15 When the Chamber rendered its judgement, it said at paragraph 444, "Since you're doubting the
16 identification of Kamuhanda, since you have an alibi, -- I am going to be very careful when we come to
17 the identification and I'm, first of all, going to examine the identification and then I'll go into the
18 credibility. It did say so, but it didn't follow its words. It did so for the first two, and for the ten others,
19 the Chamber is going to say that the identification is reliable because it corroborates what Kamuhanda
20 said. The Chamber can also say -- because it corroborates the first three, the Chamber can also say
21 that the rest of those people were credible, but it cannot also say that the identification was reliable only
22 because it corroborates the first three. And I'm saying that the Chamber erred in so doing.

23
24 It further erred because at the time all we knew was that Kamuhanda had not set foot at the parish and
25 that, according to us, the Prosecution witnesses had lied. And we said to the Chamber that maybe
26 there's another explanation to all of this. Kamuhanda, in Kinyarwanda, means "on the road." And when
27 one says, "Look at the road," isn't one saying, "Look at the road and the vehicles which are coming"
28 and not, "Look at Kamuhanda, Jean de Dieu," my client? And I'm more persuaded by this argument
29 because there were three people who said they knew him, and those three did not say that, "When
30 Kamuhanda arrived, we heard his name being mentioned." Nobody says that they heard people
31 shouting his name.

32
33 Later on, there was the explanation provided, but if the name can be the cause of an error, wasn't it
34 another reason for us to be more careful when we come to the identification by these witnesses? This
35 is more so because another witness who came, a bilingual Kinyarwanda/French witness, to say that
36 that was indeed a possible error. We know that GAA recanted his testimony. You have that in your
37 deliberations, and you're going to be saying whether you're convinced by what he told you yesterday or

1 not, and therefore set aside his testimony.

2
3 We are going to look at GES and GAF. There were two. And then you're going to superimpose the
4 GAF and GES testimonies and you shall see that those two statements are irreconcilable. And here
5 again I'm producing a little table for us to be in the clear. GES testified on the 29th of January 2002, on
6 the 12th of April and 17th September 2001. You will find all these extracts in my book of appeal -- of
7 appeals.

8
9 The number of vehicles which came to the parish: According to GAF, it's four; GES says one.

10
11 Distinctive signs on the vehicle: According to GAF, the UN sign. According to GES, there was no sign,
12 no distinctive sign or logo.

13
14 According to the Chamber, when Kamuhanda arrived, he came down from the vehicle and he spoke
15 with Pastor Nkuranga, and subsequently the killings began. You'll see that in paragraph 50 onwards
16 from the judgement, according to what I heard, this is what happened. If things did indeed happen that
17 way, why did GAF not mention it? There is only GAS -- GES who made that statement. According to
18 GAF, when Kamuhanda arrives, he came out of the vehicle alone and he goes to speak to the pastor.
19 According to GES, when Kamuhanda arrives, yes. And the attackers who are in his -- in his car,
20 according to GES, there's only one car. They come out in order to start the atrocity.

21
22 According to GAF, Bucundura dies, and we know that he's the first one who died, not given what was
23 said today but given the evidence before the Trial Chamber, because we need to look at the time when
24 the Chamber is ruling and not when you will be coming to your ruling, given the new additional
25 evidence. And the witness, Witness GAF, says that Bucundura was shot at while the vehicles were still
26 moving; Kamuhanda didn't even come out of the car. And GES says that the vehicles were parked
27 when Bucundura was shot at, and Kamuhanda is already out of the vehicle.

28
29 Subsequently, GAF says that he came, he made his signs, and then he left. He stayed for one to two
30 minutes at maximum. And GES says he stayed there for 10 to 15 minutes. GAF doesn't see him
31 leave, but GES does see him leave.

32
33 They were supposed to be a few metres from Kamuhanda: One says 20, the other one says 50, and
34 both say that they had Kamuhanda in their field of vision. It's not hearsay. They said, "I know him. I
35 saw him and I observed him for one or two minutes." And the other one says 10 to 15 minutes before
36 he leaves. And now I'm saying this doesn't work because you cannot come back and say to me later
37 that these witnesses are corroborating what? Is it corroboration of the second testimony or the first

1 testimony? The two of them -- or the third -- the three, since at the time there were three -- the first
2 three, were they not there in order to provide evidence on the presence of Kamuhanda at the parish
3 and identify him?
4

5 If I were to base myself, rely on these witnesses and they contradict themselves, I can only draw the
6 logical conclusion to say that there's no identification because there is no possible corroboration. That
7 is my reasoning, Your Honours. I have others, but you will see them in my brief. And I'm trying to go a
8 little bit faster to tell you that somewhere you will see the following reasoning. The witnesses of the
9 second group are supposed to have corroborated the evidence of the first group, and you will have a
10 list of contradictions between the testimony of the first group and the second group to show the lack of
11 corroboration.
12

13 Subsequently, I have another argument which says that when the Chamber considered the facts
14 concerning Gishaka parish, it based itself on the principle that it was necessary to examine the witness
15 statements from the time when they were all on the location, and you need to look for the contradiction.
16 Whereas, in the events concerning Gikomero parish, the Chamber will be examining the witness
17 statements only on a small segment concerning the arrival of the vehicles. All of them arrived, at the
18 latest, on the 11th in the evening. And when you look at the recital concerning the 12th and not only
19 the arrival of the vehicles, there are so many contradictions, it's impossible. And now I'm saying that,
20 given such a number of contradictions, irrespective of the arrival or not of the vehicles, the Chamber
21 could not have come to a finding that there was indeed corroboration.
22

23 And now since I need to conclude before you ask me to do so -- it's always not pleasant to stop when
24 you're being asked to -- I'm going to talk about my Defence witnesses. I had a certain number, and I
25 forget now how many, but they were set aside, one after another.
26

27 Now, there was one who was known as GPC, a young man, who heard shots. He ran to the parish.
28 He knew Kamuhanda for a long time, had known Kamuhanda for a long time. I was going to say
29 something else but that might identify. He had known Kamuhanda for a long time and he says that
30 "When I arrived, I didn't see Kamuhanda." The Chamber says, "Yes, but Kamuhanda should -- may
31 have left by then." How? Because the witness says, "When I arrived, there were four vehicles." And I
32 do not know whether it was in the examination-in-chief or cross-examination or re-direct, but "Are you
33 sure, if there were four vehicles?" "Yes, they were there when I arrived, a short while after I arrived. If
34 Kamuhanda were there, I would have seen him because I knew him because -- unless he left by
35 helicopter. It is obvious that I didn't see him."
36

37 The Chamber sets this aside by saying that GPC had high esteem for Kamuhanda. One, I'm saying

1 that that is not true, GPC does not have any high esteem for Kamuhanda. He is being made to say
2 what he didn't say. The witness was asked whether Kamuhanda had a good career, "You could have
3 had a good career; you could have had the same." He says yes. I don't see how many poor peasants
4 to whom it is said that "a post of director-general, don't you find that cool?" And I don't think there's
5 anybody who would say no. So his answer is to say that if Kamuhanda's home was beautiful, it has
6 nothing to do with the esteem that he had for him. And, for me, this doesn't mean that the witness is
7 not credible. One can have esteem for somebody but at the same time provide impartial testimony, and
8 it was up to the Chamber to find the elements which should have been for the setting aside of that
9 testimony and not only talk about the esteem the witness had for Kamuhanda.

10
11 There is also GPB who testified and who was found to be credible, GPB. The problem there is that he
12 didn't see the pastor, and he's told the Chamber, "I didn't see the Pastor, Pastor Nkuranga, I didn't see
13 Kamuhanda." And the Chamber said, "Ha, ha, ha, the evidence is that if you didn't see Kamuhanda, if
14 you didn't see the pastor, you should have been unable to see Kamuhanda, too." What I'm saying, that
15 is not possible because he was there when the vehicles arrived. He was there when the vehicles left.
16 He knows the person in question, but we do not know to the contrary, for how long Nkuranga remained
17 at that location. Consequently, the fact that he did not see Nkuranga does not mean automatically that
18 he could have been also unable to see Kamuhanda.

19
20 I have three and then I'll be done, Your Honours.

21
22 After, with regard to GPK, the Chamber says GKK is not -- GPK is not credible. Why does the
23 Chamber not trust GPK? Because he says that he saw Karekezi in the location, but nothing proved
24 that Karekezi was there. And I say, hey, be careful. The Chamber found GAF credible, and GAF said
25 that he saw Karekezi in that location. And then the Chamber goes on to say, "GEK did not say -- " No,
26 "GPK did not say GEK was pregnant when he saw her. He never said that he ever saw her. He said
27 that he accompanied her husband to the place where she was. He does not say that 'I had time to see
28 her and discuss with her'." So words attributed to that witness do not correspond with what he actually
29 said.

30
31 And, finally, the Chamber says this doesn't hold water: "I do not understand how come he didn't flee
32 when he saw the vehicles arrive or when all these things were happening." And I say, well, be careful,
33 many of them didn't flee either. First of all, there's my Witness GER, who hung about in the area. You
34 didn't find the fact that she did not flee was a serious omission. There's my Witness GPB, who also did
35 not flee, and you didn't say that this was something which was in favour of the absence of credibility,
36 and then I also say the unfortunate victims did not flee either. They all weren't able to flee.
37 Consequently, the simple fact of not having fled does not suffice insofar as the witness explained why

1 he did not flee.

2

3 Witness GPT, the Chamber considered that this person didn't say very much, whereas he had been
4 called for a specific purpose. The Prosecution witnesses had said that the inhabitants of the area knew
5 Kamuhanda and some of them identified him. And GPT said, "I work with refugees, with the survivors
6 from Gikomero, and I can certify that none of them was at the parish." So if there were no refugees
7 from the parish at Gikomero, who were the ones who would have been able to identify Kamuhanda?
8 Because there were those other 10 who said that somebody identified them -- someone identified him.

9

10 There was GAR also. GAR in our brief -- and the gentleman died. It was said that it was GAR, but I
11 don't think that today it would be unfortunate to say that GAR was Pastor Nkuranga. He didn't come to
12 testify but before his death he was approached by the Office of the Prosecutor, and the OTP gave us
13 his written statement. We read that written statement, which -- it was not in the framework of an
14 exculpatory evidence, Rule 68. This was a document which I was given. I have read the document: "I
15 know Kamuhanda. Kamuhanda was not there."

16

17 I say, eh, wait a minute. This is the document given to us by the Prosecutor. I am asking you under
18 Rule 92 of the rules -- I think it's 92 but it's not -- it's a rule which talks about the deposition of written
19 statements. So I'm saying -- I'm going to submit this. It corroborates what the witnesses have said. It's
20 Pastor Nkuranga, and all the Prosecution witnesses agree that the pastor was there. Everybody
21 agrees.

22

23 This is a Prosecution document which is not contested, and it was disclosed. I did not contest --
24 challenge it, and the Chamber says, "Ah, yes, but I cannot because Pastor Nkuranga, he was being
25 prosecuted for the same facts and events that happened at the parish. I said no, this is a Prosecution
26 document which was disclosed. I don't challenge it, and you are bound. And further, in my file, there's
27 a certain number of elements which provide evidence that you cannot set aside this testimony.

28

29 And since it's time, I'm going to rapidly conclude, Your Honours.

30

31 I told you that in the *Vasiljevic* case or trial, the Trial Chamber at the ICTY had, in a decision dated
32 29 November 2002, held that the fact that the Accused person testified before the other witnesses
33 would be something in his favour. And I say Mr. Kamuhanda also did testify first; that is, before the
34 other witnesses, and that is something that is in his favour.

35

36 I don't know what the practice is at ICTY, but, here, a number of people who had alibi witnesses keep
37 them, and then pull them out at the last minute. Mr. Kamuhanda, as from his arrest and once all the

1 facts were known, because in order to produce alibi witnesses, we needed to put together all the facts,
2 between May and somewhere in December, I already served notice to the Prosecutor, saying I have an
3 alibi defence. I think that is a point that goes in favour of Kamuhanda.

4
5 I also talked to you about the errors in dealing with the alibi. I also provided evidence -- I believe I have
6 done so -- according to which the Trial Chamber concluded that it was impossible to go to Gikomero. I
7 believe I have provided evidence that GEK was not credible. Do all these -- all that evidence not cast
8 doubt on the Prosecutor's case? And that's why I seek the acquittal of my client.

9
10 There is another option open to you, that is, to seek a retrial before a Trial Chamber composed
11 differently. The distortions are such that it may vitiate any analysis, and if you don't intend to rule on it, I
12 think it is necessary for a new Trial Chamber to look into it. That doesn't please me much, but I would
13 need to raise it with you.

14
15 And, of course, we will submit -- and that's a third option, which I refuse to raise here, in other words, a
16 confirmation or an upholding of the decision by the Trial Chamber. Thank you

17 MR. PRESIDENT:

18 I am grateful to Madam Condé for completing her argument and presenting it almost perfectly on time.

19
20 Before having a pause, I would like to correct one thing which I should have said earlier, although it
21 may become obvious from what I said about the other matters. You will recall that after the appearance
22 of every witness, I have asked the witness to remain in Arusha to be available to the Appeals Chamber
23 through Friday. In light of the orders that we have issued, decisions that we have issued, the Chamber
24 will not require the presence of those four witnesses any longer in Arusha. I emphasise, the Chamber
25 will not require their presence.

26
27 We will now have 15 minutes' break.

28 *(Court recessed from 1630H to 1649H)*

29 MR. PRESIDENT:

30 The Prosecution, who will address us? Ms. Reichman?

31 MS. REICHMAN:

32 Thank you, Mr. President. I'm appearing with Mr. Weston, Mr. Seye and Ms. Onsea. What we propose
33 to do, Your Honours, to make this as expeditious as possible, is Mr. Weston will address you first,
34 Mr. President, on the question of the Prosecution case at the site of the Gikomero massacre, and then I
35 will address Your Honours on the question of alibi, the question -- and the question of the route through
36 to Gikomero, the distribution of arms and the distortion of the Defence witnesses as alleged by my
37 friend. Thank you, Your Honour.

1 MR. PRESIDENT:

2 Please.

3 MR. WESTON:

4 Thank you, Your Honour. Your Honour, Mr. President, at the outset there are two short matters I'd like
5 to address.

6

7 During the hearing this morning, the Rule 115 hearing, in submissions Your Honour asked a question of
8 Mr. Stewart for the Prosecution about the nature of the Prosecution case. Firstly, Your Honour, I'd
9 asked Mr. Stewart whether it was correct that of the eight witnesses at the parish who did not know
10 Mr. Kamuhanda beforehand, whether it was correct that they did not make an identification of him in
11 court, and I think Mr. Stewart's answer, on my instructions, was that possibly one had.

12

13 I reviewed the evidence over lunch. I may have slightly overstated that. None of the witnesses -- none
14 of those had actually identified the Accused in court. In fact, as I read the evidence, they weren't
15 actually asked to by the Prosecutor. The one I was thinking of was GPT, who was shown a photograph
16 of Kamuhanda at some stage and was cross-examined about that.

17

18 So the position for the Prosecution is this: that the eyewitnesses that did not know Kamuhanda, none
19 of them identified him in court. So I just wish to raise that to clarify that, Mr. President.

20 MR. PRESIDENT:

21 So we are agreed on that.

22 MR. WESTON:

23 Yes. As I say, I just wish to clarify that matter.

24

25 Leading on, there was another matter Your Honour asked of Mr. Stewart. You asked him if it was the
26 case that the Prosecution case came down to this: that there were three witnesses, namely, GAF, who
27 was accepted by the majority, GES and GAA, who were accepted by all three Judges, who identified
28 Mr. Kamuhanda on the basis of prior knowledge, plus the other eight witnesses, and I think
29 Your Honour used the term "hearsay evidence" from those witnesses. I apologise if I'm not precisely
30 quoting, but it was to that effect.

31

32 Mr. Stewart replied that the Prosecution case would be argued on a much wider basis, and that is so,
33 and I will be turning to that shortly. Your Honour, I merely wish to clarify those two matters at the
34 outset.

35 MR. PRESIDENT:

36 Thank you.

37

1 MR. WESTON:

2 Your Honour, with regard to the identification of the Accused Jean Kamuhanda at the parish on
3 April 12th 1994, in the Respondent-Prosecution's brief we had set out what we submit are the correct
4 principles to be applied in assessing the matrix of evidence which was led by the Prosecution to prove
5 the presence of the Accused at the scene on that afternoon, April 12, 1994.

6
7 There has been some attack by counsel for the Appellant in oral argument today on those principles.
8 But, of course, it's incumbent upon the Appellant to either demonstrate an error of law on the part of the
9 Trial Chamber which is such that it invalidates the judgement and/or, in the alternate, that the finding of
10 fact by the Trial Chamber was, of course, so flawed that no reasonable court could have come to that
11 conclusion.

12
13 I should make it plain at this stage that I will leave aside submissions regarding the evidence that the
14 Court has heard about the Witness GAA yesterday and today. I will briefly refer to that in my closing
15 submissions, but for the moment I will not such upon that point.

16
17 Now, it is our submission that the counsel for the Respondent has really identified only one alleged
18 error of law. As I understood her argument, it came down to this, that the evidence of the eight
19 witnesses at the scene who did not know Mr. Kamuhanda could not be used, as a matter of law, to
20 corroborate or support the evidence of the witnesses who did know the Appellant Kamuhanda prior to
21 April 12, 1994.

22 *(Pages 67 to 75 by Karen L. Holm)*

23
24
25
26
27
28
29
30
31
32
33
34
35
36
37

1 1700H

2 MR. WESTON: (*Continuing*)

3 As we understand the argument advanced by counsel for the Appellant, both in the Appellant's brief
4 and in oral argument today, there is no authority either from this Tribunal, the Yugoslav Tribunal or any
5 other court to support the proposition advanced. It seems to flow on from counsel for the Appellant's
6 argument that because the evidence of the witnesses at the scene, which was deemed to be reliable
7 and credible by the Trial Chamber, because the evidence does not perfectly align in every respect, be it
8 a material matter or not, that the evidence must be rejected and the findings of the trial court are so
9 flawed that they cannot be sustained on appeal.

10

11 We take issue with the argument raised by counsel for the Appellant. We say that the correct approach
12 was applied by the Trial Chamber in assessing the evidence, that there was no error of law shown in
13 their reasons. We further say that on any objective analysis of the evidence, taking into account all
14 proper material considerations, the finding of the Trial Chamber that the Appellant was at the massacre
15 site on the early afternoon of April 12, 1994 was not only open and reasonable but, indeed, upon a
16 proper and complete examination of the evidence, no other conclusion can be rationally drawn.

17

18 If the Court pleases, if I may make some preliminary observations about the applicable law, some of
19 these may be thought to be trite, but they are worth repeating. Firstly, of course, the Trial Chamber is
20 the chamber charged with assessing witness testimony. There is a significant degree of latitude
21 granted to the Trial Chamber in assessing witness credibility and coming to the proper conclusions. Of
22 course, that doesn't mean that the Trial Chamber must have an untrammelled right to do that. If the
23 conclusion is clearly wrong, no matter how well a witness might present, it cannot survive.
24 Nonetheless, it is clear law that the Trial Chamber is granted that wide degree of deference.

25

26 Secondly, it is, in my submission, perfectly clear that the standard of proof which rests upon the
27 Prosecution at all times is this: it is proof beyond reasonable doubt. It is not proof beyond any doubt; it
28 is proof beyond reasonable doubt. Following from that, it's not the case that because the evidence we
29 are speaking about now is identification evidence, that there a higher standard imposed upon the
30 Prosecution. It is clear from the decision of the Appeals Chamber in *Kupreskic*, in paragraphs 28 to 39,
31 that caution must be applied in assessing identification evidence, particularly where it's made under
32 difficult circumstances. And we submit here, of course, that the circumstances were not difficult, that
33 given the lighting and so forth and the witnesses' prior familiarity with the Appellant, the conditions for
34 identification -- the conditions for identification were, in fact, very good. But we submit that there is no
35 higher standard, there is no higher test when identification evidence is in play. It is still proof beyond a
36 reasonable doubt.

37

1 Now, as I -- as we understood the argument advanced before the Court today, the counsel for the
2 Appellant is submitting that the evidence of the body of eight witnesses, who are accepted as reliable
3 witnesses at the massacre site, who did not know the Appellant, could not be used to corroborate the
4 evidence of GAF, GES or GAA. That is merely an assertion that has been made before you. That
5 proposition has not been supported by any reasoned legal arguments. There is no supporting
6 jurisprudence placed before you to back that up. Implicit in the Appellant's argument it seems that this
7 proposition must be paramount, that if one has Witness A and one has Witness B both narrating the
8 same event and Witness B and Witness A did not give the same account in every detail, the evidence
9 of Witness B cannot be used to support Witness A, and presumably vice versa. That proposition
10 cannot be correct.

11
12 In our brief we refer to a significant body of authorities, principally from the common law jurisdiction
13 which analyse the nature of corroborative evidence or supporting evidence. And it is our submission
14 that, whilst the Trial Chamber did not expressly advert to this, in its reasoning it essentially followed the
15 same proposition; that is, for evidence to be corroborative or supporting, it need not prove a proposition
16 on its own, it need not prove any proposition in every material particular. Really, what is required of it is
17 this: that in some way it tends to support or strengthen the primary piece of evidence, that is, that it
18 tends to make it more likely that the primary piece of evidence relied upon is true and correct.

19
20 If the Court pleases, we have referred to a wide body of authorities in our brief to support that
21 proposition. The reasoning of the Trial Chamber at paragraph 391, for example, would seem to follow
22 that same proposition. They speak about evidence not fully corroborating, but partly corroborating, the
23 evidence of other witnesses. There has been no attempt made by the counsel for the Appellant to
24 distinguish any of the authorities we have relied upon. In our submission, that is the correct approach
25 which must be followed.

26
27 Mr. President, a little while ago I submitted that our case, that is, the Prosecution case, establishing the
28 guilt of the Appellant, establishing his presence at the massacre site on April 12, was wider than merely
29 a body of hearsay evidence. To fully comprehend the case against the Appellant, it is necessary to
30 examine the Prosecution's case as an integrated whole. The submissions of counsel for the Appellant
31 have not done this, with the greatest of respect; rather, there has been an attempt to focus upon
32 isolated witnesses and try and point to possible matters of inconsistency between one witness and
33 another. The evidence goes much higher than that. The approach taken by counsel for the Appellant
34 really does a grave disservice to the Prosecution case.

35
36 The evidence, which I will now refer to, has already been outlined in the Respondent's brief, but it is
37 worth while to repeat, given that the Court, today, has heard lengthy submissions from Madam Condé

1 about apparent discrepancies or weaknesses in the Prosecution witnesses' particular testimonies. The
2 evidence establishes on any rational view and, indeed, on the only possible rational view -- it
3 establishes this: that you have an unbroken narrative from a number of credible and reliable witnesses,
4 independent of each other, establishing the Appellant's state of mind on April 12, the Appellant's
5 movements on April 12, and the Appellant's actions on April 12. We refer to the evidence of the
6 witness, GEK, the witness, GEB, the three witnesses, GAF, GES and GAA, and the group of eight, if I
7 may call them that, the eight witnesses at the parish compound who did not know the Appellant
8 beforehand, but who were accepted as being reliable and honest witnesses.

9
10 It is unsatisfactory to try and compartmentalise the evidence of any one or more of those witnesses.
11 That would be to engage in the most artificial and futile and pointless exercises of reasoning. The
12 evidence demonstrates that the Accused left the presence of the witness, GEK, that he had been
13 making statements of intention regarding the Tutsi, that he drove off in a certain vehicle, that some
14 distance away from that place where he left GEK he was observed in a vehicle similar to the one
15 described by GEK, by the witness, GEB. GEB thought he was about one and a half kilometres from the
16 massacre site. The Accused is accompanied by armed persons. Both GEK and GEB hear the sound
17 of gunfire coming from the direction in which the Appellant drove off.

18
19 You have 11 witnesses, 11 witnesses, at the massacre site who essentially describe the same thing.
20 The Court might pause for a moment, but one might think that 11 witnesses describing essentially the
21 same event is by no means an insubstantial body of evidence. Indeed, on any view, it would be
22 compelling.

23
24 The only point of distinction, really, between the group of 11 is that three of them knew the Appellant
25 beforehand; the other eight did not. When one, however, looks at what they say, the underlying unity
26 between the evidence of those 11 witnesses is more than striking. There is a unity in the time in which
27 the vehicle carrying the man, Kamuhanda, arrives at the parish site. There is a unity in the description
28 of the vehicle, and vehicles, accompanying the Appellant. There is a unity in a description of the events
29 which occur upon the Appellant arriving.

30
31 Now, if I may anticipate the response from counsel for the Appellant, it might be said, "Well, how can
32 the Prosecution say there's the underlying unity? One witness says this; another one says that." The
33 obvious answer to that is, of course, that we are considering the reasonableness of the Trial Chamber's
34 finding. It would also be apparent to anyone that we are concerned with events happening over a
35 relatively short period of time, only a matter of minutes. The events that occurred in 1994, some years
36 ago, events that were no doubt extremely traumatic to all those involved to have witnessed, events that
37 are described by persons observing the situation from different vantage points, persons being able to

1 see and hear different things, persons, no doubt, who, being merely human beings and not machines,
2 could only focus on certain things and not others. For example, some witnesses say there was a
3 UN-type logo on the white vehicle; others do not make mention of that. One might rhetorically ask: after
4 being involved in the massacre of thousands of people in 1994, would the presence of a logo on a white
5 vehicle be a matter which would automatically be assumed to stick in the memory of every person who
6 was there?

7
8 Mr. President, Your Honours, it's plain that the Trial Chamber, of course, did scrutinise the evidence
9 presented by the Prosecution with great rigour. As we all know, the Appellant was acquitted of
10 involvement in the Gishaka parish massacre which, although reliant upon a different group of
11 witnesses, was, in terms of the nature of the evidence, not dissimilar to that presented by the
12 Prosecution concerning the Gikomero massacre. It cannot be said that the Trial Chamber took
13 anything other than the most balanced of approaches, one which was measured and thoughtful and, of
14 course, at all times governed by the prevailing standard; that is, that the onus was on the Prosecution to
15 prove the case against the Accused beyond a reasonable doubt. With regard to the witnesses at the
16 Gikomero massacre site, it is also plain that there was no blanket acceptance by the Court of their
17 testimonies. There was, and it's plain in the reasoning of the learned Judges of the Trial Chamber, that
18 there was a careful examination of the evidence of the individual witnesses. At no stage was a
19 broad-brush approach taken. Apparent differences between the accounts of individual witnesses were
20 subject to careful scrutiny, as is mandated by the Appeals Chamber in *Kupreskic*, for example. And
21 whatever differences may exist between the testimonies was subject to a test as to whether they were
22 capable of any sort of logical and satisfactory reconciliation. It is plain for the majority of the
23 Prosecution witnesses that that was approached, that a logical and satisfactory reconciliation of those
24 witnesses' differences, such as they did exist, and we say that what did exist, were quite immaterial.
25 That examination was made and a satisfactory reconciliation was made. Where there were
26 Prosecution witnesses, such as GEM, who were considered to have advanced accounts lacking in
27 various similitude, or which were otherwise not acceptable, the Trial Chamber, bearing in mind the
28 standard of proof which it must apply, declined to act upon their evidence. So, of course, the
29 Trial Chamber adopted an approach which was never anything less than impartial and at no stage
30 eroded the presumption of innocence.

31
32 As I was submitting earlier, the rich detail, the wealth of detail, which the 11 Prosecution witnesses at
33 the massacre site put forth, prevents a -- presents a compelling and, indeed, an unimpeachable
34 narrative establishing the guilt of the Appellant. If I may briefly take the Court through it: as I said, we
35 had the evidence of Witnesses GEK and GEB. Both of them were considered to be reliable witnesses,
36 though, of course, in GEB's case His Honour Judge Makutu dissented on that point. Our submission is
37 that His Honour Judge Makutu's reasoning is not, with the greatest respect to him, terribly persuasive.

1 It seems to come down to not being able to reconcile the evidence of GEK and GEG as to times and
2 distances. We submit that such a matter can be reconciled. There may have been matters intervening
3 between leaving GEK and being observed by GEB, which could, for example, explain the apparent time
4 discrepancy. In any case, the time discrepancy, we are speaking about witnesses who are recollecting
5 a matter that happened in 1994. It may be the case that they did not make a careful note of time when
6 they observed these things. In fact, it would be preposterous to suggest that they would, and -- as one
7 would think, in the course of common human experience, when people are asked to recollect the
8 amount of time which may have elapsed between two events, recollections may differ, people may
9 have a different idea as to how much time elapsed. So, our submission is, firstly, that His Honour
10 Judge Makutu's dissenting opinion regarding GEB should not be given any weight by this Court.

11
12 So you have the evidence of two witnesses, GEK and GEB. You then have the evidence of the
13 witnesses at the massacre site who, firstly, knew the Appellant Kamuhanda. Firstly, we have GES, a
14 witness all three Judges found credible, and on the evidence would have had ample opportunity to
15 recognise the Appellant from the prior dealings before the genocide when they were civil servants,
16 albeit working in different departments, in Kigali. The witness, GES, has the Appellant arrive at the
17 parish sometime between 12:00 and 2:00 in the afternoon. The Appellant arrives in a white truck with
18 10 armed men in the back. He is at the scene for perhaps 10 minutes. Similarly, the witness, GAF,
19 was at the parish between -- has the Appellant at the parish between 2:00 and 3:00 that afternoon,
20 arriving at that time. He sees four vehicles arrive, three of them white. The Appellant is in one of them
21 with a UN-type marking on the side. One of vehicles is full of armed *Interahamwe*. The assistant
22 pastor is shot dead, and the Appellant raises an arm and says something to the effect of *mukore*, which
23 is taken as a signal to commence the killings in earnest. The Appellant leaves very shortly after his
24 arrival.

25
26 You have the eight witnesses -- GEE, GAG, GEC, GEA, GEG, GEV, GEP and GEH -- who individually
27 give evidence which cross-supports each other, and also which individually and collectively supports
28 the evidence of the witnesses I have already mentioned. So there exists not only that striking similarity
29 between the testimony of the group of eight, but in most material respects they dovetail perfectly with
30 the eyewitnesses who knew the Appellant beforehand. For example, with regard to the time of the
31 arrival, GEE has the Appellant arriving at between 2:00 to 3:00; GEA has him arriving between 1:00 to
32 2:00; GEC has the arrival as being between 1:00 to 2:00; GAG has it between 1:00 to 2:00; GEV,
33 again, between 1:00 to 2:00; the witness, GEV, thought sometime after noon; and GEP thought
34 sometime around lunch or soon thereafter; and, finally, GEH has the arrival occurring at between 1:00
35 to 2:00. It is thus the congruence between the evidence of the 11 witnesses; they have the arrival all,
36 essentially, happening within a period of no greater than, perhaps, three hours, between 12:00 and 3:00
37 at the very most. Given the frailties which we know about matters of human recollection about matters

1 of time, and given the fact that it is highly unlikely anybody was looking at a clock when they saw the
2 Appellant arrive, and given the fact they are speaking about events years later, it is our submission that
3 the evidence there coheres into a very compelling point.
4

5 Again, there's the remarkable similarity in the description of the vehicle in which the Appellant is said to
6 have arrived in. GEE has the vehicle being a white pickup carrying soldiers and *communal* police.
7 GEP says it was possibly a white pickup armed with *Interahamwe*. GEG says it was a small white truck
8 accompanied by two others; GEV, a white pickup packed with *Interahamwe*; GEA, a white pickup with
9 UN letters containing *Interahamwe*, soldiers and police; GEC, a white pickup with UN markings followed
10 by a Hilux. GEH said it was a white pickup with armed *Interahamwe* on board; the witness, GAG,
11 whose evidence on this point seemed to be essentially hearsay but, nonetheless, related it as being a
12 white pickup truck.
13

14 If the Court please, the objective probability of the 11 witnesses -- GES, GAF and GAA, combined with
15 the other eight I have just mentioned -- not describing the Appellant Kamuhanda, that is, that the person
16 who arrived at the scene who was described by the first three and then the second group of eight was
17 not Kamuhanda, given the reliable evidence of GEK about Kamuhanda's statement of intention towards
18 the Tutsi, given her reliable evidence about his departure, given the reliable evidence from GEB seeing
19 Kamuhanda en route with armed followers, given the evidence of both of those witnesses as to hearing
20 gunfire coming from the direction of the parish, the objective probability of someone else, other than the
21 Appellant, being the person who arrived at the parish on the afternoon of 12 April 1994 and thus
22 instigated the massacre, is so remote that it cannot be entertained by this Court.
23

24 As I submitted earlier, on the evidence considered as an integrated whole, there is no other rational
25 conclusion, there is no other rational inference, which can be possibly open other than --

26 MR. PRESIDENT:

27 Could I just as a point of clarification: among the three who have identified Mr. Kamuhanda, you are still
28 counting GAA, I presume?

29 MR. WESTON:

30 Yes, I will. I will make some submissions about how his evidence may be treated in my concluding
31 remarks, Your Honour.

32 MR. PRESIDENT:

33 Thank you.

34 MR. WESTON:

35 Thank you.
36

37 Mr. President, as I was saying -- Mr. President, Your Honours, as I was saying, the objective probability

1 of the person arriving at the scene being someone else other than Kamuhanda, the Appellant, is so
2 remote that it cannot be entertained by this Court. The criticisms advanced of the Prosecution case are
3 based on a flawed premise: they are based upon trying to look at witnesses in isolation from each
4 other. That, as I submitted earlier, is a completely artificial, compartmentalised approach and one
5 which is not founded in law and one which should not be followed by this Appeals Chamber.

6 Mr. President, they are essentially my submissions on the identification issue.
7

8 If I may, briefly, make some submissions regarding the problem that is -- or the issue that has arisen
9 with the witness, GAA, in the last two days. To some degree, I may well be repeating submissions
10 which were made by Mr. Stewart for the Prosecution this morning, and if I do so, I apologise to the
11 Court. Nonetheless, for the sake of completeness, I will place them on the record. On a view of the
12 evidence of GAA, there's really two rational approaches open, depending on which view of the
13 evidence heard over the last two days the Court takes. They could take the view that the witness, GAA,
14 is a man who, for whatever reason, has given an account of what happened at the parish, and he gave
15 that on oath before the Trial Chamber. He, now, on oath before this Chamber, seeks to retract that. He
16 says that he perjured himself.
17

18 Now, for the matters which were canvassed in oral argument before the Chamber this morning, it is
19 open for the Court to, firstly, take this view, that because of the striking similarity which GAA proffered in
20 his evidence and because he maintained his account for so long, certainly up to 2001, that for whatever
21 reason, the man, GAA, gave a truthful version and a correct version of what happened at the trial. We
22 do not know why he is now saying what he now says. It may not matter.

23 *(Pages 76 to 82 by Verna Butler)*
24
25
26
27
28
29
30
31
32
33
34
35
36
37

1 1730H

2 MR. WESTON: (*Continuing*)

3 What it really comes down to this is that GAA, in a sense, can be treated as essentially a hostile
4 witness; that is that the Court can be satisfied for the matters which were articulated by Mr. Stewart this
5 morning, that GAA's original evidence is truthful and accurate, and the Court should disregard his
6 current retraction and only have regard to the evidence which he gave this morning. That is one view I
7 gave to the Court on my submission. That, of course, would be dependent upon the final finding of fact
8 the Court makes.

9
10 The second view is this, that at the very worst the Prosecution were left with this, that GAA is one
11 witness who gave an account of what happened independently of any other witnesses, two of whom
12 knew the Appellant Kamuhanda.

13
14 Even if the Appeal Chamber is now in a state where it has significant doubts about the credibility or
15 reliability of GAA and simply doesn't know where the truth may lie, it can take the step that GAA's
16 evidence is essentially separable from the rest of the Prosecution case. That is, that there is nothing
17 which GAA says, as I understand it, which in any way contaminates or taints the evidence of any other
18 Prosecution witnesses. They all stand independently in terms of their veracity, and when one takes the
19 probative effect of all of their evidence and approaches it in an integrative way, as I have submitted, the
20 effect becomes compelling. But, as I submit, each one stands on their own. It is not a case that there
21 is a domino-effect, and if GAA falls, other dominos fall as well. So, we submit that even on the worst
22 construction of the evidence that the Court has heard, the worst construction for the Prosecution, that
23 is, GAA is perfectly separable from the rest of the Prosecution case. This is not a case where GAA
24 then casts doubt upon anything another Prosecution witness said, rather, all we have at the worst is a
25 mere subtraction of evidence from the Prosecution case. That even if GAA did not exist, even if GAA
26 did not come to Court in 2001 and testified for the Prosecution, we would still have the evidence of
27 GEK, GEB, GES, GAF and other witnesses.

28 MR. PRESIDENT:

29 I would -- please don't derive from this question any conclusions about where I stand on the matter. I
30 would have been much more sympathetic to the argument you are making, were it not for the fact that
31 as many as eight of your witnesses could not identify the accused in Court. Eight is a large number. I
32 realise the situation is a chaos, the shortest of the time they could have observed, but taking it all into
33 account, eight is a large number. What is the strongest argument that you could make to persuade us
34 that we should not worry too much about that?

35 MR. WESTON:

36 Well, Your Honour, this is essentially what I have already submitted, that you have eyes to give a body
37 of evidence which strongly supports the evidence of GES and GIF, that evidence in turn is strongly

1 supported by GEK and GEB.

2

3 Now, when the combined forces of that evidence is considered, as I submitted earlier, there is no other
4 rational inference open, other than the person arriving at the parish at that time on that day was the
5 Appellant.

6 JUDGE WEUNBERG DE ROCA:

7 You just mentioned Witness GEK; do you think there is any relevance in the fact that there are two
8 dates for the alleged birth of her second child?

9 MR. WESTON:

10 Your Honour, the short answer is no. I -- perhaps I am very slow, but I had some trouble following the
11 point that was raised. It seems to be at best a peripheral matter which might reflect upon credibility
12 towards that degree, but when GEK's evidence is considered with the rest of the Prosecution evidence,
13 it really carries no weight.

14

15 Mr. President, these are essentially my submissions regarding the issue of identification subject to
16 any --

17 MR. PRESIDENT:

18 Before you sit down, my colleague, Judge Shahabuddeen has a question.

19 JUDGE SHAHABUDEEN:

20 *(Overlapping microphones)* ...help in any way, Mr. Weston, to regard the matter of support or
21 corroboration this way, that support or corroboration has to be support or corroboration in a material
22 particular and not necessarily in respect of Court identification.

23 MR. WESTON:

24 Your Honour, that is, if I may, I apologise for interrupting, but that point was made in our brief and that's
25 what I was trying to drive at in my oral submissions today. Your Honour, I apologise for interrupting,
26 you may not have completed your question.

27 JUDGE SHAHABUDEEN:

28 That was my -- I was trying to throw a life line to you, which was not needed.

29 MR. WESTON:

30 That is the best -- Your Honour, that is our submission. We have made that consistently throughout
31 and it is our submission, of course, that whilst the Trial Chamber did not articulate that approach, it is
32 implicit and reproachable that I followed that line of reasoning.

33 MR. PRESIDENT:

34 Thank you.

35 MR. WESTON:

36 Thank you, Your Honour.

37

1 MR. PRESIDENT:

2 It's your turn now, Ms. Reichmann.

3

4 So now we will have the alibi argument, right?

5 MS. REICHMAN:

6 That is correct.

7

8 Mr. President, Your Honours, thank you. I will start.

9

10 We have set out the background of the Prosecution case, and it is this that the alibi must throw doubt
11 on, and we submit that there is no reasonable doubt shown by the arguments today or by anything that
12 came up in the case during the trial raised by the Appellant in relation to so-called alibi. The approach
13 of the Appellant's counsel today in Court, Your Honour, was with an indication of this kind of stance.
14 She did not, Your Honours, show -- my friend did not show any kind of composite case that indicates
15 that the alibi is a solid story that can be set up in any way against the Prosecution case. What she did
16 was she drew small -- she drew your attention to small holes, small minor irrelevant inconsistencies that
17 she alleged that the Trial Chamber had made, and I will briefly dispose of those before I deal with the
18 alibi as a whole and look at the way that the Trial Chamber assessed this without having regard to the
19 totality of the evidence and in relation to the alibi.

20

21 The first instance that I would like to draw Your Honours' attention to is the question of this detail of
22 whether or not the witnesses ALS and ALF said that the Appellant was with them 24 hours a day, and I
23 would like to just read very briefly some passages to you, Your Honours, or, perhaps I would just make
24 a reference to the transcript. The transcript in relation to ALF, talks about -- and this is the wife of the
25 Appellant -- talks about her being -- and this was disclosed, Your Honours -- talks about him being
26 within sight of her. The men on the patrol were within sight or calling of her all the time. She might not
27 have used the word 24 hours a day, but her words were -- and this is on page 164 of the transcript of
28 the 9th of September 2002.

29

30 "Now, to show how close they were, we could even call them, because they were walking in a street,
31 and so we could call them. Even if something could happen to us inside, they could come to our
32 rescue." This is said similarly in the evidence of ALF, Your Honours. If you would bear with me for a
33 second. And it is in her testimony in a closed session of the 28th of August 2002, where she says, "We
34 were within reach and we had view of them all the time or they were within call all the time."

35

36 Now, Your Honours, I would like to make reference to the fact that the Trial Chamber discussed the
37 evidence of the alibi witnesses in detail, and this was raised from paragraph 164 to 176 of the

1 judgment, and the evidence of the Trial Chamber was -- the findings of the Trial Chamber were as
2 follows: First of all, they dealt with the inconsistencies between ALS and ALF. They dealt with the
3 inconsistencies between the Appellant and ALS and ALF; and then they looked generally at the picture
4 of these witnesses' testimony against -- and the picture they purported to paint against the -- can
5 Your Honours bear with me for a second -- against the Prosecution case.

6
7 There was an allegation of bias between ALS and ALF and the Appellant. Now, this in itself,
8 Your Honours, would not stand as a reasonable argument to dispense with these witnesses'
9 testimonies. However, the material inconsistencies in their evidence must be raised to your attention,
10 and the one particular thing is that the witnesses attempted among themselves to hide the relationship
11 of the Accused and hide this relationship which would show potential bias. And, if you look at the
12 testimony of the Appellant himself in relation to the -- his relationship with ALB, he says on the 27th of
13 August 2002 at page 51, "We knew each other since 1974, but we were not friends." ALB says also,
14 and this was on the 5th of September 2002 on page 100. "Mr. Kamuhanda was my neighbour. There
15 was no special relationship between me and him."

16
17 Now, if one looks at the testimony of ALF, Mrs. Kamuhanda, on the 10th of September 2002, she says
18 at page 44 of the transcript, "AOB is a long term -- longtime friend -- a long time friend of my husband."
19 These are discrepancies that my friend did not draw your attention to this morning, Your Honours.

20
21 I would like to go through very briefly the kind of discrepancies on which the Trial Chamber made their
22 decision against finding the alibi addressed any reasonable doubt. ALS was a neighbour of the
23 Appellant. She testified to the fact that they were always together, and this I have dealt with already.
24 She never lost sight of him for more than two odd periods, but they shared meals. ALF said that they
25 did not leave each other's sight; they were together all the time.

26
27 Now, when one gets to the evidence of the Appellant himself on this body -- on this apparent event, he
28 says that they might have seen each other for two or three times a day. This is the kind of
29 inconsistency which was not alluded to by my friend earlier on. The Trial Chamber looked at the
30 evidence and the picture of alibi as a totality. What they saw was that -- was an event that had been
31 contrived by a group of people who were intimately related to each other, who lived near each other
32 over a very convenient period, the period being the time of the Gikomero parish attack. They did not
33 find credence in this event. They said that they found that the alibi showed an over indulgence of detail.
34 In my words, Your Honours, an over indulgence of detail in relation to the reasons for the patrol set up
35 by the Appellant and his neighbours and friends in the area of Kacyiru, that it was not in proportion to
36 the kind of harm that they were trying to eliminate, that is the harm of loses in the area.

1 They found that the evidence of ALB and ALR was too crucial evidence -- two crucial witnesses, were
2 in very major ways lacking in material detail. For instance, ALR was found not to have a good memory
3 of any of the time scales and these are crucial, Your Honours. He made the grave mistake, which he
4 admitted to, of saying that he had left the area on the 12th of April. He had left Kacyiru and fled from
5 the area on the 12th of April, and he admitted to having made this mistake, contrary to what my friend
6 said earlier this afternoon.

7
8 ALB, on the other hand, did not admit his relationship with the Accused, and this is something that the
9 Appellant himself fortified in his own testimony. The two witnesses had inconsistencies into the way the
10 patrol was run.

11
12 Now, Your Honours, what must one -- what one must do in assessing this alibi, with respect, is one
13 must look at the period, look at the degree of intimacy and involvement of these men and women over
14 this period they purport to have been together 24 hours a day over -- not in considerable period of ten
15 days, we are talking about the 7th to 17th of April when they were in each other's presence nearly all
16 the time, yet they come up with details that do not match each other. We are not talking about passing
17 events, Your Honours, we are talking about events that were consistent, according to all of their
18 testimony over a lengthy period. Why did they have such material differences? This troubled the
19 Trial Chamber, and this is where they found this story to be materially lacking, in that it could not cast a
20 reasonable doubt on the case of the Prosecution.

21
22 The next set of events that leads on from the alibi, Your Honours, is the path from Kacyiru to Gikomero.
23 The Appellant raises the absolute impossibility during this period from 7th to 17th April 1994, being able
24 to make any way from Kacyiru to Gikomero. In other words, the Defendant could not -- the Appellant
25 could not have been at the parish because he had not been able to get there.

26
27 The important witness in this respect, Your Honours, is Witness RFK, and this witness was relied on by
28 the Appellant himself. This was a witness who was in the Ministry of Defence, and this witness said
29 that there was absolutely -- it was absolutely clear that there were ways of getting to -- there were no
30 definite routes of getting through to Gikomero, but there were minor roads and paths and passages
31 where one could get to the parish. And this is what the Trial Chamber relied on.

32
33 The Trial Chamber also relies on the evidence of various Prosecution witnesses who had been raised
34 to show that the Accused was not at the parish, in identifying where the refugees had come from. The
35 refugees had come from Rubungu, which was on the route or from Kigali to Gikomero. If the route had
36 been impossible, they would not have been able to get to the refuge at the Gikomero Protestant parish.

1 The evidence of Witness RKA, Laurent Hitimana, was that he himself was easily able to move between
2 Remera and Kigali to Rubungo during this period on the 7th and 8th of April, and then to return to
3 Remera again on the 11th of April, which is a crucial date during this period. The evidence which
4 contravened -- which counter-acted against this evidence, the evidence of RGM, for instance, and the
5 evidence of VPG, were people who had only hearsay evidence of these routes. They had no personal
6 acquaintance with the localities during this period.

7
8 Your Honours, I would like to move on to my next ground raised by my friend earlier today, which is the
9 distribution of -- the alleged distribution of weapons -- our case on the distribution of weapons and the
10 evidence of GEK. If I may, Your Honours.

11 MR. PRESIDENT:

12 Counsel, please go ahead.

13 MS. REICHMAN:

14 The main contention raised by my friend in relation to the evidence of GEK is that she had
15 inconsistencies in her evidence. Now, or not, or inconsistencies as Your Honours have said on many
16 occasions, and raised by my colleague earlier today are material, and this is what has to be taken into
17 account by the Trial Chamber during assessment.

18
19 GEK gave very lucid evidence about an event that happened some time between the 6th and the 10th
20 of April 1994, when the Appellant arrived at her house, gave instructions to a group of men gathered
21 there and distributed arms. The crucial part of this evidence, what was said to the gathering of men at
22 the house, and the actual giving of arms to these men on this date with specific reason for this
23 distribution of arms is not -- has not been touched by my friend today. She raises very minor
24 inconsistencies in relation to the driving of the car, the colour of the car, and she does, of course, raise
25 the evidence of her own witnesses, GPK and EM, and I will deal with those in a short period.

26
27 The crucial evidence of the distribution of arms was found highly credible by the Trial Chamber. This is
28 the evidence of GEK and this witness in now in a position to be assessed by Your Honours, yourselves.
29 And I will leave it at that. But the evidence of the distribution of arms at her house between the 6th and
30 the 10th of April is very consistent.

31
32 Even in relation to the minor inconsistencies, I would like to just briefly draw Your Honours' attention to
33 your decision, the decision of the Appeals Chamber in *Ntakirutimana* 115 motion, where it was said that
34 "Where a witness has testified on two occasions, the fact that they might -- that he or she might at a
35 later stage come with more detail or slightly different detail must be the result of a reflection over a
36 passage of time. It does not necessarily show that the witness is in any way not to be believed." And
37 this is what our submissions are in relation to GEK and these inconsistencies.

1 Now, just to do away with some other minor inconsistencies. The question of the baby that was born.
2 This remains mute. It was never put to this witness during the question (*sic*) of the trial. It was never
3 put to her and there was documentary evidence raised during the trial as an exhibit, that actually
4 showed the birth of her baby was later in the year, in about September. This was raised as a Defence
5 exhibit.

6
7 Now, the two witnesses -- the one witness who attested to her evidence about the baby, EM, a young
8 woman at the time, in her teens, was a witness who was -- was a woman who was closely associated
9 to the -- in the household. Well, she was closely associated to the witness, GEK. And her evidence
10 was -- if Your Honours will bear with me one second -- was that she would have seen the Accused over
11 the period if he had come to the area, because she lived in the area. It was quite simple. It was as
12 simple as that. Similarly, the other Defence witness in relation to this distribution of arms, GPK, also
13 lived in the area, and he said too, that he would have seen the Accused if he had come to this area. He
14 would have known about this event, if it had happened; he would have seen if there had been cars.
15 Cars were not often driven in this part of Kigali, they would have seen -- in this part of Gikomero, they
16 would have seen cars; they would have recognised the Accused if he had been there. They did not
17 attest to having been there at all times or at the crucial periods referred to by GEK.

18
19 The findings of the Trial Chamber were quite clear. There was also that she may have been mistaken.
20 They took account of the fact that she may have been mistaken that the Appellant drove himself to her
21 house, and they regarded this as an immaterial error on her part. They dispensed with the question of
22 whether or not she wouldn't have been there, because she had been delivering a baby on that day.
23 They were very strong about their assessment of Witness GPK. They found him to be untruthful,
24 evasive. They regarded his demeanour, they were in this position, Your Honours, to judge this witness;
25 something that is particularly within their discretion as has been said by the Appeals Chamber on many
26 occasions.

27
28 I will move on, Your Honours, to the last point that I want to address in the arguments of my friend, and
29 that is the alleged distortion of the Defence witnesses. These witnesses, Your Honour -- and I will run
30 through them fairly quickly. All witnesses who came from Gikomero and were called to show that the
31 Appellant could not have been there and could not have participated in the massacre. I would like
32 Your Honours to bear these witnesses in mind against the backdrop of the argument raised by my -- the
33 argument argued in detail by my colleague earlier today.

34
35 First of all, Witness GTC. GTC heard gunshots. The massacre had already begun. He got to the
36 parish 15 minutes after the shooting had started, after the refugees were attacked. He was found to
37 have a relationship with the Appellant and there was a possibility of bias, and the Trial Chamber said,

1 "However, that alone would not have discarded his testimony." There would have had to be other
2 reasons, according to the Trial Chamber's very reasonable assessment of his evidence, and what he
3 said in his evidence was unsubstantiated. He got there too late. The Appellant, on the Prosecution
4 case, would already have left at the stage he arrived at the scene.

5
6 GPB, he was at the scene throughout, but according to his own testimony, there was an enormous
7 amount -- enormous number of people at the parish. He himself talked about 1,500 refugees and
8 82 attackers. He said that the pastor was not there. This is contradicted by two other Defence
9 witnesses who were with the pastor at the scene and who gave very direct testimony on his presence at
10 the start of the massacre. And these two witnesses are GPF and GPE.

11
12 I will move on to GPE. This witness fled very early on at the scene of the massacre. She didn't see the
13 attackers arrive. She was indoors when it happened, but she does admit that the pastor was there. So
14 she supports an important part of the Prosecution case.

15 *(Pages 83 to 90 by Sithembiso Moyo)*

16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37

1 1800H

2 MS. REICHMAN: (*Continuing*)

3 The finding on GPE was that he was there for a very brief time. He too heard gunshots and fast moving
4 cars from a distance. He wasn't at the parish when it started. He would not, according to the
5 Prosecution case, have had an opportunity to have seen the Appellant at the scene. And this is what
6 the Trial Chamber found.

7
8 GPF. This witness was indoors when the attacks started. He was having lunch when the vehicles
9 arrived. He certainly said that the pastor was there, but he couldn't have seen, on the other hand, who
10 came out of the vehicles, the meetings between the pastors, and the identity of the Accused. He has
11 no evidence on this matter. There is no distortion by the Trial Chamber in rejecting his evidence.

12
13 GPR. She lived close to the parish. She arrived at the scene after the attack was over. Now GPK
14 claims that he was forced, coerced into moving close unto the scene by those around him, by other
15 attackers. On the other hand, he says that he did not participate in the attack. He was there for one
16 and a half hours. But then, again, he himself was not in a position to see whether the Accused was
17 there. He arrived 40 minutes after the hearing of gunshots only. But these findings of the
18 Trial Chamber in relation to his veracity at the scene on his -- and his participation at the scene in the
19 massacre of the Gikomero parish, cast doubts on his veracity as a whole, and this is how the
20 Trial Chamber and this textual -- and he's back to the events in Gikomero some days earlier and the
21 distribution of weapons as alleged by GEK. He was the one -- one of the main contradictory witnesses
22 in relation to the events. GEK was found to be an evasive witness, and untruthful in every respect on
23 this and his account of the event at the Gikomero parish bears this out.

24
25 I will move on finally to the evidence that was admitted under 92 *bis*, the evidence of GER. This too,
26 my friend says should have been properly taken into account by the Trial Chamber, but he was found to
27 be unreliable because he too, as has been heard by Your Honours in much detail today, was under
28 investigation for the events that occurred at the scene.

29

30 Those are my -- those are my submissions. Thank you, Your Honours.

31 MR. PRESIDENT:

32 Thank you.

33

34 Mr. Seye, now, you have finished or do we have --

35 MS. REICHMAN:

36 We have no more submissions, thank you.

37

1 MR. PRESIDENT:

2 You have no more submissions.

3

4 Judge -- thank you so much, Ms. Reichman.

5

6 Judge Shahabuddeen.

7 JUDGE SHAHABUDDEEN:

8 Counsel, do forgive me asking you something (*microphone not activated*)

9

10 Do forgive me asking you something that I should have educated myself had I done my homework
11 properly. The core of this case concerns the question of alibi. Now, it is written that the applicable test
12 in cases of alibi is whether the alibi could be reasonably true. But does that conceal a question as to
13 the standard of proof by which an appellant has to establish that his alibi could reasonably be true? Is it
14 sufficient for an appellant, for example, to make that proof by reference to the balance of probabilities?
15 Can he argue, "Well, look, on the balance of probabilities, my alibi could reasonably be true"? Isn't that
16 a possibility? Do you have any learning to put at my disposal on that?

17 MS. REICHMAN:

18 He does not have an onus, with respect. I would say in answer to that, Your Honour, that he does not
19 have an onus certainly beyond a balance of probability. He does not have an onus at all. He's just got
20 to show -- it's not really a defence in the true sense an alibi. What he must do is cast -- si simply cast
21 some doubt on the Prosecution case. The onus remains absolutely with the Prosecution; it doesn't shift
22 at all. This isn't what we're talking about an onus, he has just got to raise some doubts, reasonable
23 doubts.

24 JUDGE SHAHABUDDEEN:

25 Thank you, Counsel. I appreciate that, but tell me, in order for an appellant to raise reasonable doubt
26 as to whether the Prosecution has discharged its onus, has the appellant got to meet some particular
27 standard of proof?

28 MS. REICHMAN:

29 I believe I do take Your Honour's point in this. I would say that they would have to be -- that strictly
30 speaking, even though it isn't set out as such as an onus, it would have to be a probability, of course.

31 Yes, that has to be the case.

32 JUDGE SHAHABUDDEEN:

33 Thank you, thank you.

34 MR. PRESIDENT:

35 Thank you, Judge Shahabuddeen.

36

37 Judge Schomburg.

1 JUDGE SCHOMBURG:

2 Thank you, Mr. President. As a follow-up question, isn't it true that recently on appeal we discussed the
3 same matter, in that apparently, in the jurisprudence, particularly in *Celebici*, the common law system
4 and the civil law system are coming closer together in that alibi is no longer seen as specific defence
5 however, but, of course, the burden of proof is on the Prosecutor. And the Defence can -- always
6 would like to contest that what was adduced evidence by the Prosecution, but at the end of the day,
7 isn't it what we are doing here the same as regards all other evidentiary matters that the test is, has the
8 Prosecutor proved beyond reasonable doubt that, in this case, the Appellant, was at the crime site?
9 Isn't this the standard applicable based on our discussion we had recently in another case?

10 MS. REICHMAN:

11 I would say absolutely, Your Honour. The Prosecution has the burden and it doesn't move, and the
12 Prosecution case has to stand on its own. And this is what -- this is what we believe we have shown
13 Your Honours here today.

14 JUDGE SCHOMBURG:

15 So you agree that alibi has no longer to be seen as a specific Defence?

16 MS. REICHMAN:

17 Well, to put it this way, Your Honour, I don't have the answer to your question. If the alibi -- just
18 because the alibi doesn't stand up wouldn't mean that the appellant would be found guilty, of course.
19 So obviously it doesn't raise -- it isn't raised as a specific defence here. I would say that is true.

20 JUDGE SCHOMBURG:

21 Thank you.

22 MR. PRESIDENT:

23 Thank you, Judge Schomburg.

24

25 Madam Condé, you have 15 minutes.

26 MS. CONDÉ:

27 Thank you, Mr. President.

28

29 I am sorry to have to say this, but I'm not at all satisfied by what I have heard. This is because this is
30 not what I was expecting from the Prosecutor. When I lodged an appeal on this decision, when I filed
31 my brief, and a moment ago when I developed my arguments, I explained as far as I saw it why the
32 Trial Chamber had erred in its decisions and I was attempting to make a demonstration and I was
33 expecting from the other side that a demonstration would go against what I had demonstrated but not
34 that I'd be simply told what the Chamber said in its judgment. We all have the judgment in hand. I don't
35 need to have it read to me or being placed in different words. What I want is that I be told how the
36 submissions I made were wrong.

37

1 Now, let's get to the alibi. I said before this Chamber that the alibi witnesses -- we didn't speak about
2 the two sentences the Chamber relied on. When my learned friend took the floor, what did they do?
3 They read the same issues: 24 hours out of 24, that's not what's in the transcript in French. My
4 witnesses expressed themselves in French and what they said in French is not what is said today. If
5 you manage to demonstrate to me in the French version of the transcripts of my witnesses who
6 expressed themselves in French, or for ALS, in Kinyarwanda, but I would say the French version is
7 more authentic than the English version, if you find in those versions contrary to what I have said, I will
8 bow to this Chamber. For the time being, this has not been done, that demonstration has not been
9 made.

10
11 The other argument, the other submission is that the Chamber stopped with a specific point. It says
12 Kamuhanda contradicts ALS, ALF on the times they saw him, morning, lunch and evening during meal
13 times. In my demonstration did I say -- cite the transcripts where we see that they were together in -- -
14 at meal times? I didn't read because we only had one and a half hours and we have submitted
15 documents which refer to this -- these items. What I want is to be told that I was wrong because this
16 and this, and it doesn't say what she said, and I haven't had that demonstration made to me.

17
18 I'm being told, oh, yes, they contradicted one another because ALB said that he was not a friend of
19 Mr. Kamuhanda, that he was an acquaintance, whereas the wife said that he was a friend. Is that what
20 is contradicting the alibi defence? Is that an argument to place a submission to rebut the alibi defence?
21 Everybody went through the same school. What did Mr. Kamuhanda say? "Yes, we knew one and
22 another in the university." Yes, okay, fine. He said that that was a neighbour, he said, "Yes, indeed, he
23 was a good neighbour, I have known him for a long time." Mrs. Kamuhanda said that for her this guy
24 was a friend. The perception of a Madam Kamuhanda and whether it was a friendship over a long time,
25 does that come to demolish what I have said? I want a structured submission which goes against what
26 I have said, and that has not been done.

27
28 Coming to the distribution of weapons, GEK gave a very lucid recital of her testimony. I told you that
29 the Trial Chamber indeed erred in its assessment of GEK's witness and I am saying, for instance, the
30 weapons. "My husband refused the weapons; my husband accepted the four grenades when the
31 weapons were being distributed." Is that the fundamental contradiction? I do not agree about the
32 number of people mentioned, maybe there were three, maybe four, but here I'm talking about an event
33 -- rather, I'm talking about a testimony on which the Chamber relied to arrive at the conviction: "My
34 husband received weapons. When he wanted to give the weapons, my husband refused." And that
35 was April 2001. When he gave four grenades to whom? I am sorry, that is fundamental, and that's
36 where I want my submissions to be demolished. If I'm told that this doesn't hold and it doesn't hold
37 because -- and I don't want a paraphrasing of a judgment, which I'm criticising already.

1 When it comes to the distance between Kigali and Gikomero, we will not go into a repetition; we will go
2 directly to GEB who corroborates GEA, and there is a similarity in the testimony of the witnesses. At no
3 point in time during cross-examination when Prosecution witnesses came, we tried to make a point on
4 the number of people at the parish. We didn't care whether there were 4,000, 6,000 or 2,000; at no
5 point in time did we try to determine the time at which the vehicles arrived.

6
7 Further, we didn't want to discuss the number of vehicles apart from GES, who said there was one, and
8 GAS, who said there were four, and these were witnesses who were supposed to have identified
9 Kamuhanda. Why did we do this? Simply because it was evident that that was not the point of
10 discussion. Be it the number 2,000 or 6,000, what would that have changed? The sentence should be
11 the same whether the numbers were 2,000 or 6,000, and that's not why we are here. What we have in
12 our brief, whether it's at the trial stage or the appellate stage, these are fundamental issues that need to
13 be looked at. You cannot have GES and GAS who tell you that they didn't leave Kamuhanda -- well,
14 that's not what they used. They said, you cannot have these two people who in their line of vision know
15 the person, and say that they saw him arrive but immediately -- I don't remember who -- but the person
16 says, "I saw the individual who was pointed out to me." This is something which, to me, appears to be
17 fundamental. He is told, "Look, over there, that's Kamuhanda, and I looked." No, I want to have an
18 explanation given to me why the Chamber is going to consider that this individual who says the person
19 who was pointed to him was carrying a weapon corroborates what he said by two others who said that,
20 "I had him in my line of sight and that he wasn't carrying a weapon."

21
22 Another argument, GEP -- I did not do all the witnesses because we cannot say everything we want,
23 and this is why we are asked to write. Maybe we do this when we are calm and we try and put as much
24 as possible in our brief because we know that you can rely on it later.

25
26 GEP. She said that when the vehicles came, people began to be killed, and there is one person who is
27 called Kamina or Kamanye, and he said, "Everything is going to stop. I'm going to take a few girls who
28 I'm going to rape later on. You have GES, GAS, on whom you rely but they don't describe any of this.
29 They see Kamuhanda two minutes later.

30
31 Now, GEP who came to tell a long story, does she corroborate the testimony of the two others? That is
32 what I'm saying. There are examples like this which I can give you *ad finitum*.

33
34 Since we are not here to redo our submissions, I'm not going to repeat my submissions. I'm going to
35 make a reply; this is what I have to say. There is also another argument which was -- was thrown at me
36 concerning identification.

37 When we looked at -- when we were writing our brief -- when we were drafting our brief, the shortfall in

1 my team is that we all come from the same system; in other words the civil law system. Consequently,
2 my knowledge of common law is mediocre, if I were not to say none at all, but I was the one who
3 decided who was going to compose my team. I read and I read, and I read a great deal, and when I
4 came to identification, all I could find was there is no method. People are free to do what they can --
5 what they want. Here we did this; there we did that. I put all this together, I put it in a blender and I saw
6 what came out. What came out is what I said.

7
8 Now, am I going to find jurisprudence which will tell me that one cannot rely on the first group to
9 corroborate the witnesses of the second group? No, that doesn't make any sense. If they do not know
10 Mr. Kamuhanda, how can they identify him? That's what I said.

11
12 Now, what else was thrown at me?

13
14 GES -- I will be concluding soon, Mr. President.

15
16 Mr. Kamuhanda testified after GES, and he told the Trial Chamber, "GES does not know me; GES
17 cannot identify me. The information he provided to say that he saw me regularly does not hold because
18 our places of work are four kilometres apart, and he cannot see me from four kilometres away. I am in
19 the suburbs, he is in the centre of town." The Chamber summarised Mr. Kamuhanda's testimony.
20 Mr. Kamuhanda says GES knew him and identified him, but on what basis was the Chamber saying
21 that? The Chamber, was it going to consider that GES was more important than Kamuhanda? It can't
22 do so because there are two others who say the contrary. At a given point in time the Chamber must
23 decide, and what I want is the criteria for choice. Why are we going to keep what GES says rather than
24 what Kamuhanda says? I don't have this. I have a summary of two testimonies and I have conclusions
25 without any demonstrations as to how that conclusion was reached. If I were to continue to speak I
26 may be doing my submissions over again, so I shall stop here and now, Your Honours. Thank you.

27 MR. PRESIDENT:

28 Thank you very much, Madam Condé, counsel for the Defence. Now we will give a few minutes to the
29 Accused, Mr. Kamuhanda, to make a personal statement if he wishes to do so.

30
31 Do you wish to make a personal statement? You do. Please, you may proceed.

32 THE APPELLANT KAMUHANDA:

33 Mr. President, Your Honours, as you know, I was convicted to maximum sentence for genocide and
34 crimes against humanity which I am alleged to have committed in Gikomero by distributing weapons
35 and supervising massacres that occurred at the Protestant parish in Gikomero. Those sad events
36 occurred between the 6th and the 12th of April 1994. That judgment is being challenged by me.

37 I continue to say that after the 6th of April 1994, I never left Gakiro, that is a *préfecture* in Kigali, to go to

1 Gikomero, which is in Kigali-rural, either to distribute weapons or to carry out massacres, let alone to do
2 anything at all. I am therefore innocent of all those despicable crimes that have been attributed to me.
3 As from the 7 of April, I stayed in my neighbourhood, as my counsel has lengthily explained.
4

5 I would like to indicate that when I was arrested in Bruges on the 6th of November 1998, I told the
6 investigators of the Tribunal that I never went to Gikomero, and on that occasion I made mention of
7 those who can testify to that fact. All the witnesses that I mentioned, men and women, honest and
8 people of integrity, appeared before this Court to say that I stayed with them in my neighbourhood
9 during the period from 7th to the 18th of April 1994, and I never went anywhere else other than
10 Kimihura which is next to that of Gakiro, again, within the Gakiro *commune* to look for my son, René, on
11 the 8th of April. At the time of the events or at the material time, I had no vehicle, whether it be official
12 or private; same as I didn't have a telephone, whether it be mobile or a landline. If I had a vehicle,
13 whereas I didn't even know how to drive, the first thing I would have done would have been to make
14 every effort at my disposal to take care of my wife and children instead of staying and being bombarded
15 from everywhere.

16 *(Pages 91 to 97 by Gifty C. Harding)*
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37

1 1830H

2 THE ACCUSED KAMUHANDA: (*Continuing*)

3 Furthermore, and let me emphasize this, since I didn't have a vehicle, and particularly not knowing how
4 to drive, why don't anyone ask, how or what means or what vehicle I could have used? And above all,
5 which driver would I have gone to convince to move me to this dangerous area that is moving from the
6 northern part of Kigali town, which was already occupied by the RPF combatants as from the measure
7 of the forces from the 10th of April 1994?

8
9 Now, the picking up of those assailants in full daylight, without it being noticed, so that firm belief that
10 the Judges got to; they got it from where? If I were the devil that I am being described to be, I would
11 have merely carried out such acts within my own neighbourhood before going on to attack the Tutsi
12 refugees, and whose present at the Gikomero parish could not have been in my realm of knowledge. I
13 would have gone to the Gikomero *secteur* if my intention had been to kill the Tutsis.

14
15 On the contrary, indeed, I allowed a lot of my -- or I made it possible for a lot of my neighbours, my
16 Tutsi neighbours, to use a vehicle which I got from a neighbour of mine on the 10th of April to leave
17 Kigali and to seek refuge in Gitarama where we spent the night in broad daylight -- no, no, in open air
18 on the 18th of April.

19
20 Now, there has been the exculpatory report that was prepared by the Prosecutor with my neighbours in
21 my area, in my neighbourhood, both Hutus and Tutsi. If I was absent from Kicukiro to go to Gikomero
22 within the period under review, it is obvious that the Prosecutor who went and saw all of my work
23 colleagues and my neighbours in Kicukiro, the Prosecutor could have found just one witness to
24 contradict me. That was not the case. No Prosecution witness on Kicukiro.

25
26 In paragraph 71 of the judgment, the Trial Chamber refused to accept any global attacks on
27 Prosecution witnesses, because it is not backed up by any evidence. Let me say, again, that the
28 accusations brought against me were fabricated, hook, line and sinker. By the way, in paragraph 69 of
29 the judgment the Trial Chamber acknowledged that the Defence did produce a witness who said that he
30 had been asked to falsely testify against me, that is Witness GPE (*sic*); who like myself was falsely
31 accused of leading an attack against Tutsi refugees in the Gikomero Protestant parish. He was
32 promised an amount of money and reactivation of his business and in return he was expected to come
33 and accuse me. And GPI refused to appear.

34
35 Witness GAA, the only one on whose testimony all three Judges agreed, and on whose testimony the
36 Trial Chamber relied in convicting me, did not set foot in Gikomero during the period of the massacre.
37 And by the way, his absence -- or that is the fact that he was not present at the Gikomero Protestant

1 parish had already been testified to before this Court by Witness GPF. Witness GIX of the Prosecutor
2 initially, who was a survivor of the massacres of 12 April 1994 at the parish, testified that she was,
3 indeed, in Gikomero and that she did not see Kamuhanda. This is evidence of the imaginations of
4 which I am a victim.

5
6 The error committed by the Trial Chamber that convicted me rather supported logic of conviction which
7 amounted to a destruction of the survivors -- or based on supporting the survivors of the Gikomero
8 survivors, and the demonisation of the defence; and upholding that view of the survivors is most
9 flagrant, particularly when it comes to supporting the testimony of the Prosecution Witness GEK.

10
11 All Defence evidence produced here, and this new situation of recantation, amounts to providing
12 unavoidable evidence together with investigations carried out in 1996 by the Rwandan authorities and
13 supervised by the ministry of higher education and scientific research, that is Exhibit D. 39, which we
14 had produced in the course of my testimony. That said, that report mentions one *commune* after
15 another throughout Rwanda, those in charge of perpetrating the massacres that occurred from April to
16 June 1994 in Rwanda; and that my *commune* is mentioned in 172, and my name does not appear
17 there; the ministry of higher education and scientific research and culture was superintending that
18 ministerial investigation. And it is in that ministry that I spent my entire career. If I was engaged in any
19 manner whatsoever in the events that brought the death and sorrow in my country, Rwanda, my name
20 would not -- would have been mentioned in the said report. Now, the official nature of that report is of
21 no doubt, as from when the person responsible for preparing it, Eric Rousseau, came to defend me in
22 November 2003 in the government trial. And I refer you to paragraph 389 of the judgment.

23
24 I am, therefore, innocent of these carefully orchestrated accusations leveled against me. I say so, and I
25 repeat it before you, and I so do swear.

26
27 As for the famous distribution of weapons, how could I have been able to go to Gikomero and distribute
28 weapons without bothering about my own dear mother and take advantage of some vehicle that was
29 provided me by the government to evacuate them? What would have justified -- what would have
30 warranted my distribution of weapons without giving such weapons to my own brothers who were of
31 age to use them and protect our dear mother? And, by the way, how could I come into possession of
32 those weapons, not being engaged in arms trafficking or a soldier? My innocence has been proven
33 beyond a reasonable doubt, but the Trial Chamber has decided to, as it were, throw me to
34 condemnation by society. Châtelet Brillant, the French writer said, in *Memory or Recollection from*
35 *Outside*: "It is not by killing someone which destroys society, but to kill him as someone who is not
36 guilty."

1 Before the history, the world, my wife and my four children, my own family, my acquaintances, my
2 relatives and those who are dear to me, I have acquitted myself of the task of proving my innocence. I
3 am someone who was born and trained -- or groomed in love. I was brought up in love, integrity. I have
4 always had a sense of honour, dignity and honesty.

5
6 It is my hope that this Honourable Trial Chamber would not lend credence to the views of a horrible
7 association, and thus convict me for a crime that I never committed, I don't intend to commit and I could
8 never commit.

9
10 That having been stated, on behalf of my family and on my personal behalf, I wish to reiterate my
11 sincere and brotherly forgiveness to those who have carried out or orchestrated these false
12 accusations. And my forgiveness really goes to Prosecution witnesses GIX and GAA, who have had
13 the courage to ask me for forgiveness for their lies. I would like the Trial Chamber to enable me to get
14 in touch with them so that I can embrace them, and really pardon them and extend to them the
15 forgiveness that I wasn't able to do.

16
17 While appealing to your conscience, Mr. President, Your Honours, as well as your wisdom as the
18 servants of justice and truth, I pray that you restore my dignity to me by correcting the obvious errors
19 that were committed by the Judges of the Trial Chamber that is by recognising my innocence. And in
20 that manner, you would have contributed to building an oasis of truth in a desert of lies. Truth is on my
21 side, innocence -- my innocence is in your hands and my destiny is in your custody.

22
23 Let the light and the blessing of the almighty go with you. Thank you.

24 MR. PRESIDENT:

25 I thank Mr. Kamuhanda for his statements.

26
27 This completes the hearings of our appeal in the case of the Prosecution against Jean de Dieu
28 Kamuhanda. The hearing is over.

29 *(Court adjourned at 1844H)*

30 *(Pages 98 to 100 by Donna M. Lewis)*

31
32
33
34
35
36
37

CERTIFICATE

We, Sithembiso Moyo, Verna Butler, Gifty C. Harding, Donna M. Lewis, and Karen Holm, Official Court Reporters for the International Criminal Tribunal for Rwanda, do hereby certify that the foregoing proceedings in the above-entitled cause were taken at the time and place as stated; that it was taken in shorthand (*stenotype*) and thereafter transcribed by computer; that the foregoing pages contain a true and correct transcription of said proceedings to the best of our ability and understanding.

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

Sithembiso Moyo

Verna Butler

Gifty C. Harding

Donna M. Lewis

Karen Holm