

THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

CASE NO. : ICTR-01-73-T
CHAMBER III

THE PROSECUTOR
OF THE TRIBUNAL
v.
PROTAIS ZIGIRANYIRAZO

MONDAY, 26 NOVEMBER 2007
0909H
CONTINUED TRIAL

Before the Judges:

Inés Mónica Weinberg de Roca, Presiding
Khalida Rachid Khan
Lee Gacuiga Muthoga

For the Registry:

Mr. Félicité A. Talon
Ms. Zulphur Mhina

For the Prosecution:

Mr. Wallace Kapaya
Ms. Sylver Ntakamazina
Mr. Brian Wallace
Mr. Iskandar Ismail

For the Accused Protais Zigiranyirazo:

Mr. John Philpot
Mr. Peter Zaduk

Court Reporters:

Ms. Melissa Hook
Ms. Kirstin McLean
Ms. Eleanor Bastian
Ms. Gifty C. Harding

I N D E XWITNESSFor the Defence:

BERNARD LUGAN

Examination-in-chief by Mr. Philpot.....	2
Cross-examination by Mr. Ntukamanzina	55

EXHIBITS

Exhibit No. D. 107	3
Exhibit No. D. 108E and D. 108F	9
Exhibit No. D. 109	23

PROCEEDINGS

1

2 MADAM PRESIDENT:

3 Good morning, everybody.

4

5 Ms. Félicité, can you please read the case.

6 MS. AHOUANOGBO-TALON:

7 Good morning, Madam President.

8

9 Trial Chamber III of the International Criminal Tribunal for Rwanda, composed of
10 Judge Inés Monica Weinberg de Roca, presiding, Judge Khalida Rachid Khan and
11 Judge Lee G. Muthoga, is now sitting Monday, 26th November 2007 for the continuation of the
12 presentation of the Defence case in the case, the Prosecutor versus Protais Zigiranyirazo,
13 case No. ICTR-01-73-T.

14

15 Thank you, Madam President

16 MR. PRESIDENT:

17 Appearances for the Prosecution, please.

18 MR. KAPAYA:

19 Good morning, Your Honours. The Prosecutor is represented by myself, Wallace Kapaya,
20 Mr. Sylver Ntukamazina, Mr. Brian Wallace, Iskandar Ismail, Jean Mukangira. And Chifundo Phiri will
21 be joining us shortly. Thank you very much.

22 MADAM PRESIDENT:

23 Mr. Philpot, appearances for the Defence, please.

24 MR. PHILPOT:

25 Good morning, Madam President. Good morning, Your Honours.

26

27 The Defence is represented by Mr. Philpot, lead counsel; Peter Zaduk, co-counsel; Innocent Nzabona
28 and Fiona Gray, assistant.

29 MADAM PRESIDENT:

30 I understand -- I assume the witness will testify in French?

31 MR. PHILPOT:

32 That is correct, Your Honour.

33 MADAM PRESIDENT:

34 Can you switch into English, because otherwise we'll have a lot of overlapping with the interpretation.

35 So if it's possible for you, I think it would help the court proceedings and the transcripts. Think about it.

36

37 And while you do, good morning, Mr. Zigiranyirazo.

1 THE ACCUSED:

2 Good morning, Madam President. Good morning, Your Honours.

3 MADAM PRESIDENT:

4 Good morning, Mr. Witness.

5 THE WITNESS:

6 Good morning, Madam President.

7 MADAM PRESIDENT:

8 Mr. Philpot?

9 MR. PHILPOT:

10 So, Your Honour, we had intended to do it in French. However, I'm fully cognisant of the risk of getting
11 crossed.

12 MADAM PRESIDENT:

13 It's your call.

14 MR. PHILPOT:

15 No, but I understand and I agree with you and we will -- so -- so --

16 MADAM PRESIDENT:

17 You choose. It's just that if it's in French, you must be aware of very long pauses.

18 MR. PHILPOT:

19 I will start in English and we will hope that it will proceed in a satisfactory manner.

20

21 Dr. Lugan, you have in front of you a document which is related to your personal information. Would
22 you please read it; and if everything is exact, sign it.

23 MADAM PRESIDENT:

24 Before you do so, the witness should be sworn in.

25 *(Declaration made by Bernard Lugan in French)*

26

BERNARD LUGAN

27

first having been duly sworn,

28

testified as follows:

29

EXAMINATION-IN-CHIEF

30 BY MR. PHILPOT:

31 Q. Have you had a chance to examine the document with the personal information, sir?

32 A. Yes, Counsel, everything is correct.

33 MR. PHILPOT:

34 So we will file this as Exhibit D -- I don't know the number, Your Honour.

35 MS. MHINA:

36 D. 107, Your Honour.

37

1 MR. PHILPOT:

2 D. 107.

3 MADAM PRESIDENT:

4 Can you please sign it?

5 (*Exhibit No. D. 107 admitted*)

6 MR. PHILPOT:

7 I believe the Court has been informed that there is no contestation of the expert status of the witness.

8 And on that commitment, I will simply begin with the examination-in-chief.

9 MADAM PRESIDENT:

10 Mr. Sylver, can you confirm this?

11 MR. NTUKAMANZINA:

12 Yes, Madam President. We do not contest his qualification as an expert, but we contest the
13 conclusions of that expert report and his knowledge regarding information on Rwanda from 1983 to
14 date.

15 BY MR. PHILPOT:

16 Q. Dr. Lugan, what was the mandate that you had to prepare the expert report, sir?

17 A. I received three mandates; mandates composed of three points. The first point was the thesis
18 concerning the planning of the genocide and the situation today in 2007. Point number 2, the issue of
19 the demonisation of President Habyarimana, the state of knowledge, particularly regarding *Akazu* and
20 the case of the pieces of paper. The third point on this mandate was the strategy by the RPF to
21 conquer power. Could this takeover strategy explain the exacerbation of tensions and the destruction
22 of the social fabric in Rwanda?

23 Q. Fine. Then we will start with your report with point number 1. Before I enter into these parts of the
24 report, did you do research, individually, on the acts and conduct of Mr. Zigiranyirazo?

25 A. Of course, Counsel.

26 Q. But did you enter into the facts in dispute in the case with respect to the actions of Mr. Zigiranyirazo
27 during the period of the indictment?

28 A. My mandate did not require me to do that. The terms of reference that were given me were to clarify,
29 and this is to be understood in the general context and the general effects or impacts of this case, but I
30 did not enter into detail -- into the details of the facts and gestures because these were not part of my
31 terms of reference.

32 Q. Fine.

33 MR. PHILPOT:

34 I'm just waiting till -- waiting till --

35 MADAM PRESIDENT:

36 Pardon? No, please continue.

37

1 BY MR. PHILPOT:

2 Q. We are referring to part 1 of your report. Would you please comment as to whether or not the thesis
3 that the genocide was planned, whether that can still be maintained in light of scientific knowledge
4 presently available?

5 A. We are faced here with an essential problem. Why? Because the state of knowledge has considerably
6 changed since the period of this drama that was lived or experienced by Rwanda.

7
8 During an initial period, which we could situate from the month of July and August 1994, right up to the
9 end of 1999, things were clear and I myself (*no interpretation*)..and it was indisputable that this
10 genocide had been planned.

11
12 Then significant events occurred, especially here in ICTR where history is being written, because the
13 true history of the genocide in Rwanda is being written here in ICTR with the hearing of witnesses, of --
14 with the discussions. And since 1999/2000 there have been new elements that have come to the fore.

15
16 And, from my standpoint, the main period where there was a drastic change was the year 2000.
17 Because, indeed, in 2000 there was a very important document that was published by African experts
18 who published a huge report of 600 pages which is entitled: "Report of the international group of
19 eminent personalities in order to conduct an enquiry on the 1994 genocide in Rwanda and its
20 consequences on the Great Lakes Region." This was a document that was published in Addis Ababa
21 at the headquarters of the OAU in July of 2000 and which is 600 pages long.

22
23 And the eminent personalities in question on page 7-1 of the report were taking stock of the situation in
24 2000. And, if I may, I wish to read out eight lines of that report to you. I am going to read it at the
25 slowest pace possible so the translators will not be lost. And I quote: "There is no document, no
26 minutes of any meeting or any other piece of evidence pinpointing any specific point in time when some
27 individuals within the framework of a steering plan would allegedly have decided to eliminate the Tutsi."

28
29 And I stop the quote, and go a few lines further, and I quote: "What we do know is that from the
30 1st of October 1990, Rwanda was faced with three and a half years of violent incidents that were
31 anti-Tutsi in nature, each of which can easily be interpreted with hindsight" -- and I insist on the words
32 "with hindsight" -- "as a deliberate stage in a vast conspiracy with as climax the shooting down of the
33 presidential plane which led to the genocide."

34
35 I finish with the following sentence: "However, all these interpretations are nothing but speculation."
36 And I insist on that word. "No one knows who brought down the plane." Et cetera, et cetera.

37

1 So this is a quote taken from the report of the eminent personalities of the Organisation of African Unity
2 in 2000. This publication is very important -- constitutes a very important change because in the year
3 2000 we are six years after the genocide and the eminent personalities became aware of the fact that
4 all the charges brought against the accused were based on speculations.

5
6 What were the changes that occurred between 2000 and 2007? Well, there are other very significant
7 elements that have been added to the case. And I wish to refer to two of them, in spite of long trials
8 that have taken place here in Arusha before the different Chambers, the Prosecutor has not been able
9 to demonstrate that there was any planning of the genocide. The experts of the Prosecution have all
10 progressively adopted positions that were more speculative. The only one to continue defending the
11 thesis of the planned genocide, Mrs. Des Forges -- and we will talk about her later on, especially with
12 regard to your historical methodology.

13
14 The second element, which is also of utmost import, is constituted by the confessions of a number of
15 RPF members which seemed to indicate that unlike what everybody thought, immediately after the
16 events and immediately after the Presidential plane was brought down, the elements that sparked the
17 genocide did not stem from the Hutu world in general, but, rather, from some circles within the RPF.

18
19 And, finally --finally, in November of last year a document was made public, which is in fact the only
20 truly comprehensive study in the present state of knowledge which puts the events into perspective.
21 And it is the ordinance of Judge Bruguière.

22
23 For all these reasons --

24 MADAM PRESIDENT:

25 Mr. Philpot, we did not allow in these proceedings that the report of Bruguière be tendered. We're not
26 going to allow in an indirect way to have the report in the proceedings. Our ruling stands that it is not
27 relevant for these proceedings, so please limit yourself to questions which have been -- which are
28 within the scope of what we're dealing with.

29 MR. PHILPOT:

30 I understand. And this is an historical analysis which he's explaining the changes in -- in his position
31 and others. To then go to the point of the planning of the genocide and --

32 MADAM PRESIDENT:

33 Please skip then this part and go directly to the planning of the genocide.

34 JUDGE MUTHOGA:

35 No, Mr. Philpot. I am sure you are not presenting Mr. Lugan as a commentator on the testimony that
36 has been received in the various trials in this Tribunal. Because that is not something for which we
37 need assistance, expertised assistance. If you are presenting for that purpose, then I think the whole

1 thing is misconceived.

2 MR. PHILPOT:

3 I will explain.

4 MADAM PRESIDENT:

5 No, don't.

6

7 Just proceed, but bear in mind what Judge Muthoga has said.

8 BY MR. PHILPOT:

9 Q. Dr. Lugan, would you direct your comments on this part to the work of Dr. Des Forges, please, the
10 historical work of Dr. Des Forges?

11 JUDGE MUTHOGA:

12 And while you do that, Mr. Lugan, please be an historian, not a commentator on current affairs,
13 because that commentating has no -- is not of any great assistance to the Tribunal. And the only
14 assistance you can give this Tribunal, is enabling the Tribunal to understand an historical concept better
15 than it would otherwise do without your assistance. But when you go on to the long commentary on
16 what testimony has been received or not received, none of that is for an expert to put to us. In fact, if it
17 is to be put to us, it be put by Counsel or other persons who will be easily persuaded.

18 BY MR. PHILPOT:

19 Q. We will -- do you understand my question?

20 A. Yes. May I respond to the Judge in one word with your leave, may I?

21 MADAM PRESIDENT:

22 No, I do not think it's necessary. It's only a warning for Counsel --- a warning from the Bench to both
23 Counsel and you what we are requesting from you. So far you have been responding to Mr. Philpot's
24 questions, so you have been doing what you have requested for Counsel who offered you as an expert.
25 We are explaining that this is not an expertise we care to have. We don't want comments on other
26 cases, on testimonies of other witnesses, nor on the Bruguière report.

27

28 So we are requesting Counsel to go in the direction -- in this direction and you to bear it in mind when
29 answering. That's all.

30 THE WITNESS:

31 Madam President, I believe there's a misunderstanding between the two of us. And I believe we should
32 settle it immediately, otherwise it would be useless to continue.

33

34 I am a scientist, which means that I cannot simply state the obvious without explaining how I reach such
35 conclusions. I am not Mrs. Des Forges. The question put by His Honour was truly pertinent because it
36 enables me to clearly state that fact. My testimony would be useless if I cannot tell you how I evolved
37 when dealing with the matter.

1 Otherwise, I would simply be doing some journalistic work and not an historical study. If that is what is
2 requested to me, to act as a journalist, well, I believe my testimony can stop here.

3 MADAM PRESIDENT:

4 Well, that is what the Chamber is determining whether your testimony can stop here or not according to
5 what you can offer to us. So, Mr. Philpot, I think, has understood the request of the Bench, and we
6 would want him to go in that direction. And the witness will see whether he has an answer or not within
7 the parameters in which the Bench wishes to have the answers; and if he cannot respond, that's it.

8 BY MR. PHILPOT:

9 Q. Dr. Lugan, as an historian would you comment on the theory of Alison -- Dr. Alison Des Forges
10 concerning the planning of genocide?

11 A. I understood your question in English, but I'm still waiting for the translation in French. But I understood
12 your question and I can answer you.

13 Q. Maybe I will ask it again to make sure the record is clear there, since there seems to have been
14 something missing. Would you, please, comment on Dr. Alison Des Forges's concept of the planning
15 of the genocide, sir?

16 JUDGE MUTHOGA:

17 You can start with the witness telling us that he has fully read the testimony that was given by
18 Alison Des Forges in this trial, as opposed to other trials, or in her book, or whatever, because what will
19 be of interest to us is not what she has written in her book; it is not testimony she has given in other
20 trials, it is the testimony she has given in this trial. And it is important that we know that the witness has
21 in fact -- which he has probably done in his report, it's only that I don't have the report in front of me.

22 THE WITNESS:

23 Your Honour, let me answer you immediately and allay your fears, and it is absolutely necessary to
24 have this scientific caution. I understand you perfectly. On page 7 of my report in its French version, I
25 quote very faithfully some of the answers made by Mrs. Des Forges before this Trial Chamber.

26 Obviously, I read what Madam Des Forges had stated and what she wrote.

27 BY MR. PHILPOT:

28 Q. Would you then proceed to explain your point of view with respect to her explanations?

29 A. Yes, indeed, Counsel. And, once again, I must say that I'm at a loss, vis-à-vis Madam President and
30 this Trial Chamber, because in order to explain how to my -- why, to my mind, Alison Des Forges is
31 being mistaken, I have to make a number of comments on statements that were made here. Am I
32 authorised to do so? Or perhaps we should refer straight to my report or my publications on the issue.

33 MADAM PRESIDENT:

34 Perhaps we would need to know what method you used to write your report. Was it -- what did you
35 base it on? On knowledge? I think that is what is the problem here. Did you write your report on the
36 basis of testimonies in cases before the ICTR? Or, do you have some other expert knowledge of
37 Rwanda? Were you in Rwanda before 1994? Have you been there after 1990? Have you had contact

1 with people there? Because that would be of interest to us, whereas to -- for you to bring us what is
2 before different chambers of this Tribunal is not.

3
4 So, perhaps you can -- I think there's a misunderstanding as to what we are requesting you to inform
5 us. Ms. Des Forges gave an expert testimony on the basis of her knowledge of Rwanda, on years
6 previous to the genocide. And she quoted sources. So you are now for the other party as an expert,
7 and we would also need to know which your sources are and if it's sources from Rwanda.

8
9 We told Ms. Des Forges when she testified, and this applies also to you, that experts should not be a
10 way of introducing testimony of witnesses who are not willing to testify in Court. So, we would need to
11 know what knowledge you have of the events and how you came to it. But Judge Muthoga asked first if
12 you are aware of Ms. Des Forges' expert report and then referred to the discrepancies which were in
13 her report and your view of events.

14 MR. PHILPOT:

15 Maybe, in this context, we will clarify some of the questions the Court has raised and then proceed to
16 the specifics.

17 BY MR. PHILPOT:

18 Q. And you can -- Dr. Lugan, what are your --

19 THE WITNESS:

20 Madam President has put a question to me and courtesy requires that I respond. Madam President, I
21 am quite astonished, quite surprised. I thought you had my curriculum vitae. I was a lecturer of the
22 Rwanda University, if my memory serves me right, from late 1971 or early 1972, up until
23 August of 1983. That is to say, for more than 11 years. I was a lecturer in the history of Africa and
24 Rwanda. I wrote my two theses in Rwanda, one of which put into perspective the history of the links
25 between the Hutus and the Tutsis through history. This is a thesis that had six volumes. I published
26 tens of articles on Rwanda. I published five books on Rwanda, the last of which is right here.

27
28 I regularly interviewed Rwandan witnesses and I have especially worked on the military aspects,
29 because in France I am a lecturer at the *académie militaire*, which is formerly known under the name
30 *Lugaire (phonetic)* law school. And I was able to interview all the military -- all the French soldiers who
31 testified.

32
33 So I have a local, regional and broad knowledge of that period in Rwanda. But my curriculum vitae is
34 quite detailed in this regard and I believe I would waste the Trial Chamber's precious time if I went
35 further in providing such information.

36 MR. PHILPOT:

37 For the purposes of the Court, when I filed the expert report on the 30th of August last year, the

1 curriculum vitae was attached and the English translation, of which I have a copy. The numbers are
2 7154 to 7148 (*sic*), are in the file. And I will now file the English version of the curriculum vitae as
3 Exhibit D. 10 -- 108, so that the Court can take cognisance of this report briefly when you come to
4 evaluating the testimony.

5
6 And I would just like to say one more thing, because there was no voir dire we did not go through this
7 exercise which we would have gone through.

8
9 So, Madam Talon, can I please file the report as Exhibit -- I think it is D. 108 now, in the English. These
10 are for the Court's files, Your Honours.

11 MADAM PRESIDENT:

12 Exhibit 108. I see no objection from the Prosecution.

13 MR. KAPAYA:

14 No objection, Madam President.

15 MADAM PRESIDENT:

16 Is this CV in French or in English? Is the translation in English and the French has been filed?

17 MR. PHILPOT:

18 Your Honour, the French was filed with our notice of filing the expert report.

19 MADAM PRESIDENT:

20 But tendered -- I'm asking if it's tendered as an exhibit, because it wouldn't make much sense to tender
21 the translation of the original.

22 MR. PHILPOT:

23 I will get --

24 MADAM PRESIDENT:

25 Let's have the expert report, if you think so, as 108 with the CV. And F -- and E in English now of the
26 CV and then of the expert report as well.

27 MR. PHILPOT:

28 My expert report has been annotated, my filed copy.

29 MADAM PRESIDENT:

30 I am sure it can be done during the break.

31 MR. PHILPOT:

32 Yes, so we will print off a copy.

33 MADAM PRESIDENT:

34 So the whole expert report and CV, both French and English, will be 108.

35 (*Exhibit No. D. 108E and D. 108F admitted*)

36 MR. PHILPOT:

37 And we'll obtain a virgin copy at the break.

1 MADAM PRESIDENT:

2 Yes, of course.

3 BY MR. PHILPOT:

4 Q. Dr. Lugan, we will now refer to Madam Des Forges. And what have you read of
5 Madam Des Forges' material, both in this trial and elsewhere, that allows you to write that opinion?

6 JUDGE MUTHOGA:

7 You see, Mr. Philpot, once you have done what you should've done at the beginning, which is tendered
8 a report -- this gentleman has prepared a report, you have it in your possession, which possibly is
9 something we can easily read. There are areas in the report which you think we -- could do with
10 additional clarification from the witness, lead him to those areas. Lead him to paragraph so and so of
11 his report and ask him to explain it. Make it more easier to understand, than it is, because his whole
12 evidence is that report.

13 MR. PHILPOT:

14 This was all filed in August, Your Honour. I assumed that the Court had copies, honestly. And I was
15 going to refer to page by page of the report and I will refer to it now.

16 BY MR. PHILPOT:

17 Q. If you'd look at page 7 of your report in French, could you explain the problems with the theories
18 adopted -- proposed by Dr. Alison Des Forges?

19 A. As far as I am concerned, the main weakness in the theory of Mrs. Des Forges' theory is that she is
20 acting in an autistic manner in her scientific analysis. In other words, Madam Des Forges is
21 constrained by her hypothesis and she shies away from everything that would contradict her thesis
22 denying, in the face of the obvious -- in spite of the obvious, to continue supporting her thesis of a
23 planned or programmed genocide.

24
25 In order to follow the directions given by Madam President and Your Honours, let us take, for example,
26 the testimony of Mrs. Des Forges in front of this -- before this very Trial Chamber. Madam Des Forges
27 says, and I quote, that she is more and more convinced of the planning of the genocide. She also tells
28 us a few minutes later that she was not able to prove that assertion, which means that this is not a
29 scientific approach, but I -- I -- rather, an approach which seems to be religious in nature. There is a
30 dogma, and one does not discuss that.

31
32 My approach is exactly the reverse because since at the beginning I believed it was so, and I no longer
33 believe it for the reasons I attempted to provide earlier on. But I will follow the directions of the
34 Trial Chamber and I will not mention what led me to change opinions.

35
36 To summarise, the main problem I see with Mrs. Des Forges' approach, as we will see in different
37 points of my report, is that she has adopted a theory and then overlooks any element that might

1 contradict that theory. And this is what makes the difference between Mr. Reyntjens, for example, who
2 has been evolving as knowledge evolved, and it is also her difference with Mr. Guichaoua, who is also
3 another Prosecution expert. With Mr. Reyntjens, Mr. Guichaoua and myself, we are using a scientific
4 approach where we challenge previous information on the basis of new knowledge, if it's reliable, of
5 course.

6
7 Madam Des Forges is rather focussing or basing all her research on a set theory and on creed.

8 Q. We will now move on to page 8 of your report, which is for the purpose -- it is Part 1B of the expert
9 report, which is the definition of the ENI as a founding act for the genocide.

10 MR. PHILPOT:

11 That's where we will be now, for Your Honours' interest. Is it -- is it clear where we are?

12 MADAM PRESIDENT:

13 In the English it's page 7141B at the bottom, page 14.

14 BY MR. PHILPOT:

15 Q. Now, Dr. Lugan, we will now refer to your chapter on the definition of the ENI. How would you respond
16 to Dr. Des Forges's explanations of this as an important factor committing -- leading to the genocide?

17 A. This is also an essential matter, because Mrs. Des Forges and the Prosecution base their thesis -- their
18 theory on this reality of the ENI, the definition of the enemy.

19
20 For any historian working with texts or documents and which has been trained to criticise texts,
21 because this is what the -- an historian does, he is an expert in text interpretation or criticism. There is
22 a concept here which is quite surprising, because the charges are based on a partial document. We do
23 not have the document in its entirety and Mrs. Des Forges, as well as the Prosecution, are making use
24 of the only part of the document that is known in order to establish their theory. Well, that is all well and
25 good. We're not going to blame Mrs. Des Forges for not using a document which by definition is
26 unknown.

27
28 But it so happens from the methodological standpoint there is a problem. The problem is that we know
29 who were the members of the commission that wrote that document and it is also obvious to all of us
30 that at least part of the members of that commission could certainly not be accused of being "Hutu
31 extremists", since at least two of them will subsequently become senior leaders of the RPF, that is to
32 say, General Gatsinzi and Augustin Cyiza.

33 MR. PHILPOT:

34 I'll get the spelling here. Gatsinzi is number 128. And Cyiza, I don't have it, I don't think. His spelling is
35 Augustin, C-Y-I-Z-A.

36 THE WITNESS:

37 Augustin, Augustin.

1 JUDGE MUTHOGA:

2 *(Unintelligible)*

3 MR. PHILPOT:

4 Gatsinzi is on the list and Cyiza is not.

5 JUDGE MUTHOGA:

6 Number 12 on your list is not Cyiza, the other one you mean?

7 MR. PHILPOT:

8 We have a new list today, a cumulative list.

9 MADAM PRESIDENT:

10 Who has the list apart from you?

11 MR. PHILPOT:

12 I distributed it to the registry this morning. I have one copy and I gave multiple copies to the registry
13 this morning.

14 MADAM PRESIDENT:

15 So perhaps we could have it now.

16

17 Well, we don't have even a copy for each judge, so what did you do with them?

18 MR. PHILPOT:

19 I had ten.

20 JUDGE KHAN:

21 To whom did you give them?

22 MR. PHILPOT:

23 I gave one to myself. I gave one to the court reporter. I gave the balance --

24 MADAM PRESIDENT:

25 So, you distributed them yourself?

26 MR. PHILPOT:

27 No, I gave one to the court reporter, one myself and the rest I gave to Madam Talon.

28

29 We have one more here.

30 MS. AHOUANOGBO-TALON:

31 Madam President, we distributed all the copies we had. We gave three copies to the interpreters. One
32 to the stenographer, the French stenographer.

33 THE ENGLISH INTERPRETER:

34 I'm sorry. We cannot hear Ms. Talon, who is not speaking into the microphone.

35 MADAM PRESIDENT:

36 Please speak into the microphone. But you should distribute --

37

1 MS. AHOUANOGBO-TALON:

2 Your Honour, we did not receive ten copies of this list. We distributed all the copies that we were given:
3 three to the interpreters, one to the English court reporter and two other copies -- the two remaining
4 copies were the ones we provided to you, Madam President. Thank you -- which means that we
5 received six copies of the document. Thank you.

6 MADAM PRESIDENT:

7 Whatever the number of copies you received, Ms. Félicité, you cannot distribute anything before giving
8 a copy to each of the Judges.

9 MS. AHOUANOGBO-TALON:

10 You are entirely right, Your Honour. But when I received the copies from Counsel Philpot, I asked him
11 whether copies had already been provided to the Judges. And I thought he understood -- I understood
12 that the answer was in the affirmative, and that is the reason why I distributed three copies to the
13 interpreters.

14 MADAM PRESIDENT:

15 Perhaps we should avoid distributing documents in the break and have them distributed in Court.

16

17 So could you repeat which name we're speaking about to see which number is on the new witness list
18 that we now seem all to have.

19 MR. PHILPOT:

20 As I stated, on the new spelling list, number 128 is Mr. Gatsinzi. And it turns out that Mr. Cyiza is not
21 on the list. C-Y-Z-A (*sic*), Augustin.

22 MADAM PRESIDENT:

23 So he was 12 on the old spelling list so perhaps we should refer to both now.

24

25 Please proceed.

26 BY MR. PHILPOT:

27 Q. We were now talking about the drawing up of the ENI document; in what context was it drawn up,
28 Dr. Lugan?

29 JUDGE KHAN:

30 Which document are you referring to?

31 MR. PHILPOT:

32 ENI document. It's a document -- it's paragraph B of the first chapter of the expert report.

33 THE WITNESS:

34 Since the 1st October 1990 the Rwandan armed forces were attacked, so they were at war.

35

36 And the question was to know who they were fighting against. The president, the military authorities set
37 up a committee which comprised ten members who -- which was to provide a report on the question:

1 How -- what should be done to fight the enemy on the military, media and political fronts?

2
3 I am not going to dwell on the issue of the membership of this committee, which is not in keeping with
4 what we are discussing here. But from what Mrs. Des Forges says, the first element of the discussion
5 is that the committee was not made up of Hutu extremists. Unlike what Mrs. Des Forges said, since
6 several of its members lived abroad and were never prosecuted by the Tribunal. And since two of its
7 members subsequently became senior leaders in the RPF. Since one of the members is going to
8 become the minister of defence of General Kagame after the RPF victory in 1994. And I'm referring to
9 General Marcel Gatsinzi, we talked about a moment ago.

10
11 The second individual is also quite interesting. He is Major Augustin Cyiza. We also mentioned
12 Major Augustin Cyiza, who after the military victory of the RPF, will be appointed vice president of the
13 supreme court and then president of the court of causation, which means that he is a very prominent
14 member of General Kagame's regime.

15
16 It so happened, and that is fortunate with regard to the changes in the scientific interpretation of events,
17 Mr. Cyiza was interviewed and was interviewed by journalists who went to Kigali to talk with him when
18 he was president of the court of causation in 1996, I believe. And the journalists put the following
19 question to him, a question which was never asked in this Tribunal, and which is of utmost importance.

20
21 "We have a part of the report that defines the ENI. What about the rest of the report? What did it say?"
22 And Augustin Cyiza is quite clear on the issue. Augustin Cyiza tells us that the purpose of the report
23 was to define the friend and to propose reforms. This is a very interesting document. So what did
24 Augustin Cyiza say? And let me quote three lines from Augustin Cyiza in the book. Do you wish to
25 have the reference for this book? Is it necessary to provide the title and references for this work?

26 BY MR. PHILPOT:

27 Q. Well, it's -- it's in your report and it's called "Augustin Cyiza, *Un homme libre au Rwanda*". It's on
28 page 9 of your report.

29 A. Very well, so there's more detailed footnote on page 11 of my expert report. It is in fact footnote
30 number 13.

31
32 And I quote, and it is Augustin Cyiza who is speaking: "This committee was requesting" -- and I quote --
33 "the rapid setting up of a credible transitional government as well as the organisation of elections as
34 early as possible. We were recommending that there be more open political activity in order to broaden
35 the scope for recruitment. So that is the conclusion. We, the soldiers, did not wish to continue the war,
36 so the recommendation was multiparty politics. There is no founding element of genocide in there."
37 But Augustin Cyiza goes even further, and he makes a serious accusation. Augustin Cyiza makes a

1 serious accusation when he states that the Prosecution only takes into account the elements which are
2 in favour of its thesis -- of its case. And all this is summarised in the following sentence of
3 Mr. Augustin Cyiza. And let me remind you, for my presentation to be well understood, that
4 Augustin Cyiza was murdered probably after the statements he made.

5
6 And let me quote Augustin Cyiza once again on page 13 of his interview: "The investigators of the
7 ICTR are only looking for evidence against the accused. And I believe that it is the reason for which
8 they are using the excerpt of the document which was used by Madam Des Forges and the prosecution
9 which I have just referred to. One wishes to state that the genocide was programmed beforehand and
10 that the committee was the ideological aspect of it. The conclusion is that the ten members of the
11 committee were the brains behind the genocide. When the investigators of the ICTR find any
12 exculpatory evidence, they set it aside, rather than looking for direct witnesses they would only use
13 intermediaries."

14
15 Augustin Cyiza has, in fact, very aptly summarised Mrs. Des Forges' ideology.

16 MADAM PRESIDENT:

17 One second, Mr. Philpot. First Cyiza, let's repeat the spelling, it's C-Y-I-Z-A.

18
19 Second, Dr. Lugan, it would be helpful if you could speak a bit slower, that would assist the interpreters
20 and court reporters. And also, if your answers could be a little shorter. Perhaps it is better to have
21 more answers but briefer, because it makes the transcript clearer.

22 MR. PHILPOT:

23 Yes. And what we'll try to do, I think, is try and have a question and answer approach. Sometimes it
24 doesn't always work, but we'll try.

25 BY MR. PHILPOT:

26 Q. This definition of the enemy, who is it referring to, all Tutsis or some other group? Could you explain
27 your interpretation and understanding of the document?

28 A. From the part of the document that we know, the one that was prepared by the Prosecution and on
29 which we're working --

30 Q. Exactly, who does it refer to, what groups?

31 A. I quote -- do you want me to quote the part of the document that refers to that? "The main enemy is the
32 Tutsi from within or from abroad, extremists, and who are nostalgic for power and who have never
33 recognised and still do not recognise the reality of the social revolution of 1969 (*sic*)."

34 Sorry, I will try to
35 slow down. Madam president, I'm sorry, I have been going very fast.

36 Let me repeat: "The main enemy is the Tutsi from within or from abroad" --
37

1 Or, maybe, it would be better for me to refer you to my report, page 10, third paragraph. The document
2 is quoted there. In any case, from a commentary of these five lines, nothing in this paragraph that I
3 have just summarised points out or refers to all Tutsis, but only to some Tutsis. Tutsis. And,
4 furthermore, this document cites Hutus, not all Hutus, but some Hutus. It is a balanced document,
5 which is very surprising.

6
7 Should we remain locked up in the paradigm to try and find out the document that originated the
8 genocide?

9 Q. In your opinion then, as an historian, can this document have any incident on inciting what came to
10 be -- happened as the genocide which is defined by the Court?

11 JUDGE MUTHOGA:

12 Is that the issue -- an issue which we are constituted to determine?

13 MR. PHILPOT:

14 It was raised in evidence in-chief, Your Honour.

15 JUDGE MUTHOGA:

16 Even if it was, surely Mr. Philpot, the last thing an expert would be allowed to do is to tell us how to
17 determine those issues which we have to determine.

18 MR. PHILPOT:

19 I think the expert can give an opinion, and in fact must give an opinion, as to the historical interpretation
20 of the document.

21 JUDGE MUTHOGA:

22 Yes, if --

23 MR. PHILPOT:

24 And that is my answer to your question.

25 JUDGE MUTHOGA:

26 Now the question you asked him is to tell us how that issue ought to be determined.

27 MR. PHILPOT:

28 These are not statements in the indictment. They are simply elements of evidence which were
29 produced obliquely by the Prosecution, but are on the record. And the opinion was given by the other
30 expert on that question, and I am asking this expert to give his opinion.

31 MADAM PRESIDENT:

32 Please continue, Mr. Philpot.

33 BY MR. PHILPOT:

34 Q. Did this document have any impact on the genocide defined by the Court which occurred in 1994?

35 A. No. No, Counsel.

36 Q. Do you have any other reasons than those which you have just given to the Court?

37 A. Of course.

1 MADAM PRESIDENT:

2 The question is a bit complicated. Mr. Philpot, you're saying there was not a genocide in 1994.

3 MR. PHILPOT:

4 I didn't say that. I didn't.

5 MADAM PRESIDENT:

6 So, make it clear. If the question is: Has this document any impact on -- let me rephrase the question.

7

8 Dr. Lugan, had this document any impact on the 1994 genocide? And I do not know what Counsel
9 means, as defined by this Court. Genocide is defined by the Genocide Convention and by our statute.

10 So, let's be clear.

11

12 Has this document any relation to the genocide that occurred in Rwanda in 1994?

13 THE WITNESS:

14 In my mind, no, Madam President. For the reasons I have just given. And for another reason, a very
15 simple one, this document was confidential.

16 MR. PHILPOT:

17 I just want to refer to the Court -- I was referring to the judicial notice decision. That's what I was
18 referring to when I was -- not to you, but to the judicial notice decision of last July.

19

20 We will now move on.

21 JUDGE MUTHOGA:

22 If you're conscious of that, Mr. Philpot, you will find that a lot of the evidence you are putting, other than
23 occupying the time it is occupying, it is not going to be any use in determining the guilt or innocence of
24 Mr. Zigiranyirazo.

25

26 But, of course, we can't stop you from putting the evidence, even if it is only spreading the time.

27 MR. PHILPOT:

28 Your Honour, it is beyond our desire to spread the time. The evidence we are replying to was given
29 in-chief and we are replying to that evidence. And I will now try and -- I think the framework of our
30 examination-in-chief is becoming clearer and we will advance.

31 JUDGE MUTHOGA:

32 And remember -- I think it's important to remember, Mr. Zigiranyirazo cannot be convicted on anything
33 which is not on the indictment. His conviction, if at all, will be on those things for which he has been
34 charged.

35 MR. PHILPOT:

36 On the indictment.

37

1 JUDGE MUTHOGA:

2 On the indictment. Not other things that have been said by people. People have said lots and lots and
3 lots of things which may be of great interest to historians, like Dr. Lugan, but are not of use in
4 determining whether Mr. Zigiranyirazo is or is not guilty of the charges laid before him. And, as
5 Counsel, your job is to correct those issues that import on the guilt or innocence of the accused, and
6 deal with them. Not give a general response to anything that anybody has ever said about matters that
7 happened in Rwanda.

8 MR. PHILPOT:

9 The important -- there are many elements of the Prosecution evidence which we are responding to,
10 which we objected to, but was allowed in. And that's why we have to reply to it. And we will move on.
11 Thank you.

12 BY MR. PHILPOT:

13 Q. Could you explain, in a succinct manner, whether or not the civil defence was a genocidal structure?

14 THE ENGLISH INTERPRETER:

15 Could Counsel please repeat the question for the French interpreters?

16 BY MR. PHILPOT:

17 Q. We're looking at paragraph C of the first part of your report on civil defence. Could you explain whether
18 civil defence was a genocidal structure with reference to Mrs. Des Forges and her testimony?

19 A. To save time, and in order not to go into details, I would adopt the conclusion of Filip Reyntjens. The
20 civilian defence was not established to perpetrate the genocide, but rather to stop the advance of the
21 RPF. The civilian defence was not established to perpetrate the genocide, but to stop the advance of
22 the RPF. My quotation is on page 20 of the French report.

23

24 I could continue talking about the civilian defence, but everything is here. As a military historian, I could
25 dwell on the civilian defence, but I think that we could move forward.

26 JUDGE MUTHOGA:

27 The easiest way to move forward, Dr. Lugan, is this: You are a historian, a military historian, is there
28 any way in which the concept of civil defence can be read as genocidal implement? That's all that we
29 ask you. It is not whether it was or it wasn't, because we do not know that you are one of those who sat
30 down to devise it. It's whether looking at it now or anytime, and in light of what happened, is there a
31 way it can be interpreted that way by an historian?

32 MADAM PRESIDENT:

33 I don't want to interfere, but I will.

34

35 Dr. Lugan, what puzzles all of us is how the genocide could occur. So the Prosecution has indicated
36 one interpretation, and it would be useful if you could give us your own interpretation of how the events
37 in 1994 happened. How, in a short period of time, hundreds of thousands of people were killed. So I

1 think it would be useful, having heard the Prosecution's perspective, to have your's, if it differs.

2 MR. PHILPOT:

3 And, Your Honour, this is in many ways part 3 of our report. And if we could move on to part 3, and
4 then maybe come back to some parts of the earlier report.

5 MADAM PRESIDENT:

6 I suggest, yes, you do, because then if we have the general background, it might be easier then to go to
7 concrete questions like civil defence because it will be seen in a context. Whereas now we're trying
8 with little questions to build up a theory.

9

10 So let's start with the theory and then explain the theory.

11 BY MR. PHILPOT:

12 Q. Do you follow that, Dr. Lugan?

13 A. Exactly.

14 BY MR. PHILPOT:

15 Q. I will go through part 3 of the report and invite the Court to intervene as I go along, if you so --

16 MADAM PRESIDENT:

17 You should never do that with this Bench. That's very dangerous.

18 JUDGE MUTHOGA:

19 I don't know. Maybe we can't quite understand. Does it mean -- you can assume, and I invite you to
20 assume that we will read this report. Just assume that. Assume that the three Judges are literate
21 (*unintelligible*) and that they will spend some time to read this report. There -- there's a danger that we
22 might not understand some parts of it. If you can deal with just those parts, the parts that you think that
23 we might not be able to understand when we read the report. We could get Mr. -- Dr. Lugan back to
24 wherever he came from in a few hours.

25

26 But if you do it this way, we will be here this week and the following week. And it will not be useful
27 because it's not going to help us understand him any better.

28

29 But make the basic assumption that Judges will read this report and ask them to read also the
30 testimony of Witness Des Forges and, definitely also, whatever the material that has been put before
31 us. And then use the experts to (*unintelligible*) those bits that we might not be able to understand.

32 MR. PHILPOT:

33 I'd just like to, almost jokingly, tell the Court that we intended to try and finish his testimony in half a day.

34 That was our intention and we still intend, approximately, to arrive at that.

35 JUDGE KHAN:

36 Proceed, Mr. Philpot.

37 MR. PHILPOT:

1 In-chief.

2 JUDGE KHAN:

3 Proceed.

4 MR. PHILPOT:

5 All right.

6 BY MR. PHILPOT:

7 Q. We will now proceed to page 37 of your report in French. It's part 3 of the report.

8 JUDGE KHAN:

9 Identify the English page too, if you could, please.

10 THE ENGLISH INTERPRETER:

11 Page 41, Your Honour.

12 MR. PHILPOT:

13 Thank you for the interpreters. It is -- it is page 41.

14 BY MR. PHILPOT:

15 Q. In the context of the question of the president and in your report, could you refer to RPF strategy which
16 could lead a problem -- lead a population to do what happened in 1994, and have so many deaths in
17 such a short time? For example, the strategy --

18 MADAM PRESIDENT:

19 I'm sure that Dr. Lugan understood. Let him answer.

20 THE WITNESS:

21 Yes. I would respond as briefly as possible with regard to the RPF strategy. The RPF strategy from
22 the outset was clearly a strategy to conquer power.

23

24 This takeover strategy involved several periods and elements. One, discredit President Habyarimana
25 and his regime using national campaigns and international campaigns. Secondly, try to destroy and
26 destructure the social organisational fabric in Rwanda by triggering political tensions through blind
27 attacks. We could talk about that in a short while because I have an original document which I can
28 produce because I worked on this matter with the French gendarmerie. Third element, after the
29 assassination of President Habyarimana -- I am not saying that the RPF assassinated
30 President Habyarimana. I am saying after the assassination of President Habyarimana, the RPF left no
31 opportunity for any peace attempt to take place. Conversely, they did everything to worsen the chaos
32 in the strange brief manner.

33

34 Let me present the RPF strategy. I understand that the Trial Chamber would want me to be as concise
35 as possible, so I'm making that effort.

36

37 BY MR. PHILPOT:

1 Q. Would you proceed and if you forget anything I will bring you back to -- for example, the strategy of
2 selective assassination or assassination and tension, what -- what -- how would you comment on that
3 aspect of your report?

4 A. The strategy for selective assassination, particularly the assassination of political personalities in the
5 Hutu world, is now well-known. And let me refer you to the works and the publications of Guichaoua. I
6 think the Trial Chamber has his works. And this is confirmed by another source which, to my -- in my
7 opinion, is important. In Rwanda -- sorry.

8 MADAM PRESIDENT:

9 Guichaoua, the spelling, we would need it for the transcript.

10 THE WITNESS:

11 G-U-I-C-H-A-O-U-A.

12 MADAM PRESIDENT:

13 Thank you. Sorry for interrupting.

14 THE WITNESS:

15 Guichaoua was a -- had been a Prosecution expert in many cases and carried out very original and
16 innovative investigations, because Guichaoua was able to discover that the assassinations of some
17 political personalities of Hutu extraction were not because they were "Hutu extremists", but were
18 caused by commandos, RPF commandos.

19

20 And this was confirmed, of course, by Ruzibiza's book. I think you also have that reference on your list.
21 And this is confirmed not by the assassination of politicians, but by a very interesting document.

22

23 Madam President, let me take two minutes to insist or dwell on this document and explain how this
24 document came up. In 1992 during the advent of multiparty politics within the framework of a Rwanda
25 that was evolving towards democracy it became obvious that it was necessary for there to be a law and
26 order maintenance force and a neutral judicial system. In other words, the need to establish a
27 gendarmerie that looked like the French gendarmerie because the French gendarmes are criminal
28 investigation officers as well. Before that there was no -- there was a gendarmerie, but this
29 gendarmerie disappeared in October -- October 1990. Why? Because -- because the Rwandan armed
30 forces were insufficient.

31 *(Pages 1 to 21 by Melissa Hook)*

32

33

34

35

36

1 1030H

2 THE WITNESS (*continued*):

3 The gendarmes who were soldiers were withdrawn from their zone and were then trained as combat
4 units. They were then sent to the Mutara front. So it was no longer possible in Rwanda to carry out
5 criminal investigations, because the police force was not able to do that. As a result, from 1991 to the
6 end of 1992, a series of attacks took place, and no one was able to foresee that. Everybody said it was
7 done by Mr. Habyarimana's entourage.

8
9 But in 1992, as from 1992, there was the need for this new gendarmerie, and the opposition which now
10 took over the government asked France to establish this gendarmerie. French gendarmes came to
11 Rwanda under the supervision of a colonel, Colonel Robardey, R-O-B-A-R-D-E-Y, Robardey. And
12 Colonel Robardey decided to create a new gendarmerie and decided to ignore the other gendarmes so
13 he could come up with a neutral force. And the first exercise that he devoted or assigned to this new
14 gendarmerie was that -- they had to investigate all the attacks that had taken place in Rwanda since
15 1990.

16
17 These Rwandan gendarmes carried out their investigations and then were supervised by
18 French gendarmes. Colonel Robardey published a report, a very important report, entitled "Study on
19 terrorism in Rwanda since 1990". And this document was submitted in 1993 to the chief -- army chief of
20 staff -- to the gendarmerie. The document was never used, and this document details the attacks, the
21 places, the ammunition, the people arrested; everything.

22
23 It turns out that these attacks were commandeered by the RPF commandos and were not done by
24 Hutu extremists, quote unquote. And I was able to see this document last year when I was carrying out
25 my investigations. I took the document from Colonel Robardey and he gave me his copy. There is no
26 date; this was -- that is a copy of his document, and he authorised me to use it. I referred to it in my
27 book, *The counter-inquiry on the genocide*. I have also referred to it in another trial, and this is a
28 document that I would make available to you, and this clearly shows that the attacks were part of the
29 RPF strategy.

30 MR. PHILPOT:

31 I would like to file these. I have copies now, and I would like to file it as Exhibit D. 109. And they are --
32 it's the cover page of Dr. Lugan's book, and annex 1 with the report of Mr. Robardey.

33 JUDGE KHAN:

34 Dr. Lugan, have you referred to this document in your report, too?

35 THE WITNESS:

36 Yes, Your Honour. Yes, Your Honour, page -- in the French version, page 37 to 39.

37

1 JUDGE KHAN:

2 And what would be the English -- the page of the English version?

3 MR. PHILPOT:

4 I'm just going to check to be careful. Two seconds, please.

5

6 It would be approximately 41 to 43 in English. Maybe a little bit longer than that.

7 MADAM PRESIDENT:

8 Any objection to the tendering of this document, Mr. Sylver?

9 MR. NTUKAMAZINA:

10 No objection, Madam President.

11 MADAM PRESIDENT:

12 This will be D. 109.

13 (*Exhibit No. D. 109 admitted*)

14 MADAM PRESIDENT:

15 Please continue, Mr. Philpot.

16 BY MR. PHILPOT:

17 Q. We've now discussed the different bombs which were placed in public places in Rwanda. What about
18 the selective assassination? As I said, very, very briefly, who was blamed and who was responsible,
19 and what are the names?

20 A. I have not studied the matter of the selective assassinations. I let my colleague, my learned colleague,
21 Guichaoua, do that, so I did not receive any terms of reference in that regard, and I do not wish to
22 waste the Trial Chamber's valuable time by repeating what Guichaoua said, since he attributed those
23 killings to the RPF. We are referring to Félicien Gatabazi and Emmanuel Gapyisi -- who should be on
24 the list. The information provided by Guichaoua and Ruzibiza are very detailed and precise, to the
25 point that even the names of the killers are provided.

26 MR. PHILPOT:

27 For the purposes of the Court, Gatabazi is 123, and Gapyisi is 115. These are in pages 40 to 41 of the
28 French report, which would be end of 43 and 44 and top of page 45 in the English report.

29 BY MR. PHILPOT:

30 Q. And who was blamed for these killings?

31 A. The selective assassinations were attributed by Guichaoua, as confirmed by Ruzibiza, to the RPF. And
32 the names of the killers, as well as the names of those who were in the commandos that perpetrated
33 such murders, are provided. And in this field, I'm referring to the results of an investigation that was
34 carried out by other people than me, because I did not have this aspect in my terms of reference.

35 Q. And at the time in 1993, who was blamed -- publicly blamed for these killings?

36 A. That is a very important question --

37

1 MR. NTUKAMAZINA:

2 And, Madam President, even if the witness deems that this is an important question, I wonder whether
3 it will be necessary for my learned friend to continue with this line of questioning, since the witness told
4 us that he never carried out any research on the killings, and referred us to Ruzibiza and Guichaoua.

5 And, as far as we're concerned, this perhaps has something to do with the credibility of those who
6 carried out the investigations, but the witness -- the expert witness doesn't have anything to do with it.

7 MR. PHILPOT:

8 The discussion of who was blamed is part of the evidence in this court already. Dr. Des Forges talked
9 about this, and this was raised in cross-examination. It is a simple question which is well-known --

10 JUDGE MUTHOGA:

11 *(Unintelligible)*

12 MADAM PRESIDENT:

13 Continue answering, Mr. Philpot.

14 MR. PHILPOT:

15 The issues were raised in examination-in-chief and cross-examination of Dr. Des Forges, who had not
16 referred -- had not researched these issues. They were discussed, and the present expert can -- as an
17 historian, can comment on historical knowledge and give an opinion to the Court and inform the Court
18 of things, even though it's not his own primary research. A large amount of Dr. Des Forges's evidence
19 was not her own primary research. It's a compendium of historical knowledge, and that's what an
20 expert is for.

21 JUDGE KHAN:

22 In spite of the fact that he told us -- Mr. -- Dr. Lugan told us that he himself did not conduct any
23 investigation into that aspect?

24 MR. PHILPOT:

25 He has -- what he has done -- he can correct me if I'm wrong. He's read all the historical material, and
26 the Court asked what is the cause of the genocide. As an historian, he can draw on historical
27 knowledge. If not, he's a simple technician. He's an historian and he can inform the courts of historical
28 knowledge and a certain degree of certainty as -- as the science evolves.

29 MADAM PRESIDENT:

30 Objection upheld.

31 BY MR. PHILPOT:

32 Q. We now move on to other elements related to the destruction of the social structure of Rwanda. We're
33 now referring to part B of this chapter, which is on page 41 of the French report --

34 THE ENGLISH INTERPRETER:

35 Page 45 of the English report.

36 MADAM PRESIDENT:

37 Thank you very much.

1 BY MR. PHILPOT:

2 Q. And could you explain how the RPF infiltrated both the state and militia? Please do it one by one, sir.

3 A. Let me refer to a previous event, or element. With all due respect towards the Trial Chamber, I believe
4 there's a methodological problem here. When an historian uses a source which is deemed to be a
5 primary source of information -- Ruzibiza's report is a primary source of information -- the historian will
6 base his analysis --

7 MADAM PRESIDENT:

8 Please. I have two issues. First, I've been for the last days trying to find the expert report in French,
9 because I've only the English copy, and have been trying to follow in both. I've been informed by CMS
10 that the French was never filed in this case, but in the Bizimungu case. So if you could, Mr. Philpot,
11 address this issue and file during the break the French, because it's not -- we shouldn't be requesting it
12 from the other Bench.

13 MR. PHILPOT:

14 I filed it on the 30th of August -- I think it's the 30th, and the Prosecutor replied to me. So it has to have
15 been filed; they received it.

16 MADAM PRESIDENT:

17 It was filed on the 26th of August, but in English.

18 MR. PHILPOT:

19 I didn't have an English one, Your Honour.

20 MADAM PRESIDENT:

21 Well, I don't know. If you can find this out, because we have no French available, and CMS says that
22 they only have the French report in the Bizimungu case. And -- but not here.

23

24 Second, Mr. Witness, the parties argue, and the Chamber makes a ruling. We do not want a
25 discussion on our rulings. So we understand both parties, but we make a decision, taking into account
26 the objections of the parties, the response of the other party, and what we consider necessary for the
27 case. So even if you disagree with the ruling, please accept it. There's no appeal, for the expert, to a
28 ruling.

29 THE WITNESS:

30 That is not what I am doing. You are preventing me from working. If I cannot quote Ruzibiza, who's a
31 primary source of information, then I go back to France. My students are waiting for me. If I can only
32 refer to oral sources, then this is not history. This is magic. You are preventing me from referring to
33 primary sources, and this is the basic work of the historian. Well, in such a situation, well, indeed, we
34 can finish today and that will be it.

35 MADAM PRESIDENT:

36 Please proceed, Mr. Philpot.

37

1 MR. PHILPOT:

2 I didn't understand your ruling as to saying he could not refer to primary sources.

3 MADAM PRESIDENT:

4 We never said that. But I am not going to enter in a discussion with your witness about what our ruling
5 means, and have him argue on our ruling. That is not proper.

6 MR. PHILPOT:

7 Okay.

8 BY MR. PHILPOT:

9 Q. Dr. Lugan, please answer my questions and then I think that the problem can be resolved very easily.

10 Could you please refer to the infiltration of the state structure by the RPF? I will come back to the militia
11 afterwards.

12 A. No, I cannot talk about it because I cannot quote my primary sources, so I will not answer your
13 question. I cannot, in practice, answer your question.

14 Q. I think that, respectfully, you have misunderstood the Court's ruling, and you can refer to primary
15 sources. You can refer to documents that you have studied, such as Ruzibiza and others, which are
16 primary historical sources.

17 A. Let me answer you by telling you that I worked using primary sources, namely Ruzibiza, but that I did
18 not carry out any investigation. I'm honest enough to recognise that, so the Prosecution will be right if it
19 asks me not to talk about it, and I will bow to the ruling of the Trial Chamber. So let us leave Ruzibiza
20 aside; I will not refer to Ruzibiza.

21
22 What I can tell you about is the field in which I made research, and I believe, then, that the
23 Trial Chamber will agree, but, once again, we're not dealing with the matters at hand.

24 Q. Could you please explain how the RPF had infiltrated the Rwandan state? In part -- in page 41 and
25 following of your report.

26 A. It is difficult to state that any individual was sent by the RPF as an infiltrator. It so happens that, after
27 the RPF's victory in July, well, we note that a number of senior Rwandan government leaders before
28 April of 1994 end up in positions of responsibility in the RPF and in the government led by
29 General Kagame. That is what we can say.

30
31 As for the rest, all the issues of the infiltrations and the infiltrators is a matter which is well documented
32 now and which I will not come back on since it has been discussed lengthily before my testimony. I
33 simply wish to refer you to the work of Guichaoua in the field, and the work has been largely confirmed
34 by Ruzibiza. So it would be interesting to see what Ruzibiza is saying on the matter and what is the
35 relevance of his comments. Perhaps one should compare what has been said. And I wish to refer you
36 to that work. Page 42 -- 41 of my report, in the French version, with all the information and all the
37 references provided. I can also refer the Trial Chamber to what some witnesses have said, and to what

1 Alison Des Forges acknowledges. Alison Des Forges never denied that there was infiltration.

2 Q. And could you explain to the Court how the *Interahamwe* were infiltrated by the RPF?

3 A. This is a question which is well documented now. We have specific details. We do know that the RPF,
4 from what the witnesses have told us, largely infiltrated the *Interahamwe*. Ruzibiza, for example,
5 page -- on page 228 of the French edition of his book, and which is on page 42 of my report, said, and I
6 quote: "We infiltrated all the networks, including those of the *Interahamwe*." End of quote. And this
7 confession is confirmed by the specific research that was conducted mainly by Guichaoua, who
8 provides us with the names of a number of members of such networks, their responsibilities, as well as
9 the actions they conducted.

10
11 And I wish to refer you once again to page 42 of my report, in its French version, where all the details
12 are provided. There are indeed elements that are extremely interesting in the primary source, that is,
13 Ruzibiza, when Ruzibiza tells us -- and I quote page 201, 225, 226 of his document which I referred to
14 on page 42 of my own report -- in which Ruzibiza says that the RPF had infiltrated the *Interahamwe*
15 with -- and Ruzibiza tells us that they infiltrated militants who looked like Tutsis (*sic*) -- who had
16 Tutsi (*sic*) features. So there was -- there was a large infiltration in all these groups.

17 Q. Did you say Tutsi features or Hutu features of the infiltrators?

18 A. Hutus.

19 THE ENGLISH INTERPRETER:

20 Correction from the interpreter, my apologies.

21 THE WITNESS:

22 Let me quote Ruzibiza. I quote: "We had set up small highly specialised squadron teams specialised
23 in infiltration techniques, and most of them could be mistaken for Hutus because of their resemblance
24 to the Hutu." End of quote.

25 BY MR. PHILPOT:

26 Q. And what was the consequence of this infiltration by the RPF into the *Interahamwe*?

27 A. When you start having influence on elements of the enemy, or the opponent, then you have the
28 possibility to act in different manners, either through disinformation or by circulating false rumours, or by
29 manipulating or adopting provocation. This is the basic task of any intelligence service, and this is
30 indeed the method that was used by the RPF in an extremely professional manner.

31 Q. And what do you know about the elected officials in the RPF-held areas in December '93? Who was
32 elected, and what happened to them?

33 A. Counsel, are you referring to the elections that took place in the demilitarised zone under the aegis of
34 the United Nations?

35 Q. Yes.

36 A. The elections are quite interesting because they show that there was -- there were developments in the
37 political situation in Rwanda. Indeed, in this demilitarised zone, which was the area that had come

1 under RPF occupation during the previous attack, where the RPF had withdrawn, there were
2 *communal* elections that took place in order to elect *bourgmestres* and municipal agents. And the
3 results of these elections are quite interesting, because they showed the weakness of the RPF, which
4 only accounted -- only got 20 per cent of the votes, and did not have any single MP elected. And this
5 demonstrated the power of the MDR in that area, since the MDR -- MRND, sorry. The MRND got
6 almost all of the MP positions in that area.

7
8 So what is going to happen after that election? Well, the MRND-CDR MPs were assassinated in the
9 following days, and General Dallaire, who had promised to carry out an investigation, never did that --
10 or, at least if such an investigation was conducted, the results were never made public.

11 Q. In the -- we could move on to part C of your third chapter, the destabilisation of the state by the
12 assassination of President Habyarimana. Could you explain the context which led to the resumption of
13 the war, sir?

14 A. On April 6th, 1994, President Habyarimana was assassinated at a crucial time in the political and
15 constitutional life of Rwanda. Why is that? Well, because Rwanda was between two systems; the
16 former constitution, and the transitional institutions as provided for in the Arusha Accords. After
17 excessively complicated events I will not insist on in order not to waste the Trial Chamber's time, it was
18 impossible to establish the -- the structures of the transitional government, as well as the
19 transitional parliament. Only one person was sworn in, and that was President Habyarimana. And this
20 in keeping with the new constitutional arrangements. So there was no government, no authority. The
21 only authority was that of President Habyarimana. And it was at that point in time that he was
22 assassinated. That is the context.

23 Q. And was it still -- was it too late after the assassination, or was there any solution possible to prevent
24 the wholesale outbreak of civilian and military hostilities which led to the genocide?

25 A. Counsel, we are at the very heart of the issue, because, contrary to what we might imagine and believe,
26 nothing was written, or unavoidable, first of all because the genocide had been neither planned nor
27 programmed, and also because, in the present state of knowledge, nothing proves that it was the
28 Hutu extremists, quote unquote, who assassinated the president.

29
30 Nevertheless, if we are to take stock of the situation, between 10 p.m. on the evening of the 6th of April
31 and 6 in the morning on the 7th of April -- I carried out lengthy research on this issue because I testified
32 in the *Ndindabahizi* case, but also because I worked extensively in the Bagosora and Renzaho cases.
33 So I specifically focused on that issue. I am convinced that everything could have been avoided. And
34 this for four reasons.

35
36 The first reason is that the meeting which was held at the general staff in the presence of
37 General Dallaire, during the evening of the 6th of April, was a meeting that showed that the mill -- that

1 the soldiers from the Rwandan armed forces did not want to organise a coup. And this meeting ended
2 with an agreement with Mr. Booh-Booh, who is the representative of the UN secretary general in
3 Rwanda, who was pushing for the facilitation of a civilian government. So the logic is not one of a
4 coup d'état.

5
6 Second point, the military -- the senior military officers of the Rwandan army asked General Dallaire, as
7 well as Mr. Booh-Booh, to inform the RPF that, in spite of the tragedy, that is to say, the assassination
8 of the president and a number of their friends and senior leaders, did not in any way put the
9 Arusha process into question. The Arusha process was to continue. He asked General Dallaire to tell
10 General Kagame that the Arusha Accords were still standing. So this is the second element.

11
12 Third point, there were no roadblocks erected in the city, except for the usual military checkpoints in the
13 areas in which the soldiers, either on an ad hoc basis, or regularly, erected their military checkpoints, or
14 roadblocks.

15
16 And fourth point, and this is an element which is not often mentioned, even though it is quite significant.
17 UNAMIR had over 2,000 members, had excellent troops, African troops -- the Ghanian battalion is an
18 elite battalion, and the other units are also remarkable -- in addition to the Belgian paracommando
19 battalion. General Dallaire, with the 2,000 men he had at his disposal -- and I'm not even referring to
20 the Tunisians, who also constitute an excellent contingent. General Dallaire, with the 2,000 men he
21 had at his disposal, could have put an end -- or, frozen any potential outburst. But, of course, in order
22 to do that, he should have made provisions, or taken actions that would have led to such a situation.

23
24 Of course, we cannot blame General Dallaire for not having intervened from the military standpoint --
25 that was not his mandate -- but if he had a -- ensured his mission of peacekeeping, nothing prevented
26 General Dallaire from putting in place the UNAMIR/Rwandan armed forces patrols, as was decided
27 during the meeting on the 6th of April in the evening at the general staff. Nothing prevented him from
28 deploying troops between the CND and the barracks of the Presidential Guard in order to avoid any
29 contact. And third, nothing prevented him from guarding the crossroads at the -- leading to the airport,
30 so as to protect that road and so as to prevent the resumption of hostilities.

31
32 So that when, towards 3 or 4 in the morning, the meeting ended -- so now we are in the 7th of April.
33 The meeting started around 9 or 10 p.m. on the 6th of April. It was quite lengthy; it was interrupted and
34 then resumed, and ended around 3 or 4 in the morning on the 7th of April. When the senior military
35 leaders will decide to go and rest for a few moments, the situation was under control. And this in spite
36 of the tragedy that affected Rwanda. Nothing was unavoidable. But soon enough everything will
37 become unavoidable.

1 What happened? Well, there are three elements that will come into play.

2 MADAM PRESIDENT:

3 Sorry to interrupt, but our realtime got stuck, LiveNote.

4

5 Okay.

6 MR. PHILPOT:

7 I'm not sure the witness knows what you're talking about. I do.

8 MADAM PRESIDENT:

9 *(Microphone not activated)*

10 THE WITNESS:

11 *Oui oui.*

12 MR. NTUKAMAZINA:

13 Madam President, if I may intervene at this stage, I wish for my learned friend to tell me whether the
14 witness is testifying in his capacity as an expert witness, or if he is a factual witness.

15 MR. PHILPOT:

16 No one -- no one has ever said he was there. He's talking about doing extensive research, military
17 research, and he explained that at the outset. And in cross-examination you can verify it.

18 MADAM PRESIDENT:

19 Exactly. And Mr. Sylver, don't make general comments. If you object, object to a concrete question.

20 JUDGE KHAN:

21 Go ahead, Dr. Lugan.

22 MADAM PRESIDENT:

23 I don't know if the witness -- do you know where you stopped, or do you need us to tell whereabouts --

24 THE WITNESS:

25 Yes, yes, indeed, Madam President, I'm a very organised man and my mind is quite well structured.

26

27 So I was saying that there will be an upheaval; in spite of the four elements I mentioned beforehand
28 and which tended to show that the situation was under control, the irreparable occurred. What
29 happened? Well, three things which are of utmost importance. First of all, the RPF unilaterally decided
30 to relaunch the hostilities, or resume the hostilities. So the RPF deliberately violated the peace accord
31 signed on the 4th of August in Arusha, and did that without being able to mention legitimate defence, or
32 without any justification whatsoever.

33 MADAM PRESIDENT:

34 *(Microphones overlapping)*... we will break and then give -- no, because we don't have realtime, and I
35 would rather have him finish the question when we can follow it. And as the witness says, he's a very
36 organised man and he can return to the question after the break.

37

1 THE WITNESS:

2 *Bon.*

3 MADAM PRESIDENT:

4 But I would rather be able to follow it. So let's -- how long do you need to fix this? Twenty minutes,
5 until 11:30. And if you need more time, you let us know.

6 *(Court recessed from 1108H to 1134H)*

7 MADAM PRESIDENT:

8 Mr. Lugan -- Dr. Lugan. It's the third time you have to start -- restart with this question -- answer.

9 MR. PHILPOT:

10 Before we start, I have a full French copy as filed on the 27th of August, which I've given to Mr. Mhina.

11 And then we will -- it has been filed and I will make it an exhibit at the appropriate time.

12 MADAM PRESIDENT:

13 Can I have it, please?

14 JUDGE MUTHOGA:

15 It's already an exhibit, isn't it? We gave it 108F.

16 MR. PHILPOT:

17 The exhibit hasn't been physically given in yet. It's been numbered but not transmitted.

18 MADAM PRESIDENT:

19 Thank you, Mr. Philpot.

20 JUDGE KHAN:

21 So it could be 108F and 108E. F for French and E for English.

22 MADAM PRESIDENT:

23 Yes, I said that already. Before the break it was tendered already.

24 BY MR. PHILPOT:

25 Q. So, you could finish -- carry on with your question, and you were talking about -- as you remember.

26 You're very organised.

27 A. Very, indeed, Counsel. My answer had to do with three points, after the four issues I would raise
28 under D. I mentioned the first one already; I will not go back there. That had to do with the unilateral
29 resumption of hostilities by the RPF. And this was done with no reason whatsoever, no military
30 justification, because the RPF was not attacked by the FAR.

31

32 The second reason that led to the degeneration of a situation that was under control before,

33 General Dallaire's attitude was -- was strange. And I'm using the word "strange" because

34 General Dallaire did not take any military measure. He's a soldier; he took no military measure to
35 protect -- to efficiently protect the prime minister of the former government,

36 Madam Agathe Uwilingiyimana, whom he had previously sought to put into power. The previous night,
37 the night of the 6th to the 7th of April, during the meeting of the general staff, he did not succeed, or

1 even attempt to protect the Belgian blue berets who were held hostage and were subsequently
2 murdered. He did not commission his troops to reassure the population, and he did not establish any
3 safety belt between those who obviously -- in situations like this one, when hostilities resume, those
4 who were going to be the initial targets, that is, the CN -- the MRND -- the CND, and those who were
5 opposite the CND.

6
7 Another third element that led to the chaos, the Rwandan armed forces were overwhelmed from the
8 beginning of the RPF offensive. The RPF (*sic*) were overwhelmed for three reasons -- the RAF (*sic*)
9 were overwhelmed for three reasons, because after the conclusion of the Arusha agreement, they had
10 decided on a position of demobilisation. For example, the heavy weapons and the efficient weapons
11 were kept under the protection of the UNAMIR forces.

12
13 The RAF (*sic*) were demoralised because there was an organisation to the return of the civilian
14 authorities; and secondly, because the RAF had not received weapons and ammunition; and thirdly,
15 because the only two elite units -- what is an elite unit? An elite unit is one that is able to fight in any
16 place at any time in the day and in the night. And there were only two of such elite units within the
17 RAF. Actually, there was only one, the paracommando battalion. However, the
18 paracommando battalion, which was stationed in Kanombe at the airport, was immediately cut off from
19 the centre of town once the hostilities resumed. And I would come to that later. The other units which
20 we could describe as the elite force was the reconnaissance battalion that had a few armoured
21 vehicles, and only a small part of their staff strength was in Kigali, because a squadron was detached to
22 Mutara, and another squad was sent to -- to Rugahire (*sic*).

23
24 So these are the elements that contributed to the fact that at 5:30 a.m., 5:30 a.m. -- or, rather,
25 5:45 a.m., according to Colonel Maurin, M-A-U-R-I-N, Jacques -- Maurin, Jacques, who, at the time was
26 in charge of the French military operations in Rwanda, and who was better placed to talk about the
27 situation -- Colonel Maurin, the military technical assistant, considered that the situation at 5:45 at
28 Kigali, the problem had started at 5:45 a.m. And that is when the apocalypse was triggered.

29 JUDGE MUTHOGA:

30 And what is "apocalypse", and who was doing the triggering? I'm inviting you to -- to cease being
31 metaphorical and become expressive so we can understand you.

32 THE WITNESS:

33 Your Honour, I like things to be clear, just as you do. If you want me to say that the genocide took
34 place, I would say, yes, of course. The apocalypse is this terrible tragedy that includes the genocide,
35 which affected Rwanda, and by extension, the entire Great Lakes region. And this started when the
36 events I have just described were triggered.

37

1 BY MR. PHILPOT:

2 Q. Why these three events which occurred -- did they lead to this term which some call an apocalypse,
3 and which was the genocide and all the other events associated with it?

4 A. Why? Because, as from this point in time, we were once again entering into a state of war. And
5 considering the state of war which had been decided by the RPF -- at no point in time did the
6 Rwandan authorities, who no longer exist because there's no government -- there was no government
7 then. The former prime minister had been murdered; General Dallaire, who was supposed to
8 guarantee the peace agreement, is moving around Kigali but takes no military action, or measure; some
9 of the units by -- of the FAR are defending their positions, faced with the RPF attack. And there would
10 be an event which would have very serious consequences. And this would be the second offensive
11 that would be launched by the RPF and the APR (*sic*).

12

13 We need to -- in -- look at the -- the time, and the sequence of events from the 6th of April to the
14 7th of April -- from the 7th to the 8th of April. We have the offensive that is launched at the CND -- and I
15 believe that the Court moved to Kigali. The RPF and the Rwandan Patriotic Army focuses on the
16 airport. And this is the 7th of April. During this time, an important squadron has gone to positions
17 prepared previously in the northern part of Rwanda. And this important column goes on the 7th -- on
18 the 10th of April, and arrives in Kigali, passing through the refugee camps, the immense refugees
19 camps, which are situated in Mugambazi and Nyacyonga, where hundreds of thousands of unfortunate
20 refugees who have been chased away from their homes have been stationed, and these persons have
21 been driven away from Kigali by the RPF. These refugees break up into two groups; one group turns
22 westwards towards Gitarama, and another group goes -- finds itself in Kigali, or in the environs in Kigali,
23 near the fighting. The situation becomes unmanageable.

24 JUDGE MUTHOGA:

25 These -- all these, Dr. Lugan, are matters you have read in which book?

26 THE WITNESS:

27 Your Honour, this time around my primary sources are oral sources by interviewing the actors who
28 were both foreign actors, French actors, some of them are also Rwandan actors. And unfortunately I
29 cannot go any further than that, because some of these actors are -- how would I say it? Have a
30 fragile -- a fragile status in Europe and in France. I worked considerably with those who were
31 supervising the -- the French who were supervising the Rwandan forces, and anyone else who could
32 give me information.

33

34 With regards to the written documents, I also did a lot of work on a good number of testimonies that
35 were given before the ICTR on a number of cases, and I was able to re-establish this sequence with
36 some people working with UNAMIR. But I did not -- I have been working for many years on the matter.
37 It is not something I did only yesterday. I am very interested in these military issues.

1 This was my problem: How could the RAF (*sic*) -- on paper they were important, of course. But how
2 come they were so incapable of acting as from the 7th of April? After dwelling -- or, working on this
3 force, how come I could come up with this approach that is relatively important with regard to this
4 matter? Have I answered your question, Your Honours?

5 JUDGE MUTHOGA:

6 No, not clear, but perhaps you can confirm my understanding. My understanding is that this is -- these
7 are matters you have obtained from sources you are not willing to disclose at the present time because
8 of their fragility where they are living; is that the correct position?

9 THE WITNESS:

10 No, Your Honour. From among my sources --

11 JUDGE MUTHOGA:

12 (*Microphones overlapping*)... what is the correct position, then?

13 THE WITNESS:

14 When I cite Colonel Maurin, and when I mention the French military attache,
15 Colonel Cussack (*phonetic*), and when I mention the French officers who were on the spot, I can name
16 them. When I mention Colonel Marchal, there's no problem. When I mention the witnesses who have
17 come and given testimonies before the ICTR, there is no problem, either. From the 10 or so informers
18 that I have, there are also two or three persons who I would not like to refer to. And I believe that is my
19 right, because I want to protect them. Of course, by saying that, you need to see how I'm putting my
20 cards on the table. By telling you this, I know very well that the Prosecutor will try to weaken my
21 position. But I swore to speak the truth; I could have left aside these sources. I am putting the cards on
22 the table as far as my research is concerned.

23 JUDGE MUTHOGA:

24 Go on; go on.

25 BY MR. PHILPOT:

26 Q. A small question before we get into the --

27 A. There is a terrible whistling going on here.

28 MADAM PRESIDENT:

29 Can the witness please be given another headphone.

30 THE WITNESS:

31 Background noise.

32 MR. PHILPOT:

33 One, two, three.

34 MADAM PRESIDENT:

35 Is it better now, Dr. Lugan?

36 MR. PHILPOT:

37 One, two, three.

1 THE WITNESS:

2 One, two, three. Yes, it's perfect.

3 MR. PHILPOT:

4 And are you on channel 4, the French channel -- channel 2, the French channel?

5 MADAM PRESIDENT:

6 He didn't change the -- it's only the headphones.

7 THE WITNESS:

8 Channel 2.

9 MADAM PRESIDENT:

10 Please continue, Mr. Philpot.

11 BY MR. PHILPOT:

12 Q. Before we get more into the social structure and breakdown, in the area of Remera, did it ever become

13 impassable in those early days?

14 JUDGE MUTHOGA:

15 That again another one which you (*unintelligible*) literal, because he hasn't said he was there. Unless

16 you now want him to give evidence that he then interviewed people --

17 MR. PHILPOT:

18 He talks about this in his report, Your Honour.

19 MADAM PRESIDENT:

20 But saying -- mentioning something in the report doesn't authorise the expert witness to become a

21 factual witness. So please reword your question.

22 BY MR. PHILPOT:

23 Q. Were any areas -- with your research, are there any areas which -- of Kigali which became impassable
24 or militarily occupied between the 7th and the 10th of April 1994?

25 A. Yes, Counsel. The neighbourhoods around the CND. I'm looking for a map in my book so that I can
26 explain that to you, showing you the map. That would be easier. All the neighbourhoods around the
27 CND. All the neighbourhoods towards Chez Lando, the main intersection towards the airport, because
28 the RAF -- the RPA, I beg your pardon, had a very simple strategy. From the north of Kigali, they were
29 able to launch two columns, or two attacks, if I'm -- if I'm back in the north, you have to the right, going
30 through the west of Kigali, going through the north and the east, and heading towards the airport road.
31 The RPA would hit the airport road, and the entire northern part and northern-eastern (*sic*) part of Kigali
32 is under the RPA attack. And now we know clearly that the RPA had succeeded to introduce weapons
33 that had been prohibited by the Arusha agreement, particularly rocket launchers, that were used to
34 bomb the town.

35 So the entire town of Kigali found itself in a state of war. And this is a very small town. Imagine this
36 small town with a population which is, under normal circumstances, of about 200 --

37 180- or 200,000 people, and then you have hundreds of thousands of refugees coming into the city.

1 This was hell in Kigali at that time.

2 Q. Were there any attempts to stop hostilities to allow civil peace to be re-established?

3 A. There, Counsel, we are still dealing with a very interesting problem, because if we were to refer to the
4 sequence of what happened, right up to the end of July -- or, sorry, end of June, we realise that almost
5 on a permanent basis, the RAF (*sic*) would almost beg the Rwandan Patriotic Army to stop its offensive.
6 And the Rwandan Patriotic Army, or the RPA, which is engaged in a strategy to take over power, would
7 refuse. I could cite a number of elements which are -- which clearly demonstrate what I've just said.

8
9 On the 10th of April and on the 15th of April, when the RAF proposed a ceasefire, the RPA said, "Yes,
10 on condition that you -- you surrender." And this, of course, was an unacceptable condition. On the
11 12th of April, a number of senior Hutu officers asked for an immediate and unconditional cessation of
12 hostilities. And this fell in line with the 10th April request made by the RPA. And this was an almost
13 total surrender, the immediate and unconditional cessation of hostilities is a surrender, or a capitulation.
14 There was no response.

15
16 On the 17th of April, Mr. Booh-Booh, the special representative of the United Nations secretary general,
17 forwarded to the RAF an official request going through the United Nations channel, requesting a
18 ceasefire. And the RPA says no. Still on the 17th of April, Colonel Gatsinzi, chief of staff of the RAF,
19 wrote a letter to Mr. Booh-Booh in which he, once again, requests for an unconditional ceasefire. This
20 time there was no request -- response from the RPF.

21
22 On the 17th of April, the Rwandan interim government, through an official telegram, accepted the
23 ceasefire which had to lead to negotiations that were agreed upon in Tanzania on the 23rd of April.
24 This was cancelled by the RPF -- this meeting was cancelled. On the 29th of April, the new
25 chief of staff, General Augustin Bizimungu, wrote to Mr. Booh-Booh to inform him that he was accepting
26 an immediate ceasefire. There was no action taken with regard to that. And so on and so forth.

27
28 So, clearly there was a takeover strategy. The RAF is not ready to compromise -- the RPF, sorry, is not
29 ready to compromise. It is clearly engaged in its strategy which includes dislocating the RAF and taking
30 over power.

31 Q. And about an hour ago, the President of the Tribunal addressed you, saying that she would like to have
32 an explanation of the Rwandan genocide. And I think this is the time where we can -- appropriate
33 moment where we can try and explain how it all happened that so many people were killed in such a
34 short time. Could you please explain that to the Court, about the Rwandan social structure?

35 A. I never claimed that I could provide an explanation to the genocide. In my modest capacity as an
36 historian, I can provide elements of response. I do not have an overall vision of the situation, and I
37 would certainly not dare tell you, "This is what happened, and this is the reason why it happened." No.

1 But what I can tell you is that a number of elements, taken individually, or added to one another, in a
2 context that is a context of war, which was launched four years before that -- let us not forget it -- on the
3 1st of October 1990, in an atmosphere of demonisation of the Habyarimana regime, which is the second
4 point we have already dealt with, the lengthy item 2 of my expert report, which we have already dealt
5 with. And along with that, the destabilisation strategy, in addition to the social elements, which remain
6 untold.

7
8 Well, what is it? It is quite clear. Let us not forget, or let us not lose sight of the fact that Rwanda has
9 only been governed by the Hutus since 1959. Before that, there was a Tutsi monarchy, and let us not
10 lose sight of the fact, either, that the social revolution of 1959 was conducted in the name of the revolt
11 of the oppressed Hutu against the Tutsi feudal system, which is a phenomenon we have seen in many
12 countries, starting by my country, France, with the revolution of 1789.

13
14 So, for years, under Juvénal Habyarimana's regime, which today is considered to be responsible for all
15 evil, the ethnic issue was no longer a question that was dealt with in Rwanda, at least under the terms
16 prior to 1959. Those of the Tutsis who had not accepted the revolution had left. Of course, they ended
17 up as refugees in an unfortunate situation, but they had left. So, by definition, those who remained in
18 Rwanda had accepted the revolution, and were accepting to live under Hutu rule.

19
20 In the years 1973 up to 1990, General Habyarimana did his best in order to in fact not fan the flames of
21 ethnic hatred. One must believe that there was still some fire, because on the 1st of October of 1990,
22 all the things that had remained unsaid, all the things that had been internalised in the very complex
23 political rapport between the Hutus and the Tutsis, came back in an artificial manner with a caricature
24 made by some, and this, of course, will contribute to the exacerbation of the genocide and the war.

25 Had there not been that war which was launched by the RPF on the 1st of October -- in
26 October 1994 (*sic*), if there were not the successive attacks or the campaigns conducted by the RPF, if
27 there had not been so many things, if President Habyarimana had not been assassinated, and if
28 General Dallaire had taken his responsibilities, then I believe the events would have been totally
29 different.

30 JUDGE MUTHOGA:

31 Dr. Lugan, you do not find -- anywhere in your report, you find anything wrong with what was happening
32 in Rwanda, other than what the RPF did. There is no contribution you would put on the other side of
33 that scale?

34 THE WITNESS:

35 Not only errors, but also crimes. But, Your Honour, this was not requested of me for this report. I have
36 devoted a number of works to the matter. I can only provide what I am being requested to do. I was
37 asked to provide a brief report, and I have also been asked to avoid losing myself in historical details, to

1 focus on the context of the genocide. I could have provided a report which would have been 100 pages
2 long, and I have produced works on the subject. I tried to demonstrate in what way the demonisation of
3 the Habyarimana regime led to a situation where Mr. Protais is here in this courtroom. As for the rest,
4 this was not requested from me. Counsel Philpot did not give such terms of reference to me. But I do
5 acknowledge that fact.

6 JUDGE MUTHOGA:

7 You have not understood me. You were asked, a moment ago, to give some -- an epithet of why you
8 think the genocide occurred. Just that. And you gave us and told us all the ifs, all of them saying what
9 the RPF did wrong. I am asking you, in the context of why it occurred, why the apocalypse occurred,
10 you don't find anything other than the errors of RPF and that side of the -- of the question? I didn't hear
11 you say anybody else other than Dallaire and the RPF did anything wrong, or made any contribution.

12 THE WITNESS:

13 Your Honour, your observation only reinforces the comment I made earlier on. If I had been afforded
14 the time to develop on item 2, I would have been able to show the sequence of events. But I notice that
15 I have to make haste, and there is a whole part of my report that has been overlooked.

16 MR. PHILPOT:

17 I just want to point out, maybe you didn't understand, we will return to item 2.

18 MADAM PRESIDENT:

19 And can we also move on a bit?

20 JUDGE MUTHOGA:

21 Proceed.

22 THE WITNESS:

23 *(No interpretation)*

24 MADAM PRESIDENT:

25 But, Mr. Philpot, do we need to dwell into this, or can we move on?

26 MR. PHILPOT:

27 On the chapter 3 of his report, I had finished, and --

28 MADAM PRESIDENT:

29 Okay.

30 MR. PHILPOT:

31 -- Honourable Judge Muthoga had some questions, and I intend to return to item 2, as I had promised
32 to do.

33 BY MR. PHILPOT:

34 Q. And you didn't understand; we were going to go back to that, sir.

35 THE WITNESS:

36 May I respectfully submit --

37

1 MADAM PRESIDENT:

2 Before we continue, we still think Judge Muthoga's question has not been answered.

3

4 Dr. Lugan, you made concrete reference to the responsibilities of the RPF, and to General Dallaire,
5 what they did or shouldn't have done. Judge Muthoga asked if, in the course of your research, you
6 didn't find that also the MRND, or the interim government was responsible, or Habyarimana before he
7 was killed, or those who succeeded him, if there were no acts and conducts on the part of them that
8 also account for the genocide.

9 THE WITNESS:

10 Madam President, items C, D, E, and F under chapter 2 have not been dealt with yet. That being said,
11 and in order to allay the fears of Judge Muthoga, let me tell you, Your Honour, that I am convinced that,
12 before 1994, there were killings that were perpetrated. We agree on that. Do not bring me to an area
13 that is not mine. I acknowledge that. The thing is, I wrote about all these events in my previous works.
14 So, as far as I'm concerned, I believed all these elements were made known to the Trial Chamber. I do
15 not claim that I'm going to inform the Trial Chamber about the events that occurred.

16 JUDGE MUTHOGA:

17 Proceed, Mr. Philpot.

18 BY MR. PHILPOT:

19 Q. We will now return to item 2, parts A to F, of your report, which are on page 20 of the French report.

20 THE ENGLISH INTERPRETER:

21 Page 25 of the English report.

22 MR. PHILPOT:

23 Thank you very much.

24 BY MR. PHILPOT:

25 Q. Dr. Lugan, would you please -- there are a series of elements which have been raised concerning
26 criticising the Habyarimana regime in the period after October 1st, 1990. Could you please first refer
27 yourself to the alleged attack in Kigali on October 5th, 1990 -- on the night of October 4th to 5th, I think
28 it is.

29 A. Yes. The five points in the second part of my report, chapters A, B, C, D, and F, are points that are
30 examples of the strategy that was devised in order to demonise the Habyarimana regime, and that
31 provided a clear explanation of the reason for this trial. And this strategy was conducted like clockwork,
32 I would say, from its beginning to its end. And it's striking to note on that period, if we look at the
33 four years, from 1990 to 1994, that at no point in time did President Habyarimana ever control the
34 events. In the best of cases, he reacted to events.

35

36 In fact, there were two camps that were opposed to one another. One that had a strategy, and another
37 one which, with its scarce resources, its divisions, incoherences, errors, mistakes, tried to contain this

1 strategy and its effects. So this strategy was launched as early as the 5th of October of 1990. And
2 what is shown -- or, the idea that is expressed is that President Habyarimana and his entourage
3 organised the false attack on Kigali so as to be able to carry out reprisals and be able to control the
4 opposition.

5
6 Through the research I have conducted, I have reached a number of conclusions. First of all, I cannot
7 state that the RPF did not launch that attack. Secondly, point two, I can state that the RAF (*sic*) did not
8 launch it. And the source we have in this regard is a source that I mentioned in a previous trial, and
9 which I wish to mention once again in the present trial, which is a very important source. It is the
10 logbook of the Foreign Legion -- of the Foreign Legion paratroopers, which intervened in Kigali on the
11 5th of October, and which was led by Captain -- the name is given in my book --
12 Captain Streichenberger -- on page 22. It's a very complicated Alsatian name.

13
14 The Foreign Legion troops have a rule which is to have a very precise report of everything that
15 happens. It is a confidential document I was able to use, but I cannot have it admitted into evidence
16 because it's confidential. And this document tells us quite clearly everything that happened from the
17 time the unit's arrived in Kigali up until its departure a few days later.

18
19 What does Captain Streichenberger produce on the reports of his heads of squadron? Well, a
20 generalised panic movement. This false attack on Kigali is not a false attack on Kigali. It is generalised
21 panic so that some RAF (*sic*) troops will shoot in all directions in total anarchy. And this is a very
22 important aspect, because up to now, no serious study had been conducted on the events on the night
23 from the 4th to the 5th of October.

24
25 We have some information which has -- as states Captain Streichenberger. In Kigali, the military
26 defence attache comes to him and tells him that he has information provide -- coming from the
27 US embassy. We have some information from the United States embassy indicating that infiltrated
28 commandos -- and the RPA is not referred to yet -- so, troops will attempt to attack in the night.
29 Captain Streichenberger has specific instructions from Paris which is not to intervene in any way
30 whatsoever, but to ensure the safety of foreign citizens. So he gave very strict orders to his men, just
31 observe the situation and report. And we thus have a report on all the events of the night from one --
32 one hour and ten minutes in the morning, until the end of the gunfire at 8 p.m., with stops in fits and
33 bursts. We know exactly where the shots come from. It is not an attack from Kigali, but, rather, panic
34 from the RAF.

35
36 Now, what is the trigger? Well, I am not able to answer that question. Was there an RPF commander?
37 I do not know. Was there this panic movement from the beginning? Well, it seems to be the

1 assumption, but it is only that, an assumption. For all intents and purposes, the first element of the
2 demonisation of the Habyarimana regime falls.

3 JUDGE MUTHOGA:

4 Do I understand you; are you suggesting the false -- the panic was self-creating, or no one is
5 responsible for having created the panic? I didn't understand. You said there was no self -- there was
6 no false attack, there was no attack, false or not false, there was panic, or some attempt to create
7 panic. That's what I understand. Did that happen on its own, or was it human-directed?

8 THE WITNESS:

9 Very well, Your Honour. I cannot do better than to refer you to the sequence of events provided by my
10 source, who tells us that at 1:10 a.m., there were shootings of small arms in different areas, as well as
11 gunshots, followed at 1:30 in the morning by mortar shelling in the industrial area around the airport.
12 Then an interruption. Around 3 a.m., the mortar resumed in the same area with, in addition, gunfire in
13 the airport area.

14

15 And the section of the Foreign Legion who were in the airport region clearly established the origin of the
16 shooting. The RAF (*sic*) troops are shooting at one another, and the analysis that is made is an
17 analysis -- a military analysis based on the situation as it is evolving, by the units, and later on which
18 General (*unintelligible*), who is going to summarise all this and say, and I quote: "The Kigali
19 psychodrama during the night of the 5th is only the lamentable outcome of the panic of the RAF."

20

21 There is indeed a hypothesis that was upheld by General Bagosora during his trial, which I mentioned
22 in my book. I am simply referring to it, but, of course, I do not take it for granted. Colonel Bagosora
23 said that there was firing of the Kanombe camp by infiltrators. But what I'm explaining, and what I'm
24 trying for you to understand, is that in the context of this very complex event, nothing enables us to
25 conclude that there was any action -- decided action by the Habyarimana regime. The elements that
26 are at our disposal tend towards another hypothesis. Nothing enables us to establish anything, but we
27 merely, on the elements available, tend to have a different interpretation of the event.

28 JUDGE MUTHOGA:

29 Who was the commander-in-chief of the RAF (*sic*)?

30 THE WITNESS:

31 At the time? Well, the commander-in-chief of the RAF at the time was -- who was he at the time? The
32 commander-in-chief of the RAF at the time? I'm sorry, I have a lapse in my memory. I can't remember.
33 I am not a universal source of knowledge. I'm not -- I'm not remembering it at this very instant, but I will
34 probably be able to provide the name in a moment.

35 JUDGE MUTHOGA:

36 I know, so you don't have to provide the name. But if it is not Habyarimana, are you providing the
37 name?

1 THE WITNESS:

2 Oh, of course. The chief of staff (*sic*) of the RAF was Habyarimana. Of course, of course. But I was --
3 I did not know who was the chief of staff, but President Habyarimana was the supreme chief of the
4 armed forces. But the general chief of staff after Habyarimana, who was in place, well, I don't
5 remember. But the supreme commander of the RAF was General Habyarimana, president of the
6 republic, who will remain so for two additional years.

7 JUDGE MUTHOGA:

8 Proceed.

9 THE WITNESS:

10 So, this is what can be said on the different assumptions. In summary, nothing proves that there was
11 any conspiracy, and everything tends to indicate that there was a general climate of anarchy which will
12 be pervasive throughout the war.

13 BY MR. PHILPOT:

14 Q. Could you please now, the follow-up on this were allegedly multiple arrests, and Mrs. Des Forges has
15 made certain allegations. Could you please explain to the Court what your opinion and what your
16 knowledge of that issue is?

17 A. On the matter of arrests, we did not have any specific piece of information. Madam Des Forges is
18 sometimes talking about 10,000 or 11,000 elements, and does not say what basis -- on what basis she
19 makes such a statement. Other sources refer to 5,000 or 6,000 people. The most important thing is
20 that, in what Madam Des Forges is stating, it seems that the arrests were mainly of Tutsis.

21
22 However, we have in our possession an article that was written in Cyiza's book I was referring to earlier
23 on, which states that the arrests in Kigali were of between 6,000 to 7,000 people in Rwanda as a whole,
24 and the arrests -- and those arrested were Tutsis to the tune of 61 per cent, mostly from the south, as
25 compared to 31 per cent -- sorry, 61 per cent of Hutu, most of them southerners, while 31 per cent were
26 Tutsi. I am referring to this in my book, and this is the -- the source is Cyiza, Augustin Cyiza, page 79
27 from his book, *Un homme libre au Rwanda*. Where does Cyiza get his information from? I do not
28 know.

29
30 So these are figures I'm providing, which should be taken as such, but which are however more specific
31 than what Des Forges is telling us, because Des Forges doesn't give us the sources for her numbers. I
32 have not conducted any inquiry on the issue, I'm just providing the two pieces of information,
33 11,000 people according to Des Forges, and according to Cyiza, 6,000 to 7,000 of people, among
34 which 61 per cent of them are Hutus. So if Cyiza is right, then it was not mainly Tutsis who were
35 arrested.

36 (*Pages 22 to 42 by Kirstin McLean*)

37

1 1230H

2 JUDGE MUTHOGA:

3 If the whole thing was just a panic reaction thing, how do you explain the arrests?

4 THE WITNESS:

5 Because it is clear that the regime is going to react. Let us look at the context of the time. The attack
6 did not occur all of a sudden. In what context did it take place? At the time when the negotiations on
7 the return of refugees had been finalised, there had been negotiations for years between Uganda and
8 Rwanda under the aegis of the United Nations, and the discussions were making progress. The
9 Rwandan intelligence services warned the President's office and told them: "Careful, there is a threat
10 of an attack". And besides, the Rwandan intelligence services were mistaken when they said that the
11 attack had been postponed. President Habyarimana met with President Museveni, who guaranteed
12 that nothing was being prepared against his country. And it was at the time when the main claim of the
13 refugees, the Tutsi refugees -- or, at least of the organisation -- their organisation, whether it was
14 representative or not were accepted. And it is at the time when the Habyarimana regime announced
15 that it would enter into democratic process, because for a number of months President Habyarimana
16 had announced that he was going to launch a democratic process. It was at that very time that the
17 attack occurred, and the reaction which will be elicited will, of course, lead to movements that will have
18 as a consequence killings. And I'm answering the question you put to me earlier on.

19
20 And as far as Kigali is concerned, what is going to happen there? Well, it is not impossible, but, of
21 course, I have no answer -- no definite answer. It might have been that the regime tried to seize the
22 opportunity in order to try to weaken or control or destabilise the Hutu opposition, because we realise
23 that the people who were arrested are mainly Hutus from the central and southern regions, and those
24 we will find in the main opposition parties subsequently, that is to say the MDR. So there are
25 two elements that need to be taken into account. It is not because there were arrests that there was
26 necessarily a plot the previous day. Those are two different things.

27 MADAM PRESIDENT:

28 Please continue Mr. Philpot.

29 BY MR. PHILPOT:

30 Q. During the period of October 1990, have you any commentary to make concerning allegations by
31 Mrs. Des Forges on the military efforts at that time in October 1990, page 22 of your report?

32 MADAM PRESIDENT:

33 Is there anything -- wait a minute. I remind you of what Judge Muthoga said sometime ago before the
34 break. We will read the report. Is there anything that needs to be added to the report or explained in
35 the report? Because at one point, I had the impression that the witness was repeating what was in the
36 report in a way that even the interpreters could translate into English before he answered the question.
37 So let's avoid that.

1 MR. PHILPOT:

2 What I wish to do is to punctuate certain facts as was done by --

3 MADAM PRESIDENT:

4 Not if they do not need explanation. We promise we will read the report.

5 MR. PHILPOT:

6 All right. I will move on then.

7 BY MR. PHILPOT:

8 Q. The international commission of inquiry, how did that have an effect on the reputation of
9 Mr. Habyarimana?

10 A. It was terribly destructive of him, because it is from the time when this commission of inquiry submitted
11 its report that we started hearing all of the ideas that were subsequently developed, the death
12 squadrons, the liquidation of adversaries and so on and so forth. So the mechanism was set up -- the
13 mechanism was being set up.

14 Q. We will move on then, sir. Could you comment on the concepts of death squads and particularly on the
15 personality of Afrika, Janvier?

16 A. Yes, Counsel. I would leave aside the other matter that the Trial Chamber knows. What does my
17 report bring new to this matter? There was a study that was carried out on the death squads, one study
18 that was not made public which was transmitted to the gendarmerie general staff. The study was
19 carried out by the military gendarmerie technical assistants of the French government, and this is the
20 only serious document that exists on the death squads, because it was never demonstrated that there
21 were people who were part of these death squads save for somebody called Janvier Africa.

22
23 This Janvier Africa -- and this is an element that I'm bringing up following my research. This
24 Janvier Africa was interviewed, interrogated and seriously so. He was interviewed early 1993 in prison
25 by a French *gendarmerie* officer on the orders of Colonel Robardey. And this French *gendarmerie*
26 officer came to prison with a questionnaire like the ones prepared by the French *gendarmerie*. They
27 were clear, detailed, and so on and so forth. And he asked Janvier Africa some time -- or some
28 questions and this *gendarmerie* report proved that; one, Janvier Africa was unable to describe the
29 locations where he claimed that he witnessed or took part in confidential meetings. Two, that he
30 knew -- he did not know the people he claimed that he knew. He was not able to provide information
31 that was requested by the *gendarmerie*.

32
33 What was Colonel Robardey's conclusion? He concluded that Colonel Robardey concluded that this
34 was a fake, because the investigation demonstrated that, and I quote Mr. Robardey that he never took
35 part in the meetings that he claimed to take part in, nor was in the locations that he claimed that he was
36 in. So that is the new element that I can bring out with regard to the death squads.

37

1 And then I would like to refer you to Guichaoua's work or maybe -- and I'm just quoting him because I
2 did not carry out any research on the matter. Guichaoua confirmed this point, and I quote Guichaoua
3 on page 25 of my report in French.

4 Q. Fine. And what is the tenor of what he says, just in one sentence, without reading it out -- without
5 reading it out?

6 A. It's a report. I can't read it, the investigation I carried out with Colonel Robardey, and the officers of the
7 French gendarmerie. Here again, this is surprising. There is no action taken with regard to this report.
8 The report is forwarded but no action is taken. So what Colonel Robardey told me and what some of
9 his assistants also told me is that, well what (*sic*) is what happened, this is how the investigation was
10 carried out, and these were the conclusions that they arrived at.

11

12 I believe I have an important source in that regard.

13 Q. Could you move on now and refer to your analysis -- historical analysis and research on the concept of
14 the *Akazu*. We might start primarily first with the origin and status of Mr. Habyarimana?

15 MADAM PRESIDENT:

16 What does "origin and status" mean?

17 MR. PHILPOT:

18 I will withdraw my question and I ask my expert -- he is -- I will withdraw my question and ask another
19 one.

20 BY MR. PHILPOT:

21 Q. In your report you refer to the testimony of Mrs. Des Forges concerning the origins of Mr. Habyarimana.
22 Could you please elucidate to the Court your difference of opinion and your knowledge on this subject?

23 A. Yes, Counsel. As far as my theory -- as far as my thesis is concerned, my thesis on Rwanda. I did a
24 lot of work on the rural and land laws in Rwanda. The title of my thesis was *Pre-colonial Rwanda:
25 Between the easements of the hoe and the spells of the cow*.

26 THE ENGLISH INTERPRETER:

27 This is a loose translation by the interpreter.

28 THE WITNESS:

29 The dualism of the society. So -- it is six volumes. I devote some ten pages to the Bushiru region,
30 Habyarimana's native region. And also the native region of his wife, and also the Accused, and I
31 worked on a point that was of great interest to me. The land laws that were particularly applicable in
32 this region, because in this region the Hutus had come up with land law.

33

34 I will try to slow down, particularly as the concepts I am going to talk about are complex.

35

36 Thank you once more, Madam President.

37

1 BY MR. PHILPOT:

2 Q. I know there are some words that you are going to use which will have to be spelled also.

3 A. The Bushiru system that the Trial Chamber knows very well is a region in the mountains, which was
4 cleared around the 15th and 16th century by Hutus who had come from various regions in Rwanda.

5 And this region had an aristocracy -- a Hutu aristocracy, which was composed of a lineage of clearers,
6 and they had a land tenure system which was the *Ubukonde* law, land -- *Ubukonde* --

7 MADAM PRESIDENT:

8 A lineage of what? If you could repeat this? The region had a Hutu aristocracy which was composed
9 of a lineage of?

10 THE WITNESS:

11 Those who cleared the land; the clearers. The Kinyarwanda translation means "those who ate the
12 forest", "those who had eaten the forest". And this entire region of Bushiru is the region that is
13 governed by the *Ubukonde* law. What is the *Ubukonde* law? In law --

14 MR. PHILPOT:

15 "*Ubukonde*" is 639 on the spelling list. I apologise for interrupting you.

16 THE WITNESS:

17 This *Ubukonde* law is an inalienable law -- an inalienable right that no one, not even the king, could
18 question. And because of this, in Bushiru the social structure -- and I'm now coming directly to the
19 *Akazu* question -- the Bushiru social structure was essentially Hutu. There were no Tutsis in Bushiru.
20 There were two categories of Hutus: Those who controlled the *Ubukonde* law, and who on this land
21 that had been cleared by the ancestors had settled people that they referred to as the Abagererwa.

22 UNIDENTIFIED SPEAKER:

23 What number on the list?

24 MR. PHILPOT:

25 Abagogwe?

26 THE WITNESS:

27 Abagererwa. Do you want me to spell?

28 MR. PHILPOT:

29 Yes, please.

30 THE WITNESS:

31 B-A-G-E-R-W-A (*sic*) Bagererwa or Abagererwa.

32

33 You may want to ask me where I am going -- heading to with this Abagererwa. This is at the core of the
34 problem, because the entire *Akazu* theory, as mentioned by Madam Des Forges and by the
35 Prosecution, is to say that in actual fact the *Akazu* was -- came to light from a clear social relationship.
36 On the one side you have Madam Habyarimana's lineage which is related to the last kings of the
37 Bushiru, and on the other hand you have the small lineage of President Habyarimana, which is not only

1 of foreigner origin, they are not even from Rwanda. They are from Uganda. And there is the theory
2 invoked by Madam Des Forges and the Prosecution, the idea of this alliance that would explain -- or,
3 sorry, the idea of this mismatch that explains that Madam Habyarimana's lineage had taken over
4 control of the future President Habyarimana. But this is completely false. This is completely false. Let
5 us not even look at the origin of Habyarimana's family. You had experts who talked about this here.
6 Let us leave that aside, you are aware of it. But let us look at what experts have not talked about.

7
8 Let us not come back to the Rwandan origins of President Habyarimana. Experts have dwelled on that
9 here before. But, conversely, what I would like to bring up here is that the lineage of
10 President Habyarimana's family was in control of some areas of the *Ubukonde* rights, and they were
11 also part of the Bushiru aristocracy. There is no alliance in the social sense, as such.

12
13 So, without going into the -- there is no misalliance, as such. So there is a theory that no longer exists,
14 because everything relies on the fact that -- or, on the theory that on the one hand there is some worthy
15 body on the lower part of the scale whose career was prepared by his wife's family who was from the
16 highest scale or on the highest scale of the ladder. There is no need for me to go into details of the
17 *Akazu* issue.

18
19 As a historian, the Prosecution criticised me that I did not carry out research. Well, I've just given you
20 information about the *Ubukonde* rights which you were not aware of before.

21 MR. PHILPOT:

22 For the balance of the report, Your Honours, you can read it and it is some based on the testimony you
23 have already received in court.

24 BY MR. PHILPOT:

25 Q. We will now move on. I just explained to the Court that we are not going to go into the case --

26 MADAM PRESIDENT:

27 The witness, I am sure, understood you.

28 BY MR. PHILPOT:

29 Q. We would like to move now to point D, the question of the speech of Mr. Habyarimana, on
30 November 15, 1992, and the demonisation of him, please.

31 MADAM PRESIDENT:

32 I thought that we had dealt with that. But --

33 MR. PHILPOT:

34 No.

35 MADAM PRESIDENT:

36 -- we are 30 minutes from a break. How long do you think will need this afternoon?

37

1 MR. PHILPOT:

2 Not very long, Your Honour. If you want to you could either break now and start – or, break at one.

3 MADAM PRESIDENT:

4 No, we will continue until 1 o'clock. Please.

5 BY MR. PHILPOT:

6 Q. Could you please refer to the --

7 MADAM PRESIDENT:

8 Unless you prefer to have a break now?

9 MR. PHILPOT:

10 I am tired, but that's -- it depends on how --

11 MADAM PRESIDENT:

12 Try to continue.

13 MR. PHILPOT:

14 Fine. No, no, no. I'm at your disposition, even tired disposition.

15 BY MR. PHILPOT:

16 Q. Could you please now, Mr. Lugan, explain -- Dr. Lugan, explain the question of the *chiffon de papier*,
17 and the manipulation of this concept and these words?

18 A. Here again we are looking at the destabilisation enterprise against President Habyarimana. Why?

19 Because this "scrap of paper affair" would demonstrate that President Habyarimana is a hypocrite so
20 long as he accepts to sign agreements or pre-agreements or ceasefires. And on the other hand he
21 goes back home within his supporters in the northern region, and particularly in Ruhengeri he delivers
22 speeches that are opposite to what he said before.

23

24 Up to 2000 I believed the idea behind this scrap of paper. Why? Because I trusted
25 Jean-Pierre Chrétien; because I trusted Gérard Prunier; because I trusted Alison Des Forges. We were
26 all talking about the scrap of paper up to the day when the text was translated -- the text of the speech
27 was translated, was presented before a court and the translation was accepted. And this translation
28 demonstrates that at no point in time did President Habyarimana talk about a scrap of paper. At no
29 point did he reject the idea of peace. The text translated by the expert Shimamungu is indicated on
30 page 31 of my report.

31

32 President Habyarimana's speech was translated, but let's not go any further than that, because here
33 again, I will be told that I was not the one who carried out the investigation, but I simply want to explain
34 to the Court how my intellectual ideas evolved. And this is one of the reasons -- one of the reasons --
35 this is one of the reasons that led to my intellectual evolvment. And I must say, I was surprised when I
36 read this translation. I questioned Shimamungu and I asked him: "Is this truly the translation?"

1 MADAM PRESIDENT:

2 The witness mentioned twice Shimamungu. He's 604 on the spelling list.

3

4 Please continue.

5 THE WITNESS:

6 Even though the text that was translated had been accepted before a court, I decided to verify because
7 I do not read Kinyarwanda and I showed the text to some of my Rwandan friends, notably some of my
8 former colleagues at the university, who confirmed the translation. So we are dealing here with an
9 important element which also had to do with the destabilisation of the regime of
10 President Habyarimana.

11 BY MR. PHILPOT:

12 Q. Is Dr. Des Forges correct to say that Mr. Habyarimana was opposed to the Arusha Accords when he
13 spoke at home?

14 A. There were no Arusha Accords at the time. There was no Arusha agreement at the time. We were --
15 we're talking about a context before the Arusha Accords, the 15th of October 1992.

16 The Arusha Accords were signed much later. I am talking about the peace negotiations, and this is why
17 the insinuation is important, because this allows me to say, yeah, there is duplicity. We have the one
18 language that is given to the international community, and then something else is said to the supporters
19 at home. Scrap of paper. But this is not the case.

20 Q. We'll now move on to the final -- I think the final chapter or sub-chapter of your report where you are
21 talking about President Habyarimana being accused of blocking the Arusha process. Could you explain
22 this to the Court, please?

23 A. Yes, Counsel. I think that we need to distinguish two periods. Maybe -- maybe during the first period
24 President Habyarimana may try to obstruct or slow down, let's say up until the month of July between
25 '92 and '93. It is difficult to give the exact date, but what is certain is that at some point the political
26 situation is such that not only did President Habyarimana not obstruct the Arusha process, but, actually,
27 fought for them to be implemented.

28

29 For what reasons? Simply because in July of 1993, there was a decisive event that took place and this
30 was the splitting up of the MDR; the Hutu opposition movement or party which is the main adversary of
31 the MRND, and of President Habyarimana. From July 1993, for reasons I will not dwell on because that
32 would mean we will be getting into details that are not necessary, the MDR excludes its president and
33 some of its very important members, including Madam Agathe Uwilingiyimana.

34

35 And from this point we no longer have three political forces: The RPF, the Hutu opposition, and the
36 MRND presidential plane, in quotes. As from this point, General Habyarimana, who knows how to
37 assess a situation sees that the context is very favourable to him. And why? Because at the

1 conclusion of the Arusha process what was supposed to happen? There had to be general elections
2 and he was sure to win. Even though the RPF was counting on its ethnic support base. But it was not
3 going to win in the majority.

4
5 And as a result of this, the president wanted to push things forward. And it is for this reason that during
6 the last weeks, during the last months, he would even go as far as trying to find very common
7 solutions -- strange solutions to ensure that the national assembly and the transitional government be
8 set up, and the context is totally different from the one that was prevailing before because before the
9 MDR was split up, the main political stakes at the time were not between the RPF and Habyarimana.
10 He was in the middle of the inter-Hutu positioning between the MRND and the MDR.

11
12 The RPF at that point never represented a danger for him. July 1993 the situation totally changed, and
13 we realised that the president, in spite of the considerable advantages that had been given to the RPF,
14 accepts the Arusha process because he knows that all these will be sanctioned by the
15 universal suffrage, and this will be based on a very simple reality; 80 per cent Hutu, 20 per cent Tutsi
16 population. Whatever the case, he was sure to win. He and his people were going to win. That is what
17 I can say.

18 Q. And what was --

19 MADAM PRESIDENT:

20 At this point I think we can break until 2:30.

21 *(Court adjourned 1300H to 1433H)*

22 MADAM PRESIDENT:

23 Mr. Philpot, please proceed.

24 MR. PHILPOT:

25 My --

26 MADAM PRESIDENT:

27 I'm requested to ask you how long the testimony will continue.

28 MR. PHILPOT:

29 Not very long at all.

30 MADAM PRESIDENT:

31 What does that mean?

32 MR. PHILPOT:

33 Very little.

34 MADAM PRESIDENT:

35 Okay. So should we ask WVSS to bring the next witness to the Tribunal, Mr. Sylvester?

36 MR. PHILPOT:

37 I know the answer. He has been brought. He is arriving any minute now.

1 MADAM PRESIDENT:

2 Okay.

3 MR. PHILPOT:

4 He may or may not get on today. We shall see.

5 MADAM PRESIDENT:

6 Very efficient, Mr. Philpot.

7 MR. PHILPOT:

8 Well, I may be efficient in some things, but my memory is not as good as the memory of my expert.

9 And I'm going to ask --

10 MADAM PRESIDENT:

11 I will tell you where we were before we broke for lunch. "The RPF at that point never presented a
12 danger for him, for Habyarimana. July 1993, the situation totally changed, and we realised that the
13 president, in spite of the considerable advantages that had been given to the RPF, accepts the
14 Arusha process because he knows that all these will be sanctioned by the universal suffrage. And this
15 will be based on a very simple reality of 80 per cent Hutu, 20 per cent Tutsi population. Whatever the
16 case, he was sure to win. He and his people were going to win."

17 BY MR. PHILPOT:

18 Q. Dr. Lugan, we will move forward to the period February and March 1994, and around pages 34-35 of
19 your report, but we are not going to read all of the report, of course. Can you --

20 A. Pages 34-35 not 234-235.

21 Q. Pages 34-35, okay. We are in February and March of 1994. How did the Arusha process play out in
22 local Rwandan politics?

23 A. The Arusha Accords were signed. I'm sorry -- section of public opinion, the Hutu public opinion, the
24 Arusha Accords were overly favourable to the RPF from the military and political standpoints. So, in
25 that context the various political parties were deeply divided. These deep divisions were related to
26 various criteria. And such criteria were clearly ethnic in the case of the Liberal Party, and they were
27 political with respect to the MDR. For the Liberal Party, the split up of the party was clear between a
28 Tutsi faction and a Hutu party. We should leave that aside because the Liberal Party was a small party,
29 but for the MDR it was a little more complex, because two major political options came up and were
30 quite extreme.

31

32 There were those who thought that Habyarimana should be disposed of as a priority, even at the cost of
33 forming an alliance with the RPF. And that was the case of Twagiramungu, and

34 Mrs. Agathe Uwilingiyimana, and who found themselves in a minority -- very much in a minority --

35 because during the Kabusunzu congress in the month of July, they were able to rally only a few votes

36 to their option. And so the MDR, in the majority, was opposed to an alliance with the RPF to overthrow

37 Habyarimana.

1 Consequently, each of the political parties, with the exception of the MDR and the social
2 democratic party, to be quite clear, had internal divisions. So the entire rationale of the Arusha Accords
3 disappeared because what was the rationale; it was the existence of three political forces; the RPF and
4 its friends; the MRND and its friends; the Hutu opposition around the MDR, basically. And the entire
5 rationale of the Arusha Accords was an artificial construction that sought to prevent any one of these
6 three parties to take over power.

7
8 So, they had to be an alliance of two of these parties against one. So it was a three-dimensional
9 separation of power in Rwanda. However, in as much as the MDR was split in factions, the situation
10 changed because there was like a bipolarisation. On the one hand, the RPF and its Hutu allies or the
11 Tutsi faction of the Liberal Party which moved over to it, and which represented a third of all of the
12 members of parliament, or all of the active forces of the country. And on the other hand, the MDR
13 which did not agree with Habyarimana -- they had long-standing quarrels -- but they defined themselves
14 as Rwandan patriots, and they were not willing in a bid to rid themselves of their internal political
15 opponents to gang up with the persons described as feudal lords. So that was the bipolarisation. So
16 from that moment on the political complications set in. And the attitude of some MDR officials was quite
17 irresponsible on account of their immediate political interests. They actually split the party into three --
18 into three political forces, and they were not willing to follow the Arusha Accords as they laid out power
19 between three political parties.

20 JUDGE MUTHOGA:

21 Which are those factions that were -- you say were acting irresponsibly?

22 THE WITNESS:

23 I believe that the most irresponsible of them were members of the MDR; the
24 Faustin Twagiramungu/Agathe Uwilingiyimana faction. They are the ones who split the doctrinal
25 organisation of the Arusha Accords, because in as much as there was an opposition within the MDR
26 which was one of the three political forces, it led to the weakening of the MDR and that also helped to
27 strengthen the two opposing forces; RPF and MRND.

28
29 And there the MDR did not play its role for reasons that I have explained. I am coming back for the
30 Bicamumpaka. I think I explained that position there. It is out of place for me to dwell into that in here.
31 But, Madam President, I should point out that the Arusha Accords were to be played out between the
32 three homogeneous forces. But from the point where you have a split between these three forces or
33 between one force, there is an imbalance, because that is when the situation really becomes difficult.
34 Because who was going to appoint members of parliament to the transitional parliament; who were
35 those who were going to be MPs in the transitional assembly; what faction would send its members to
36 the national assembly? Take the example of the Liberal Party. Landoald Ndasingwa was Tutsi.

37

1 MADAM PRESIDENT:

2 Yes. The name, and also much slower.

3

4 The court reporters have a lot of trouble with your testimony, which they do not have normally. It is very
5 difficult to write down what you're saying. So if you could also make your answers shorter, it would
6 simplify. Because Judge Muthoga asked simply which the parties are.

7

8 And Judge Muthoga, do you need more explanation to this?

9

10 So we do not need the rest of this. So we can skip the name. We will need it because we had it on the
11 record, but after that let's just move on. Just spell the name and let's move on to another question from
12 Mr. Philpot.

13 MR. PHILPOT:

14 The name was Landoald Ndasingwa.

15 MADAM PRESIDENT:

16 Yes, can you spell it for us?

17 THE WITNESS:

18 Landoald Ndasingwa. Would you like me to spell out the name? Landoald is spelt L-A-N-D-O-A-L-D.
19 Ndasingwa is spelt N-D-A-S-I-N-G-W-A.

20

21 Is it necessary for me to spell Faustin Twagiramungu?

22 MADAM PRESIDENT:

23 No. Thank you very much, but the court reporters have this spelling.

24 MR. PHILPOT:

25 Thank you.

26 BY MR. PHILPOT:

27 Q. So in the immediate period prior to the 6th of April what was the political possibilities of the RPF to
28 obtain powers through the Arusha Accords? I'm looking at around page 36 of your report, and 35.

29 A. The RPF realised in the weeks prior to the attack that it was going to lose politically, that it had no
30 chance of winning the elections. That would mark the end of the transition process.

31 Q. And how do you arrive at that conclusion?

32 MADAM PRESIDENT:

33 He said so. I think it is asked and answered. He said that the country was 80 per cent Hutu, and
34 20 per cent Tutsi.

35 BY MR. PHILPOT:

36 Q. What was the -- what were the efforts of Mr. Booh-Booh at that time?

37

1 MADAM PRESIDENT:

2 How do you spell that?

3 MR. PHILPOT:

4 B-O-O-H hyphen B-O-O-H.

5 THE WITNESS:

6 Mr. Booh-Booh's role was rather annex. It would focus on an issue that adds to the
7 political representation at the transitional national assembly. There was political movement known as
8 the CDR that was not involved in the Arusha negotiations. And the CDR, which was a real political
9 force -- it cannot be measured, but it was real -- and in the final analysis decided to join the
10 Arusha process in exchange for a seat in the transitional national assembly. That would help address a
11 part of the problem. And there, Mr. Booh-Booh reports that there were rather interesting negotiations
12 that took place between him and the CDR and the RPF. They were almost agreed that the CDR would
13 have a seat in the transitional national assembly. And so, the transition process would be acceptable to
14 virtually all of the political forces of Rwanda. At the same time, the major question that came up -- and I
15 was talking about it before you asked your last question, Counsel -- the major issue that came up was
16 who were going to represent the political parties at the transitional national assembly. It was obvious
17 that if it was the Hutu faction of the liberal party or the Tutsi faction, then the political outcomes would
18 be different. Who was going to appoint ministers to the transitional government, the leader of the
19 MDR --

20 MADAM PRESIDENT:

21 Thank you, Dr. Lugan, but this is not what -- you answered Mr. Philpot's question, and then you went
22 back to a previous question which we said was not necessary for you to answer. So please answer the
23 questions. We, I repeat, will read the report, but we do not have time for -- we do not have the time to
24 hear everything that might be interesting, but not necessary because we can read it.

25

26 We are here only to deal with those parts of your report which need clarification.

27 BY MR. PHILPOT:

28 Q. I can ask a couple of pointed questions to you, and I think we can terminate rather promptly. What was
29 the attitude of President Habyarimana to the Arusha Accords in late March 1994?

30 MADAM PRESIDENT:

31 If possible, if you can give us a very short answer.

32 THE WITNESS:

33 Not only did he support them, but he helped accelerate them.

34 BY MR. PHILPOT:

35 Q. What choice did the RPF make at this stage, given its incapacity to succeed through the
36 Arusha Accords?

37 A. Counsel, your question is too direct. You want to make me say that the RPF was bound to assassinate

1 President Habyarimana. I would be -- differ a bit in my answer. I would say that politically it was clear
2 that there was no political solution out of the issue for the RPF, and that its strength was no longer
3 political but always military. I would leave it to you to conclude that -- I would leave it to the Chamber to
4 interpret that.

5 Q. That was the answer I was hoping you would give.

6 MR. PHILPOT:

7 And I will conclude on that note.

8 MADAM PRESIDENT:

9 Mr. Sylver, will you cross-examine or do you have no questions?

10 MR. NTUKAMAZINA:

11 Thank you, Madam President.

12 CROSS-EXAMINATION

13 BY MR. NTUKAMAZINA:

14 Q. Good afternoon, Mr. Lugan.

15 A. Good afternoon, Counsel for the Prosecution.

16 Q. According to your testimony and your curriculum vitae, you go to Rwanda in 1972 and you stay there
17 for 11 years, that is, until 1983; is that correct?

18 MADAM PRESIDENT:

19 Now we are starting to have problems of overlapping questions and answers. You have to make
20 pauses because otherwise you will be answering when we are listening to the interpretation. So the
21 question was, that you stayed 11 years in Rwanda, until 1983 -- from 1972 to 1983. And now we need
22 you to repeat your answer.

23 THE WITNESS:

24 Specifically from the month of September 1972, to the month of August 1983.

25 BY MR. NTUKAMAZINA:

26 Q. And you never went back to Rwanda?

27 A. Not to Rwanda itself. But I went to areas that were very close to Rwanda; notably the Kivu region.

28 Q. Does that mean that for 24 years and 3 months you have not conducted any study, any research work
29 in Rwanda?

30 A. Mr. Prosecutor, life is short. I was there for 12 years, that was not bad.

31 JUDGE MUTHOGA:

32 Dr. Lugan, you know that is not an answer. What you have given is not the answer to the question. He
33 asked you does that mean you have not conducted any research in Rwanda during that period. It is a
34 question you can answer yes, or no, so easily. And you give it an explanation about the shortness of
35 life. And you know, we are supposed to understand your answers. So don't place us in a problem
36 where we will be interpreting what does it mean to say life is short.

37

1 Proceed.

2 THE WITNESS:

3 Your Honour, I have not stopped working on Rwanda. To prove the point I have conducted lectures --

4 MADAM PRESIDENT:

5 Dr. Lugan, that was not the question the Prosecutor put to you. The Prosecutor asked; have you done
6 any research in Rwanda after 1993 -- 1983. Sorry.

7

8 So yes or no, have you been in Rwanda after 1983?

9 THE WITNESS:

10 I have answered no on two occasions.

11 MADAM PRESIDENT:

12 This is the first time we have a no. We have had an explanation about the length of life. So now we
13 have a no.

14

15 Do you want to add anything to this? That is, you worked on Rwanda not having been there. That you
16 did not want to go there because life was short, or that you could not go there because you were not
17 allowed in or whatever; do you want to explain or not?

18 THE WITNESS:

19 What I meant, quite simply, is, that I worked from 1983 onwards without interruption on Rwanda with
20 small periods during which I looked at other regions of Africa. The proof of this is in my CV. Since
21 1983 I have published five works on Rwanda.

22 MADAM PRESIDENT:

23 Mr. Sylver.

24 BY MR. NTUKAMAZINA:

25 Q. We shall get back to that, Witness. We shall get back to the books you published on Rwanda, after
26 1983. But for the time being, we would like you to answer our questions on what you did after 1983.
27 And we understood your answer whereby you did not conduct any work in the field, in Rwanda.

28

29 Are we to understand that it is the reason for which your report and your testimony are based on what
30 other people told you, and that your report is nothing but a compendium of other -- other reports,
31 statements, or testimonies made by other people?

32 A. Counsel for the Prosecution -- Counsel for the Prosecution, I wonder -- I -- I end up wondering whether
33 you have read my report, if you have heard what I stated this morning. I believe this morning I gave
34 new sources, which were the results of my initial research, not only in the archives but also in the field
35 of the *Ubukonde*, but a historian works on what one calls primary sources and also with
36 secondary sources.

37

1 Am I to understand, Counsel for the Prosecution, that it is impossible to write the history of the
2 Roman Empire because one is born after the year of Julius Caesar and that one has not lived in
3 imperial Rome? You are denying any historical work in such a way.

4 Q. Witness, what are the criteria or the methodology you used in your report in order to have a balanced
5 information and to check the reliability of the information you received?

6 A. This report is not isolated, if you look at the list of the works I published. And before preparing your
7 cross-examination, I am certain, Counsel for the Prosecution, that you have read my reports in
8 three previous cases; you have, of course, read my books; and you have noted that the methodology or
9 the methods I used are the conventional methods of historians who continuously confront what is, with
10 the new sources that appear. So it is a dynamic and critical thought process, and I believe that you
11 must have observed, Counsel for the Prosecution, that it is by confronting such sources, analysing
12 them, that my opinion changed. Because I believe you have read what I wrote, and my approach of
13 this issue of the genocide has considerably evolved. So all of these sources; oral, written, documentary
14 sources, and, of course, I was about to forget perhaps the most important thing, the works of the ICTR.
15 I stated this morning that the history of Rwanda was being written in the ICTR. The ICTR and what is
16 happening in it is a wealth -- constitutes a wealth of information on the history of Rwanda.

17 MADAM PRESIDENT:

18 Mr. Sylver, if we look at the footnote of the report, we can see the sources for the report itself.

19 MR. NTUKAMAZINA:

20 I am much obliged, Madam President.

21

22 I shall have time to come back to this matter on a case-by-case basis, which I merely wish for this
23 witness to, as an introduction, provide us with some indications that will enable us to delve into the
24 sources quoted in his report.

25 BY MR. NTUKAMAZINA:

26 Q. Witness, I did read your report, and I noted that you are referring to sources that are all outside of
27 Rwanda. Am I correct?

28 A. Are they all outside of Rwanda? No. Counsel for the Prosecution, I do not believe you have all of the
29 pages of this report of mine. All of them are outside of Rwanda? All of them are outside of Rwanda --

30 JUDGE MUTHOGA:

31 Dr. Lugan, because you know them, for instance, you can tell counsel so and so is not in Rwanda; so
32 and so is in Rwanda; and so and so is in Rwanda. It makes it much easier to deliver your evidence if
33 you don't circumvent by asking "Are all of them in Rwanda?" And you know them -- as you would know
34 them.

35 THE WITNESS:

36 Very well. Sources outside of Rwanda, Ruzibiza, Ruyenzi, and indeed they arrived in Rwanda after
37 1990. So indeed are they Rwandans?

1 MADAM PRESIDENT:

2 Spelling.

3 THE WITNESS:

4 Ruzibiza, Ruyenzi, the witnesses who testified before this Tribunal.

5 JUDGE MUTHOGA:

6 Ruzibiza, for instance, is not in Rwanda.

7 MADAM PRESIDENT:

8 No, he said outside Rwanda. But let us go to the spellings.

9

10 Number 555 is Ruzibiza. And what is the other source you mentioned?

11 THE WITNESS:

12 I mentioned Aloys Ruyenzi.

13 MADAM PRESIDENT:

14 Could you spell his name, please?

15 THE WITNESS:

16 R-U-Y-E-N-Z-I.

17 MADAM PRESIDENT:

18 Thank you very much.

19 THE WITNESS:

20 I could also mention Dr. Sèraphin Bararengana --

21 MADAM PRESIDENT:

22 Slowly. We are going to get the names on the transcript. Sèraphin.

23 THE WITNESS:

24 Bararengana, who testified before this Tribunal?

25 MADAM PRESIDENT:

26 Yes.

27 THE WITNESS:

28 I could also mention, but it would be a tedious exercise, it would be a tedious exercise. I can refer to
29 the different trials, the sources, Shimamungu.

30 MADAM PRESIDENT:

31 *(Microphone not activated)*

32 THE ENGLISH INTERPRETER:

33 Microphone for Your Honour.

34 MADAM PRESIDENT:

35 The question of Judge Muthoga is: "Please tell us which sources were in Rwanda?" You are
36 mentioning names of witnesses who testified in this Tribunal, many of them at these same proceedings.

37 The Prosecutor is challenging your sources, saying your expertise, saying all of your sources are

1 outside of Rwanda. You have not been back to Rwanda after 1983. So, could you tell us which
2 sources from Rwanda have been taken into account when writing your report?

3 JUDGE MUTHOGA:

4 And also, Dr. Lugan, when you give sources like Dr. Bararengana, now if your source is his testimony in
5 this Tribunal, say his testimony in this case or that case. If you met him at some place, you start with
6 him; you say "My source is a conversation with Dr. Bararengana at this or that place." It is not enough
7 just to attribute a name to it. We want to know whether it is something you have read and which we
8 could also read, or whether it was an interview you have conducted with a person which we are not
9 able to interview because the person is not here available to us, because a lot of your sources if they
10 are sources by reading them, you can trust that we have the capacity to read. But what we may not
11 have is the capacity to call the witnesses and listen to them and ask them questions.

12 THE WITNESS:

13 In a few seconds you are asking me to give you -- which is impossible -- the list of the hundreds of
14 people I met on a number of years. Let us act in a simple manner. Let us take one source.

15 MADAM PRESIDENT:

16 Start with giving us five names of persons who are in Rwanda. Don't give us one hundred; start with
17 five names.

18 THE WITNESS:

19 *(No interpretation)*

20 MADAM PRESIDENT:

21 In Rwanda, and which you talked to to make this report.

22 MR. PHILPOT:

23 I would like to object at this stage because these -- as the Court pointed out, many of these things are
24 footnoted -- very carefully footnoted -- whether they are in conversations or testimony. The other thing,
25 I think there is a false distinction that people who are in Rwanda now, some were there in 2002 and left
26 in 2003, and I think it is an artificial distinction. It is almost common knowledge that there are
27 500,000 Rwandans outside of Rwanda, and it still can be original testimony on events which happened
28 in Rwanda. That does not in any event diminish the quality. The simple fact that the expert did not go
29 to Rwandan to do original research on *Ubukonde*, for example, in -- after 1983 -- it is obviously he
30 would not do that, although he has explained to you that he has given a lot of original research on land
31 and land tenure. He has published many books about it and I think that the distinction of being in and
32 outside of Rwanda is somewhat erroneous, and I think that we should --

33 MADAM PRESIDENT:

34 But, Mr. Philpot, this is not closing arguments, we are going to assess the evidence. But if Mr. Sylver
35 wants to make the point at this stage and clarify how the report was written, let him do so.

36 MR. PHILPOT:

37 I have absolutely no objection to that, but rather than answering a catch-all question where it requires

1 two hours to respond and give a list of names which is almost impossible, ask specific questions and --

2 MADAM PRESIDENT:

3 Let Mr. Sylver --

4 JUDGE MUTHOGA:

5 No, Mr. Philpot, let me just. You see --

6 MR. NTUKAMAZINA:

7 I am much obliged, Madam President.

8 THE ENGLISH INTERPRETER:

9 Says counsel for the Prosecution.

10 JUDGE MUTHOGA:

11 The witness has been presented to the Prosecutor, to be cross-examined, and the Prosecutor is
12 entitled to ask the witness who his sources are and where they are. The Prosecutor may well want to
13 find out whether those sources exist or do not exist, and whether the witness is likely to have met them
14 last week or not. And surely it can't be such a great task on the part of the witness to say "I met so and
15 so, so and so." Five of those people he has met who are in Rwanda now or who were in Rwanda when
16 he met them.

17

18 He, himself, we know has not been to Rwanda since 1983, but he could have met witnesses who are in
19 Rwanda, outside of Rwanda but who are living there, and he is able to say so. I can't see why it would
20 be difficult for him to say that. And too, when you will be addressing us, you will tell us to don't -- take
21 no note of what Mr. Sylver asked the witness, because it means nothing. You can never (*inaudible*)
22 from your opinion, you can source information without going to Rwanda, and we will be -- we will decide
23 whether the fact that it was sourced without going to Rwanda makes it any less reliable than it is. But
24 that is at that time, not now.

25 MR. PHILPOT:

26 I could not agree more than -- with you. I fully agree with you, except ask specific issues and say on
27 which point.

28 MADAM PRESIDENT:

29 But let Mr. Sylver phrase the questions like he wants to phrase them and not how you want to phrase
30 them.

31

32 Please continue. At this stage we have not had the name of one person living in Rwanda who has
33 been interviewed. So we would like to know if there has been any.

34 MR. NTUKAMAZINA:

35 I am much obliged, Madam President. I do not know whether I should respond to the submission of my
36 learned colleague before I proceed?

37

1 JUDGE KHAN:

2 Go ahead.

3 BY MR. NTUKAMAZINA:

4 Q. Witness, perhaps I could be of some assistance to you: Most of your resource persons -- or, rather,
5 your sources are they not refugees who for the most part are living in France; others are convicted
6 persons here or elsewhere, in Belgium; and others are accused persons and are here especially at the
7 Tribunal; and others are outside of Rwanda in a number of countries, but on the list of genocide
8 perpetrators; and, finally, are French soldiers. I believe I have read the whole list.

9 A. Well, you forgot the missionaries.

10 THE ENGLISH INTERPRETER:

11 Says the witness.

12 THE WITNESS:

13 Witness, indeed this is one of the elements of the case, but you're also forgetting quite important
14 leaders of the RPF who are also at large, some of them for a short time, and who had very important
15 positions within the RPF, and who provided excellent documentation to me and the internal workings of
16 the RPF and who, for the time being, are refugees here and there in Europe, and on whom I cannot say
17 much more. So there is, indeed, the whole range of sources for individuals and there are also the
18 Rwandan archives you yourselves use as a work tool and which we all work on.

19 BY MR. NTUKAMAZINA:

20 Q. Where did you consult the Rwandan archives, Witness?

21 A. Counsel for the Prosecution, I am certain that you are aware that many of these archives come from
22 your own office.

23 Q. Thank you, Witness. So let us make progress and move to the following item on the planning of the
24 genocide. You stated before this Trial Chamber that from 1994 up to 1998, you had --

25 JUDGE MUTHOGA:

26 There is one particular source I want to ask you about. Did you sit with Mr. Ruzibiza, or have you just
27 read what he has written?

28 THE WITNESS:

29 I did not meet him. I read his published work as well as his writings on the internet, his interviews in the
30 press, especially the American press, his interviews on the Flemish television station, and also the
31 portions that -- of that interview that were used in the *ordinnance Bruguière*. And, of course, what he
32 stated here in the ICTR in the Military I case.

33 JUDGE MUTHOGA:

34 Did you ever make an attempt to meet with him?

35 THE WITNESS:

36 That was difficult. I did make some attempts, but it is difficult. I must say that I did not push this matter
37 in order to have a meeting, because I found other -- I believe you call them resource witnesses, who

1 just like him are members of the RPF. I found people who were senior, more senior than he was in the
2 RPF, and who told me the same thing.

3 JUDGE MUTHOGA:

4 What about General Gatsinzi?

5 THE WITNESS:

6 The same goes for General Gatsinzi. I did not return to Rwanda, which means that I could not see
7 General Gatsinzi who was in Rwanda, and I did not interview him.

8 JUDGE MUTHOGA:

9 Yeah, but did you make any effort, for instance, to talk to him, to call him on the phone, ask him "When
10 are you likely to be in this neighbourhood or France? I would like to have a chat with you on a few
11 matters?"

12 THE WITNESS:

13 No, Your Honour.

14 JUDGE MUTHOGA:

15 What about such people like Guichaoua; did you sit with him?

16 THE WITNESS:

17 I know him, of course, he is my colleague. Guichaoua is my colleague. The issue with lecturers at the
18 university is that you have very close and friendly relationships with some, and not with others. For
19 example, I met Reyntjens, I know quite well. I also know Guichaoua but I do not have the same links
20 with him as I have with Reyntjens. So much so that I worked on the publications of Guichaoua and I do
21 not need to go beyond what Guichaoua wrote. I am not going to conduct an investigation with
22 Guichaoua or on Guichaoua's works. Guichaoua conducted his own investigations, and the scientific
23 value of his work is not in question.

24

25 I am not going to go and check everything my colleagues have stated. There are scientific fields in
26 which it is not required. It is not necessary, because you trust what the researchers are saying. And
27 besides, Your Honour, I in the -- in 1997-1998, I mistakenly trusted Mrs. Des Forges and I realised she
28 was not on the right track. As for the subject I'm interested in, not necessarily for this testimony but for
29 one or the other of my testimonies, what Guichaoua wrote, the numerous articles he published in the
30 French press and his interviews, were more than enough, as far as I am concerned. If I have any
31 doubt, any question, then I will phone him.

32 JUDGE MUTHOGA:

33 What about General Dallaire, did you ever chat with him?

34 THE WITNESS:

35 We were to talk to one another. We were to talk to one another during the Munyaneza trials, but this
36 meeting was postponed. We were to have a discussion, but this did not take place. General Dallaire --
37 General Dallaire is tired these days, and I did not try, but I do not think he would be willing to give me

1 an interview, which does not make that much of a difference, because we have seen here at the ICTR
2 Dallaire's main assistants or deputies who testified. The historian works with a wide range of
3 documents.

4 JUDGE MUTHOGA:

5 What about Mr. Booh-Booh?

6 THE WITNESS:

7 Mr. Booh-Booh published what I consider to be a primary source of information which can be used as
8 such, with all of the positive critical aspects as well as the negative aspects as referred to in my works.
9 But I will go further, Your Honour. There comes a time when the historian is not a judge. Your very
10 arduous task is not the same as ours. I mean by that that there comes a time when it is best not to
11 make physical contact with some witnesses, and this in order to be able to work on their written account
12 and the written sources, because the aspects such as sympathy or antipathy is such that we historians
13 are human, and might be influenced. From the methodological standpoint, it is much healthier to work
14 as I did, except when you are looking for specific information, but that is the historical method. It is not
15 the work that is being done in the court. You have another task to undertake.

16 JUDGE MUTHOGA:

17 Proceed, Witness.

18 JUDGE KHAN:

19 Before you proceed, Dr. Lugan. You said you trusted Guichaoua and Reyntjens because they are
20 great researchers and they have conducted investigations. What about these Ruzibiza and
21 General Gatsinzi? How -- do you accept their writings and publications as a correct statement of facts?

22 THE WITNESS:

23 Well, these are two different cases; Reyntjens and Guichaoua are university lecturers or scholars who
24 have conducted research on a case, whose work was useful and on whose thoughts we sometimes
25 have very different positions.

26
27 Ruzibiza is not providing an analysis. He is providing a source. He is writing. He is a witness. He is
28 not an academic. So much so, that I am not taking for granted what Ruzibiza writes a priori, but since
29 you are putting the question to me, thank you, Madam President, because it affords me the possibility
30 of giving you an example of my methodology.

31
32 Let us take the example of the missiles Ruzibiza is telling us about. Your Honour, I will answer your
33 question. Ruzibiza is explaining to us how they were shot and so on and so forth. In my capacity as a
34 historian, am I to take for granted what Ruzibiza is telling us? What did I do? Well, I went to see
35 French specialists of missiles, and I know them quite well, since I was at the school of war and I asked
36 them whether the description of the attack by Ruzibiza is credible, because I do not launch missiles. I
37 do not know how it is done. Are there any contradictions? Are there any grey areas? "What do you

1 think of Ruzibiza's account?" Is what I asked the specialists. And I was given some answers.
2 Everything Ruzibiza says -- sorry, sorry -- a great number of the elements provided by Ruzibiza were
3 confirmed by RPF fugitives I interviewed in France, have also been confirmed by the gendarmerie and
4 the Robardey archives I have told you about. So let us not mix up the source and the research work.

5 JUDGE KHAN:

6 Are you telling us that you conducted your own research on the writings of Ruzibiza?

7 THE WITNESS:

8 Yes, Your Honour. I tried to check a number of elements as stated by Ruzibiza. For example Ruzibiza
9 at some point states -- or, rather, attacks the French army when he states that during the Byumba battle
10 in 1992 they heard on the RPF lines some calls made by French officers. So I went to check in the
11 French archives and checked with the French witnesses who told us that yes -- who told me, rather,
12 that "Yes, for this specific battle what that person is saying is true, because on that day we were very
13 close to the front line and we communicated openly for the fine tuning of systems. " And so on and so
14 forth. So there are small elements such as this one. But that was not the orientation of my report. At
15 first I wanted to provide a comprehensive report, which I was told to be as specific as possible and limit
16 myself to the subject. But since I note that my books were not read, and all my different works were not
17 read in their entirety, I am now forced to explain what I explained a number of times in my different
18 publications, which, of course, I am quite willing to do so.

19 *(Pages 43 to 64 by Eleanor Bastian)*

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1 1530H

2 JUDGE KHAN:

3 Mr. Prosecutor.

4 MR. NTUKAMANZINA:

5 Thank you, Your Honour.

6 BY MR. NTUKAMANZINA:

7 Q. There is an interesting answer, Witness, that you gave to Their Honours. I would just like to come back
8 to it for purpose of clarification because it would be of interest of us for the latter part of our
9 cross-examination. I thought I understood you, you told the Honourable Judges that when a
10 researcher, an academic, makes an assertion there is no need for you to challenge it, you take it for
11 granted; is that correct?

12 A. Mr. Counsel, you have a sense of telegraphic short cuts. I did not say so. When Jean Pierre Crétien
13 speaks of a scrap of paper, I consider him a clown. When Alison Des Forges works up herself in her
14 religious beliefs, I say she is not a scientist. When Guichaoua, most of whose opinions I don't share,
15 develops a theory, I know that Guichaoua is not dogmatic; I know that Reyntjens is not dogmatic. I
16 know that they are open to intellectual evolution depending on documents. So I trust some of my
17 colleagues whom I know, even if I do not agree with them and I don't trust others. It is not because you
18 have an academic degree that you will be trusted.

19 Q. Before moving on to the next line, Witness, I would like to end this one with the precise question of your
20 qualification. You had your last certificate in 1983 and that was after you presented a thesis on the
21 history of Rwanda; is that correct?

22 A. No, not on the history of Rwanda, a history of the rural world in pre-colonial Rwanda. It is not the same
23 thing.

24 Q. So, after 1983 you did not have any other diploma?

25 A. Counsel for the Prosecution, I am sorry, I have the highest certificate that one can have in a French
26 university. I may have -- I can't have any others. If that were possible, I would have accumulated them.
27 I have the highest one. There is no other diploma higher than that. What else do you want me to do? I
28 am a PhD, *docteur d'état*, there is nothing higher than that.

29 Q. I am satisfied, professor.

30 MADAM PRESIDENT:

31 There must be a pause between question and answer unless you want to have a private conversation
32 and you are not interested in having it on the record. So, Prosecutor, repeat what you last said if you
33 think it should be on the record.

34 MR. NTUKAMANZINA:

35 I do apologise, Your Honour. I will try this time to respect the pause.

36 BY MR. NTUKAMANZINA:

37 Q. Witness, I was saying that I was satisfied with your answer, that after 1983 you had no other diploma.

1 And we move on to the next line, that is, on the planning of the genocide.

2
3 You stated before this Honourable Chamber that from 1994 to 1998 you had a different opinion on the
4 planning of the genocide, that is, at that time you argued that there was actually planning of the
5 genocide; is that correct?

6 A. That is quite right, Counsel for the Prosecution. And I thank you especially for that question, because if
7 you give me the opportunity I will explain to you why I changed my mind.

8 MADAM PRESIDENT:

9 It's easier if you switch (*microphones overlapping*)

10 MR. NTUKAMANZINA:

11 No, that is not necessary.

12 MADAM PRESIDENT:

13 No, only one so that you are looking at Mr. Sylver. I think it would be more comfortable.

14 JUDGE KHAN:

15 Dr. Lugan, does that mean that you keep changing your opinion as the cases unfold in future?

16 THE WITNESS:

17 As new sources emerge. I would turn to Counsel for the Prosecution and if he demonstrates to me that
18 his argument is right, then I will bow to it -- then he can count on me as an expert.

19 BY MR. NTUKAMANZINA:

20 Q. Witness, you changed your mind. I told you it was not necessary to explain because you said clearly
21 that you changed your mind on account of the publication of a document by African intellectuals in
22 Addis Ababa in 2000, correct?

23 A. Sorry about the pause, Your Honours. Counsel for the Prosecution, you are -- you are going round the
24 facts. It is not entirely false what you are saying, but it is only an aspect of my reasoning. I said that I
25 started realising that there may be some other reality when I read the report of the eminent
26 personalities of the OAU. And as time moved on, I came back to what my colleague, Reyntjens, spoke
27 on the double-track, I came back on the assertions of Alison Des Forges. And later on I discovered the
28 issue of the scrap of paper and so on. And all of this changed my corpus.

29

30 And, if you read my reports in the various trials, from the first report I made in the *Ndindabahizi* trial, and
31 the one I made in the Bagosora and Renzaho trials, you can notice the change because I factor in new
32 discoveries. And as new documents make for a new approach, I factor them into my documentation.

33 MADAM PRESIDENT:

34 Which were the three cases mentioned? *Ndindabahizi*, I think?

35 THE WITNESS:

36 *Ndindabahizi*.

37

1 MADAM PRESIDENT:

2 We have to spell it. Can you spell?

3 THE WITNESS:

4 N-D-I-N-D-A-B-A-H-A-I-Z-I (*sic*). I can give you --

5 MADAM PRESIDENT:

6 That's not necessary.

7 THE WITNESS:

8 -- the trial number

9 MADAM PRESIDENT:

10 The other two cases were Bagosora?

11 THE WITNESS:

12 Bagosora, B-A-G-O-S-O-R-A; and Tharcisse Renzaho, R-E-N-Z-A-H-O. And I also drafted a report that

13 I will be presenting in April in the Bicumumpaka trial.

14 MADAM PRESIDENT:

15 Wait, wait, we need spelling. So how do you spell Bicumumpaka?

16 THE WITNESS:

17 Bicumumpaka, B-I-C-A-M-U-M-P-A-K-A, Bicumumpaka.

18 MADAM PRESIDENT:

19 Unless the Prosecutor is not satisfied, the answer is long enough. You need more? It's very difficult
20 with very long answers. The transcripts get confused. It would be more helpful if you make more
21 pointed questions that can have concrete answers because otherwise we have a lot of confusing
22 sentences.

23 MR. NTUKAMANZINA:

24 Thank you, Madam President, we'd try to comply with that.

25 BY MR. NTUKAMANZINA:

26 Q. Precisely, Counsel -- Witness, in the Ndindabahizi trial, N-D-I-N-D-A-B-A-H-I-Z-I, you actually
27 demonstrated and asserted that the genocide was actually planned -- that the genocide was planned.

28 And as a reminder I would just cite the paragraph. Page 14 --

29 MR. NTUKAMANZINA:

30 If the registry officer can help me to circulate that document, the French and English versions. I believe
31 there are enough copies; the interpreters should be given.

32 MR. PHILPOT:

33 Can we have two copies, one for the Defence counsel, one for the Accused?

34 MADAM PRESIDENT:

35 Judge Muthoga donates his French version to the Accused.

36

37 Does the expert have a copy? Do you have the French, Dr. Lugan?

1 Mr. Sylver, start questioning.

2 JUDGE KHAN:

3 Before you start, Mr. Sylver, please also identify the document which you have distributed.

4 MR. NTUKAMANZINA:

5 I would first like to ask the witness --

6 BY MR. NTUKAMANZINA:

7 Q. Witness, is this your report, the one you presented in the Ndindabahizi trial?

8 A. Counsel for the Prosecution, yes, but I would like to make a remark straight away. We are going to
9 waste our time here.

10 Q. Please, can you just answer the question?

11 A. If you read the warning I made this morning, I reject this report so we shouldn't waste time on it.

12 Q. So I understand that it is actually your report, Witness. Could you please read out -- it is page 14 on the
13 French version, and 13 for the English, just after point 4?

14 A. Counsel, I can read it out to you very clearly, but we'll be wasting the time of the Chamber because in
15 the preamble of my present report in page 2 I said that this report is obsolete, but I can read it out to
16 you because I wrote it in 1960 (*sic*). But you will not be able to fault me on it; we are wasting our time.

17
18 In the Ndindabahizi trial, I wrote what I wrote but other sources, new sources have made me to
19 reconsider my previous positions, sometimes in a radical manner. There is really no inconsistency but
20 the factoring in of the evolution of the state of knowledge, elementary ethical attitude in any scientific
21 endeavour and, all the more so in the matter of a legal proceedings.

22
23 So I would like us to discuss it but I reject this report because at the time I did not have the facts that
24 enabled me to get to that conclusion, because if the Court wants it I can read it out, but we'll be wasting
25 our time. Ask me, rather, why I changed my mind and I'll tell you.

26 JUDGE MUTHOGA:

27 You have just been asked to read it.

28 THE WITNESS:

29 Should I answer yes to a text that I reject? If you like, I'll do it. I don't want to wage war with you. If you
30 like I'll read it out to you then we'll move on faster, but I reject the text.

31 MADAM PRESIDENT:

32 Please, Mr. Witness, we don't want an argument between you and the Prosecutor. Just answer the
33 question. If he wants you to read it, read it. You can then explain afterwards why you changed your
34 mind or did not change your mind. Instead of just reading and giving a scientific explanation, you have
35 made this into an emotional discussion. Just read the paragraph and answer the questions of the
36 Prosecutor, and if the Prosecutor doesn't ask you the questions you want him to ask you to explain, I'm
37 sure Mr. Philpot will do so later. So just follow the proceeding and just don't argue. Now, please read

1 that paragraph.

2 THE WITNESS:

3 I'm going to do it, Madam President. So I am assured that I will have opportunity to explain my
4 intellectual evolution. We're agreed on that.

5

6 Mr. Counsel for the Prosecution, what do you want me to read?

7 BY MR. NTUKAMANZINA:

8 Q. Please read the first paragraph under point 4. The title there is: "7th April to July 1994 genocide."

9 A. "Do you remember the hours after the death of President Habyarimana, the massacres started in
10 Rwanda according to a plan which was well prepared aimed at physically eliminating Hutu senior
11 officials of the opposition who did not support the Hutu power. The genocide of the Tutsis took place at
12 the same time."

13

14 That is what we thought at the time.

15 Q. Thank you, Witness. And you presented this to the Chamber in the Ndindabahizi trial on
16 20 November 2003. This document was presented as Exhibit D. 203A (*sic*).

17 THE ENGLISH INTERPRETER:

18 Correction, D. 53A.

19 MADAM PRESIDENT:

20 The number of exhibit was, in the other case, D. 53A. One is the A, the French, and B in the English.

21 BY MR. NTUKAMANZINA:

22 Q. Now, here is my question, Witness: Before presenting this report before the Chamber, did you properly
23 conduct a well researched investigation into the matter?

24 A. Thank you, Counsel, for that good question. The Ndindabahizi report is a perfect illustration of what
25 excess confidence can produce, when an academic has excess confidence in his colleagues. At the
26 time I did not realise what level of misinformation Jean Crétien had developed on the issue at the level
27 of a quasi-religious interpretation that Alison Des Forges had made of it. So it was this excess
28 confidence that I had for your own expert witnesses, Counsel for the Prosecution.

29

30 The investigation that I conducted, and I did so directly, on Mr. Ndindabahizi's schedule, his activities,
31 and I do not reject that. What I do reject are the assertions that I make in which I buy into the dominant
32 ideology of the official story of the genocide as it was presented to us at the time. I must say that the
33 Ndindabahizi matter was another element of my intellectual evolution for, as I worked here before the
34 Tribunal in this matter, I met a number of persons involved and we discussed and that was another
35 element of awareness in me, to the extent that I went back home losing all my trust in
36 Jean Pierre Crétien and Alison Des Forges and I went through all what they had written and I realised
37 with stupefaction that their thought process was not scientific.

1 JUDGE MUTHOGA:

2 I probably misheard you earlier on or the translation was wrong. Did you say you prepared this in
3 1990? When did you say you prepared this?

4 THE WITNESS:

5 No, I didn't say that at all. No.

6 JUDGE MUTHOGA:

7 When did you prepare it?

8 THE WITNESS:

9 Well, when -- in what year did I come for Ndindabahizi? What year was that? It was 2002 or 2003.

10 That was the beginning of my work here; 2002, 2003.

11 JUDGE MUTHOGA:

12 This one you prepared in 2003; is that correct? When did you complete it, long before your testimony
13 or immediately just before?

14 THE WITNESS:

15 Thank you for your question, Your Honour. I always submit my reports several months before. I came
16 here in the month of November, I believe, so I must have submitted it at least one and a half or two
17 months before. That would mean that the report was written before the major recess because a report
18 is not written overnight. For instance, the Bagosora report took me over two years of work.

19 JUDGE MUTHOGA:

20 Thank you.

21 BY MR. NTUKAMANZINA:

22 Q. Witness, in November 2003 you did not tell the Chamber in the Ndindabahizi trial that you had changed
23 your opinion?

24 A. That is because I had not changed my opinion. I'd started having doubts. You know,
25 Counsel for the Prosecution, Judges have doubts, historians too. It is not done overnight. It is not
26 black and white. You look at the situation you think you've understood, and then you realise that you're
27 mistaken, so it is a very slow process, very slow.

28
29 So my evolution in this matter was speeded up later on when I started working in an area on which I'd
30 not worked before, that is, expert opinion on the Bagosora affair. And bit by bit, if you've read my
31 books, Counsel, you'll realise that between my story, *History on Rwanda*, published in 1997;
32 my book are titled, *Rwanda: the genocide, the church and democracy*, published in 2003; my book
33 *The French Army and Rwanda*, published in 2005, and this one published a few months ago. There's
34 been considerable change but I cannot be proud of it because that is the ethics, that is the thrust of a
35 historian and a researcher.

36 MADAM PRESIDENT:

37 (*Microphones overlapping*) ... you had one question which you wanted to ask before?

1 MR. NTUKAMANZINA:

2 No, Madam President. I can well continue after the recess.

3 MADAM PRESIDENT:

4 Judge Khan has some questions -- question before the break.

5 JUDGE KHAN:

6 Dr. Lugan, how would you rate your present report in this case?

7 THE WITNESS:

8 I would rate it as a report which is partly obsolete already because since I got here on Friday in Arusha,
9 I've had occasion to discover declassified American sources that would help me make progress in my
10 evolution. Therefore, this report represented my state of knowledge at a specific knowledge. This
11 report, by definition, is constantly changing, and history is never written. Otherwise, we would be
12 talking about religion or dogma, as my colleague, Madam Des Forges, does. We are not doing history.

13 JUDGE KHAN:

14 Do you think you'll have some doubts about this report after a few years?

15 THE WITNESS:

16 Your Honour, nobody knows the future. Nobody knows the sources that will emerge. Nobody can
17 predict the future. Nobody would tell us what would be contained in Gasson's report, a Spanish Judge.
18 Nobody can tell us what the future would be like, except for God. We are poor human beings. I'm a
19 poor scientist who makes his own contribution and who tries, with the emergence of new facts, with the
20 greatest humility, to strive towards what he considers to be the truth, but I have no certainty. In any
21 case, if tomorrow -- and Counsel for the Prosecution, I make this pledge before you, if tomorrow you
22 prove to me that I am wrong, then I'll be ready to come and testify for the Prosecution. I can't tell you
23 more than that. So my thought is constantly changing.

24 JUDGE KHAN:

25 So your expert report is a continuous process, you keep on changing as the facts unfold to you?

26 THE WITNESS:

27 That is correct, Your Honour, if you consider my Ndindabahizi report, which is inconsistent with what I
28 said in my Renzaho report or in my Bagosora report, and in my books too. Your Honour, that is
29 scientific thought. So the truth is not written once and for all. A historian is not bound to have the final
30 truth, otherwise he is not a historian. But he could be mistaken; he is a human being. The historian is not
31 a mathematician or a chemist, so he is working on human material. He also has his own
32 subjectiveness in a subjective area. So it is very difficult. That is why it is not wise to meet the main
33 parties concerned. You are supposed to meet them, not us. Otherwise, I may be friendly or loath some
34 of the parties, so I have to keep some distance from them. That is the work of the historian, it is
35 difficult. There is no certainty in history.

36

37 Consider just one example: Up until 1990, the entire world thought that the massacre of Polish officers

1 in 1940 in Katyn, K-A-T-Y-N, was the handiwork of the Nazis. The Russian perestroika brought out
2 records and it was discovered that it was the red army, or the Russian army, that killed those people. In
3 fact, the Nuremburg court did not condemn the Nazis on it. But the vulgate was that everybody
4 believed that Katyn was the Germans, but today it has -- they've discovered that it is the Russians.

5 JUDGE KHAN:

6 Dr. Lugan, tomorrow you get information saying that the sources on which you based your report was
7 not authentic. What would be your reaction?

8 THE WITNESS:

9 I will put -- call into question that aspect of my work that depends on those sources right away. First of
10 all, I will take time, think about it, and then integrate it into my reasoning. I'll try to fit in that new
11 element and if the new element has a major influence on what I've said so far, I'll review my position

12 JUDGE KHAN:

13 Would it be correct to say that your expert report is not based on research, investigation conducted by
14 you, but simply on the basis of the information, writings, books which you keep on reading during the
15 course of time?

16 THE WITNESS:

17 Your Honour, I believe I answered that question from the Prosecutor a moment ago by demonstrating
18 that my report comprises several aspects and a major aspect of personal research. First, what I
19 mentioned on *Ubukonde*, that is part of my research on the rural world in Rwanda. Secondly, what I
20 said about relations within the gendarmerie, that is my personal research that I discovered in records.
21 Three, what I said on Javier Africa, is the same procedure. So there is personal research, primary
22 source, secondary sources and publications on which one works. So the essential -- that is three
23 essential aspects of a historian's work.

24 MADAM PRESIDENT:

25 So we will break now until 25 past four, according to this clock here in the courtroom, 20 minutes.

26 *(Court recessed from 1608H to 1628H)*

27 MADAM PRESIDENT:

28 Mr. Ntukamanzina.

29 MR. NTUKAMANZINA:

30 I'm much obliged, Madam President.

31 BY MR. NTUKAMANZINA:

32 Q. Witness, I now wish to conclude on this document. If you would be so kind as to answer in a very
33 specific manner, I shall also try to put precise questions to you and that will enable us to make
34 progress. For the time being, let me simply ask you to read a number of paragraphs and afterwards I
35 will put a question to you and then we can proceed. It's on page 6, paragraph 2. In the French version,
36 page 6 of the same document, paragraph 2, immediately before chapter number 2, "1990-1993,
37 political chaos", the previous paragraph. I am looking for the reference in the English version.

1 JUDGE MUTHOGA:

2 Page 5.

3 MR. NTUKAMANZINA:

4 It is on page 5, Your Honours.

5 THE WITNESS:

6 Page 5 of the French version?

7 BY MR. NTUKAMANZINA:

8 Q. Page 6 of the French version, that is to say the second paragraph or the previous -- the paragraph
9 which is before the chapter, the main chapter which starts with --

10 A. "Popular"?

11 Q. Yes, indeed.

12 A. May I start? So let me read out this paragraph which is taken from my testimony in the Ndindabahizi
13 case, "Popular at the beginning, the Habyarimana regime ended up in micro-regionalism. The lineage
14 of the president's wife took power" --

15 JUDGE MUTHOGA:

16 No one can record --

17 THE WITNESS:

18 Don't you have the text?

19 MADAM PRESIDENT:

20 Do you think anybody can translate or record this? Start all over again.

21 THE WITNESS:

22 Madam President, my apologies. I believed you had the text and that I was merely -- well, very well.

23 Very well.

24 MADAM PRESIDENT:

25 You are not mistaken, but everything that is said in court has to be translated into the languages of the
26 Tribunal and recorded. So even if we have the text, that does not mean that translation and recording
27 are not going on. So start again reading, please.

28 THE WITNESS:

29 My apologies.

30

31 "Popular at the beginning, General Habyarimana's regime ended up in micro-regionalism. The lineage
32 of the president's wife took over the control of the state, all the powers being concentrated in the hands
33 of a handful of faithful which constituted the *Akazu* or "small hut" or "household". In the hands of the
34 *Abakiga* and mountain dwellers, the country was led as a family enterprise. The main nucleus being
35 made up of three men who were brothers of the colonel's spouse, that is to say, Colonel Elie Sagatwa,
36 Protais Zigiranyirazo and Serafin Rwabukumba, respectfully in charge of intelligence, of security, and of
37 the special secretariat of the president."

1 And this is a text I deny in its entirety today in the light of the new research. That is what I can say.

2 BY MR. NTUKAMANZINA:

3 Q. Witness, if I understand you correctly, you are also withdrawing this testimony. It was after receiving
4 what information?

5 A. On what pertains to the *Akazu* in its political definition. The most relevant elements in the development
6 in my thought are derived from the testimonies of a number of non-suspect personalities, since they are
7 MDR personalities, who testified before your Trial Chamber and who explained -- and I must say that
8 once again, the work that was accomplished in the ICTR is of fundamental importance for historians.
9 Who could have thought that the word "*Akazu*" had been coined by the MDR if there had not been such
10 proceedings before the ICTR? So on page 29 of my report you have the names of all the witnesses
11 who came to talk about this matter of the *Akazu* and how it was created in the context of destabilisation
12 of President Habyarimana.

13
14 From then onwards, I started looking for the investigations I had conducted in Rwanda between '72 and
15 '83 -- or, rather, between 1984 and 1986-1987 because during that period I interviewed one hundred or
16 so witnesses especially in the Busiru -- in the light of such elements, I started having renewed interest
17 in one aspect of my research that I had completely set aside because in the hundreds of investigations I
18 was able to conduct, you can easily imagine, that I only made use of a small portion of in this work in
19 my thesis. So I went back to the Busiru reports and I took from that time onwards interest in this issue
20 of the *Ibukonde* and of the social rank of the Habyarimana family. Because I believed -- I also
21 believed -- I also believed that President Habyarimana, since I had trusted the writings of a number of
22 historians, was a foreigner to that region, at least on his father's side. And I also thought that he was
23 from an inferior lineage.

24 JUDGE MUTHOGA:

25 Mr. Witness, let us confine ourselves to the questions that you are asked. It helps. It makes the
26 evidence --

27 THE WITNESS:

28 Very well.

29 JUDGE MUTHOGA:

30 -- as easy as possible. And what you have been asked here is this: What is the new information which
31 has come to make this incorrect, to make you withdraw? What you wrote in 2003, what is it that has --
32 you have since learnt which has now made this not true? Just confine it to that.

33 THE WITNESS:

34 Your Honour, I have just answered.

35 JUDGE MUTHOGA:

36 No, you have not.

37

1 MADAM PRESIDENT:

2 No, no, you are giving us your thoughts, what you wanted to look at. But if you write a report, present it
3 as an expert report in a trial chamber and want the judges to consider it when writing their judgment, we
4 assume you are making this investigation, this research seriously and thoroughly. So, of course, there
5 can be information which makes researchers, even so thorough, change their mind. We want to know,
6 very specifically, what information was not available to you in 2003 but was available to you after that
7 date which make you change your -- the outcome of your research?

8

9 So don't tell us about going back to the Busiru or whatever because that only is about confirmation of
10 information. But what information did you receive to change the outcome of your investigation? Or
11 wasn't it any new information but just that you had made a mistake when originally drafting the report?
12 That's also possible; we all make mistakes. Was it the wrong assessment of information you had or
13 new information available to you?

14 THE WITNESS:

15 Both, Madam President. First of all, James Gasana's book, G-A-S-A-N-A, that I discovered quite late,
16 *Rwanda from the State Party to the Garrison State*, the former minister of General Habyarimana, which
17 on page 40 refers to the *Akazu* by saying that unlike what was being said in the populace, it was not a
18 Mafia gang, but as James Gasana says, it was a broad regional brotherhood. I had the book later on.
19 Then, the two other important elements are the explanations provided here by
20 Jean Marie Vianney Nkezabera by -- Jean Marie Vianney --

21 MADAM PRESIDENT:

22 *(Microphones overlapping)*

23 THE WITNESS:

24 -- Nkezabera, N-K-E-Z-A-B-E-R-A, then Anastase Munyandekwe, M-U-N-Y-A-N -- Y-A-N-D-E-K-W-E,
25 Munyandekwe -- Anastase Munyandekwe and Jean Marie Vianney Nkezabera provided you with very
26 interesting information here explaining how the *Akazu* concept was used by the president's political
27 opponents. So we have here important elements which contributed to my change of opinion on this
28 specific point, which only confirmed research that I had conducted and which I had set aside. What I
29 did here was simply use sources that I did not collect myself; these are sources available at the ICTR,
30 so it is a whole range of pieces of evidence and elements which have led me to analyse the
31 phenomenon of the *Akazu* in a different manner.

32 JUDGE MUTHOGA:

33 These two persons you have referred to, they -- it is testimony they have given in this Court, in this
34 Tribunal, in these cases, or is it books they have written, or is it that you have sat with them and asked
35 them questions on these matters? Which is the correct position?

36 THE WITNESS:

37 It is their statements: Jean Marie Vianney Nkezabera, ICTR 2001-73-T, Thursday,

1 March the 8th, 2007, page 16 of the transcript.

2 JUDGE MUTHOGA:

3 That kind of evidence can make an expert change his opinion on a matter as fundamental as the
4 *Akazu*? Is that what you are saying?

5 THE WITNESS:

6 Your Honour, if Madam Des Forges had had one-tenth of this information -- she was in an accusatory
7 system. There are a number of statements by people who are not suspects and who are opponents to
8 President Habyarimana, and you also have a statement by James Gasana, former minister, who
9 separated from President Habyarimana. I do believe that this is more than prima facie evidence, to use
10 legal terms. You, besides, conducted a cross-examination of them. They were cross-examined and
11 they maintained their versions.

12 JUDGE MUTHOGA:

13 Is there another one? You have got two witnesses who gave evidence, testimony in this year. Is there
14 any other thing you have done to verify or to re-establish your position on that?

15 THE WITNESS:

16 Yes, indeed. I consulted with a former member of the MDR, who is in Leon, and I asked him whether in
17 the internal organisation of the MDR, Mr. Jean Marie Vianney Nkezabera and Anastase Munyandekwe
18 were people with sufficient credibility and influence, and that was confirmed to me. What is striking in
19 this matter is the accuracy of Anastase Munyandekwe's account when he explains how the term that
20 was coined did exist in Rwandan tradition, but how its meaning was changed in order to be used for
21 political reasons. And he says that on Monday, the 19th of March 2007, in the French transcript,
22 page 78, he states that this term was coined following a proposal of Mr. Boniface Nkulinzira and the
23 lead -- leaders of the MDR thought that it was an excellent idea. And what does Mr. Boniface
24 Nkulinzira say, and I quote -- what does, rather, Mr. Anastase Munyandekwe say? I quote: "We were
25 doing everything within our political parties to demonise the head of state. I can tell you that all the
26 parties demonised them. We did that with the intent to harm, to demonise him so that we would be
27 able, when the time came, to take or seize power" -- I'm not sure of the word used. So one would
28 invent anything or say anything that was bad for the head of state, even if he had done -- not done
29 anything. And this is an important MDR leader who was making such a statement, not a grassroots
30 militant. And this is confirmed by Nkezabera. And I believe this provides food for thought, and it is
31 prima facie evidence.

32 JUDGE MUTHOGA:

33 I have heard that. I asked you, is there anything else you have done? Is there any other fact or act or
34 any thing else you have done, other than reading that, those testimonies of those two witnesses, is
35 there anything else which you have done to validate the view expressed by those two witnesses?

36 That's what I asked you. Of course, if there isn't, just tell me there isn't; if there is, just tell me what it is.

37 THE WITNESS:

1 My answer is the affirmative, especially since I said yes a few moments ago, and there is also
2 James Gasana who is saying the same thing or at least who is saying that the *Akazu* was not what
3 people said it was. And I also have confirmations as to the credibility and the political prominence of
4 these two personalities in the MDR emigration circles. I cannot go any further than that.

5 JUDGE MUTHOGA:

6 Thank you.

7 JUDGE KHAN:

8 Mr. Lugan --

9 MADAM PRESIDENT:

10 No, no, Mr. Prosecutor, Judge Khan still has a question, so --

11 JUDGE KHAN:

12 It's a very brief question and I hope -- I expect a very brief answer too. What sources you used or what
13 research did you undertake to formulate expert report in Ndindabahizi's case?

14 THE WITNESS:

15 If counsel for the Prosecution is -- would be kind enough to give me the outline of the report I will tell
16 you exactly on which chapters I conducted original research, and then by extension I will give you those
17 chapters where I based my report on what Des Forges, Reyntjens and others said. To be -- in simple
18 terms, in the -- in Ndindabahizi report, everything that has to do with the setting up to the interim
19 government --

20 JUDGE KHAN:

21 Let me confine my question to this paragraph.

22 MADAM PRESIDENT:

23 Yes, but the witness needs a copy of the report.

24 MR. PHILPOT:

25 I would like it back, but please give it to him.

26 MADAM PRESIDENT:

27 But wasn't it -- the Prosecutor had a copy of this for the witness? I thought he did. He has it.

28 THE WITNESS:

29 I do have a copy, still on page 6.

30 MADAM PRESIDENT:

31 Give it back to Mr. Philpot.

32 JUDGE KHAN:

33 Which paragraph on *Akazu*?

34 THE WITNESS:

35 Your Honour, I admit that I erred and that I made sure of levity because at the time I did not conduct
36 any investigations on the matter, I was working on the Ndindabahizi case and on the setting up of the
37 interim government. And for all the general background introductory part, I used to -- I used the works

1 of Alison Des Forges that I was taking seriously at the time.

2 JUDGE KHAN:

3 Go ahead.

4 THE WITNESS:

5 I'm sorry.

6 MR. NTUKAMANZINA:

7 I'm much obliged, Your Honours.

8 BY MR. NTUKAMANZINA:

9 Q. Witness, I note that you have read all the transcripts of the testimonies of Defence witnesses. Did you
10 do the same for the transcripts of the testimonies of Prosecution witnesses?

11 A. I did not read everything, it's impossible. I would be lying if I stated that I had read everything. I did
12 read a number of elements, but I certainly do not have a comprehensive view of the situation.

13 Q. I also hope that you have read Mr. Gasana's book in its entirety?

14 A. Yes, I see what you are leading at -- what you are leading at.

15 Q. You agree that he is one of the first people, a member of the MRND, who started talking about the
16 existence of the *Akazu*?

17 A. Yes, but to say that the *Akazu* was not what people said it was. And, besides --

18 Q. No, I am satisfied with your answer, Witness, if you could be brief. You have also read the paragraph in
19 which he describes the OTP's -- as he calls them -- "the officers coming from the president's region and
20 the destabilising acts perpetrated by the members of the OTP". Is that correct?

21 A. Yes, indeed, but I do not take everything that is said for granted, just as I am not exonerating those who
22 are dubbed as the Hutus from the presidential persuasion, I'm not exonerating them from their
23 responsibilities. This was not my mandate. My terms of reference were specific. So in this wealth of
24 events that took place in 1990-1994, we can of course find events I did not deal with, that's certain, but
25 otherwise I entirely agree with you

26 Q. I'm satisfied with your answer. And when James Gasana's book was published -- and when was it that
27 it was published, Witness?

28 A. The French edition of that book was published in the year 2000, but I did not read it in 2000, I read it a
29 bit later.

30 Q. Thank you, Witness. Are we to understand, as you were saying earlier on when you were responding
31 to a question put to you by Judge Khan, are we to understand that if you were to receive new
32 information you could revert -- or, rather, change your position once again, and even revert to your initial
33 position regarding the *Akazu*. Am I correct?

34 A. Yes, indeed. The only difference is that at the time we did not know what we presently know on the
35 *Akazu*.

36 Q. I'm sorry, I did not understand your answer.

37 A. My answer was yes, of course, my previous position is certainly the one that is contained in on page 6

1 of my Ndindabahizi report, because in the meantime there were elements which proved this position
2 wrong. So, of course, if I have new information at my disposal I might change my mind. And, as I
3 explained earlier on, I'm willing to receive any reliable piece of information, and I'm insisting on the
4 "reliable".

5 MADAM PRESIDENT:

6 Are you going to dwell on this longer?

7 MR. NTUKAMANZINA:

8 No, Madam President, just one last question and then I shall proceed.

9 MADAM PRESIDENT:

10 Move on.

11 MR. NTUKAMANZINA:

12 It was just one small question, Madam President, to say that:

13 BY MR. NTUKAMANZINA:

14 Q. When you wrote your report for the Ndindabahizi case, Mr. Gasana's books had already been
15 published and you had already read it.

16 A. But the problem is that at the time I was working on the Ndindabahizi case, I was not working on the
17 *Akazu*. So what I did was that I took the vulgate, the official version, in fact, I worked on the way in
18 which the PSD joined the interim government, and as far as I was concerned, the matter of the *Akazu*
19 was an issue which was to be placed in the context but was at the heart of my research.

20 Q. Thank you, Witness.

21 JUDGE MUTHOGA:

22 Before you go, Mr. Witness. Just confirm for me, you had in fact read James Gasana's book by the
23 time you prepared this report. Is that not the case?

24 THE WITNESS:

25 Well, Your Honour, I am not that certain now. You are putting a question to me. I do not know for sure.
26 It has been a number of years. I do know that I chanced upon the book after the year 2000. When? I
27 do not recall.

28 JUDGE MUTHOGA:

29 Now --

30 THE WITNESS:

31 I don't know. Maybe, maybe not; I don't know.

32 JUDGE MUTHOGA:

33 Let's try and figure it out because it is an important matter. You wrote this report in 2003, correct?

34 THE WITNESS:

35 Your Honour, the date which is shown here is the date when it was submitted to the ICTR,
36 18th of November 2003.

37 *(Pages 65 to 79 by Gifty C. Harding)*

1 1700H

2 MADAM PRESIDENT:

3 And earlier today you said it was probably written before the summer vacations in August 2003, is that
4 correct?

5 THE WITNESS:

6 Unless I am making an error, or omission generally, I use the period from the beginning of the
7 academic recess to prepare my work for the period when the classes will resume. So I don't know
8 when this was when I was preparing the Bagosora report. I can't be asked six or seven years after the
9 fact. I was not asked about the existence of Gasana's book at the time because I believe these are not
10 essential approaches.

11 JUDGE MUTHOGA:

12 Let's do something. At least you would know whether you had read it by the time you gave evidence.
13 You testified in this Court -- in this case some time in November of 2003, is that not the case?

14 THE WITNESS:

15 I don't know anymore, Your Honour, I don't know anymore. When you ask me these questions, I don't
16 know anymore. I don't know whether to answer yes or no. In any case, the issue of *Akazu* was not
17 important to me at the time. My terms of reference was to present a report on the Ndindabahizi trial, to
18 know whether he, willing or unwilling, was involved in the affairs of the interim government.

19 JUDGE MUTHOGA:

20 I am asking you, you are a witness.

21 THE WITNESS:

22 The other one is completely out of the issue.

23 JUDGE MUTHOGA:

24 Let's try and understand it. You are not able to remember when you testified -- when you gave
25 evidence. That can be confirmed because I think the Prosecutor has a transcript.

26 THE WITNESS:

27 Yes, sir.

28 JUDGE MUTHOGA:

29 Can you assist on that one?

30 THE WITNESS:

31 From memory, I testified before the Christmas recess. Well, from my memory I say. But is it really
32 important, Your Honour?

33 JUDGE MUTHOGA:

34 Yes, it is.

35 THE WITNESS:

36 Well, then I can look into it. I can do some research on that.

37

1 JUDGE MUTHOGA:

2 You are not able to know whether you had read Jim Gasana's book or not at that time?

3 THE WITNESS:

4 I cannot tell you whether I read it before or after. I don't know anymore and I can't tell you anything
5 further. I don't have any university science (*sic*). And at my advanced age, even though I do not suffer
6 Alzheimer's, and if my memory takes a beating --

7 JUDGE MUTHOGA:

8 Everybody's take a beating. You then read the evidence -- the transcript of the two witnesses who
9 gave testimony in March of 2007. By that time had you read Gasana's book or not?

10 THE WITNESS:

11 Yes, yes, of course, of course. Concerning Gasana, I told Your Honour that as much as I can
12 remember I read Gasana's book just before I came to Arusha or shortly after I left the Ndindabahizi trial.
13 I can't go any further than that. I will simply look into it, if that would be of interest to you. When I get
14 back home I will check the date on which I did my reading on the Ndindabahizi matter. Because at
15 home my records have dates. And the thousands of books, I have at home -- I don't know.

16 JUDGE MUTHOGA:

17 You can tell me one thing: By the time you read the evidence of the two witnesses who testified in
18 March, do you have a correct recollection whether by that time you had read or had not read
19 Jim Gasana's book?

20 THE WITNESS:

21 Yes, Your Honour. All the more so, as in my previous works, I mentioned Gasana's book in my book
22 published in 2005. I mention Gasana's book in my book published in 2005 titled -- 2004 titled:
23 *Rwanda: The Church, Democracy (sic)*. So I read Gasana. So I read him before 2004 because the
24 book came out in 2004. I handed it to my publisher six months before. So I'd written it some six
25 months before. So I read it just about the time I came to Arusha to testify in the Ndindabahizi trial,
26 within that time line. He is cited in my previous works.

27 JUDGE MUTHOGA:

28 So there is one fact we can establish, Gasana's book pre-dated the testimony of the two witnesses.
29 The two witnesses, like you, could well have read Gasana's book by the time they gave evidence. It is
30 possible they could have read the book, because the book existed before they gave evidence.

31 THE WITNESS:

32 The book came out in 2000, Gasana's book. The witnesses testified in 2007. So, Gasana wrote his
33 book seven years before the witnesses gave their evidence. You are right, Your Honour.

34 JUDGE MUTHOGA:

35 When you read Gasana's book, did you believe him or did you wait for it to be confirmed? Did you
36 believe Gasana when you read him?

37

1 THE WITNESS:

2 No, because I used him for the first time in my book that was published in 2004:

3 *Rwanda: The Genocide, the Church and Democracy*. In that book, which came at the beginning of my
4 process of reconsidering the issue, I -- I gave out two positions. I say this is *Akazu* as presented by
5 Alison Des Forges and others, and this is what Gasana says about *Akazu*. So in my book I set out the
6 two aspects, and I don't take sides. And I was showing that doubt had started setting in.

7 JUDGE MUTHOGA:

8 So you confirmed your doubts after the testimony of the two witnesses in March 2007. They are the
9 people who confirmed your doubts on Gasana.

10 THE WITNESS:

11 I believe you have perfectly analysed my approach.

12 MADAM PRESIDENT:

13 Prosecutor.

14 MR. NTUKAMANZINA:

15 Thank you, Madam President.

16 BY MR. NTUKAMANZINA:

17 Q. Witness, we'll move on to the second chapter, point B, on the definition of the enemy. This morning
18 when you were answering a question of my learned friend, Mr. Philpot, and it is also written in your
19 report, on page 10 in the French version and page 16 in the English version, you stated that the
20 definition of the enemy did not extend to all the Tutsis, that some Tutsis were targeted while others
21 were not involved in that definition. As an expert I believe you have delved into that issue, especially
22 the use of that definition, and I would like you to help shed light on one point; that is, who are the Tutsis
23 that are targeted by the definition and who are those that are not defined as the enemy?

24 A. When you look at the text, when the interpretation is clear, unless one adopts some imaginary and
25 post-facto analysis and that is clear, I will cite the passage: "The primary enemy are the extremist Tutsi
26 within the country and are brought" -- "who are nostalgic for power and who have never acknowledged,
27 and still do not acknowledge, the realities of the social revolution of 1959 and who still wish to regain
28 power in Rwanda" -- "and who still wish to regain power in Rwanda by all possible means, including the
29 use of weapons, and, generally, Tutsi within the country who too are dissatisfied with the current
30 regime, foreigners married to Tutsi women", et cetera, et cetera. That's it. So each time it describes
31 the population group that he suspects. He does not say all the Tutsis. He says some members
32 of the -- some Tutsi, but also Hutu, some Hutus.

33 Q. Let us be more practicable, Witness. Let's assume or suppose that the Tutsi go to the roadblocks that
34 are controlled by the *Interahamwe* and who are seeking out the Tutsi enemy and the Tutsi who are not
35 enemies. What, in your opinion, would be the criteria used by this *Interahamwe* to say that this Tutsi
36 does not fall within the definition or this other Tutsi is the enemy and we have to arrest and kill them?

37 A. The fundamental aspect, Counsel for the Prosecution, is that the documents are confidential and that

1 the people at the roadblocks did not get to know it. That is a confidential document, only two or three
2 copies of which were reproduced. And part of which was made public in a restricted military circle. And
3 the slaughterers, the killers at the roadblocks were not even aware of the existence of this text. I
4 believe I cannot give you any other answer. It is clear. This text was not made public to the Rwandan
5 population.

6 Q. Witness, if I understand you properly, and this is found in your report somewhere, you say that the
7 report was kept confidential for some time and then subsequently General Nsabimana, who was the
8 army chief of staff --

9 A. He was a colonel at the time.

10 Q. When Colonel Nsabimana published his report and did whatever he did to a certain category of
11 persons, and then he was known to a lot of persons.

12 A. No, the report was sent to commanders of operational sectors. There were about three of them: The
13 Kigali operational sector; the Mutara operational sector; and the Ruhengeri operational sector; then the
14 Gisenyi operational sector; just four persons.

15 JUDGE MUTHOGA:

16 Was the report prepared for four persons? Are those the people for whom it was prepared?

17 THE WITNESS:

18 The use of the document was intended for one person: President Habyarimana. And this report was
19 so confidential that only two copies thereof were made on stencil, and he was instructed that the
20 stencils be destroyed.

21 JUDGE MUTHOGA:

22 Dr. Lugan, is it your position that it was intended that this report shall -- or what is contained in this
23 report shall only be known by three persons? There were the three persons who did not know who was
24 the enemy.

25 THE WITNESS:

26 Not three persons, one person: The president. And probably -- probably the minister. But we know
27 it --

28 JUDGE MUTHOGA:

29 I am asking you: Do you really think in all seriousness that it is Mr. Habyarimana who did not know who
30 the enemy was? It is him for whom the enemy had to be identified; is that your thesis, the position you
31 take?

32 THE WITNESS:

33 I did not quite understand your question, Your Honour.

34 JUDGE MUTHOGA:

35 Do you take the position that this committee, which prepared this report, did it to educate only one
36 person as to who the enemy was, and that person is President Habyarimana?

37

1 THE WITNESS:

2 I am going to explain to you how the committee was set up.

3 JUDGE MUTHOGA:

4 I am not asking.

5 THE WITNESS:

6 Well, if you don't want me to explain, then it is not worth the trouble. If you ask me a question I want to
7 answer, you say no, then there is nothing I can do about that. I am really sorry.

8 MADAM PRESIDENT:

9 You have to keep the calm in Court because otherwise you will be accused of contempt. This is not the
10 way to respond to any Judge of the Tribunal. So, first of all, behave. Second, listen to the questions
11 and answer the questions. You have been telling us what you want us to hear but have not been
12 answering concrete questions. This is not a lecture and we are not your students, where you can just
13 walk in or walk out and have us hear what you want to listen -- what you want us to listen to. We are
14 determining what we want to listen to, not you.

15

16 Having said this, please answer Judge Muthoga's question. He has not asked you how the committee
17 was created. He wants your opinion as an expert witness if you really believe that the committee would
18 write a report of this type -- of this kind for President Habyarimana's eyes only. If that for you, as a
19 researcher, makes sense, if you consider that possible, probable, or not.

20 THE WITNESS:

21 Madam President, if I cannot explain to you how the committee was created, the purpose for which it
22 was created, how can I go on? We are not before an electronic game where we can answer by yes or
23 no.

24 MADAM PRESIDENT:

25 You know how the commission has been created. You are the expert. So you're in a condition -- you
26 are in a position to respond with your knowledge of how the commission was created, whether you
27 consider it probable, or not, that this report was written for President Habyarimana's eyes only. We're
28 asking your expert opinion.

29 THE WITNESS:

30 In the present state of knowledge in early November -- December 1991 with the prevailing situation in
31 the north of Rwanda, officers had undertaken to ask President Habyarimana. These were the ones
32 waging war. They were the ones dying at the front. Who is fighting us? Who is attacking us? Who is
33 the enemy?

34

35 And ultimately for weeks President Habyarimana was tackling -- was handling the question and he set
36 up a commission to look into the matter. And he told the commission: You will present a confidential
37 report to me. That report was handed in two copies. So I don't know if the objective was to give just

1 two examples to President Habyarimana. The stencils were burnt. And that report, which was
2 supposed to remain confidential, did not, that is clear.

3
4 But it is obvious that if I didn't tell you that, I wouldn't have answered your question. And I do apologise
5 to the Judge that I blew up. Actually, the attitude of somebody who wants to co-operate in this
6 important work that is being done here, to get to the bottom of things, I would not want to be restricted
7 in what I'm saying because it is always good to listen to various opinions. And I do apologise for the
8 veracity of my answer, which is due to the evening fatigue, Your Honour.

9 JUDGE MUTHOGA:

10 Prosecutor, go on.

11 BY MR. NTUKAMANZINA:

12 Q. Witness, you have never wondered what may have been the reasons for keeping this report
13 confidential, this report that defines the enemy to the extent that in civil defence all the persons
14 concerned about their security would have wanted to know its contents?

15 A. Counsel for the Prosecution, this report -- its intention is not meant to identify the enemy, not at all. It's
16 only one aspect of the report, and let's be specific here. The title -- the question that
17 President Habyarimana asked the commission was: How do we go about defeating the enemy at the
18 military, media and political fronts?

19
20 And this morning I said that this report has several aspects, or several parts. We have only one, at
21 least I have only one: The definition of the enemy. But some members of that commission tell us that
22 the report comprised several parts and proposed democratic and political reforms on others.

23
24 So it was not a report that was meant to justify the genocide, but which was meant: One, who was
25 attacking Rwanda. Two, to see what could be done to address the political situation according to
26 Augustin Cyiza.

27
28 Democracy, we are talking about the founding act of the genocide, one must have a really flighty
29 imagination.

30 MADAM PRESIDENT:

31 We will adjourn until tomorrow nine o'clock.

32
33 Mr. Witness, you're still under oath and we caution you not to speak with anybody about your testimony
34 until tomorrow.

35
36 Mr. Sylver, how long will you continue cross-examining tomorrow, an estimate, please?

37

1 MR. NTUKAMANZINA:

2 That will depend, Madam President, on how the questions are answered. But I have one or two
3 questions on each of the chapters that were raised by my learned friend in the examination-in-chief,
4 and I believe that I should be done in less than one hour, Madam President.

5 MADAM PRESIDENT:

6 So we should finish between cross-examination and re-direct by the 11 o'clock break, if we're lucky.
7 And so it would be helpful to have the other witness tomorrow also.

8 MR. PHILPOT:

9 The answer to your question is yes; and, yes, he will be here.

10 MADAM PRESIDENT:

11 All right. So we adjourn until tomorrow, 9:00.

12 *(Court adjourned at 1725H)*

13 *(Pages 80 to 86 by Melissa Hook)*

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CERTIFICATE

We, Melissa Hook , Kirstin McLean, Eleanor Bastian and Gifty C. Harding, 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.

_____ Melissa Hook

_____ Kirstin McLean

_____ Eleanor Bastian

_____ Gifty C. Harding