

1 THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA  
2 CASE NO.: ICTR 97-20-T  
3 THE PROSECUTOR  
4 OF THE TRIBUNAL  
5 AGAINST  
6 LAURENT SEMANZA  
7  
8 31 OCTOBER 2001  
9 0930H  
10 CONTINUED TRIAL  
11  
12 Before: Judge Yakov Ostrovsky, Presiding  
13 Judge Lloyd William  
14 Judge Pavel Dolenc  
15  
16 For the Registry:  
17 Mr. Constant Kwaku Hometowu  
18 Mr. Thobias Ruge  
19  
20 For the Prosecution:  
21 Mr. Chile Eboe-Osuji  
22 Ms. Patricia Wildermuth  
23  
24 For the Accused Semanza:  
25 Mr. Charles Acheleke Taku  
Mr. Sadikou Alao  
Mr. Joseph Mushyandi  
  
Court Reporter:  
Ms. Judith Kapatamoyo  
Ms. Karlene Ruddock  
Mr. Haruna Farage

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1 P R O C E E D I N G S

2 MR. PRESIDENT:

3 The proceedings are called to order. I ask  
4 the registrar to introduce the matter coming  
5 to us this morning.

6 MR. HOMETOWU:

7 Thank you, Mr. President. Trial Chamber III  
8 of the International Criminal Tribunal for  
9 Rwanda composed of Judge Yakov Ostrovsky,  
10 presiding, Judge Lloyd Williams, and Judge  
11 Pavel Dolenc, is now sitting in open  
12 session, today, Wednesday, the 31st of  
13 October, 2001, for the continued trial in  
14 the matter of the Prosecutor versus Laurent  
15 Semanza, Case No. ICTR-97-20-T.

16  
17 Thank you.

18 MR. PRESIDENT:

19 Thank you. For the record the appearance of  
20 the Prosecution.

21 MR. EBOE-OSUJI:

22 Eboe-Osuji and Ms. Wildermuth for the  
23 Prosecution.

24 MR. PRESIDENT:

25 Thank you. The appearance of the Defence.

1 MR. TAKU:

2 May it please Your Lordships, Charles Taku,  
3 my learned colleague Mr. Sadikuo Alao, for  
4 the Defence, and with us here, My Lord, is  
5 our legal assistant Mr. Joseph Mushyandi.

6 MR. PRESIDENT:

7 Thank you. The interpreter, will you  
8 explain to the witness that he continues to  
9 be on affirmation.

10

11 Mr. Eboe-Osuji, you may complete your  
12 cross-examination.

13 MR. EBOE-OSUJI:

14 Thank you.

15

16 CROSS-EXAMINATION (continued)

17 BY MR. EBOE-OSUJI:

18 Q. Witness, yesterday we had stopped at where I  
19 had put to you the proposition that it was  
20 reported that between October 1990 and  
21 January 1993, at least two thousand  
22 civilians had been victims of extra-judicial  
23 summary or arbitrary executions, and I had  
24 said killings. I had put that to you and I  
25 believe your response for that was that you

1 had not heard that.

2

3 Now let's continue. Did you hear, Witness,  
4 that since the 8th of February, 1993, the  
5 date on which the RPF violated the  
6 cease-fire agreement concluded at Arusha, at  
7 least three hundred Tutsis and political  
8 opponents were said to have been killed  
9 mainly in prefectures of Gisenyi, Ruhengeri,  
10 Kibuye and Byumba, did you hear that?

11 A. I did not know anything about those people  
12 who were killed, since I was in Ruhengeri  
13 during that time. I know that there was one  
14 person who was killed.

15 Q. Did you hear that massacres of civilian  
16 populations had been perpetrated either by  
17 the Rwandese security forces, that would be  
18 as of the 11th of August, 1993, that will be  
19 the date, or by certain sectors of the  
20 population. Did you hear that?

21 THE INTERPRETER:

22 The Witness also said that he did not hear  
23 anything about the three hundred people who  
24 were killed in that region. The specified  
25 number.

1 Q. And I believe that was your continued answer  
2 to two questions ago, but did you hear what  
3 I just put to you just now?

4  
5 I can repeat if you want me to. I see you  
6 nod.

7  
8 My proposition is this, that massacres of  
9 civilian populations as of the 11th of  
10 August, 1993, had been perpetrated either by  
11 the Rwandese security forces or by certain  
12 sectors of the population. Did you hear  
13 that?

14 A. I don't know anything about that.

15 Q. That the killings had taken place not only  
16 in the combat zones during or after clashes  
17 but also in areas situated some distance  
18 from the hostilities. Did you hear that?

19 A. What year are you talking about, Counsel?

20 Q. 1993.

21 A. No, I don't know anything about that.

22 Q. Did you know that or hear that in those  
23 instances where the killings had taken place  
24 at remote places, I mean places remote from  
25 combat zones, that it had been shown time

1 and time again that government officials  
2 were involved either directly by  
3 encouraging, planning, directing or  
4 participating in the violence or indirectly  
5 through incompetency, negligence or  
6 deliberate inaction. Did you hear that?

7 A. Since I don't even know whether those  
8 massacres took place, I am not able to tell  
9 you what the authorities did or did not do.

10 Q. That some, as least or at some occasion,  
11 numbers as high as 348 persons were said to  
12 have been killed within 48 hours, especially  
13 shortly after the outbreak of hostilities in  
14 October 1990, did you hear that?

15 A. I don't know anything about that.

16 Q. Did you also hear that death threats and  
17 political assassinations had been used to  
18 intimidate or eliminate the regime's  
19 opponents? Regime, here means Habyarimana  
20 regime, of course, did you hear that?

21 MR. PRESIDENT:

22 Mr. Eboe-Osuji, Judge Dolenc would like to  
23 ask you something.

24 MR. EBOE-OSUJI:

25 Very well, Your Honour.

1 JUDGE DOLENC:

2 Prosecutor, when you say; "Also heard", on  
3 what do you refer to? You said that if the  
4 witness also heard. Where is the --

5 MR. EBOE-OSUJI:

6 The comparative, Your Honour, you mean?.

7 JUDGE DOLENC:

8 Yes.

9 MR. EBOE-OSUJI:

10 Your Honour I am putting propositions to the  
11 Defence, to the Defence witness, and we will  
12 be making submissions to you at the end of  
13 the day.

14  
15 Your Honours must not forget that when the  
16 Defence opened their case -- Your Honours,  
17 when they opened their case, they indicated  
18 squarely that they are going to turn their  
19 defence into more or less a Prosecution on  
20 their part, of the RPF.

21  
22 Now my mandate here -- my responsibility as  
23 a barrister does not include defending the  
24 RPF, but my obligation to you is to make  
25 sure that you get the whole picture. So if



1                   they now started talking about what anybody  
2                   did, particularly if they are doing so with  
3                   the intention of adding some context to the  
4                   guilt or innocence of Mr. Semanza, then we  
5                   will explore those propositions. Yes, when  
6                   I said also, I mean I have given him a  
7                   certain proposition before and subsequently  
8                   I gave him another one. So, I say also in  
9                   relation to the previous proposition I had  
10                  given the witness.

11       JUDGE DOLENC:

12                  But by now, today, all the answers were that  
13                  he didn't hear anything, what you propose to  
14                  him.

15       MR. EBOE-OSUJI:

16                  Your Honour, that is, in our view, a very  
17                  convenient position to take. The witness  
18                  had given you evidence clearly that he heard  
19                  this and that done by the RPF. He heard  
20                  massacres committed by the RPF. He said  
21                  that. So I want to point him to another  
22                  side of that picture that he is talking  
23                  about or perhaps as sourced, so to speak,  
24                  from other bodies apart from wherever he got  
25                  his own hearsay from. So, Your Honours, it

1 is not an excuse. We will not fold up  
2 because he says we have heard nothing about  
3 it. We will push on and put all these  
4 things to him because we will be making  
5 submissions about them.

6  
7 Your Honours, we do this, of course, mindful  
8 that after this, the Defence might decide  
9 not to pursue that line of defence any more  
10 but we want to be on record as having made  
11 our case to the extent that they have opened  
12 that line of defence at all.

13 MR. TAKU:

14 My Lord, we just want to correct one  
15 statement that was made, that in our opening  
16 statement we said we are going to make this  
17 a case, an indictment of the RPF. We  
18 clearly said that Semanza does not consider  
19 the RPF as his enemies nor does he consider  
20 the RPF, per se, his enemies, but that an  
21 individual whose name is Alexia Karanyangwe  
22 might have used his position as a privilege  
23 for the RPF to use the RPF to persecute  
24 Semanza. We didn't say that he was an enemy  
25 of the RPF in any way, whatsoever. So this

1                               should be corrected, My Lord.

2       MR. EBOE-OSUJI:

3                               Your Honours, if I may continue bearing in  
4                               mind what --

5       MR. PRESIDENT:

6                               You may continue.

7       MR. EBOE-OSUJI:

8                               Thank you, Your Honour.

9       BY MR. EBOE-OSUJI:

10      Q.                      So Witness.

11      MR. EBOE-OSUJI:

12                              Your Honours, I crave your indulgence. I  
13                              don't recall if the witness answered my last  
14                              question but if you say he did then I will  
15                              move on to another proposition.

16      BY MR. EBOE-OSUJI:

17      Q.                      Witness, can you answer my question, the one  
18                              I asked you before the Judge asked me the  
19                              question?

20      MR. PRESIDENT:

21                              No, he did not answer your question.

22      MR. EBOE-OSUJI:

23                              Thank you.

24      THE WITNESS:

25                              Prosecution Counsel, could you please repeat

1                               your question?

2       MR. EBOE-OSUJI:

3       Q.                    I was asking the witness whether he had  
4                               heard that in some instances up to at least  
5                               348 persons were said to have been killed  
6                               within 48 hours shortly after the out-break  
7                               of the war in October, 1990, whether the  
8                               witness heard that.

9       A.                    I don't know anything about that.

10      Q.                    What you have indicated is that you heard  
11                              that RPF also were guilty of some of the  
12                              massacres, that you have stated to the  
13                              Court. Is that correct?

14      A.                    I heard that since the RPF attacked the  
15                              country in 1990, they killed people.

16      Q.                    Actually that is part of the report that I  
17                              was talking about earlier, but we want to  
18                              get the whole picture. Now we continue.

19  
20                              Now, Witness, did you hear that death  
21                              threats -- actually that was the last  
22                              question. I looked back, further back. Did  
23                              you hear that death threats and political  
24                              assassinations were methods used up until  
25                              about the 11th of August, 1993? These

1 methods were used to intimidate or eliminate  
2 the Habyarimana regime's opponents, did you  
3 hear that?

4 A. I heard about that, and that was something  
5 that was verified.

6 Q. That such violations of right to life have  
7 sometimes been committed by government  
8 officials, you also heard about that?

9 A. I did not hear about that. However, it was  
10 thought that the perpetrator of the violence  
11 were RPF agencies, because most of the  
12 victims belonged to the MRND.

13 Q. Very well about the MRND. Did you hear that  
14 frequently these methods I have indicated  
15 earlier in my two questions above, that  
16 those methods could frequently be attributed  
17 to the militias of two political parties,  
18 the MRND and the CDR. Did you hear that?

19 A. I did not hear about that, but I am not  
20 saying that this could not have taken place.

21 Q. Very well. Did you hear that in addition to  
22 the militias of the MRND and CDR, that armed  
23 or clandestine armed groups, said to be  
24 close to the party in power, were also seen  
25 as perpetrating these sorts of violations?

1 Did you hear that?

2 MR. TAKU:

3 My Lord, one thing is, which was the party  
4 in power, because we, for our on part, we  
5 know that the opposition was in power, MDR.  
6 So, what the witness can clarify about the  
7 party in power because it was a multiparty  
8 period and the party in power was MDR?

9 MR. EBOE-OSUJI:

10 Your Honour, my friend could take up some of  
11 these things in his re-examination. He is  
12 quite able to do that, and let me continue.

13 BY MR. EBOE-OSUJI:

14 Q. Witness, as of August 1993, President  
15 Habyarimana was the President of the  
16 Republic, is that correct?

17 A. Yes.

18 Q. And his political party was the MRND. Is  
19 that correct?

20 A. Yes, from what I know.

21 Q. Now to make my learned friend happy we also  
22 know that Dismas Nsengiyaremye -- I believe  
23 Nsengiyaremye is spelt  
24 N-S-E-N-G-I-Y-A-R-E-M-Y-E -- he was the  
25 Prime Minister at the time, is that correct?

- 1       A.           I no longer remember that.
- 2       Q.           Fair enough. So let's not -- let me put  
3                    this to you, just so we are clear on the  
4                    record on this matter. Nsengiyaremye was a  
5                    member of the MDR, not MRND, that much you  
6                    will agree with; is that correct?
- 7       A.           I do not remember very well but that is  
8                    possible.
- 9       Q.           Let's continue. Now Witness, forget about  
10                   these political parties and who their  
11                   leaders were. Let's turn back to those  
12                   violations we have been discussing this  
13                   morning. Did you hear that members of the  
14                   Rwandan Armed Forces at the time were  
15                   reported to have carried out summary  
16                   executions. Did you hear that?
- 17      A.           Maybe that happen within the army but I was  
18                   not aware of that.
- 19      Q.           Did you -- just to jog your memory a bit,  
20                   did you hear that the victims of these  
21                   summary executions would have been known  
22                   combatant soldiers of the RPF or civilians  
23                   accused of being accomplices to the RPF; did  
24                   you hear that?
- 25      MR. TAKU:

1 May it please, Your Lordships, we have been  
2 sitting here this morning and allowing this  
3 line of questioning go on with the intention  
4 of letting the proceedings advance. We  
5 raised an objection about this question of  
6 the report since yesterday. Your Lordships  
7 overruled in part, but we want just to say,  
8 My Lord, that the witness has persistently  
9 said that he did not hear, he did not hear,  
10 and to come back to the same questions  
11 several times, My Lord, I don't know where  
12 we are moving to. So, I just want to say  
13 that if Your Lordships want the proceedings  
14 to move on, the witness has given his  
15 answers persistently about what he knows and  
16 what he heard and what he didn't hear. And  
17 he has consistently said he didn't hear  
18 about summary executions, and for my learned  
19 colleague to come back to summary executions  
20 when he said he didn't hear, My Lord, I  
21 think it's a waste of time and it is  
22 repeating the questions too many times.

23 MR. PRESIDENT:

24 Mr. Taku, the Prosecutor's questions are  
25 based on the report but these are concrete



1                   questions and the witness could hear or not  
2                   hear. Therefore, if the Prosecutor is  
3                   asking whether the witness heard about such  
4                   and such things I think this is a concrete  
5                   question and the witness is able to answer.  
6                   From this point of view I think your  
7                   objection is overruled.

8       MR. TAKU:

9                   About which report, My Lord? I would like  
10                  to know.

11  
12                  In any case, My Lord, it is the right of the  
13                  Defence, since this is our witness and since  
14                  we are part of these proceedings, to  
15                  reiterate objections we raised yesterday.  
16                  This report, My Lord, does not form part of  
17                  proceedings and in any case if the parties  
18                  were limited to refer to a witness  
19                  statement, only in case of contradiction,  
20                  what about a report which is not even part  
21                  of the proceedings, which the witness says,  
22                  he did not even know about its existence.  
23                  This is my concern, Your Lordships. You  
24                  said you could ask about -- yes, you said  
25                  that you could rule that -- you could ask

1                   about the conclusion but the existence of  
2                   this report, he just said he doesn't know  
3                   about its existence.

4       MR. EBOE-OSUJI:

5                   Your Honour, may I respond? First of all I  
6                   am putting concrete propositions to the  
7                   witness, concrete proposition. I have not,  
8                   in my questions, said; do you know or did  
9                   you know that the report of the special  
10                  rapporteur contains statements to the effect  
11                  that the FAR committed some executions? I  
12                  haven't done that. I am taking concrete  
13                  propositions and feeding them to the  
14                  witness. The witness has a right to say yes  
15                  or no to them. And then we keep going, Your  
16                  Honour, and we cannot have a situation where  
17                  a party calls a witness to come to court,  
18                  the witness has come, the Defence leads them  
19                  to say I have this, I have that, I have the  
20                  other thing, but then there's some other  
21                  evidence of exactly what that witness is  
22                  talking about that probably does not square  
23                  with what the witness said in the testimony  
24                  in chief, that he heard about the same  
25                  event, and then we cannot put these other

1 alternative view points to them. We cannot  
2 have that. But if Your Honours want to have  
3 it that way. I am entirely in your hands, of  
4 course, we can only -- the record would stay  
5 as it is.

6 MR. TAKU:

7 My Lord, the cross-examination on the  
8 testimony on oath and about this report is  
9 --

10 MR. PRESIDENT:

11 Mr. Taku, just a minute, I will give you the  
12 floor, but not now, a little bit later.

13 MR. TAKU:

14 Thank you, My Lord.

15 MR. PRESIDENT:

16 I give you the floor.

17 MR. TAKU:

18 Yes, My Lord. My Lord, we have taken the  
19 pen to count more than 133 times the number  
20 of times we were cut off on this line of  
21 questioning during the Prosecution's case.  
22 I asked my staff to count, and at the  
23 appropriate moment we will address Your  
24 Lordships on that.

25

1 Now this is exactly the same situation. The  
2 cross-examination is based on the viva voce  
3 evidence given before Your Lordships and the  
4 statement of the witness in case there's a  
5 contradiction. Yesterday, the question of  
6 the report was raised, and we raised  
7 objections. Your Lordships took the stand,  
8 and we were afraid, My Lord, that this will  
9 go on and on.

10

11 Now, today the principle question is asked,  
12 he says, I don't know about that. Then you  
13 ask subsidiary questions. That is the  
14 reason why Honourable Judge Dolenc asked and  
15 you also heard, that based on what? You  
16 heard that based on what? At the end of the  
17 day submissions were made that he heard  
18 this. So if the question is to be asked,  
19 ask an independent question not as giving  
20 the impression that it's a subsidiary  
21 question, whereas the main question and  
22 answer was; "No, I have not heard about it."

23 So, My Lord, the intention is this -- the  
24 entire objection, My Lord, is that the  
25 submissions at the end of the day somebody

1                   should not say that there was a report, a  
2                   report which Your Lordships have not seen,  
3                   which has never been tendered and in a back  
4                   door attempt this report, My Lord, is  
5                   brought to your attention in a manner which  
6                   is quite unorthodox. This witness does not  
7                   know the existence of that report. He has  
8                   not seen that rapporteur report, I mean the  
9                   report of 1990 and 1993.

10       MR. EBOE-OSUJI:

11                   Your Honour, briefly.

12       MR. PRESIDENT:

13                   Maybe it's enough with the discussion  
14                   because the position of the parties is  
15                   clear. On the point of view of the Chamber  
16                   is that you are right, the Prosecution  
17                   cannot mention the report, because the  
18                   witness doesn't know this report and, as you  
19                   said, this report is not before this  
20                   chamber, but the Prosecutor is able to ask  
21                   the question about the concrete facts and to  
22                   try to find out whether the witness heard  
23                   about these facts or he did not. This is  
24                   the situation. Therefore, I think this is  
25                   an opinion of the Chamber and we cannot

1 continue this discussion.

2 MR. TAKU:

3 As principle questions, as individual  
4 questions not to ask subsidiary questions to  
5 a suggestion, you have already clearly said  
6 that he did not know or hear.

7 MR. PRESIDENT:

8 Yes, and the witness is able to say that he  
9 heard about it or he did not hear about it.  
10 Therefore, you may proceed and I understand  
11 that you are close to the end of your  
12 cross-examination?

13 MR. EBOE-OSUJI:

14 Not quite, Your Honour, I am afraid. Not  
15 quite, because the history of this  
16 cross-examination did not start this  
17 morning, it started yesterday at 3 o'clock.  
18 So we have to continue and until we finish  
19 our cross-examination.

20 MR. PRESIDENT:

21 You may continue.

22 MR. EBOE-OSUJI:

23 Very well, sir.

24 BY MR. EBOE-OSUJI:

25 Q. So, Witness, my last question to you was

1                   whether you heard that the victims of  
2                   summary executions of the Rwandan Armed  
3                   Forces included non combatant RPF soldiers  
4                   and civilians suspected of being accomplices  
5                   of the RPF; did you hear that?

6       A.           I did not hear anything about that.

7       Q.           Did you hear that some of the victims of the  
8                   Rwandan Armed Forces were the sub-ethnic  
9                   minority of the Tutsi known as the Bagogwe,  
10                  B-A-G-O-G-W-E; did you hear that?

11      A.           I did not hear about that.

12      Q.           Let me jog your memory now. Did you hear  
13                   that soldiers of the Bagogwe camp in the  
14                   Mutura commune were said to have organised  
15                   fake attacks by rebels during the night of  
16                   the 4th of February, 1991, so that they  
17                   could then unleash indiscriminate and bloody  
18                   reprisal against those alleged to be  
19                   responsible; did you hear that?

20      THE INTERPRETER:

21                   Prosecution Counsel, could you kindly repeat  
22                   the question?

23      MR. EBOE-OSUJI:

24                   Your Honours, the interpreters want me to  
25                   repeat, and I will.

1 MR. PRESIDENT:

2 Very long and I think very complicated to  
3 follow.

4 MR. EBOE-OSUJI:

5 Your Honour, if I broke it down, the Defence  
6 will keep jumping up. So I want to give the  
7 witness a large chunk. The witness can say  
8 yes or no, I didn't hear that.

9  
10 So what I had just put on the record, what  
11 the interpreters want me to repeat, was  
12 whether the witness heard that soldiers of  
13 the Bagogwe camp in Mutura commune were said  
14 to have organised fake attacks by rebels  
15 during the night of the 4th of February,  
16 1991, so that they could then unleash  
17 indiscriminate and bloody reprisals against  
18 those alleged to be responsible, did the  
19 witness hear that?

20 MR. TAKU:

21 My Lord, we want the record to reflect that  
22 the Prosecutor is reading from the reports  
23 on which Your Lordships have already ruled.

24 MR. PRESIDENT:

25 Mr. Taku, I don't know what the Prosecutor



1 is reading. The question may be very  
2 complicated. It may be, it could be divided  
3 in two or three, I don't know. This is the  
4 only problem, but what he is reading I don't  
5 know.

6 MR. EBOE-OSUJI:

7 Very well, Your Honour.

8 MR. PRESIDENT:

9 I Think it's important that he is trying to  
10 ask the concrete cases (sic) whether the  
11 witness could or not. Therefore, let's  
12 continue and not to complicate the  
13 proceedings.

14 BY MR. EBOE-OSUJI:

15 Q. Witness, did you understand the proposition  
16 I put to you? Did you understand the  
17 meaning of it? Whether or not you can  
18 answer it yes or no is a different matter.  
19 Did you understand my question?

20 A. I did not hear anything about that.

21 Q. Very well. Did you also hear that elements  
22 of the Rwandan Armed Forces were accused of  
23 inciting the population to commit murders  
24 and giving logistical support to the  
25 killers; did you hear that?



1       A.               I don't know anything about that.

2       Q.               Thank you. Did you hear that at Bugesera --  
3                        Bugesera in March 1992, members of the  
4                        Rwandan Armed Forces disarmed the Tutsis so  
5                        that they would be unable to defend  
6                        themselves against their attackers. Did you  
7                        hear that?

8       A.               I don't know anything about that.

9       Q.               Did you also hear that local government  
10                       officials, such as préfets, sous préfets  
11                       bourgmestre or mayors, councillors and  
12                       sector leaders, or cell leaders were also  
13                       implicated in these atrocities; did you hear  
14                       that?

15      MR. PRESIDENT:

16                       Mr. Eboe-Osuji, Judge Williams would like to  
17                       ask you something.

18      MR. EBOE-OSUJI:

19                       Very well, Your Honour.

20      JUDGE WILLIAM:

21                       Mr. Eboe-Osuji, the questions are extremely  
22                       lengthy, and I am not sure what period these  
23                       questions are referring to, but one doesn't  
24                       have to beat the plowshare into the ground.

25

1           You have raised some issues, he has said he  
2           doesn't know about it, granted he gave his  
3           evidence in chief. He raised a lot of  
4           issues which he heard about, but you know,  
5           there comes a time when you have to draw a  
6           line. You can't just go on and on adding on  
7           items.

8       MR. EBOE-OSUJI:

9           Your Honour, I am very very deferential to  
10          your observation, specifically on the last  
11          point of whether to beat the plowshare into  
12          the ground. I take that. The difficulty I  
13          have with that sentiment is that is this  
14          then going to be the last time we are going  
15          to hear from the Defence the sort of  
16          material they will let this witness testify  
17          to in direct evidence in his  
18          evidence-in-chief? If not, would the  
19          Defence then be in a position to make  
20          submissions in relation to those elements  
21          that I am now attacking, that this witness  
22          has testified to? It is either they are  
23          going to do that, Your Honour, we should be  
24          in a position to put all our case on the  
25          record on it. Again, our concern is that

1 witnesses come here and they state  
2 conveniently that they heard something about  
3 a certain event and then nobody gets to talk  
4 about other things other people might or  
5 they might have heard about the same events;  
6 that's the concern. And in relation to the  
7 time period, Your Honour, this whole theme  
8 of this line of cross-examination was  
9 established yesterday when we were talking  
10 about the period when this witness talked  
11 about massacres committed by the RPF, that  
12 is between 1990, after the attack of 1990,  
13 up until the time of the President's plane  
14 crash and even beyond that, that's the  
15 period.

16 JUDGE WILLIAMS:

17 Yes, I agree that you are entitled to put  
18 your, case because if you don't put your  
19 case then at the end of the day you can't  
20 raise issues that you did not put. The  
21 point I am trying to make is that you need  
22 to be probably a little bit more selective  
23 and concentrate on the more germane rather  
24 than just throw everything into the pot.

25

1 MR. EBOE-OSUJI:

2 Very well, Your Honour. I heard that.

3 JUDGE WILLIAMS:

4 Very well.

5 MR. TAKU:

6 My Lord, the Defence would like to react to  
7 something. In the first place, the point of  
8 view of Honourable Judge Williams was not a  
9 sentiment, it was an opinion from the Bench.  
10 We would like to make that clear.

11  
12 The second point, My Lord, is that the  
13 Prosecution does not have the right to  
14 comment on the quality of the evidence we  
15 led yesterday. He has an opportunity to  
16 cross-examine and let him go ahead with  
17 cross-examination, but not to say in  
18 reaction to what Judge Williams said, to say  
19 that I wonder whether the Defence would be  
20 allowed to continue to lead the type of  
21 evidence led yesterday, that is not  
22 appropriate at this point in time, My Lord.

23 MR. EBOE-OSUJI:

24 Your Honours, that means I can then go ahead  
25 and do my thing.

1 MR. PRESIDENT:

2 You may proceed because it's 1015 and I  
3 think we have to move on.

4 MR. EBOE-OSUJI:

5 Very well, sir.

6 BY MR. EBOE-OSUJI:

7 Q. Now witness --

8 MR. EBOE-OSUJI:

9 Your Honours, now, I had finished discussing  
10 the role of the Rwandan Armed Forces, I had  
11 just moved into the role of local government  
12 officials, and, Your Honours, this is quite  
13 a different area and is quite a significant  
14 area, too; whether the préfets, sous préfets  
15 bourgmestres, councillors and cell leaders  
16 were also part of these massacres that the  
17 witness attributed to the RPF. With the  
18 Court's indulgence I seek to proceed along  
19 those lines.

20 MR. PRESIDENT:

21 You may proceed. What are your questions?

22 MR. EBOE-OSUJI:

23 Thank you.

24 BY MR. EBOE-OSUJI:

25 Q. Witness, I had asked you whether you heard

1                   that these local government officials I have  
2                   mentioned were also implicated in these  
3                   human right violations you and I have been  
4                   discussing this morning?  
5       A.           I don't know anything about that.  
6       Q.           Did you hear, just to jog your memory, that  
7                   these local government officials or some of  
8                   them encouraged the killings of civilians  
9                   during that period? Did you hear that?  
10      A.           I did not hear anything.  
11      Q.           Did you hear that they planned it?  
12      A.           No, I did not hear anything.  
13      Q.           That they directed it?  
14      A.           No, I did not hear anything.  
15      Q.           That in some instances they actually  
16                   participated in the massacres, did you hear  
17                   that?  
18      A.           No, I did not hear anything.  
19      MR. EBOE-OSUJI:  
20                   Your Honours, I would have liked to continue  
21                   but in reference to the Court's sentiments  
22                   on the matter I will move on to something  
23                   else.  
24      BY MR. EBOE-OSUJI:  
25      Q.           Did you hear that --



1 MR. TAKU:

2 My Lord, we suggest the word; "sentiment" to  
3 be struck off from the record. "The Court's  
4 opinion from the Bench, not sentiments", My  
5 Lord.

6 MR. EBOE-OSUJI:

7 Your Honour, there's something called  
8 pladarotic (phonetic) interventions and I  
9 believe that Mr. Taku is doing that very  
10 much. And what I mean by that is  
11 objections or interventions that are  
12 fanciful, distractive, unhelpful,  
13 obstructive, and time consuming. That hasn't  
14 been happening here. If I use a word, I am  
15 entitled to it. He can make his submissions  
16 to it. It's not for him to tell me how to  
17 use the word to describe what the Chamber  
18 has said. It is for the Chamber to say no,  
19 that's not an appropriate way to address us.

20

21 Can I continue sir?

22 MR. PRESIDENT:

23 You may continue.

24 MR. EBOE-OSUJI:

25 Thank you, sir.

1 MR. PRESIDENT:

2 You may continue. My impression is that  
3 Mr. Eboe-Osuji is trying to complete his  
4 cross-examination as soon as possible.  
5 Therefore, maybe it will be better not to  
6 interrupt him and to reach such a result  
7 that this cross-examination is over.

8 MR. TAKU:

9 Thank you, My Lords. We learn from the  
10 language and we use the appropriate  
11 language, because if Your Lordships say that  
12 language is correct to refer to the opinion  
13 from the Bench then we will take from the  
14 language, My Lord, and I hope that we will  
15 not be admonished because ten sanctions --  
16 ten sanctions for doing the right thing, My  
17 Lord, it's a bit too much.

18 MR. PRESIDENT:

19 This is the language of the Prosecutor and  
20 at this stage the Chamber is not prepared to  
21 judge whether it's proper language or not  
22 proper language.

23 BY MR. EBOE-OSUJI:

24 Q. Now, Witness, did you hear that the  
25 government of Rwanda of the day, through the

1 President, Major General Juvenal  
2 Habyarimana, and the Prime Minister,  
3 Mr. Dismas Nsengiyaremye, did react to some  
4 of the propositions I have put to you this  
5 morning; did you hear that?

6 A. No, I did not hear anything.

7 Q. Let me jog your memory a bit. Did you hear  
8 that they had taken the position or stated  
9 the position that this war situation, that  
10 is the 1990, the war started by the RPF in  
11 1990, had re-awakened the old demons of  
12 antagonism between the Hutu and Tutsi ethnic  
13 groups? Did you hear that?

14 A. No, I did not hear anything.

15 Q. Did you know that they acknowledged that  
16 there were massacres, and massacres and  
17 various kinds of attacks against people and  
18 property had resulted in several regions, as  
19 a result of that war; did you hear that?

20 A. I did not hear anything about that.

21 Q. Did you hear that they acknowledged and  
22 regretted those human rights violations that  
23 had happened in their country, those that I  
24 have indicated to you this morning; did you  
25 hear that?

- 1       A.           I didn't know anything about that.
- 2       Q.           Did you hear that while acknowledging  
3                   responsibility they said that the  
4                   responsibility of the Rwandese government  
5                   lies in the failure of certain authorities  
6                   properly to ensure the security of  
7                   individuals and their property; did you hear  
8                   that?
- 9       A.           No, I did not hear anything.
- 10      Q.           And they pledged themselves to take  
11                   appropriate measures against all authorities  
12                   who had failed in their duty to ensure  
13                   public security; did you hear that?
- 14      A.           The question is not clear, Counsel.
- 15      Q.           Did you hear that the government pledged  
16                   themselves to take appropriate measures  
17                   against all local government authorities who  
18                   had failed in their duty to ensure public  
19                   security; did you hear that?
- 20      A.           I did not hear anything about that.
- 21      Q.           Did you hear specifically that the  
22                   government had taken the position that,  
23                   concerning the human rights violations by  
24                   the Rwandan Armed Forces, it may have been  
25                   acknowledged that there must have been some

1                   unfortunate excesses on the part of certain  
2                   undisciplined soldiers which have resulted  
3                   in ill-treatment of a civilian population;  
4                   did you hear that?

5       MR. PRESIDENT:

6                   Too long, Mr. Eboe-Osuji.

7       MR. EBOE-OSUJI:

8                   Your Honour, I am trying to --

9       MR. PRESIDENT:

10                  It's not so easy to understand.

11       MR. EBOE-OSUJI:

12                  All right. Let me break it down, Your  
13                  Honour.

14       MR. PRESIDENT:

15                  Yes.

16       MR. EBOE-OSUJI:

17                  We want to move on, obviously.

18       MR. PRESIDENT:

19                  Leave it to me. Judge Williams said a very  
20                  very good thing, to be selective. You know,  
21                  just in your questions to be selective.

22       MR. EBOE-OSUJI:

23                  Your Honour, this is very selective.

24       MR. TAKU:

25                  My Lord, this is my witness. It is my

1 witness, and I have a right to react. My  
2 Lords, we have said and I will continue to  
3 say that this is a mere reading of the  
4 reports.

5  
6 We would like, Your Lordships, to say that  
7 you are not aware of that. If that's the  
8 position, then he may continue but we want  
9 to say that he is merely reading from the  
10 report and Your Lordships have already said  
11 it's not before Your Lordships. You already  
12 ruled on it.

13 MR. PRESIDENT:

14 Mr. Taku, I can only repeat what I said  
15 before. I don't know whether Mr. Eboe-Osuji  
16 is reading something or not. The only thing  
17 I see is that there are concrete questions,  
18 and my point of view and I will try to draw  
19 the attention of Mr. Eboe-Osuji that  
20 sometimes the question is so long it is not  
21 so easy to understand the meaning of these  
22 questions.

23 MR. TAKU:

24 My Lord, we think our intervention, which is  
25 a right of the Defence, should not be

1 received with sadness. At least the same  
2 reaction when the Prosecutor is speaking,  
3 the same reaction should be extended to us.  
4 But we have a right, My Lord, in these  
5 proceedings to protect the rights of the  
6 Accused. If we raise an issue, My Lord, we  
7 raise it in good faith. We raise it, My  
8 Lord, because we know the powers entrusted  
9 to Your Lordships by the rules and  
10 regulations to make sure that these  
11 proceedings are carried out in a fair  
12 manner.

13

14 Your Lordships have complained about the  
15 same method of asking questions more than  
16 seven times, and the same attitude, My Lord,  
17 is continuing. Complex questions with  
18 imprecise questions and Your Lordships have  
19 not even given any sign to admonish but if  
20 it were the Defence My Lord, in these  
21 circumstances we cannot count the number of  
22 admonitions and the number of sanctions. We  
23 just want this to be on the record, My Lord.

24 MR. PRESIDENT:

25 Your point of view will be reflected in the

1 record.

2 MR. EBOE-OSUJI:

3 Your Honour, let me break down the last  
4 question.

5 BY MR. EBOE-OSUJI:

6 Q. Witness, did you hear that the government of  
7 the day acknowledged that some members of  
8 the Rwandan Armed Forces whom they  
9 characterised as undisciplined soldiers had  
10 indeed committed excesses as the government  
11 put it, did you hear that?

12 A. No, I didn't hear that.

13 Q. And that these excesses involved or resulted  
14 in the, as the government put it,  
15 ill-treatment of civilians. Did you hear  
16 that?

17 A. No, I didn't hear anything.

18 Q. Very well. Now you -- I just want to round  
19 up, and now I ask you this pointed question,  
20 since yesterday, since yesterday, we know a  
21 number of hours have elapsed since we  
22 stopped and now have you now remembered  
23 whether there was a report called "A Report  
24 of the Special Rapporteur on Ex-Judicial  
25 Summary or Arbitrary, Executions issued on



1 11th of August 1993", have you remembered  
2 whether there was any such report since  
3 between yesterday and today?  
4 A. No, I didn't hear anything.  
5 Q. Moving on now. Did you -- talking  
6 now about another body, are you aware that  
7 in 1993 there was an international  
8 commission of inquiry on violations of human  
9 rights in Rwanda since October 1st, 1990,  
10 that carried out investigations in Rwanda,  
11 do you know that?  
12 A. No, I don't know anything about that.  
13 JUDGE WILLIAMS:  
14 Mr. Eboe-Osuji, you need to move on. You  
15 can't just keep going on and on and on with  
16 all these things. You need to move on,  
17 please.  
18 MR. EBOE-OSUJI:  
19 Your Honour, I am moving on. I am indeed  
20 moving on. If Your Honours can be more  
21 concrete I would, of course, defer to you.  
22 I want to put a series of reports.  
23 JUDGE WILLIAMS:  
24 What's the point of all these reports?  
25 MR. EBOE-OSUJI:

1           Your Honours, the point of all these reports  
2           is, if anything, at the end of the day, if  
3           anybody is going to make submissions to the  
4           court the reason why Mr. Semanza should not  
5           be held guilty was because he is being  
6           blamed for atrocities committed by the RPF,  
7           and the RPF committed atrocities in Rwanda  
8           from one time to another time if anybody is  
9           going to make any submissions to come close  
10          to that position, we should be in a position  
11          to tell Your Honours, there are some  
12          independent reports on this matter and it is  
13          up to you to consider or reject them. If we  
14          are going to hear people say, Witness  
15          this -- remove Witness SDN1, he talked about  
16          massacres committed by the RPF and all that,  
17          Your Honours should be able to know that.  
18          Your Honours are also -- and this is central  
19          to the case since my friends opened. We  
20          should also be able to encompass the  
21          proposition whether what happened in April,  
22          1994, what happened in April, 1994, was the  
23          final act of a pattern of conduct the  
24          witness had in that country before that  
25          date.

1 JUDGE WILLIAMS:

2 Mr. Eboe-Osuji, reports that only help us  
3 are reports that are either in evidence, are  
4 the reports that are considered as matters  
5 for judicial notice; otherwise they don't  
6 help us.

7 MR. EBOE-OSUJI:

8 Your Honours, that is exactly on point. In  
9 the court's decision of the 4th of November,  
10 2000, the decision on the Prosecutor's  
11 motion for Judicial notice and presumption  
12 of facts, pursuant to Rules 94 and 54, Your  
13 Honours took judicial notice of certain  
14 propositions and judicial notice of certain  
15 documents. One of those documents; annex  
16 (b) to that decision, is to the United  
17 Nations Commission on Human Rights in Rwanda  
18 1993 to 1996.

19 JUDGE WILLIAMS:

20 Yes.

21 MR. EBOE-OSUJI:

22 That is this document.

23 JUDGE WILLIAMS:

24 Then you didn't have to take this witness  
25 through it. You don't have to take this

1 witness through anything that comes in that.

2 EBOE-OSUJI:

3 That's the position, Your Honour, I am  
4 willing to withdraw.

5 JUDGE WILLIAM:

6 Yes, so it's not necessary.

7 MR. EBOE-OSUJI:

8 Thank you, My Lord.

9 JUDGE WILLIAMS:

10 If we say we take judicial notice of a  
11 document, you don't have to take this  
12 witness through any document of that nature.

13 MR. TAKU:

14 My Lord, we want to react to this, My Lord,  
15 the Defence would like to state  
16 categorically, My Lord.

17 MR. EBOE-OSUJI:

18 Before the Defence -- I am not obstructing  
19 the Defence.

20 MR. TAKU:

21 My Lord, I would like to react to this, my  
22 colleague can't get off with it because he  
23 is referring to your previous rulings. My  
24 colleague has again forgotten that in March  
25 2001 Your Lordship issued another ruling

1                   that he had to prove the genocides and other  
2                   offences because after that report he filed  
3                   a motion to the extent that Your Lordships  
4                   should be able to modify the report -- the  
5                   ruling and that it should take judicial  
6                   notice, under Article 94bis, and Your  
7                   Lordships declined for several reasons.  
8                   That was the issue of March 2001.

9  
10                  Now, My Lord, it is a bit embarrassing that  
11                  my colleague wants to open this debate here  
12                  today. What we want to state -- My Lord, is  
13                  that after -- that Your Lordships know  
14                  exactly what we went through about the case  
15                  of  
16                  Rene Degni-Sègui. We don't want to bring  
17                  this argument now because that argument will  
18                  be protracted and it will take weeks and  
19                  it's an issue on which we will address the  
20                  court on. The reason why they had to bring  
21                  Rene Degni-Sègui here, My Lord, was as a  
22                  result of your ruling of March 2001.

23  
24                  Now, My Lord, with regard to what Judge  
25                  Williams has just said, My Lord, it is the

1 jurisprudence of Your Lordships that the  
2 witness is cross-examined or gives his  
3 evidence on oath and to some extent on the  
4 statements recorded by the investigators.

5  
6 This Witness, My Lord, has at no time  
7 testified as to any report. I did raise  
8 objections yesterday and today about the  
9 question of reports. My colleague has just  
10 gotten up and confirmed that the reason why  
11 he was pushing this line of  
12 cross-examination is because of certain  
13 reports, and we will continue to object, My  
14 Lord, that these reports are not in  
15 evidence.

16  
17 Your Lordships cannot take judicial notice  
18 to these reports at this point in time  
19 because Rene Degni-Sègui was mentioned.  
20 There was a special proceeding that was  
21 on Rene Degni-Sègui. Rene Degni-Sègui did  
22 not testify and in any case, My Lord, we  
23 have been able to analyze the report of  
24 Rene Degni-Sègui, the four reports which  
25 were tendered here. There's a reason why,

1 My Lordships, he is not asking questions  
2 based on those four reports. There's a  
3 clear reason why he is not, My Lord. He is  
4 raising issues on a report which he didn't  
5 put in at that point in time. He had the  
6 opportunity of putting in this report among  
7 this report. There's a reason why he is  
8 not, My Lord, and we would not want to  
9 address Your Lordship on that matter because  
10 it will delay the proceeding but we object  
11 vehemently to any attempt to make  
12 submissions on a ruling of November 2000 and  
13 the ruling of March 2001.

14  
15 My Lord, we will have the opportunity to  
16 address Your Lordships, at the appropriate  
17 time, but for my colleague, My Lord, in the  
18 presence of the witness. In the presence of  
19 the witness who testified, viva voce on oath  
20 and on facts, not on any expert evidence,  
21 for him not to make this submission, My  
22 Lord, is very very prejudicial with the  
23 Defence and I will object very strongly, My  
24 Lord, because, with regard to Rene  
25 Degni-Sègui, we will make the appropriate

1                               submissions when the time comes.

2

3                               Secondly, My Lord, it is likely going to  
4                               prejudice -- My Lord, this again has an  
5                               impact on the experts, our application for  
6                               six experts.

7       MR. PRESIDENT:

8                               Mr. Taku.

9       MR. TAKU:

10                              Yes, My Lord.

11       MR. PRESIDENT:

12                              Your point of view will be reflected in the  
13                              record.

14       MR. TAKU:

15                              Most obliged, My Lord.

16       MR. PRESIDENT:

17                              Mr. Eboe-Osuji, you are with this Witness  
18                              more than three hours.

19       MR. EBOE-OSUJI:

20                              Your Honour, it's not all my fault, I refuse  
21                              with due respect to be called. I refuse to  
22                              take responsibility for the length of this  
23                              examination-in-chief. In fact it was  
24                              cross-examination, Your Honour. I refuse to  
25                              do that with due respect.



1 MR. PRESIDENT:

2 But two parties, I am not talking only about  
3 you but two parties must not forget that  
4 before us there's an indictment and there  
5 are the concrete charges against Semanza,  
6 and when we are spending a lot of time on  
7 the issues which could be considered as  
8 relevant, I don't deny it, but at the same  
9 time, whether it is justified to spend so  
10 much time to the issues which don't lead us  
11 to the conclusion about the involvement and  
12 not involvement of our accused. Let's --  
13 you know, just -- Defence also has to take  
14 into account because I did not want to  
15 interfere but your examination-in-chief also  
16 you have to take it into account.

17  
18 Therefore, I understand your intention. I  
19 understand your strategy because you are  
20 trying to answer on the examination-in-chief  
21 etc etc. But at the same time we have to be  
22 realistic and we have to understand that for  
23 the Chamber it's important to understand the  
24 involvement or noninvolvement of our Accused  
25 to the tragedy events in '94. And when you

1                   see we are spending a lot of time on such  
2                   issues, I doubt that it's justified, taking  
3                   into account that it's not a reasonable  
4                   approach and I am not sure that in this case  
5                   we take into account the provision of our  
6                   rules to avoid needless consumption of time.

7  
8                   Therefore, this is your right to continue  
9                   and to complete your cross-examination but  
10                  at the same time I would like not only you  
11                  but also the Defence to take it into  
12                  account.

13       MR. TAKU:

14                  My Lord, we now want to make a commitment  
15                  before Your Lordships. We have been very  
16                  conscious of the indictment in our motions  
17                  in our presentation. We have been very very  
18                  conscious even in cases in which our motions  
19                  have been dismissed, we have limited that to  
20                  the indictment, but if Your Lordships find  
21                  that we are trying to pry into an area which  
22                  is not relevant, you have the right to stop  
23                  us and we will defer to your wisdom.

24       MR. PRESIDENT:

25                  Thank you.

1  
2 And you may continue but at the same time I  
3 would like to ask you to take into account  
4 the position of the Chamber.

5 MR. EBOE-OSUJI:  
6 Your Honour, frankly I would tell the Court  
7 this --

8 MR. PRESIDENT:  
9 Just a moment, Mr. Eboe-Osuji.

10  
11 And it's necessary for me to add that this  
12 is the opinion of the majority of the  
13 Chamber that you may continue because Judge  
14 Dolenc asked me to emphasise that he cannot  
15 approve all your questions which have been  
16 raised before this Accused because it only  
17 delays the proceedings.

18 MR. EBOE-OSUJI:  
19 Very well Your Honour, if I take it --

20 MR. PRESIDENT:  
21 Did I express Your point of view correctly?  
22 Or you would like to correct me?

23 MR. EBOE-OSUJI:  
24 If His Honour, Judge Dolenc, cites any  
25 questions directly to me, I will be happy to



1 take those questions from his --

2 MR. PRESIDENT:

3 No, no, from the point of view of Judge  
4 Dolenc, all your questions which have been  
5 raised before to this witness are not  
6 relevant.

7 MR. EBOE-OSUJI:

8 All of my questions relating to this witness  
9 or relating to the events --

10 MR. PRESIDENT:

11 Relating to the report.

12 MR. EBOE-OSUJI:

13 Okay, I see.

14 MR. PRESIDENT:

15 Judge Dolenc could tell you, himself --

16 MR. EBOE-OSUJI:

17 Exactly.

18 MR. PRESIDENT:

19 -- what is his point of view.

20 MR. EBOE-OSUJI:

21 Very well.

22 JUDGE DOLENC:

23 On my opinion all these questions which  
24 derive from the report, special rapporteur,  
25 shouldn't be allowed, shouldn't be

1                   permitted, because they don't have direct  
2                   link with the testimony of the witness in  
3                   examination-in-chief and Prosecution didn't  
4                   show that these questions and answers on  
5                   these questions could have any link to the  
6                   credibility of the witness.

7       MR. EBOE-OSUJI:

8                   I think, Your Honour, it is just a minor  
9                   point. These are not --

10      MR. PRESIDENT:

11                  No, no, no.

12      MR. EBOE-OSUJI:

13                  I just thought there's a point of  
14                  correction, sir. He has not dispatched the  
15                  report of Rene Degni Sègui. This is a  
16                  special rapporteur of the United Nations  
17                  Commission on Human Rights. It's different  
18                  from Rene Degni Sègui matters but if I may  
19                  ask His Honour to the extent that the  
20                  witness just talked about RPF being  
21                  responsible for the massacres that happened  
22                  between 1990 and 1993, is Your Honour saying  
23                  that we are not -- that these lines of  
24                  questions that may be arguably seen as  
25                  confronting that viewpoint are still not

1                   raised by the witness? I just wish to know  
2                   since it might affect how we do our case in  
3                   future.

4       MR. PRESIDENT:

5                   Mr. Eboe-Osuji, the Chamber is of the  
6                   opinion that you may --

7       MR. EBOE-OSUJI:

8                   Oh, very well.

9       MR. PRESIDENT:

10                  -- Complete your cross-examination but at  
11                  the same time I would like to ask you to  
12                  take into account the position of the  
13                  Chamber and the point of your objection.

14       MR. EBOE-OSUJI:

15                  Very well, Your Honour.

16       BY MR. EBOE-OSUJI:

17       Q.           Now Witness, we know you said that you  
18                    heard, although you did not witness it, but  
19                    you heard that RPF were responsible for the  
20                    massacres of Hutus that happened between  
21                    19-- or before the President's plane went  
22                    down, you said that. May I suggest to you  
23                    that all that stuff that you heard or at  
24                    least most of it would have been as a result  
25                    of a mischievous propaganda mounted by some

- 1 agencies of Hutu extremism in Rwanda at the  
2 time you heard those things; do you agree?
- 3 A. I could consider all that as I considered  
4 everything that you said or everything that  
5 was said to me.
- 6 Q. My question to you is, did you consider that  
7 those things you heard about the RPF killing  
8 Hutus were propaganda by some agencies of  
9 Hutu extremism? I need you to say yes or no  
10 to the question, Witness. You can say no, I  
11 don't agree with you or yes I agree with  
12 you. Can you do that?
- 13 A. I cannot confirm if it was propaganda or  
14 not.
- 15 Q. And if these were propaganda they were meant  
16 to mentally condition all Hutus, as you said  
17 in your statement, into feeling threatened  
18 against Tutsis; do you agree?
- 19 A. I don't know anything about that, that is  
20 your analysis.
- 21 Q. They were designed to make them adopt what  
22 you described as self-defence strategies in  
23 anticipation of similar attacks; do you  
24 agree?
- 25 A. That is the extension of your analysis and I



- 1 have no comment on it.
- 2 Q. Very well, and they were designed to make
- 3 all Hutus, and you have testified before
- 4 that all Hutus felt threatened and targeted,
- 5 that these propagandas were designed to make
- 6 all Hutus feel targeted by the "RPF."
- 7 A. I don't know anything about all that.
- 8 Q. With the result that, at the time,
- 9 appropriate time or when the occasion arose,
- 10 Hutus may kill Tutsis; do you agree?
- 11 A. I don't know anything about all that.
- 12 Q. Very well.
- 13 MR. EBOE-OSUJI:
- 14 Your Honour, I see your microphone is on.
- 15 MR. PRESIDENT:
- 16 Yes, I understand that -- first of all this
- 17 question is not appropriate, Mr. Eboe-Osuji,
- 18 and the second question is, what is the
- 19 situation?
- 20 MR. EBOE-OSUJI:
- 21 Your Honour, I don't understand why the
- 22 questions are not appropriate. Your
- 23 Honours, one thing you know, you have always
- 24 gotten from the Prosecution and Defence
- 25 whenever you feel minded to make any ruling

1 in any way we abide by them. We do not  
2 argue with you. If you overrule me and say,  
3 Mr. Eboe-Osuji explain to me where you are  
4 going and after such explanation you are not  
5 satisfied you say no, do not continue with  
6 that line of cross-examination, I will stop  
7 it, but I feel that I have to pursue --

8 MR. PRESIDENT:

9 Mr. Eboe-Osuji, but you could have stopped a  
10 long time ago because you know yourself that  
11 on all your questions the answer will be the  
12 same. "I don't know, I did not hear."  
13 These are the answers to all your questions.

14 MR. EBOE-OSUJI:

15 Your Honour, there's something in my  
16 jurisdiction called, "rule in brown undone."  
17 I have said this before. What this rule  
18 means is, if you are going to make an issue  
19 out of what the witness has said --

20 MR. PRESIDENT:

21 Mr. Eboe-Osuji.

22 MR. EBOE-OSUJI:

23 Your Honour, may I finish for the record?.

24 MR. PRESIDENT:

25 Yes.

1 MR. EBOE-OSUJI:

2 If you are going to make an issue either in  
3 your case in rebuttal or in your submissions  
4 at the end of the day about what a witness  
5 said in court, you are required to stand and  
6 put those propositions to the witness. I  
7 have authority for that proposition. Now it  
8 is a rule of fairness if the witness has  
9 testified about something that we feel  
10 should warrant us to make submissions at the  
11 end of the day on his testimony or to call  
12 rebuttal evidence we should put these things  
13 to him. He may well say, no, I don't agree  
14 with you, that is fair. He can say that you  
15 don't have to agree with my propositions but  
16 I have to put it to him.

17 MR. PRESIDENT:

18 Mr. Eboe-Osuji.

19 MR EBOE-OSUJI:

20 Your Honour.

21 MR. PRESIDENT:

22 I am not inclined to deny you authority or  
23 your right but there are limits. I told  
24 you, taking into account the position of the  
25 Chamber, the position of Judge Dolenc, and

1                   you continue like that, where are the  
2                   limits? The only, you know, request, on  
3                   your request, to try to put an end to such a  
4                   number of questions which are not justified.

5       MR. EBOE-OSUJI:

6                   Your Honour, these are different things now.  
7                   Your Honours, have expressed your opinion on  
8                   whether or not I should continue to ask  
9                   questions about reports. I have abandoned  
10                  that line now, and I am now going to the  
11                  question of witness saying, I heard  
12                  something and I am asking if the witness  
13                  testified in chief that he heard something.  
14                  I think I am entitled to say that you heard  
15                  what you heard as a result of propaganda.  
16                  Is that not a fair proposition to take? And  
17                  this is exactly what I am doing. It is not,  
18                  still digging into the details of the  
19                  report.

20       MR. PRESIDENT:

21                  There's no question now about the report.  
22                  The question is that the witness mentioned  
23                  before, about some measures which have been  
24                  taken by Hutus who were frightened to  
25                  protect their -- to reinforce their gates or

1 something like that, but nothing you said  
2 about the extermination of Tutsi as a part  
3 of this strategy, so defence strategy or  
4 something like that. From this point of  
5 view, I am not sure that it will be proper  
6 to continue this line of questions and to  
7 come back to this topic.

8 MR. EBOE-OSUJI:

9 Your Honour, again you can rule for me to do  
10 a certain thing and not to do a certain  
11 thing and I will abide by your ruling but --

12 JUDGE WILLIAMS:

13 Mr. Eboe-Osuji: It's the opinion aspect of  
14 the question. The enlisting opinions and he  
15 is not an expert witness. You are trying to  
16 avoid questions that are intended to enlist  
17 opinions. That's the aspect. That is, that  
18 part of the aspect is not appropriate.

19 MR. EBOE-OSUJI:

20 I see what Your Honour has said, yes, very  
21 well. But I can quote out to the witness  
22 what he knows and he can tell me whether or  
23 not he knows something.

24 JUDGE WILLIAMS:

25 You can quote out something whether he heard

1 something because he said a lot of things  
2 that he heard when he gave evidence in  
3 chief. So you appropriately can ask him  
4 whether he heard something to the contrary.

5 MR. EBOE-OSUJI:

6 Very well.

7 JUDGE WILLIAMS:

8 Nothing wrong with that.

9 MR. EBOE-OSUJI:

10 Thank you.

11 BY MR. EBOE-OSUJI:

12 Q. Witness, do you know or have you heard as  
13 you have heard things or the idea of  
14 allegation in the mirror.

15 THE INTERPRETER:

16 Counsel, can you repeat the question?

17 MR. EBOE-OSUJI:

18 My question is, are you aware of a notion  
19 called; "allegation in the mirror." If you  
20 want me to explain I will explain so that  
21 it's clear to you. That is a practice where  
22 someone may blame the adversary for  
23 something they did themselves in order to  
24 make the adversary look bad. Have you ever  
25 heard of such a notion? But specifically as

1 something that was practiced in Rwanda  
2 before the death of the President.  
3 A. No, I don't know about that.  
4 Q. Now, do you know whether those things you  
5 heard -- do you know whether those things  
6 you heard as having been done by the RPF  
7 were, in fact, things that were done by  
8 agencies of Hutu extremism in Rwanda; do you  
9 know that?  
10 A. No, I don't know about that.  
11 MR. PRESIDENT:  
12 Mr. Eboe-Osuji. It is time for a break for  
13 15 minutes.  
14 MR. EBOE-OSUJI:  
15 Your Honour, I hope to be done in 15  
16 minutes.  
17 MR. PRESIDENT:  
18 What is your idea, to let you finish and  
19 after that to have a break or to have a  
20 break now and after that you complete?  
21 MR. EBOE-OSUJI:  
22 Your Honour, any way is good to me. It's up  
23 to you. I am in your hands.  
24 MR. PRESIDENT:  
25 Okay, you may finish and after that it will

1 be a break.

2 MR. EBOE-OSUJI:

3 Thank you.

4 BY MR. EBOE-OSUJI:

5 Q. Now let's go back to -- return in view of  
6 what we have discussed this morning. Let's  
7 go back to that question of reinforced  
8 deaths as to what you had in mind amongst  
9 other things as the sole defence strategies  
10 adopted by many Hutus.

11  
12 Interpretation.

13  
14 You know, you don't need to answer. That  
15 wasn't a question, just turning your mind  
16 back to an area.

17  
18 I will suggest to you sir, that the reason  
19 why you did not indicate that in your  
20 statement, as we have noted earlier, is not  
21 because you are reserving it to tell it to  
22 the Court when you come to the court. You  
23 can say I do not agree with you or yes, I  
24 agree with you?

25 A. I am sorry, but I don't understand the



1 question.

2 Q. I am saying that the reason why you -- I am  
3 saying the reason why you did not supply  
4 that detail in the statement you gave to the  
5 Defence investigators was not because you  
6 were reserving that piece of detail for the  
7 Court. The reason rather, sorry -- quite to  
8 the contrary, you do indeed suggest, suggest  
9 in your statement, what you meant by  
10 self-defence strategies, you meant killing  
11 of Tutsis, you suggest that in your  
12 statement.

13 MR. TAKU:

14 My Lord, at this stage --

15 MR. PRESIDENT:

16 It's not proper, it's not proper. He said  
17 the Hutus were frightened and therefore they  
18 reinforced their gates, that's all.

19 MR. EBOE-OSUJI:

20 Your Honour, he said that in his  
21 examination-in-chief. He said that in  
22 court. He did not say that in his statement  
23 and I am saying that when he gave his  
24 statement to the Defence investigators he  
25 had an idea what he meant then. He did not

1 include the reinforcement of gates and I am  
2 suggesting to him what he meant in his  
3 statement or when he talked to the Defence  
4 investigator.

5 MR. PRESIDENT:

6 But you are trying to impose your point of  
7 view on him.

8 MR. EBOE-OSUJI:

9 He can say no. He can say I do not agree  
10 with you.

11 MR. PRESIDENT:

12 Mr. Eboe-Osuji, it's not necessary.

13 MR. EBOE-OSUJI:

14 Because I am going somewhere. If you waited  
15 you may or may not agree with me, Your  
16 Honours, but let me -- by the time I ask two  
17 more questions, it will all become clear  
18 where I am going.

19 MR. PRESIDENT:

20 But that question is speculative, and do not  
21 try to impose your point of view on the  
22 witness, because his position was quite  
23 clear.

24 MR. EBOE-OSUJI:

25 I will take that as over ruling that last

1 question.

2 BY MR. EBOE-OSUJI:

3 Q. Now, let's move on to another question.  
4 Witness, in your statement, you do indeed  
5 finish with "One must not forget to  
6 underscore the fact that it was indeed the  
7 RPF that initiated and encouraged this  
8 ethnic hatred which began with the first  
9 attack in 1990 by the killing of Hutus  
10 everywhere they operated." You do say that?  
11 You say that in your statement. Did you  
12 not?

13 A. Yes, that was my testimony.

14 Q. And I suggest you were speaking, you made  
15 that statement or ultimately gave that  
16 utterance in the context of the discussion  
17 of the massacres that happened in Rwanda in  
18 1994, am I right?

19 A. In making that statement my starting point  
20 was 1990.

21 MR. EBOE-OSUJI:

22 Moving on now to my last line of questions  
23 Your Honour, and I hope this will be very  
24 brief.

25 BY MR. EBOE-OSUJI:

1       Q.               Now we have seen that you do, and you put it  
2                       on the record, you have talked about the RPF  
3                       attack in Rwanda in October 1990 and the  
4                       unrest that happened in your school and how  
5                       Mr. Semanza --

6       MR. TAKU:  
7                       My Lord, I will object vehemently to this  
8                       question. My colleague very well knows that  
9                       there are witness protection issues here, so  
10                      when he is talking about school, which  
11                      school is he talking about? You see, My  
12                      Lord, that area should be put in the closed  
13                      session, My Lord.

14      MR. EBOE-OSUJI:  
15                      We all went to school. My friend doesn't  
16                      know which school I went to. This witness  
17                      went to school as well. I have not  
18                      indicated what school he went to, and I am  
19                      not going to do that. So my friend can sit  
20                      down and listen to the question. We will  
21                      move faster.

22      MR. PRESIDENT:  
23                      In answering this question you should not  
24                      mention or indicate the school that is being  
25                      referred to.

1  
2 THE INTERPRETER:  
3 Can the witness speak into his microphone so  
4 we can take him from French?.  
5 THE WITNESS:  
6 The question itself will tend to indicate my  
7 -- or reveal my identity.  
8 MR. PRESIDENT:  
9 But no -- the mention -- the reference to  
10 school does not reveal your identity. This  
11 is school in general. You may proceed.  
12 MR. EBOE-OSUJI:  
13 Thank you, very much.  
14 BY MR. EBOE-OSUJI:  
15 Q. And you have indicated the role certain  
16 people played in restoring peace to your  
17 school. Now do not mention your school nor  
18 anybody who played any role in it but I will  
19 put it to you that the party you said  
20 restored peace to your school, assuming that  
21 person did, indeed, restore peace to your  
22 school and punished the culprits. That  
23 party may have changed their position by the  
24 time of the death of the President in April  
25 1994; you agree with me?

1  
2 MR. TAKU:  
3 My Lord, I object. It's speculative.  
4 JUDGE WILLIAMS:  
5 It's speculative.  
6 MR. TAKU:  
7 It's not based on facts.  
8 JUDGE WILLIAMS:  
9 It's speculative.  
10 MR. TAKU:  
11 Very well, Your Honour.  
12 MR. PRESIDENT:  
13 The objection is sustained.  
14 MR. EBOE-OSUJI:  
15 On that note, Your Honour, that will be all  
16 for the witness.  
17 MR. PRESIDENT:  
18 Okay.  
19 MR. TAKU:  
20 No re-examination, My Lord, that's all for  
21 our witness, My Lord.  
22  
23 MR. PRESIDENT:  
24 No re-examination.  
25 MR. TAKU:

1 Yes, My Lord.

2 MR. PRESIDENT:

3 Okay. Therefore it will be break for 15  
4 minutes and after that it will be the next  
5 witness. I understand the next witness is  
6 here. This is Witness CBM. The only thing  
7 I would like to request the parties is that  
8 the witness doesn't feel very well. From  
9 this point of view the witness is vulnerable  
10 and I would like to take it into account in  
11 your examination-in-chief and in  
12 cross-examination.

13  
14 The break for 15 minutes  
15 1115H

16  
17 (Pages 1 to 67 by Judith Kapatamoyo)

18  
19  
20  
21  
22  
23  
24  
25

1 1130H

2 MR. PRESIDENT:

3 The proceedings are resumed.

4 MR. EBOE-OSUJI:

5 May it please the Court, there was a  
6 proposal I was exploring with my learned  
7 friends on the other side when the Judges  
8 walked in. It is this: they have indicated  
9 that this witness has not been well, they  
10 have been telling us that for some time now,  
11 and the witness happens to be here.

12  
13 Now I am proposing to them that if the  
14 witness is not well I have no objection, as  
15 an exceptional humanitarian gesture, to just  
16 put the witness on the stand, have her adopt  
17 her statement and we put her statement in,  
18 and that is it. There is no  
19 examination-in-chief and I will undertake,  
20 if that is done, I will not cross-examine.  
21 My fear is the witness gets on the stand and  
22 all kinds of other things get dragged out of  
23 her in examination-in-chief and if I try to  
24 cross-examine, people will say she is not  
25 well and you are badgering the witness.



1  
2                   So I am suggesting that the witness, since  
3                   she is not in good health or in the top of  
4                   health, to put her on the stand, have her  
5                   adopt her statement, as an exception to the  
6                   procedure, and we just close this  
7                   proceeding, in relation to this particular  
8                   witness.

9       MR. PRESIDENT:

10                   And what is the position of the Defence?

11       MR. ALAO:

12                   Mr. President, thank you very much. We have  
13                   just heard the proposal made by the  
14                   Prosecution. We did not have the time to  
15                   analyze it. It is a bit different from what  
16                   we were planning to do. We would like to  
17                   request the Tribunal to give us two minutes  
18                   so that we can consult ourselves; that is,  
19                   the Defence can consult our client.

20       MR. PRESIDENT:

21                   Maybe I have to clarify the situation. This  
22                   witness is with pregnancy of seven months;  
23                   therefore, she visited the doctor and the  
24                   doctor recommended her bed rest for one day.  
25                   Yesterday it was such a day for her rest,

1 but pregnancy of seven months, I understand  
2 that she doesn't feel very well; therefore,  
3 I said that she is not very well. This is  
4 -- I did not mention about the pregnancy  
5 before because -- but now, now I found it  
6 necessary to clarify the situation.

7 MR. EBOE-OSUJI:

8 Very well, Your Honour.

9 JUDGE WILLIAMS:

10 I just want to make one comment. Of course  
11 you understand the statement will be --  
12 evidence will be unchallenged. You  
13 understand that situation? The statement  
14 having been admitted in evidence it will be  
15 then unchallenged.

16 MR. EBOE-OSUJI:

17 Your Honour, it will be unchallenged to the  
18 extent that I propose it on its own, that's  
19 correct. But in terms of other evidence,  
20 pieces of evidence in the case, we will take  
21 the position that the evidence will be  
22 treated in the same way as any other witness  
23 who has been cross-examined and who has  
24 testified in chief and cross-examined to the  
25 extent, Your Honour, that we can call

1                   rebuttal evidence, and to the extent that we  
2                   can use the testimony of other witnesses to  
3                   compare to hers. We can do that.

4       MR. TAKU:

5                   I have to say this, My Lord, because the  
6                   situation may arise again sometime. I think  
7                   my colleague is right, because what  
8                   probative value you give to it is a matter  
9                   for the Judges. So challenge or no  
10                  challenge, the question of the probative  
11                  value will remain with Your Lordships. So I  
12                  think my colleague is right on this point.

13      MR. PRESIDENT:

14                  As all testimonies, the Judges will consider  
15                  all of them in the proper time.

16  
17                  May I understand that you agree with the  
18                  suggestion of the Prosecutor.

19      MR. ALAO:

20                  Yes, Mr. President, the Prosecution's  
21                  proposal is accepted.

22      MR. PRESIDENT:

23                  Just a moment.

24      JUDGE WILLIAMS:

25                  I think there are some issues here. I don't

1 know whether that statement is signed, or  
2 that sort of thing.

3 MR. EBOE-OSUJI:

4 Your Honour, that is even the more reason  
5 why we are not saying we would just put it  
6 without the witness coming in. Where a  
7 witness is on the stand, we show her the  
8 document, Did you make this; whether or not  
9 it is signed it doesn't matter if the  
10 witness adopts it, Yes I made this  
11 statement, this is my statement, and we take  
12 it.

13  
14 And, Your Honour Judge Williams, again the  
15 reason why we are doing this is out of  
16 humanitarian grounds. It is not for lack of  
17 our ability to cross-examine this witness.

18 JUDGE WILLIAMS:

19 I understand that.

20 MR. EBOE-OSUJI:

21 Very well, sir.

22 JUDGE WILLIAMS:

23 I am just making the point that the  
24 evidence, therefore, in the document becomes  
25 unchallenged.

1 MR. EBOE-OSUJI:

2 Your Honour, you view all that in context.

3 JUDGE WILLIAMS:

4 It's a legal point.

5 MR. EBOE-OSUJI:

6 You view all that in context when the time  
7 comes.

8 MR. TAKU:

9 And also, My Lord, because it is a rule for  
10 the Prosecutor to bring all the evidence to  
11 Your Lordships, whether it is challenged or  
12 not he is doing the appropriate thing by  
13 bringing all the evidence in order to come  
14 here before Your Lordships. I think it's  
15 appropriate. Whether it is challenged or  
16 not is another issue.

17 MR. PRESIDENT:

18 And the witness should be invited and the  
19 registrar will take care of it.

20

21 I think the identification paper will be  
22 circulated.

23 MR. ALAO:

24 Very well, Mr. President.

25



1 MR. PRESIDENT:

2 The witness has to make a solemn  
3 declaration.

4

5 (Declaration made by the witness in Kinyarwanda)

6 MR. PRESIDENT:

7 Well, we start in an open session.

8 MR. ALAO:

9 Thank you, Mr. President.

10

11 WITNESS CBN

12 first having been duly sworn,  
13 testified as follows:

14

15 EXAMINATION-IN-CHIEF

16 BY MR. ALAO:

17 Q. Good morning, Witness CBN.

18 A. Good morning.

19 Q. You just made a solemn declaration declaring  
20 that you speak the truth and nothing but the  
21 truth. Semanza's Defence would like you to  
22 stick to the truth, in the interest of  
23 justice.

24

25 I would like to call upon you to help us,

1 before the examination-in-chief, to clarify  
2 a minor point, or minor points. The first  
3 point concerns your identification as stated  
4 in this identification sheet. The  
5 interpreter will help you understand and you  
6 could also tell the Court in what language  
7 you would like to express yourself in order  
8 to tell us whether the information contained  
9 in this sheet matches your identification.  
10 A. The information contained in the  
11 identification sheet matches my identity.  
12 Q. Thank you, Witness CBN. Registry, could you  
13 please show the sheet to the Prosecutor.  
14  
15 If Prosecution Counsel has no objection,  
16 Mr. President, we would like this document  
17 to be admitted as Document D20; that is,  
18 Defence Document D20.  
19 MR. PRESIDENT:  
20 It will be admitted as a piece of evidence.  
21 Number D, you said?  
22 MR. ALAO:  
23 D20, Your Honour  
24  
25 (Defence Exhibit No. 20 was admitted)



1  
2 MR. PRESIDENT:  
3 Yes, number D20.  
4 BY MR. ALAO:  
5 Q. Witness CBN, I would also like to ask you to  
6 help us to fulfil a second formality; that  
7 is, actually confirming that you know  
8 Mr. Semanza well?  
9 A. I am going to express myself in Kinyarwanda,  
10 and I would also like to say that I know  
11 Semanza.  
12 Q. If you know him as well as you are saying,  
13 could you recognize him in this courtroom,  
14 that is, if he is in this courtroom?  
15 A. Yes. I can see him there.  
16 Q. Could you tell the Court where is he sitting  
17 so that it can be noted down in the court's  
18 records?  
19 A. He is sitting on the Defence side.  
20 Q. Mr. President, I think that it is obvious  
21 that the witness has recognized Semanza. So  
22 I would like it to be on record.  
23 MR. PRESIDENT:  
24 On the record that the witness --  
25 MR. EBOE-OSUJI:

1                   Your Honour, with due respect, it isn't  
2                   obvious that the witness has recognized  
3                   Semanza. My friend can do more.  
4       MR. ALAO:  
5                   No objection. If the Prosecution thinks  
6                   that is not enough, I will go on. I just  
7                   wanted to ease the discomfort of the Accused  
8                   (sic).  
9       BY MR. ALAO:  
10      Q.           Witness CBN, can you tell us where is  
11                   Mr. Semanza sitting in this courtroom?  
12      A.           I see him sitting down on the Defence side.  
13      MR. PRESIDENT:  
14                   What do you have to say about his suit, tie,  
15                   or --  
16      BY MR. ALAO:  
17      Q.           How is he dressed?  
18      A.           He is wearing a striped shirt, a whitish  
19                   tie, and a grey jacket.  
20      MR. ALAO:  
21                   Mr. President, if the Prosecution does not  
22                   have an objection, then I would like to  
23                   request that it be noted that the witness  
24                   has recognized Mr. Semanza.  
25      MR. EBOE-OSUJI:

1 No objection, Your Honour.

2 MR. ALAO:

3 Thank you, Mr. President, thank you,  
4 Prosecutor.

5 BY MR. ALAO:

6 Q. Witness CBN, do you remember meeting an  
7 investigator who asked you whether you were  
8 willing to come to testify in Arusha?

9 A. Yes.

10 Q. Do you also remember that on the 21st of  
11 October, 2000, you gave a statement to that  
12 investigator on the basis of his questions?

13 A. Yes, I remember that very well.

14 Q. Could you tell the Court whether this  
15 statement, which has eight pages that I'll  
16 make available to you, is the statement that  
17 you actually gave, to the investigator, of  
18 course?

19 MR. EBOE-OSUJI:

20 Your Honour, I don't know if this will help  
21 cut things short and quickly. If my friend  
22 is going to offer that the statement he  
23 handed up to the witness was indeed this  
24 witness' statement, I would have no  
25 objection to it so that we can save further

1 questions at this point.

2 MR. ALAO:

3 Mr. President, we are proceeding according  
4 to the law. I am very much used to this  
5 procedure, and I think we should do  
6 everything by the book, and this is what we  
7 will do.

8 MR. PRESIDENT:

9 In the French document there is a signature  
10 by the witness.

11 MR. ALAO:

12 I am saying -- no, no, no. These are the  
13 documents that we gave to you, but on those  
14 documents which we gave to you, you have  
15 only the investigator's signature.

16 THE WITNESS:

17 Yes, this is my statement.

18 MR. ALAO:

19 Thank you, Witness CBN. Registry, could you  
20 please give this statement to the Prosecutor  
21 in order to satisfy ourselves that it  
22 matches the document in their possession.

23 JUDGE WILLIAMS:

24 Is her signature on the document you gave  
25 her?

1 MR. ALAO:  
2 Signature of the investigator, yes.  
3 JUDGE WILLIAMS:  
4 What about the witness?  
5 MR. ALAO:  
6 No, no, no, because those are the documents  
7 that we transmitted --  
8 JUDGE WILLIAMS:  
9 What I am trying to find out is if --  
10 THE INTERPRETER:  
11 Microphone, Counsel.  
12 MR. ALAO:  
13 No, Mr. President, it's exactly the document  
14 that you have in your file.  
15 MR. PRESIDENT:  
16 Why no? In French text there is a  
17 signature.  
18 MR. ALAO:  
19 Of the investigator, yes.  
20 MR. PRESIDENT:  
21 No, it says "witness' signature." In  
22 French, it says "witness' signature", and  
23 there are two signatures there in the French  
24 version.  
25

1 MR. ALAO:

2 Thank you, Mr. President. I think that you  
3 have clarified the situation. It is the  
4 investigator who signed that document.

5 JUDGE WILLIAMS:

6 I am just wondering whether we shouldn't get  
7 her to sign it now. I think it would be  
8 better.

9 MR. ALAO:

10 Yes, Your Honour, we can do that, that is,  
11 if the Prosecution does not have an  
12 objection.

13  
14 Registry, could you give the witness  
15 statement to the witness to sign the  
16 statement, if she confirms the contents of  
17 the document.

18 MR. EBOE-OSUJI:

19 No objection. The witness can indeed sign,  
20 or make a mark if she doesn't have a  
21 signature.

22 MR. ALAO:

23 Interpreter, did the witness understand that  
24 she has to sign a copy of her statement  
25 confirming that actually the statement

1 before her corresponds or matches the  
2 statements that she gave to the  
3 investigator?

4 THE WITNESS:

5 There is no problem, Counsel.

6 MR. ALAO:

7 Mr. President, Witness CBN has just  
8 confirmed that, has just confirmed her  
9 statement by signing it, and I would like it  
10 to be duly noted down.

11 MR. PRESIDENT:

12 Mr. Osuji?

13 MR. EBOE-OSUJI:

14 Your Honour, to note that the witness has  
15 signed the document? Of course, no  
16 objection, Your Honour.

17 MR. PRESIDENT:

18 But the statement of the witness to the  
19 investigator is signed, and it's necessary  
20 to reflect in the record that the witness  
21 recognized that she made such a statement to  
22 the investigator on 21st October 2000.

23 MR. ALAO:

24 Thank you, Mr. President. Having  
25 accomplished this formality, the Defence has

1 no further question to this witness.

2 MR. EBOE-OSUJI:

3 Your Honour, perhaps my friend should ask  
4 the witness if she does adopt that  
5 statement, for purposes of her testimony.  
6 Of course, noting the earlier discussion we  
7 have had about this matter, earlier  
8 discussion we have had on the record.

9 MR. ALAO:

10 Mr. President, it's obvious that we are not  
11 talking about the same system. In my system  
12 when you take due note of something it means  
13 you accept, acknowledge the statement. But  
14 if in your system a statement has to be  
15 first accepted by the Court, then now we are  
16 talking about different systems here.

17 MR. PRESIDENT:

18 I understand the system "donner acte." It  
19 means to reflect in the record that the  
20 statement was signed and the witness  
21 recognized that this is her statement which  
22 was made to the investigator. And the  
23 second question is, whether, whether there  
24 is a proposal to adopt, to admit this  
25 statement as a piece of evidence?



1 MR. ALAO:

2 Indeed, Mr. President, in my system when the  
3 Court takes note it means not only it  
4 accepts the statement, but it also tenders  
5 it as an evidence which can be used by the  
6 Court. So we are talking about a different  
7 system. So I am requesting you to accept  
8 this statement so that it should be  
9 acknowledged as being in evidence, a Defence  
10 evidence accepted by the Court.

11 MR. EBOE-OSUJI:

12 Your Honour, it might all in the end be one  
13 of technicality but we -- if it doesn't --  
14 it doesn't cost anything to ask the witness,  
15 Witness, do you adopt this statement as your  
16 testimony to the Court. Witness says yes;  
17 we move on. We already have an  
18 understanding about what to do in the  
19 circumstances in view of the witness'  
20 physical condition, and we move on. That's  
21 all.

22 JUDGE WILLIAMS:

23 I just want to say something. I don't think  
24 we need to argue about the formalities.  
25 What we should do is carry out the

1 formalities. She herself has not said that  
2 she made the statement on the specific day.  
3 That should be put to her.

4  
5 Secondly, the issue that the Prosecution has  
6 raised as to whether she adopt this as the  
7 statement she gave, that should also be put  
8 to her so that we have it formally on  
9 record.

10 MR. ALAO:

11 Thank you very much, Judge Williams.

12 BY MR. ALAO:

13 Q. Witness CBN, I will put the question to you  
14 again, but I will formally ask you the  
15 question again. The statement that you have  
16 just signed, is it the statement that you  
17 gave to the investigator on the 21st of  
18 October, 2000?

19 A. Yes, it's the same statement.

20 Q. And do you adopt it as your statement before  
21 this Court here in Arusha?

22 A. Yes, I acknowledge this statement.

23 MR. ALAO:

24 Mr. President, if there is no objection by  
25 the Prosecutor, we would request the

1 Tribunal to consider this statement by  
2 Witness CBN accepted, and consider it as  
3 testimony provided by Witness CBN.  
4

5 MR. PRESIDENT:

6 I understand there is no objection of the  
7 Prosecutor?

8 MR. EBOE-OSUJI:

9 Your Honour, none, of course, based on the  
10 earlier discussions we had on the record  
11 before the witness came in, we have no  
12 objection there, except that we believe it  
13 should be marked as exhibit. I don't know,  
14 just --.

15 MR. PRESIDENT:

16 Okay.

17 MR. ALAO:

18 Maybe we could consider this document as  
19 being D21? if there is no objection on the  
20 part of the Prosecutor.

21 MR. EBOE-OSUJI:

22 No objection, Your Honour  
23

24 (Defence Exhibit No. 21 was admitted)  
25

1 MR. PRESIDENT:

2 No objection. In this case, the statement  
3 of the witness CBN is accepted as a pièce  
4 D21, and in this situation I understand the  
5 witness can be free, if, if there is no  
6 intention to cross-examine of this witness?

7 MR. EBOE-OSUJI:

8 Your Honour, again on the basis of earlier  
9 discussions, the Prosecution will not be  
10 cross-examining this witness.

11 MR. PRESIDENT:

12 Yes. And in the proper time this testimony  
13 will be considered by the Judges, as all  
14 other testimonies of the witnesses.

15 MR. ALAO:

16 Thank you, Judge.

17 MR. PRESIDENT:

18 Therefore, thank you for your cooperation,  
19 thank you that you found it possible to come  
20 here to help us to settle our problems, and  
21 now you can be free and the registrar will  
22 accompany you, and you can go.

23 THE WITNESS:

24 Thank you.

25

1 MR. PRESIDENT:

2 My question to the Defence is, who is your  
3 next witness?

4 MR. TAKU:

5 My Lord, we have got the information from  
6 the Witness Protection Unit that they went  
7 out to bring in other witnesses. I have  
8 information released, that by the weekend  
9 the witnesses will be here. There were  
10 originally programmed four witnesses from  
11 that particular country where the witnesses  
12 are to be brought here, but the Witness  
13 Protection Unit is informing us that the  
14 officer who dispatched to bring the  
15 witnesses will be in here before weekend, My  
16 Lord. As soon as they come, we will be in a  
17 position to inform Your Lordship.

18 MR. PRESIDENT:

19 Your statement, I understand in such a way  
20 that for a moment we have no witnesses.

21 MR. TAKU:

22 Yes, My Lord, we don't have any witness now.

23 MR. PRESIDENT:

24 Therefore my question is, there are two  
25 issues pending. One, this is the

1 application of the Defence to include in the  
2 list six expert witnesses, and the second  
3 issue, which was mentioned yesterday, the  
4 intention of the Defence to move before the  
5 Chamber for with the oral motion about the  
6 calendar, and my question is, what is your  
7 intention? and we can deal before with one  
8 matter or another.

9 MR. TAKU:

10 My Lord, the Defence has realized that the  
11 two issues closely related. The question of  
12 the witness list and the question of the  
13 judicial calendar. We had been trying to  
14 work especially on the motion on the witness  
15 list, get information, but because the trial  
16 was going on and we were in court every day  
17 we could not finish.

18  
19 Your Lordship will see that it is a very,  
20 very important application, that one of the  
21 witness list. We intend to go back to our  
22 office and see what we can do to expedite  
23 action on that application and we will, once  
24 we finish with that and file the required  
25 paper as soon as possible, we will be in a

1 position to move the Court on the judicial  
2 calendar, My Lord, because we discovered  
3 that the two are linked and we cannot settle  
4 one without looking at the other.

5  
6 So we crave your indulgence, perhaps just to  
7 give us perhaps today to go back to the  
8 office and see what action we can take, in  
9 addition to also working on some witness  
10 statements which the registrar has  
11 requested, and also some disclosure which we  
12 have to make to the Prosecutor about the  
13 additional witnesses. So we can take this  
14 time to do that, My Lord.

15 MR. PRESIDENT:

16 I agree with you that there is a link  
17 between two issues, but at the same time we  
18 cannot lose our time and, therefore, I  
19 understand maybe not before lunch break, but  
20 after lunch break we are able at least to  
21 consider and to have an exchange of views of  
22 one of the questions, because, in any case,  
23 we are not able to discuss all problems  
24 together.

25

1                   Therefore, therefore, my suggestion is in  
2                   such a situation, in such a situation,  
3                   maybe, maybe, it will be proper this  
4                   afternoon to consider your application to  
5                   add some expert witnesses to the list of  
6                   witnesses, but not to consider all of them  
7                   but at least, at least, we could start with  
8                   two French witnesses, because this matter  
9                   more or less is discussed.  
10  
11                  Maybe you will find it necessary to add  
12                  something, maybe -- I don't exclude the  
13                  Prosecution will be able to express the  
14                  position of the Prosecution, and I don't  
15                  exclude the Judges also could have some  
16                  questions which should be clarified, and at  
17                  least, at least, the Judges will be able to  
18                  take the decision on these two French expert  
19                  witnesses, and after that we can continue  
20                  and you have to choose yourself what could  
21                  be the next expert witness candidate which  
22                  should be discussed, from the point of view  
23                  of your information, because you understand  
24                  that the matter cannot be postponed. It is  
25                  necessary to take the decisions and if we



1                   have no witnesses now it will be proper not  
2                   to lose our time and to make a useful work.

3       MR. TAKU:

4                   Yes, My Lord.

5       MR. PRESIDENT:

6                   Such a procedure is convenient for you?

7       MR. TAKU:

8                   Yes, My Lord, the one of the French expert,  
9                   this afternoon is convenient for us.

10      MR. PRESIDENT:

11                   And whether this procedure is convenient for  
12                   the Prosecution?

13      MR. EBOE-OSUJI:

14                   Your Honour, that will be fine with us as  
15                   well.

16      MR. PRESIDENT:

17                   Okay. Therefore we will adjourn our  
18                   proceedings and we will resume at three  
19                   o'clock. At three o'clock I will give the  
20                   floor to the Defence to make submission as  
21                   to French witness. It's not necessary to  
22                   consider them separately because this is the  
23                   matters which are connected. You are  
24                   talking about two French witnesses. You  
25                   make a submission. After that we would like

1 to know the point of view of the Prosecutor,  
2 your reaction, it's as usual the practice  
3 you have the right to react, and, as usual,  
4 the Judges are entitled to ask the questions  
5 at any stage as they find it necessary to  
6 ask, just in order to be -- to understand  
7 the matter better and to take a decision.  
8 And after completing the consideration of  
9 these two French witnesses, at your choice  
10 the next candidate, expert witness, will be  
11 considered and we will see when it would be  
12 done.

13 MR. TAKU:

14 Thank you, My Lord.

15 MR. PRESIDENT:

16 Okay. And I have to add that Judges tried  
17 to draw my attention that before it was a  
18 decision that the Defence has to provide the  
19 Chamber, as well as the Prosecutor, with the  
20 information, a minimum information of each  
21 witness, I mean, expert witness. For what  
22 purpose the Defence would like to call this  
23 witness, what is the topic of the report,  
24 when this witness. You remember this  
25 question?

1 MR. TAKU:

2 Yes, My Lord.

3 MR. PRESIDENT:

4 Therefore, therefore, I would like—so far  
5 we didn't receive any information;  
6 therefore, I understand the Defence has to  
7 try to supply us with such information, or  
8 no doubt, no doubt, it would be better to  
9 receive it before the deliberation, but no  
10 doubt such information as far as I  
11 understand orally, orally, will be submitted  
12 and for our discussion because we have to  
13 receive such information.

14 MR. EBOE-OSUJI:

15 May it please the Court. It would be much  
16 easier for everyone, particularly the  
17 Prosecution, if this sort of information  
18 Your Honour is talking about is provided in  
19 writing, at a barest minimum, because Your  
20 Honour has to remember that the reports, the  
21 expert witnesses reports are not being  
22 submitted. So the minimum that can be done  
23 is for these bare information, bare  
24 essentials you have outlined to be submitted  
25 in writing.

1 MR. PRESIDENT:

2 Okay. I think this is a reasonable point of  
3 view, and I would like to ask the Defence to  
4 do it because before, before the  
5 deliberation it will be proper and very  
6 useful for the Judges, as well as I  
7 understand for the Prosecutor, to have such  
8 a minimum information.

9  
10 It doesn't mean that we will postpone our  
11 work this afternoon at three o'clock; if it  
12 could be done with the French two expert  
13 witnesses it could be circulated even during  
14 the proceedings. But as the other  
15 candidates are concerned, we would like to  
16 receive such information as soon as possible  
17 in a written form because there are only  
18 five questions, but only three of them are  
19 of the most importance—for what purpose the  
20 Defence would like to call this witness;  
21 what is the topic of the report of this  
22 witness; and when this witness is able to  
23 come. Because no doubt -- about his  
24 knowledge, et cetera, et cetera, no doubt  
25 the question arises but as you understand

1                   this is the requirements of the Directives.

2           MR. TAKU:

3                   Yes, My Lord. We will do our best with the  
4                   French experts. The information about them  
5                   have been supplied in different locations,  
6                   but in the form that Your Lordship required.  
7                   So we bring it and see if we can bring it in  
8                   that form and bring it here today.

9           MR. EBOE-OSUJI:

10                   Your Honour, briefly please, one final  
11                   matter before we adjourn for lunch. If it  
12                   will be possible at all to get the  
13                   information after lunch break as to which  
14                   witnesses Defence will be bringing to come  
15                   next, that will be very, very helpful so  
16                   that we can start working, as opposed to we  
17                   are confronted at the last minute with  
18                   witnesses and we are asking for adjournment  
19                   to prepare for their testimonies.

20           MR. PRESIDENT:

21                   You mean, next after the two French  
22                   witnesses?

23           MR. EBOE-OSUJI:

24                   No, no, no, no. The next factual witnesses  
25                   that are coming to testify for the Defence.

1 MR. PRESIDENT:

2 For the Defence. But in any case I  
3 understand the situation is such that  
4 tomorrow we will not have the witnesses.

5 MR. EBOE-OSUJI:

6 But if it is possible for any sort of  
7 information to try to focus us.

8 MR. TAKU:

9 My Lord, at this point in time the Defence,  
10 we do not yet know. These officers left for  
11 one continent where several witnesses  
12 reside, and as soon as they come back they  
13 normally inform us and they inform the  
14 registry that we brought Witness A, Witness  
15 B, Witness C. So far they are not yet back.  
16 As soon as they come back, My Lord, they  
17 will inform us. We are in the same  
18 situation. The registrar will confirm that,  
19 until these witnesses are brought we  
20 normally do not know.

21 MR. EBOE-OSUJI:

22 Will my friend then confirm that there are  
23 four witnesses that are being looked for, as  
24 we speak, and who are those four.

25 MR. TAKU:

1 My Lord, I said that we had four witnesses  
2 in a particular country, and among the  
3 country where they went to I knew that the  
4 officer in charge went to that particular  
5 country. But I do not know exactly which  
6 witness, which of these witnesses is going  
7 to be brought.

8 JUDGE WILLIAMS:

9 I think what the Prosecutor is asking you,  
10 who are those people that they are now gone  
11 to get, so at least he will have some idea  
12 so he can start preparing. He might not get  
13 them, but who are those.

14 MR. TAKU:

15 Okay, My Lord, we will contact Witness  
16 Protection again, and we will inform you  
17 when we come back here today, when we come  
18 back this afternoon.

19 MR. PRESIDENT:

20 The only information we have at our disposal  
21 right away, for the period of 5 to 8  
22 November and 12 to 14 November, the section  
23 for the protection of witnesses has to  
24 produce the witnesses, six witnesses. This  
25 is the Witness CYM3, the Witness BBS, the





1                   Witness BBL, the Witness ZC, the Witness  
2                   KNU, and Witness PFM.

3  
4                   Therefore, I understand this afternoon it  
5                   will be difficult to say something, but  
6                   tomorrow maybe the information could be  
7                   available, what is the situation with the  
8                   work to bring these witnesses here, and in  
9                   what order the witnesses should be called.

10       MR. EBOE-OSUJI:

11                   Very well, sir. Does that mean, then, we  
12                   should not be preparing to do any witness  
13                   tomorrow?

14       MR. PRESIDENT:

15                   The situation is such that tomorrow we are  
16                   not expecting to have any witness.

17       MR. EBOE-OSUJI:

18                   Very well, sir.

19       MR. PRESIDENT:

20                   Therefore, this afternoon and tomorrow could  
21                   be devoted to settle these problems which  
22                   have been mentioned when we discuss the  
23                   application and the motion of the Defence.

24  
25                   Is it clear? Therefore, the proceedings are

1 adjourned until three o'clock.

2

3 (Court recessed at 1215H)

4 (Court resumed at 1500H)

5 MR. PRESIDENT:

6 The proceedings are resumed. I would like  
7 to give the floor to the Defence for the  
8 submission as the application of the Defence  
9 is concerned about two French witnesses.

10 MR. EBOE-OSUJI:

11 Your Honours, the Court's indulgence,  
12 please. There was a matter that we had been  
13 discussing before, relating to certain  
14 videotapes which the Prosecution had  
15 tendered into the evidence and if Your  
16 Honours recall, the Prosecution had made an  
17 offer which we have still not withdrawn.  
18 The offer is still there to be accepted.

19

20 We made an offer to withdraw the videotapes  
21 made by Mr. Pierre Huts, Pierre Huts is --  
22 "Huts" is H-U-T-S. I believe that the  
23 videotape in question would have shown some  
24 bones and perhaps some exhumation in  
25 progress, or completed. We had offered to

1                   withdraw that videotape. We had not used  
2                   it, really, in our case in chief, and the  
3                   Defence has not accepted that offer yet. I  
4                   don't know if they are planning to do that.

5  
6                   We are still moving ahead regardless of  
7                   whether or not they accept it. We want to  
8                   withdraw that on the record now. We will  
9                   sort out from which precise videotape it is,  
10                  but for whatever it is worth, we cannot make  
11                  an omnibus offer of wherever in the  
12                  videotapes before the Court that contains  
13                  bones or exhumation work in progress, or  
14                  exhumation completed. We are withdrawing  
15                  such videotape.

16       MR. PRESIDENT:

17                   Okay. Your statement will be taken into  
18                   account

19       MR. EBOE-OSUJI:

20                   Your Honour, just to be clear, this is a  
21                   motion we made, and the basis for that  
22                   would, of course, at least be on the basis  
23                   of Rule 54. But it is a motion we are  
24                   making to Your Honours for your ruling.

25

1 MR. PRESIDENT:

2 We reserve our ruling on this matter, and it  
3 will be done later.

4 MR. EBOE-OSUJI:

5 As the Court pleases.

6 MR. PRESIDENT:

7 Now you may start your submission, and the  
8 main, the main, question which we would like  
9 to understand, for what purpose the Defence  
10 would like to call these two witnesses, and,  
11 and, I may add that before I indicate it,  
12 that the second question, what is the topic  
13 of the testimony of these witnesses. The  
14 third question was, whether these witnesses  
15 have a specific and relevant information or  
16 knowledge on this matter.

17  
18 And there are some other questions which  
19 have been mentioned, but we will see. If  
20 something is not clear in your submission,  
21 the question will be raised and you will be  
22 asked to clarify the situation.

23  
24 Who has the floor? Mr. Alao, you have the  
25 floor.

1 MR. ALAO:

2 Thank you, Mr. President, for giving me the  
3 floor. Perhaps it would be appropriate  
4 before we start making submissions on the  
5 issues that you have raised, issues which  
6 are obviously relevant, it might be  
7 appropriate for the Prosecutor to clarify  
8 for us, in relation to the point she made a  
9 while ago, to clarify the following issues.

10

11 Mr. President, Your Honours, you will recall  
12 that the Prosecutor produced videocassettes.  
13 He also produced photographs in an album  
14 which are copies in front of the  
15 videocassette. Secondly, he also produced a  
16 report which is a commentary on the  
17 videocassette and photographs.

18

19 Perhaps before we start, it might be  
20 appropriate, together with the withdrawal of  
21 the videocassettes, if the other two  
22 exhibits are also, the other two productions  
23 are also withdrawn or are being maintained.

24 MR. PRESIDENT:

25 Do you -- you understood the questions and

1                   the Defence would like to ask you to clarify  
2                   this matter.

3       MR. EBOE-OSUJI:

4                   Your Honour, I understand the question in  
5                   general terms, but in terms of specifics if  
6                   my friend can point out the photographs he  
7                   is talking about, perhaps if he can direct  
8                   me to them specifically while I also looked  
9                   that will make it easier to deal with the  
10                  matter so that we all are on the same page,  
11                  as opposed to me talking and thinking it  
12                  means something else that he might not have  
13                  meant so. If he is in a position at all to  
14                  point out the pictures in the photo album  
15                  that he has in mind when he spoke, that will  
16                  make it easier to deal with the matter, and,  
17                  just to help, he might know that the photo  
18                  album would have been Prosecution Exhibit  
19                  P5, I believe.

20       JUDGE WILLIAMS:

21                  Mr. Alao, just before you respond, if you  
22                  can help me. You raised three points—you  
23                  raised the videocassettes, you raised the  
24                  photographs, and what was the other point  
25                  you raised?

1 MR. ALAO:

2 The reports, Your Honour.

3 JUDGE WILLIAMS:

4 The reports.

5

6 MR. ALAO:

7 Mr. President, these material, these  
8 exhibits which were produced by the  
9 Prosecutor which are in the possession of  
10 the registry have been inventorized, and I  
11 believe these are the three videocassettes  
12 of the photographs, photo album, which is a  
13 reproduction of the videocassette, because  
14 we have watched the videocassette, and then  
15 there is the report which is a commentary on  
16 the photographs and the videocassettes.

17

18 So for us, these are all exhibits, these  
19 three exhibits are one and the same, and the  
20 Prosecutor knows these very well. It is his  
21 exhibits, so we want to know exactly what is  
22 happening to these exhibits. If he is  
23 talking about withdrawing the  
24 videocassettes, what happens to the others?  
25 That is our question.

1  
2 Before we go further, I think it would be  
3 appropriate to clarify these issues.  
4 MR. PRESIDENT:  
5 Mr. Osuji, could you specify exactly which  
6 pieces of evidence you are withdrawing.  
7 MR. EBOE-OSUJI:  
8 Your Honour, when the Prosecution, the first  
9 Prosecution witness, Mr. Duclos, testified  
10 he did put into the -- onto the record some  
11 videotapes and synopses of those videotapes,  
12 and he did indicate that there were some  
13 parts of the videotapes, they referred to  
14 unknown investigators, that portion of it,  
15 and that would have been the pictures or  
16 moving pictures showing the exhumation work,  
17 either completed exhumation work, or  
18 exhumation work in progress.  
19  
20 That would be what specifically I had in  
21 mind, those images referred to in the  
22 synopsis as "unknown investigators", because  
23 as Mr. Duclos explained then he did not know  
24 who those people were and he just, because  
25 he was taking charge of the Prosecution



1 evidence, these are all the things he  
2 gathered in the process of assembling the  
3 material for the Prosecution, he decided to  
4 put them all in because they came from the  
5 OTP investigation section, so he put them  
6 all in.

7  
8 But those would be the pictures that contain  
9 or speak to exhumation work, the moving  
10 pictures, that is.

11  
12 Now, in terms of the still pictures, I asked  
13 the registrar to produce Prosecution Exhibit  
14 P5, and he has brought it. I asked him to  
15 give it to the Defence counsel in order to  
16 help the Defence counsel more clearly  
17 articulate the pictures he is talking about.

18 JUDGE WILLIAMS:

19 And the report?

20 MR. EBOE-OSUJI:

21 Yes, of course, we are also withdrawing the  
22 reports, the report attributed to Mr. Pierre  
23 Huts, as well.

24 MR. PRESIDENT:

25 Mr. Osuji, Judge Dolenc would like to ask

1 something.

2 MR. EBOE-OSUJI:

3 Sure, Your Honour.

4 JUDGE DOLENC:

5 You mentioned photographs and videotapes

6 made by Mr. Duclos in the beginning of your

7 submission.

8 MR. EBOE-OSUJI:

9 Your Honour, you mean today?

10 JUDGE DOLENC:

11 Yes, I believe.

12 MR. EBOE-OSUJI:

13 I said Pierre Huts.

14 JUDGE DOLENC:

15 I heard you also mentioned Pierre Duclos.

16 MR. EBOE-OSUJI:

17 At the beginning of my submission today?

18 JUDGE DOLENC:

19 Yes, some minutes ago. So I would like to

20 be clear, are you withdrawing only materials

21 made by Mr. Pierre Huts, or only this?

22 MR. EBOE-OSUJI:

23 Yes, Your Honour, only that. Although, Your

24 Honour, as I indicated before all the

25 materials were tendered, were brought to the

1 court by Pierre Duclos but some of these  
2 were created by Huts alone. Yes.

3  
4 Your Honour, sorry. My learned colleague,  
5 Ms. Wildermuth, pointed out some pertinent  
6 information I missed to supply to you, and  
7 that is, that we did not put in any reports,  
8 I don't recall that -- she doesn't recall us  
9 putting in the reports of Pierre Huts on the  
10 record. But I was mindful of a certain  
11 piece of communication that went between  
12 myself and the Defence counsel where they  
13 seemed to have suggested that such a report  
14 was tendered, and just to be on the safe  
15 side I offered to them, then, that if it was  
16 tendered by mistake—and we didn't know when  
17 that was tendered—we were also withdrawing  
18 it.

19 MR. TAKU:

20 May it please Your Lordships --

21 MR. PRESIDENT:

22 May I understand that you are withdrawing  
23 the whole report, not the part of the  
24 report?

25

1 MR. EBOE-OSUJI:

2 Of Pierre Huts, if, if, it was tendered into  
3 evidence, although, as I said, I don't  
4 recall us having tendered the reports of  
5 Pierre Huts onto the record.

6 MR. PRESIDENT:

7 Thank you.

8 MR. TAKU:

9 May it please Your Lordships. The report of  
10 Mr. Pierre Huts is an object of a motion  
11 before Your Lordships. I don't remember  
12 whether the Prosecution filed a motion to  
13 withdraw Mr. Huts as a witness from the  
14 witness list. The Defence did file a motion  
15 before Your Lordships and annexed the  
16 reports from the forensic lab at Amsterdam,  
17 of Mr. Pierre Huts.

18  
19 Your Lordship said that at the appropriate  
20 moment Your Lordship would make a ruling to  
21 that effect. That is still on record, My  
22 Lord, and I quite remember because the  
23 report was communicated to us and I filed  
24 that motion before Your Lordships.

25

1           So the report of Huts is the subject of an  
2           application. The very moment the Prosecutor  
3           indicated he wanted to withdraw Mr. Huts  
4           from the witness list that application was  
5           made and we filed that application with his  
6           report, and Your Lordship said that you  
7           reserved your ruling.

8  
9           So you cannot withdraw that report when that  
10          report is subject of an application with  
11          Your Lordships.

12  
13          With regard to the question of the unknown  
14          investigators, I don't remember that -- I  
15          don't remember Mr. Duclos coming before Your  
16          Lordship to tender any evidence purported to  
17          have been evidence obtained by Mr. Huts. He  
18          talked about "unknown investigators." So I  
19          want this to be clear, My Lord.

20       MR. EBOE-OSUJI:

21           Of course, Your Honour, my friend, he has  
22           filed a lot of motions, and quite frankly I  
23           have forgotten whether he did file the one  
24           he said he filed. But if he did, again I  
25           will stand corrected on it. I guess there

1 needs to be a decision on it. But, of  
2 course, we cannot be withdrawing whatever  
3 document my friend attached to his own  
4 motion. We could not withdraw what we did  
5 not put on to the record. I am only talking  
6 about to the extent that we ourselves may  
7 have been seen to have put in the report of  
8 Pierre Huts. It is without prejudice to  
9 whatever motion he may have filed that  
10 remains pending, and without prejudice to  
11 him having attached Pierre Huts' reports to  
12 such a motion.

13 MR. PRESIDENT:

14 Well the position of the parties on this  
15 matter is clear, and you will be informed  
16 about the ruling of the Chamber.

17  
18 (Pages 68 to 112 by Karlene Ruddock)

19  
20  
21  
22  
23  
24  
25

1 1530H

2 THE ENGLISH INTERPRETER:

3 Can Counsel wait for the other interpreter  
4 to get through?

5 MR. ALAO:

6 Mr. President, the issue is not over. Let  
7 me attempt a summary of what I heard from  
8 the Prosecutor. He is saying that the video  
9 cassettes, the photographs, and the reports,  
10 if applicable, were produced by unknown  
11 investigators. That was my understanding.

12  
13 Now, the other question we might put to him,  
14 is that which had to do with video cassettes  
15 which were produced by Mr. Duclos. What is  
16 going to happen with these video cassettes  
17 presented, produced by Mr. Duclos, who,  
18 himself, admitted that it was his  
19 production?

20 MR. EBOE-OSUJI:

21 Your Honours, this is very, very simple.  
22 Let's not confuse both things. Mr. Duclos,  
23 when he appeared before you, told you that  
24 he took video photography of some topical  
25 scenes, that is the scenes where witnesses

1 suggested to him that certain things  
2 happened, so that Your Honours, if you're  
3 minded to look at those, we will look at  
4 them. These are quite different from  
5 pictures containing, or moving pictures  
6 containing forensic evidence in terms of  
7 bones and materials like that.

8  
9 Those materials -- Mr. Duclos clearly said  
10 when he was on the stand, "I do not know who  
11 took those, but I took pictures of the  
12 scenes", and then he outlined to you what  
13 pictures, he, himself, took or pictures he  
14 directed the taking of while he was there.  
15 And he said that the remainder of it, which  
16 contains those cross and bones -- sorry,  
17 bones and skulls material, he said, "Those  
18 were unknown investigators." And, we are  
19 saying it is those that we are now moving to  
20 withdraw from the record, but not Pierre --  
21 pictures that Pierre Duclos took himself or  
22 directed the taking of. We are not  
23 withdrawing those.

24 MR. PRESIDENT:

25 Yes, Judge Williams would like to ask you



1 something.

2 JUDGE WILLIAMS:

3 Actually, what I'm about to say is equally  
4 applicable to the Defence. Speaking for  
5 myself, I don't see how we can deal with  
6 this matter the way it's been dealt with.  
7 Defence say they filed a motion, you say you  
8 are not clear what the position is whether  
9 they filed a motion or not. And, there are  
10 some other issues that just seem to be  
11 hanging in the air. These are matters that  
12 the two sides should get together about and  
13 give us specific facts, because we cannot  
14 come to a decision in a vacuum. So, we will  
15 be just wasting time having an exercise in  
16 futility. This side say this, the other  
17 side say that, and the Chamber is not quite  
18 clear what are the specific factual issues.  
19

20 And it seems to me both sides ought to get  
21 together, decide on what are the real  
22 factual issues, and at that stage, then the  
23 Tribunal would be in a position to come to a  
24 determination. But while these matters are  
25 just going back and forth, how on earth are

1 we going to be able to come to a decision?

2 We can't come to a decision that way.

3 MR. ALAO:

4 I would like to pay tribute to the  
5 intervention of Judge Williams, a clearly  
6 merited tribute. And perhaps, in spite of  
7 our submission, we might have to proceed  
8 with the discussions with the Prosecutor.  
9 You will observe, when I brought to your  
10 attention the document produced by the  
11 Prosecutor, a document titled, "List of Some  
12 Sites", Mr. Pierre Duclos conducted  
13 investigation in the course of his  
14 investigation into Semanza's case. And you  
15 will see at point 14, Mwulire, the  
16 investigator, Pierre Duclos, is saying,  
17 "Cellule Binyange, Chapel Kaboya, secteur  
18 office, Mwulire hill, including mass grave  
19 and genocide memorial." That's 14.

20

21 Now, point 19, he stated, "Ruhanga, mass  
22 grave and school."

23

24 So, so our problem here is very clear.

25 Mr. President, our problem is to know if the

1 documents produced by Mr. Duclos on these  
2 human remains are also being withdrawn or  
3 not?

4 MR. PRESIDENT:

5 I would like to suggest the following  
6 procedure: Taking into account that there  
7 are some difficulties to understand the  
8 situation, maybe it will be wise if the  
9 Prosecutor and the Defence counsel,  
10 together, discuss this matter to understand  
11 better each other. And after that, taking  
12 into account the difficulties, the  
13 Prosecutor could, in a written form to  
14 formulate his application or motion, and  
15 with indication which pieces of evidence are  
16 to be withdrawn, and whether they to be  
17 withdrawn in a whole or in part. And, no  
18 doubt, we'll need to know the Defence  
19 position also in a written, which could  
20 allow us to take a decision.

21  
22 Now, maybe to continue the exchange of  
23 views, I think this is better if you will be  
24 together and you discuss the matter, and  
25 we'll do in a such a way.

1                   Such a procedure is acceptable for you?

2       MR. ALAO:

3                   Absolutely, Mr. President.

4       MR. EBOE-OSUJI:

5                   Yes, Your Honour, indeed. We just wanted to

6                   state our intention. We can sort out

7                   details by the meeting Your Honours have

8                   indicated, but we just wanted to state on

9                   the record that we have this motion, in

10                  principle, as to what we want done, we would

11                  get together and get the exact details. We

12                  thought it would be simple to do it this

13                  way, but apparently not.

14       MR. PRESIDENT:

15                  Yes. Thank you very much. This matter is

16                  so-called settled, or at least, you know,

17                  just postponed. And you may start your

18                  submission.

19

20                  And, I would like to remind you, one of the

21                  main questions is, for what purpose you

22                  would like to call these witnesses?

23       MR. ALAO:

24                  Thank you, Mr. President. Without wishing

25                  to go over all the -- to go over the

1           antecedent of the video cassettes,  
2           photographs, and reports, I just wish to say  
3           that the first purpose of the calling of  
4           experts is to get them to do a technical  
5           expertise on two issues, basically.

6  
7           Legal expertise, they would have to conduct  
8           a legal expertise on the video cassettes,  
9           the photographs, and the accompanying  
10          reports regarding their authenticity, the  
11          exhibits themselves, the material.

12  
13          The second expert report, counter-expertise  
14          -- counter expert report involves verifying  
15          the totality of all these documents that I  
16          have referred to, with the on-site reality,  
17          and thus be able to locate the extent of the  
18          production, the reality of the human  
19          remains, the age of the human remains, in  
20          relation to what is contained in the video  
21          cassettes and photographs, comparison  
22          between video cassettes and sites. An  
23          expertise in the light of available  
24          technology of the age of the bones and  
25          remains. This, to enable us to determine

1 the age, the age of the persons involved,  
2 the age of the remains, and subsidiary, the  
3 sex, age, and ethnic group of the persons  
4 concerned, and also, importantly, the site  
5 of the first burial of the dead in relation  
6 to the sites where the remains were found.  
7 Because today we can examine the human  
8 remains in relation to the soil in which  
9 they were buried initially, and the soil of  
10 site where they have been presented.  
11 Because it's very easy to transport, carry  
12 human remains from one position, one site to  
13 the other to produce the effects expected.  
14 And, today modern technology makes this  
15 possible. Mr. President, Your Honours, this  
16 is the first objective of the technical  
17 expert report.  
18  
19 Now, what are these experts going to bring  
20 before your Court? Obviously, as a result  
21 of their technical expertise, which has  
22 nothing to do with the talking, the idea is  
23 for them to present to you technically, on  
24 each issue what might inform your conviction  
25 in relation to these materials. This is the

1                   purpose of calling them, the presentation of  
2                   their technical reports.  
3  
4                   Now, relevant information on the persons  
5                   involved and their qualifications. First of  
6                   all the institute, itself. I do not know,  
7                   if across the world, to my knowledge, if  
8                   there is any Institute which is better  
9                   qualified than the Medical Legal Institute  
10                  of Paris to conduct these investigation. I  
11                  have known them professionally for years  
12                  and their reputation is without -- is not in  
13                  doubt, not only in respect of the technical  
14                  equipment, the methods of analysis which had  
15                  been developed by that institute, which, let  
16                  me say, in person, that this is not a  
17                  private institution. It is an institute  
18                  that the government and French states have  
19                  spent years in setting up. It's very well  
20                  known, and all the technological resources  
21                  have been made available to them to operate.  
22                  They are known across Europe and Africa.  
23                  And they have been appointed to do a similar  
24                  work in Kosovo, because of their technical  
25                  competence. And the Director of that

1 institutes is Madam Lecomte. She is the  
2 director.

3  
4 And, now, we can talk about those experts,  
5 we can talk about those experts. We've  
6 talked about the institution itself, so that  
7 we would know what we are talking about.  
8 Dead bodies in Rwanda, we know exactly what  
9 you are talking about. We would be giving  
10 you a reproachable technical material. We  
11 have the support of the institute, and we  
12 have support of the -- or the approval of  
13 the expert himself. And that's why I talk  
14 about the experts now.

15  
16 Now, I would like to talk about the Director  
17 of the Institute, who is Madam Bonnet  
18 Lecomte, who, as is indicated, is a doctor  
19 in medicine, has a doctorate in medicine,  
20 who is a laureate of the medical faculty of  
21 Paris. She is a professor of forensic  
22 medicine at Paris V. Besides, she is  
23 inspector, medical inspector, and she is an  
24 expert before the cour de cassation of  
25 Paris, for forensic medicine, for Tanatology



1                   -- Anatomic-pathologie and medical  
2                   responsibility. She is attached to the  
3                   Ministry of Health --

4       THE ENGLISH INTERPRETER:

5                   I am not too sure what counsel means.

6       MR. EBOE-OSUJI:

7                   Can my friend go over his last point again,  
8                   because apparently the interpreters missed a  
9                   point, and we are not able to follow the  
10                  proceedings.

11      MR. ALAO:

12                  It is better to translate it by "appointed".  
13                  It is better.

14  
15                  So, this lady has been appointed by the  
16                  Ministry of Health and Ministry of Foreign  
17                  Affairs. And, besides this commission, the  
18                  ICTY has got her seconded to identify, I  
19                  mean, identify and to research.

20      MR. PRESIDENT:

21                  Mr. Alao, the Chamber has no doubt as  
22                  qualification of this institute and as these  
23                  experts are concerned. Therefore, it's not  
24                  necessary to make and expand on this matter.  
25                  It's quite clear. It's a very high



1                   qualification, and from this point of view,  
2                   the question doesn't arise.

3  
4                   And Judge Dolenc would like to ask the  
5                   question.

6       JUDGE DOLENC:  
7                   Mr. Alao, have you by now, have any  
8                   connections with these two proposed expert  
9                   pathologist?

10      MR. ALAO:  
11                  Thank you, Mr. President. As we have  
12                  already said --

13      JUDGE DOLENC:  
14                  Did you explain them what should their task  
15                  be, and what they answered?

16      MR. ALAO:  
17                  Yes, Mr. President, we have, in an informal  
18                  manner, contacted the Institute as well as  
19                  the director, Madam Lecomte. And she  
20                  invited Expert Vorhauer for a discussion,  
21                  and we told him this is the information we  
22                  have. We would like to know if it were  
23                  possible to know, first of all, the  
24                  authenticity of the cassettes and the  
25                  documents, and to verify on the site, the

1 reality in relation to the cassettes, as I  
2 explained to you. But the experts told us  
3 that it's a work we are used to. We've done  
4 that in Kosovo, and we continue, we still go  
5 to Kosovo for the human remains that are  
6 being discovered everyday.

7  
8 So, technically, we have no problem, but it  
9 would be up to you to get to get us  
10 appointed to do the work. That is why we  
11 came back here. We have initially contacted  
12 the Registry, which is in charge of  
13 appointing experts. And when the Registry  
14 contacted the French authorities, they told  
15 the Registry that this is a normal work, get  
16 the Tribunal to appoint the experts and they  
17 would be at the disposal of the Tribunal to  
18 do the work. That is the information we  
19 have on this situation.

20 JUDGE DOLENC:

21 Only one question more.

22  
23 Mr. Alao, what was answer, for instance, of  
24 this institute on question if they are able  
25 to distinguish from the remains, if the

1                   remains of the body belongs to the Tutsi or  
2                   Hutu; what was their response?

3       MR. ALAO:

4                   The truth is that we did not put that  
5                   specific question, but it will be up to  
6                   them, if the question is put to them, to say  
7                   if they can or cannot. And if they cannot,  
8                   we only put questions to them, questions on  
9                   issues that we know is within their  
10                  technical competence, but Tutsi-Hutu  
11                  distinction, even we, ourselves, cannot do  
12                  that MORPHOLOGICALLY. The expert would  
13                  conduct their research and say if it is  
14                  possible to do so. If it is not possible,  
15                  they would say so. But, we, ourselves, do  
16                  not have the answer to that, but it's a  
17                  question that may be put to them to clear  
18                  our minds on the issue.

19       MR. PRESIDENT:

20                  And, my question is --

21       MR. ALAO:

22                  May I distribute what I have been  
23                  presenting, because I have documentation of  
24                  this one? Copy for the Prosecutor.

25

1 MR. PRESIDENT:

2 Mr. Alao, my question is, whether the French  
3 experts would still be necessary if the  
4 Prosecutor's motion to withdraw such an  
5 evidence is granted?

6 MR. ALAO:

7 An excellent question, Mr. President. We  
8 shall call the Prosecutor, himself, as my  
9 witness, for having discussed this with him  
10 on several occasions when he contacted me, I  
11 said to him, Mr. Prosecutor, this is not the  
12 problem if you withdraw the said documents  
13 with all the implications.

14  
15 Our concern is that the Prosecutor intends  
16 to withdraw some materials, and yet use --  
17 make use of materials linked to that, to  
18 those materials. And the principle in law,  
19 you either use the materials or you  
20 withdraw. Then everybody would be okay, but  
21 we should not have a situation where you are  
22 in at the same time, and yet out. You have  
23 to be fully committed. This is the only  
24 problem we have with the Prosecutor. He  
25 wants to be in and out. That's not

1 possible.

2 MR. EBOE-OSUJI:

3 Your Honours, I wasn't going to reply to the  
4 last comment.

5 MR. PRESIDENT:

6 Yes, not at this stage, because you will  
7 have the floor later on.

8 MR. EBOE-OSUJI:

9 I would not do that.

10

11 Your Honour, I just -- in relation to  
12 something you said, just so that there is no  
13 confusion in future. Your Honour told  
14 Mr. Alao that he need not go at length with  
15 the qualifications of the experts, they are  
16 very qualified and very impressive.  
17 Your Honour, I take it that comment is made  
18 only in the context of the application to  
19 add the witness for purposes of Rule 73ter,  
20 because we don't know how the Bench is going  
21 to rule on it, you may or may not allow this  
22 witness to proceed and give evidence, but we  
23 don't want to come to Court, and we are told  
24 that the Judges have already ruled that the  
25 witness is qualified to give evidence. This

1                   is the confusion. I just wanted to be  
2                   clear, sir.

3       MR. PRESIDENT:

4                   No, no. The attempt was to reduce a little  
5                   bit the submission, taking into account, as  
6                   I told you before, for us, it's a very  
7                   important, first of all, to understand for  
8                   what purpose these witnesses should be  
9                   called, and would like to be called by the  
10                  Defence.

11  
12                  And, therefore, when Mr. Alao, started at  
13                  length to say about the qualification and  
14                  the prestige of this institute, the idea was  
15                  to reduce this, because, no doubt, we  
16                  understand this matter very well.

17       MR. EBOE-OSUJI:

18                  Very well, sir. You just, you know that we  
19                  have this experience of people quoting  
20                  decisions by the Chamber, that the Chamber  
21                  didn't give.

22       JUDGE WILLIAMS:

23                  I just want to add, because this is  
24                  important. If these witnesses are allowed  
25                  to give evidence, their credentials would



1                   have to be established. We are not  
2                   prejudging their credentials. What we are  
3                   trying to say to Defence counsel, you don't  
4                   need to go into a long detail with regard to  
5                   that aspect of the matter in respect of  
6                   these submissions.

7       MR. EBOE-OSUJI:

8                   Very well, sir. I thought that's what you  
9                   meant, I just wanted to be clear on this.

10      MR. PRESIDENT:

11                  You may proceed.

12      MR. ALAO:

13                  Mr. President, given the pertinent  
14                  limitations that you have brought in, I am  
15                  left with only just one part. I'm left with  
16                  only Item 6, that is the possibility of  
17                  calling them.

18      MR. PRESIDENT:

19                  It seem to me, this is a particular case,  
20                  because you are saying about the expertise  
21                  technique, therefore, I understand that you  
22                  would like to invite these expert witnesses  
23                  to make the expertise technique, and only  
24                  after that, they will be able to prepare the  
25                  report?

1 MR. ALAO:

2 Mr. President, your understanding is  
3 correct.

4 MR. PRESIDENT:

5 The only thing, can I have an idea,  
6 approximate, how much it could take to  
7 prepare such a report, and how much time  
8 they need to make such an expertise? This  
9 is the only question, but maybe it's  
10 difficult to answer.

11 MR. ALAO:

12 Mr. President, it's not difficult, because  
13 we requested the experts. Based on  
14 information that we have, it would need  
15 about two and three weeks, because they will  
16 have to go to the site, they will take  
17 various samples which they would analyze in  
18 their own laboratory. Then they would write  
19 a report, which will be clear to make it  
20 possible for any counter-expertise to be  
21 conducted.

22 MR. PRESIDENT:

23 I think your submission is clear, and now,  
24 we can give the floor to the Prosecutor.

25

1 MR. ALAO:

2 I think you are right, Mr. President, we  
3 have said the most important. And if there  
4 are any other issues, we are ready to take  
5 questions.

6 MR. PRESIDENT:

7 During the deliberations, if there are any  
8 questions, they will be put to you and you  
9 will answer to clarify issues that are not  
10 clear.

11

12 And, because your submission is over,  
13 Judge Williams would like to ask you a few  
14 questions.

15 JUDGE WILLIAMS:

16 It's more than one question, and I will just  
17 put them, and then you can answer them  
18 after.

19

20 One of the matters you raised was that the  
21 expert who would determine the validity of  
22 the cassette, validity or authenticity,  
23 whichever word, but I think you understand  
24 what I mean.

25

1 My question, therefore, if the tape, if the  
2 video cassette is withdrawn, then there  
3 would be no necessity for the question of  
4 the validity to be determined. But let us  
5 assume that it is not withdrawn, and let us  
6 assume that it is established that it is not  
7 authentic, then we are back where we were  
8 before. If it's withdrawn and it is valid,  
9 there is no problem. If it's withdrawn and  
10 it's not authentic, there is no problem. If  
11 it's kept in and its authentic and you  
12 establish it's not authentic, then the  
13 Chamber will not consider that when they  
14 come to determine their decision.

15  
16 So, what I'm trying to come to is what is  
17 the usefulness of the exercise, in light of  
18 those questions?

19  
20 Now, the other issue, and one of the issues  
21 I intend to raise, Judge Dolenc has already  
22 raised that, as to how the expert is going  
23 to determine whose bones is ethnic (sic),  
24 and whose bone is Tutsi, because, I, myself,  
25 have difficulty in understanding how they

1 are going to determine that? I'm not saying  
2 it's not possible, but I just have  
3 difficulty understanding how that would be  
4 determined. And the remains have already  
5 been removed from the site, if that is so, I  
6 don't whether their remains have been  
7 removed. If the remains have been removed,  
8 what is it they are going to go to the site  
9 to determine? So, if you can assist me with  
10 those, then I probably will have a better  
11 understanding of what this exercise is all  
12 about.

13 MR. PRESIDENT:

14 Do you want to answer now or later on?

15 MR. ALAO:

16 Of course, now, because we are prepared for  
17 this question, of course --

18 MR. PRESIDENT:

19 As you like.

20 MR. ALAO:

21 -- we don't need a lot of time to reflect on  
22 it, like the Prosecutor used to say.  
23 Thank you, Mr. President.

24

25 The first question was on the utility or the

1                   need for the rest of the exercise. If the  
2                   cassettes were patched up, if they are fake,  
3                   what is obvious is that if it is determined  
4                   that they adopted, and, therefore, they are  
5                   not authentic, it will throw doubt on the  
6                   credibility of the all materials, legally,  
7                   from the legal stand point.

8  
9                   However, it is possible that these cassettes  
10                  contained information, some of which  
11                  information may not have been adopted,  
12                  because, in any event, we do know that  
13                  following the events of 1994, there were  
14                  deaths in Rwanda. They didn't fall from  
15                  heaven. So, among the information on this  
16                  cassette, there are some that might remain  
17                  true, even if the entire cassette is not  
18                  true. And this information contained in the  
19                  cassette could be verified on site, and it  
20                  is obvious that we would be able to  
21                  determine their origin, the cause of their  
22                  deaths, the age of the deceased persons, the  
23                  age of the period of the death. It is  
24                  possible, and we can use all these.

25

1 But if it is determine that these cassettes  
2 are not authentic, it is possible that a  
3 dead body which is contained in the cassette  
4 might be on the site. It is not because a  
5 cassette is not credible, that it is  
6 adopted, that information taken individually  
7 from the cassette might not be true. So,  
8 there is the lack of authenticity of the  
9 materials taken as a whole, and there is  
10 some issue of authenticity of some  
11 information contained therein. So, we  
12 should distinguish between the two; the  
13 cassette as a whole, and some information  
14 contained within the cassette. That is my  
15 answer to the first question.

16  
17 Now, regarding the ethnic issue, we all have  
18 a problem when we are told that persons have  
19 been killed, when we do not have their birth  
20 certificates, we do not have their death  
21 certificates. So, we do not know if these  
22 persons did exist.

23 JUDGE WILLIAMS:

24 The bodies are there.

25

1 MR. ALAO:

2 Thank you, Mr. President. That's the point  
3 I'm coming to. If we had some  
4 documentation, it would be easier for us to  
5 do our verification. We do not have the  
6 exact dates of the death. In my system, my  
7 legal system, and I believe it is the same  
8 in the common law system, there is never --  
9 there is never a murder if you do not prove  
10 that the person at issue did exist legally.  
11 If it is not proved that he is dead -- that  
12 person is dead legally, so it requires some  
13 documentation. So, if you do not have these  
14 papers, even if you present a dead body, it  
15 would -- its identification would be -- it  
16 would necessary to identify it.

17  
18 Our problem, therefore, is that we do not  
19 have this information of identification to  
20 be able to say that this individual is  
21 known.

22 JUDGE WILLIAMS:

23 A single person who has been killed, and  
24 then you need to establish that that  
25 specific person has been killed. Here, we



1                   are dealing with mass killings. So, there  
2                   are mass bodies all over the place.

3       MR. ALAO:

4                   Mr. President, the fact that there was mass  
5                   killing does not mean there is  
6                   non-determined incrimination. These are  
7                   individuals who are being charged.  
8                   Therefore --

9       JUDGE WILLIAMS:

10                  Then you have to establish that particular  
11                  individual was involved.

12       MR. ALAO:

13                  Mr. President, the documents that were  
14                  produced to us are from Gikoro and Bicumbi,  
15                  and that is our problem. From then on, the  
16                  experts are going to MORPHOLOGICALLY attempt  
17                  to see if it is possible to distinguish a  
18                  Tutsi from a Hutu, since we have no criteria  
19                  here. Once they establish that possibility,  
20                  I don't know what the possibility is going  
21                  to be, because I have not read this in any  
22                  book, the element of this kind of  
23                  distinction, it would then be up to them to  
24                  see if the dead remains meet the criteria  
25                  for determination of a distinction between

1 Hutu and Tutsi. But that is the secondary  
2 problem, because the real problem, which is  
3 to be determined by the expertise, is not  
4 the ethnicity of the dead bodies, that is a  
5 secondary issue, be it a Hutu or Tutsi,  
6 moderate or extremist, the death of a person  
7 or in determine number of -- indeterminate  
8 number of persons is a crime.

9  
10 Our concern, therefore, is the place of  
11 death, the date of the death, the causes of  
12 death, and to get to the last issue that you  
13 referred to, Mr. President, the issue of  
14 transfer of the remains of the dead bodies,  
15 or the bones. Regarding the sites of  
16 exposition of the bones, we would like to  
17 believe that there was a movement, because  
18 we assumed that these people would not have  
19 died with their bones in such a perfect  
20 formation. But what we are told of fresh  
21 graves whose pictures are in the cassette,  
22 we expect that those who produced the  
23 documents will tell us that there was  
24 movement, which has not been the case up  
25 till now. We have not been told that these

1 remains have been moved. Now, if the  
2 experts determine that there was movement,  
3 it would be up to the Chamber to determine  
4 whether these crimes actually took place in  
5 Bicumbi or Gikoro. You have helped me,  
6 actually, to clarify the issues that we  
7 wanted to clarify. Thank you very much.

8 MR. PRESIDENT:

9 I give the floor to the Prosecutor.

10 MR. EBOE-OSUJI:

11 Thank you.

12  
13 Your Honours, I begin by saying you have the  
14 evidence. The witnesses who came and  
15 testified to what they saw and witnessed  
16 with their own eyes during the case for the  
17 Prosecution. Some of the these witnesses,  
18 if you recall, had shown up with photographs  
19 of people who died. And I remember wanting  
20 to get into having these witnesses establish  
21 these things to you very clearly. And the  
22 Court felt there was no need to get into  
23 that.

24  
25 There was also, I believe, a certain witness

1                   who showed up with the birth and death  
2                   certificates of her relatives who died.  
3                   And, again, if I recall, the Court felt  
4                   there was no need to do that. And,  
5                   Your Honour, Judge Williams touched the  
6                   thing right on. When a case is so  
7                   concentrated that an accused person is shown  
8                   to have committed a crime so succinctly,  
9                   particularly in a case like this, do we need  
10                  to go and adduce evidence of everybody who  
11                  died in that genocide? Do we really want to  
12                  do that?

13  
14                  Your Honours also have to remember that  
15                  there have been cases in this Tribunal, this  
16                  is not the first case that is being tried in  
17                  this Tribunal on genocide. And Your  
18                  Honours, we have not finished this case yet,  
19                  and we do not know what your judgment would  
20                  be, but there have been judgments where  
21                  accused persons were found guilty of  
22                  genocide. Your Honour, Judge Ostrovsky even  
23                  sat in one of those trials. I will leave it  
24                  at that, and then move on to another point  
25                  in my reply.

1 I do not need belabour the points raised by  
2 the Judges in their questions to my learned  
3 friend about what happens if the Chamber  
4 grants the motion of the Prosecution to  
5 withdraw the materials or the photographic  
6 materials, that is the moving picture and  
7 still, perhaps, indicating exhumation on it.  
8 Your Honours have touched on it. I will not  
9 belabour the point. It is very crucial in  
10 this debate.

11  
12 And the only thing, perhaps, I need to add  
13 is that I had offered to my learned friends  
14 on an earlier occasion to make this  
15 withdrawal, we made them the offer hoping  
16 they will accept it, and they still have not  
17 accepted it, as at the time we started this  
18 discussion this afternoon. And when I made  
19 that offer, I had indicated that the  
20 undertaking -- so the undertaking to  
21 withdraw, if they accepted the offer, would  
22 have been made without prejudice upon the  
23 understanding that the Defence will then not  
24 be calling Dominique Lecomte or Walter  
25 Bonnet. I said that to them. So, I offered

1 to them, we would withdraw these materials  
2 if you don't call these witnesses, because,  
3 in our view, then to call these witnesses  
4 would just involve prolongation of the trial  
5 and wasted cost, which will not assist at  
6 all in the guilt or innocence of the  
7 Accused. Again, they did not accept the  
8 offer. Regardless, we have unilaterally  
9 moved to withdraw those materials. It is  
10 very important on the whole motion made by  
11 the Defence here, whether they still need to  
12 proceed with these two witnesses? And, in  
13 my view, they have not offered any concrete  
14 answer to that question. Again, it's up to  
15 you, Your Honours, to make your  
16 determination; but whatever you rule, if you  
17 were to rule that these witnesses were to  
18 come, we would be quite prepared to meet  
19 them, and we will cross-examine them, all  
20 right, on what they have come to say. It's  
21 a question of, do we need to get involved in  
22 all that exercise when we can avoid it, and  
23 when, either way, that appearance in Court  
24 does not affect the guilt or innocence of  
25 the Accused? That's the big question, but

1                   then, again, there is, finally, the point of  
2                   even if the Court were to allow this  
3                   prospective line of inquiry or defence from  
4                   my learned friends, do we really need two of  
5                   them to come and say the same thing? We  
6                   understand they are husband and wife, but,  
7                   yes, but that's not a reason to bring both  
8                   of them to Court to come and talk about the  
9                   same thing. Your Honours, I don't need to  
10                  belabour the point. Those are briefly the  
11                  thoughts I have by way of replying -- yes,  
12                  the response goes to the Defence motion.  
13                  Thank you.

14       MR. PRESIDENT:

15                   Thank you. You have the right to react.

16       MR. ALAO:

17                   Thank you, Mr. President. Maybe I should  
18                   begin with the end. I think that the  
19                   Prosecutor should withdraw what he just said  
20                   with regard to Professor Lecomte and with  
21                   regard to Professor Vorhauer. I think it's  
22                   very unfortunate, because we've never said  
23                   that the two professors are a couple.

24       MR. EBOE-OSUJI:

25                   I withdraw that.

1 MR. ALAO:

2 It is very unfortunate, and I think the  
3 French authorities wouldn't take that too  
4 kindly. And, of course, the respective  
5 spouses wouldn't take that too kindly  
6 either. It is a complementary team, as far  
7 as technical matters are concerned. And  
8 their expertise were called upon -- was  
9 called upon in Kosovo, and I would hope that  
10 this pronouncement be withdrawn from the  
11 record.

12 JUDGE WILLIAMS:

13 It has been withdrawn.

14 MR. ALAO:

15 You will understand, Mr. President, that  
16 personally, I am hurt to hear this kind of  
17 comment. And I would like to share with you  
18 my feelings.

19  
20 Mr. President, you are told of medical  
21 certificates and death certificates  
22 regarding people who supposedly died. The  
23 Defence, up to this day, have not been made  
24 aware of those items. No material of that  
25 kind has been tendered in evidence, as far



1 as we are aware. So, those are pure and  
2 simple assertions which are aimed at  
3 preparing what we called reparation of  
4 certain legal omissions. However,  
5 unfortunately, that is not possible. And,  
6 even, in this case, there would be an  
7 expertise. And we know what we are talking  
8 about.

9  
10 Secondly, Mr. President, all the  
11 demonstrations that have been shown before  
12 this Court concerning mass killings were  
13 done throughout Rwanda with the exception of  
14 Bicumbi and Gikoro, whose client has been  
15 accused as having some responsibility, in  
16 any manner, whatsoever, in those killings in  
17 those regions. So, what we are doing is not  
18 actually covering the whole of Rwanda. And  
19 that is why, Mr. President, you already  
20 decided in relation to a motion that the  
21 Defence submitted to you in March 2001 --

22

23 THE ENGLISH INTERPRETER:

24 The microphone was off, could counsel  
25 repeat?

1 MR. ALAO:

2 It was actually a Prosecution motion, and  
3 the Chamber decided that in Bicumbi and in  
4 Gikoro, the Prosecutor should prove that  
5 there was genocide. And our calling experts  
6 goes towards proving such logic.

7  
8 With regard -- now, with regard to the  
9 withdrawal of materials mentioned by the  
10 Prosecutor, we do not intend to make  
11 your honourable Court lose a lot of time.  
12 You've already told the parties the need to  
13 continue with their consultation and to  
14 inform you of their decision in this  
15 respect. What we are saying simply is, if  
16 the Prosecutor is logical in her withdrawal  
17 of materials, exhibits that she has  
18 produced, it would be necessarily followed  
19 by the Defence. However, if it's not  
20 logical and rational, it's obvious that the  
21 Defence cannot follow the Prosecutor, as far  
22 as this matter is concerned. The interest  
23 of our client needs this -- calls for this.  
24 So, very briefly, this is what I wanted to  
25 say, Mr. President. Thank you very much,

1 for your attention.

2 JUDGE WILLIAMS:

3 If you just respond to whether you need  
4 both? That's one of the issues the  
5 Prosecutor raised, whether you really need  
6 both of these experts, or whether one would  
7 be adequate?

8 MR. ALAO:

9 Mr. President -- Your Honour, Judge  
10 Williams, I thought that I already answered  
11 your question by talking about the  
12 complementary technical expertise of the two  
13 experts.

14 MR. PRESIDENT:

15 The question, it seems to me that the  
16 Prosecutor raised one point, whether such an  
17 expertise could help us to establish the  
18 guilt or not guilt of the Accused; what  
19 could you tell us about this matter?

20 MR. ALAO:

21 I have to prove to the contrary,  
22 Mr. President, to the contrary, Mr.  
23 President. I think that Mr. Semanza is  
24 being accused of having committed the crime  
25 of genocide and crime against humanity. And



1                   there are several crimes against humanity.  
2                   The cassettes that have been produced are  
3                   referred to, in my jurisdiction, as the  
4                   material evidence of the crimes. If such  
5                   exhibits are missing, if material elements  
6                   of the crime are missing, then it would be  
7                   up to your Court to access the facts of the  
8                   matter. It is up to your Court to access  
9                   whether the crimes can hold, even in the  
10                  absence of material evidence. Because if  
11                  the Prosecutor is so sure of being able to  
12                  establish that crime was committed without  
13                  the material evidence, the question would be  
14                  why did she, in the first place, produce  
15                  them? Those materials didn't just fall from  
16                  the sky. This is not like a piece of hair  
17                  which fell in a soup. They were prepared by  
18                  the Prosecutor with a certain objective in  
19                  mind. So, if those materials no longer  
20                  exist, I cannot there tell the Court what  
21                  would be the fate of this case. But I know  
22                  in my jurisdiction, what would be the fate  
23                  of the case and, I can tell you, if you  
24                  wish, even now.  
25

1 JUDGE WILLIAMS:

2 Mr. Taku, you referred to some motions which  
3 you had filed with regard to the videotapes,  
4 the cassette, the video cassettes?

5 MR. TAKU:

6 No, My Lord, not the video cassette. You  
7 remember when the Prosecutor moved the  
8 Honourable Trial Chambers to exclude, that  
9 he was no longer calling Mr. Heuts and some  
10 other witnesses, there and then, My Lord, I  
11 said, okay, Mr. Heuts has produced a report,  
12 a report from the forensic lab in Amsterdam,  
13 and that Your Lordships should omit that  
14 report. And Your Lordships deferred your  
15 ruling to a later date. And if Your  
16 Lordships would want, tomorrow I will be  
17 able to bring both the transcript of that  
18 hearing, and perhaps my motion to Your  
19 Lordships attention.

20 JUDGE WILLIAMS:

21 And was this a written motion or an oral  
22 motion?

23 MR. TAKU:

24 Immediately after he withdrew, and Your  
25 Lordships granted application, I made an

1 oral motion, My Lord.

2 JUDGE WILLIAMS:

3 I see. Well, maybe you could assist us  
4 because we would like to get the transcript  
5 with regard to that, because there was some  
6 hesitation on the part of the Prosecution  
7 who didn't seem to recall it.

8 MR. TAKU:

9 Well, I will bring that to your attention,  
10 My Lord.

11 JUDGE WILLIAMS:

12 Please. Thank you very much.

13 MR. TAKU:

14 Yes, My Lord.

15 MR. PRESIDENT:

16 I understand that the deliberation of this  
17 matter is over.

18 MR. EBOE-OSUJI:

19 Your Honour, there was something that --  
20 perhaps the cross-examination of the last  
21 witness that we cross-examined, raised an  
22 issue that perhaps, I might use this  
23 opportunity to clear up, with Your Honours  
24 direction on.

25

1 MR. PRESIDENT:  
2 Mr. Osuji, the procedure is that the  
3 submission of the Defence, the answer --  
4 MR. EBOE-OSUJI:  
5 It's a different thing.  
6 MR. PRESIDENT:  
7 Yes, but let's finish with these things.  
8 MR. EBOE-OSUJI:  
9 Okay.  
10 MR. PRESIDENT:  
11 Yes, let's finish with this thing.  
12 MR. TAKU:  
13 I wouldn't wonder whether he can raise any  
14 issue about the cross-examination when the  
15 witness has been discharged.  
16 MR. PRESIDENT:  
17 Therefore, I would like to say that that was  
18 the submission of the Defence, and the  
19 Defence, Mr. Alao, answered the questions  
20 which have been raised, and it was the  
21 response of the Prosecutor. The Judges will  
22 consider all the matter, and you will be  
23 informed about the decision of the Judges.  
24 This is on this matter.  
25



1                   Taking into account that now it's only 4:30,  
2                   what is the next candidate who should be  
3                   considered in the same time? This morning,  
4                   again, I reminded you about the written  
5                   information, but so far we did not receive,  
6                   but you have to choose what would be the  
7                   next, because it's necessary to consider  
8                   this matter today and tomorrow, because  
9                   tomorrow we have no witnesses.

10       MR. TAKU:

11                   My Lord, to put this in the appropriate  
12                   form, the next witness would be Professor  
13                   Pascal, then Ndenjeso. Ndenjeso, My Lord,  
14                   is N-D-E-N-J-E-S-O.

15       MR. PRESIDENT:

16                   But are you able the minimum information --  
17                   to supply us right now with the minimum  
18                   information?

19       MR. TAKU:

20                   My Lord, we would be -- we crave indulgence  
21                   to do that perhaps tomorrow so that we  
22                   present a written document, My Lord. We  
23                   prefer to present a written document.

24       MR. PRESIDENT:

25                   Tomorrow?

1 MR. TAKU:  
2 Yes, My Lord.  
3 MR. PRESIDENT:  
4 You cannot do it today?  
5 MR. TAKU:  
6 Yes, My Lord.  
7 MR. PRESIDENT:  
8 Okay. Therefore, the next will be Professor  
9 Pascal.  
10 MR. TAKU:  
11 Yes, My Lord.  
12 MR. PRESIDENT:  
13 And after Pascal?  
14 MR. TAKU:  
15 Nyetera, Antoine Nyetera.  
16 MR. PRESIDENT:  
17 Nyetera.  
18  
19 Mr. Taku, we don't understand you, tomorrow  
20 morning, you are ready to provide us with  
21 the information about Professor Pascal and  
22 Professor Nyetera, or all the candidates?  
23 MR. TAKU:  
24 No, My Lord. Let me just talk to my  
25 assistant, My Lord, about the other

1 information.

2

3 My Lord, we crave your indulgence that  
4 tomorrow we can present the information on  
5 Professor and Mr. Antoine Nyetera. Yes,  
6 My Lord.

7 MR. PRESIDENT:

8 Only on two of them?

9 MR. TAKU:

10 Yes, My Lord.

11 MR. PRESIDENT:

12 And what about?

13 MR. TAKU:

14 Professor Max Hilaire, we would do that  
15 subsequently, and the one for Major General  
16 Anyidoho, we would be slightly delayed  
17 because of the information which has to be  
18 given to us by the Ghanaian Armed Forces.  
19 The requests have been made and we have been  
20 in touch with them, and we are waiting for  
21 the information -- for the permission to be  
22 given as soon as possible.

23 MR. PRESIDENT:

24 Okay. Try to do it as soon as possible,  
25 taking into account that I understood that

1                   tomorrow you are able to provide us with  
2                   information on two expert witnesses.

3       MR. TAKU:

4                   Yes, My Lord.

5       MR. PRESIDENT:

6                   And, as the others are concerned, you will  
7                   try to do it as soon as possible with  
8                   understanding that maybe you will be able to  
9                   finish with all the candidates tomorrow.

10      MR. TAKU:

11                  My Lord, it is not really possible. The  
12                  Major General, in particular, I will let  
13                  Mr. Alao to explain, because he is the one  
14                  who is in touch with the Ghanaian government  
15                  now at this point in time.

16  
17                  With Max Hilaire, we would try to do that if  
18                  we can have one more day, we would produce  
19                  all the information, My Lord. Because, as  
20                  you see, there was a request, the Registrar  
21                  granted him three days to go to New York to  
22                  get some other information, and I have not  
23                  been able to get him in his home, but if you  
24                  give me just one more day, I would provide  
25                  -- I will file all the information about it.

1 MR. PRESIDENT:

2 But now a days, there are, you know, such  
3 means of connection as fax, email --

4 MR. TAKU:

5 No, to contact him out of his home, or out  
6 of university. I used to get in touch with  
7 him very often, but that now because he went  
8 out of town, that's why I wanted to complete  
9 the information, My Lord.

10

11 But with Major General Kwami Anyidoho,  
12 Mr. Alao, will surely give you some  
13 information, My Lord.

14 MR. PRESIDENT:

15 Yes. Okay.

16 MR. TAKU:

17 The request we had when he asked that, he  
18 left for New York on the 18th, but because  
19 of some procedural problems, Mr. Vorhauer  
20 was not really possible for him to leave on  
21 that same day. So, we would give you as  
22 soon as possible. If, by the end of  
23 tomorrow, I have the information to file, I  
24 would file it, then Your Lordships will  
25 direct when we should come and argue the --

1 make the oral arguments, My Lord.

2 MR. PRESIDENT:

3 Okay. In any case, I understand we'll try  
4 tomorrow to do as much as possible.

5 MR. TAKU:

6 Yes, My Lord. Mr. Alao will talk you about  
7 the General, My Lord.

8 MR. ALAO:

9 It will not be long, Mr. President. I will  
10 be very brief. Since our last hearing, I  
11 tried to contact general Anyidoho, he told  
12 me that he is aware of the Registrar's  
13 letter sent to the Ghanaian authorities  
14 following the authorisation given by the  
15 Secretary General of the United Nations.  
16 However, in view of the conditionalities  
17 attached thereto, the Ghanaian General Staff  
18 is in the process of analysing whether it  
19 could authorise General Anyidoho to disclose  
20 such information. They asked me to call  
21 them either today or tomorrow in order to  
22 know whether they have been granted such  
23 authorisation. This is the situation as of  
24 now, Mr. President.

25

1 MR. PRESIDENT:

2 Yes, Mr. Alao, what interests us is,  
3 firstly, why do you want to call General  
4 Anyidoho as an expert? And what would be  
5 subject of his report? It seems to me that  
6 you will be able to answer those questions,  
7 although you might not be able to shed light  
8 on everything.

9  
10 So, tomorrow, we'll start with the two  
11 candidates, and we would have made progress  
12 in our work. So, it's so being decided.

13  
14 Mr. Osuji, you wanted to raise your question  
15 about cross-examination?

16 MR. EBOE-OSUJI:

17 Your Honour, not about cross-examination.

18 MR. PRESIDENT:

19 What is your question?

20 MR. EBOE-OSUJI:

21 My question for direction from the Judges is  
22 this: There was that decision of the 3rd of  
23 November 2000, on the Prosecutor's motion  
24 for judicial notice. And, in that decision,  
25 Your Honours took judicial notice of certain

1 things, certain propositions in Annex A, and  
2 in Annex B, Your Honours also took judicial  
3 notice of certain documents.  
4 Your Honours, as you recall the history of  
5 this motion, we had filed it on the 19th of  
6 -- originally, filed it on the 19th of  
7 January 1999, that's over two and half years  
8 ago. And for some reason, I don't  
9 understand what happened, but it looked like  
10 the motion was lost in limbo at some point,  
11 and then we had to revive it. It is my  
12 understanding, my recollection, that when we  
13 filed that motion originally, we had bundled  
14 up the documents we sought judicial notice  
15 of, and also handed up one copy of the Blue  
16 Book series, which is United Nations and  
17 Rwanda, to the Registry.  
18  
19 Now, I don't know if Your Honours still have  
20 these documents. If not, we need to know so  
21 that we can see what could happen. As I  
22 say, in view of the fact that it took a long  
23 time, and at some point it looked like we  
24 had to refresh the Court's memory that there  
25 was this motion pending. So, if those



1 materials are not in, we need to know, and  
2 as well, even if they are in the Registry,  
3 how we do we formally make them matter for  
4 the Chamber in these proceedings? Would it  
5 have been sufficient to have left it, the  
6 motion, the notice of motion, as we filed  
7 the notice of motion back then in 1999? Or  
8 would the Court desire for something other  
9 than that to be done for purposes of giving  
10 the Judges the material so that they can  
11 actually use the material in their  
12 deliberation? These are some matters for  
13 direction we seek from the Court. It would  
14 have been different, of course, if a witness  
15 is testifying, and through that witness, we  
16 want to tender a document that the Court has  
17 not taken judicial notice of. The thing to  
18 do is to have the witness put it into the  
19 record, but here is a situation where we  
20 made a motion for some documents to be taken  
21 judicial notice, and judicial notice was,  
22 indeed, taken of such documents. Where do  
23 we go from there?

24 MR. TAKU:

25 My Lord, the Defence would like to react to

1                   this. In the first place, My Lord, this  
2                   motion is inappropriate, because the Defence  
3                   was never given notice of what my colleague  
4                   has raised. He is talking about a matter  
5                   that took place -- the motion he filed since  
6                   1999, the decision of November 2000, in  
7                   which he asked for a review, and which  
8                   Your Lordships issued another decision in  
9                   March 2001.  
10  
11                  And, My Lord, if I think about that motion,  
12                  this motion has been an object of a lot of  
13                  briefs. I think that is one of the  
14                  applications that led to Your Lordships  
15                  deciding, among others motions filed by both  
16                  parties, that henceforth, application should  
17                  be made orally. If Your Lordships look at  
18                  the history of that motion in which he asked  
19                  for judicial notice, it was totally, the  
20                  reasons why Your Lordships, in the review of  
21                  the decision of November 19 -- 2000, one of  
22                  the issues that was raised was that the law,  
23                  the provision on judicial notice had changed  
24                  shortly after that. Now, if I have -- let  
25                  me have the Rules -- one minute,

1                   My Lord. My Lord, Rule 6, Rule 6 with  
2                   regard to amendments of the Rules.

3

4       JUDGE WILLIAMS:

5                   Yes. But, Mr. Taku, the change of the Rule  
6                   came after the decision that we gave. Is  
7                   that the position?

8       MR. TAKU:

9                   No, My Lord.

10      JUDGE WILLIAMS:

11                  When he asked for review, he asked for a  
12                  review because of the change that have been  
13                  made in the Rules. Our decision had already  
14                  been given. And he said, because the Rule  
15                  has now been changed, he is asking us to go  
16                  back and look at it again.

17      MR. TAKU:

18                  My Lord, I didn't oppose, but  
19                  Your Lordships, in the decision -- in the  
20                  decision of March 2001, said the Prosecutor  
21                  has to prove genocide. And the question I  
22                  asked was that in the light of the change  
23                  that had been made. In fact, he was not  
24                  asking for judicial notice of this document.  
25                  He cited several decisions that had been

1           taken; the decision in Akayesu, the decision  
2           in Kambanda, all these decisions, and said  
3           that Your Lordships should take judicial  
4           notice that in the light of these decisions,  
5           the Prosecution should no longer be required  
6           to prove genocide. Now, Your Lordships said  
7           yes --

8       JUDGE WILLIAMS:

9           We never came to any decision that he did  
10          not have to prove genocide. We never came  
11          to any such decision. Our decision was to  
12          the contrary.

13       MR. TAKU:

14          Yes. If Your Lordships, My Lord -- let me  
15          say what I just want to say, My Lord. But  
16          Your Lordships said that Your Lordships can  
17          take judicial notice of the fact that these  
18          decisions were back, but Your Lordships was  
19          not prepare to draw any inference from those  
20          decisions, because the prove of genocide,  
21          the Prosecutor still had to proof genocide.  
22          He was not satisfied by that decision of  
23          November 2000, and asked for a review in the  
24          light of the amendment of the Rule. And  
25          Your Lordships said that he had to prove

1 genocide. That is why he now gave notice  
2 that he wanted to put Professor Guichaoua  
3 and Degni Segui on the stand.  
4 And I understand, My Lord -- our  
5 understanding is that the debate that took  
6 place, there were so many exchanges. He  
7 filed more than -- after the change he filed  
8 more than two other motions for a review, My  
9 Lord. So, I cannot understand how today, my  
10 learned colleague would come today and raise  
11 this issue. He can make an application at  
12 any time if Your Lordships would take  
13 judicial notice of any document, it is his  
14 right to do so, but to attempt to give an  
15 interpretation to this ruling, or to  
16 reopened the issues which have been  
17 determined by Your Lordships, through this  
18 method, My Lord, we think is inappropriate.  
19 He still has the right to file a motion if  
20 he needed to, or to make an application to  
21 Your Lordships, but for him to give a  
22 different interpretation about this -- a  
23 particular ruling, My Lord --  
24 JUDGE WILLIAMS:  
25 What I understand the Prosecutor to be

1 saying is that those documents for which we  
2 allowed judicial notice, what is the  
3 procedure that should be followed to bring  
4 those materials before the Court? That's  
5 what I understand him to be saying. I don't  
6 understand him to be saying the issue that  
7 you are dealing with.

8 MR. TAKU:

9 Whatever the case, My Lord, we should be  
10 given time to go back to those motions,  
11 because Your Lordships cannot give any  
12 directions on the documents that are not  
13 before Your Lordships. He should bring the  
14 documents before Your Lordships, or the  
15 Registry should bring all the documents, the  
16 Defence should have the opportunity of  
17 cross-checking these documents, then we can  
18 make proper arguments on them. If this  
19 issue arose, if he is making the application  
20 for directions now, is because of a witness  
21 who have been discharged. An issue arose,  
22 the witness has been discharged, My Lord.  
23  
24 So, our objection is that the issue cannot  
25 be properly dealt with at this point in

1                   time. He should give proper notice of that  
2                   motion, and bring the application to our  
3                   attention, and we would be able to argue it,  
4                   My Lord.

5       JUDGE WILLIAMS:

6                   I think when he talked about a witness being  
7                   discharged, he must be misspeaking, because  
8                   witnesses being discharged have nothing to  
9                   do with the issue that he spoke about. So,  
10                  he did make that reference, but he misspoke,  
11                  because that can't be what he means.

12      MR. TAKU:

13                  Okay. Thank you, My Lord, for that. But,  
14                  My Lord, we are saying that if he wants to  
15                  make this application about judicial notice  
16                  of any document, or any previous ruling,  
17                  that was not one of the issues placed on the  
18                  record for today. We will be willing to  
19                  argue that application for directions by my  
20                  learned colleague, but we should be given  
21                  time to go back and consult our document and  
22                  we would make an appropriate reply.

23      MR. PRESIDENT:

24                  Could you clarify whether understanding by  
25                  Mr. Taku of your statement is correct?

1 MR. EBOE-OSUJI:

2 Your Honour -- Your Honour, I think -- well,  
3 not I think, His Honour, Judge Williams  
4 stated clearly what the position is. We are  
5 -- our position is the Court has rendered a  
6 decision already saying we are taking  
7 judicial notice of a number of documents.  
8 And our concern, and what we come to you for  
9 direction is, what do we do next in relation  
10 to those documents so that you can now look  
11 at them and make them part of the record?  
12 That is what we are asking. I don't know  
13 what my friend is talking about.

14  
15 Just for the record, sir, we have this  
16 problem of people again, getting up and  
17 stating decisions the Judges have  
18 rendered --

19 MR. TAKU:

20 My Lord, we oppose, there is nothing as  
21 people here. There is counsel.  
22 My colleague shouldn't have use that  
23 language.

24 MR. PRESIDENT:

25 No, no, Mr. Taku, Mr. Taku.



1 MR. TAKU:

2 He cannot refer to the Defence as people,  
3 My Lord.

4 MR. EBOE-OSUJI:

5 It's quite right, Your Honour. Mr. Taku has  
6 that problem.

7 MR. PRESIDENT:

8 Mr. Taku, you speak up, it's impossible to  
9 speak simultaneously.

10 MR. EBOE-OSUJI:

11 Your Honour, this is what you said regarding  
12 just what it is were regarding judicial  
13 notice of genocide. And this is paragraph 4  
14 of your decision, as I refer to -- and I  
15 will read it, paragraph 4, subheading,  
16 "Judicial notice of enumerated acts  
17 comprising the crime of genocide." And you  
18 say this, sorry, this is subheading 4, not  
19 paragraph 4. And then the main text begins  
20 at paragraph 36. It says, "A fundamental  
21 question in this case is whether "genocide"  
22 took place in Rwanda. Notwithstanding the  
23 over abundance of official reports including  
24 United Nations Report confirming the  
25 occurrence of genocide, this Chamber

1 believes that the question is so fundamental  
2 that formal proof should be submitted  
3 bearing out the existence of the  
4 jurisdictional elemental crime.  
5 Kanyabashi's judgment", reference given,  
6 referring to genocide and holding, "The  
7 question is so fundamental to the case  
8 against the accused that the Trial Chamber  
9 feels obliged to make a finding of fact on  
10 the issue."

11 THE ENGLISH INTERPRETER:

12 Excuse me, could Counsel please slow down.

13 MR. EBOE-OSUJI:

14 I proceed, this is the relevant part. "The  
15 Chamber shall take judicial notice of the  
16 existence of the enumerated acts comprising  
17 the crime of genocide, as provided in  
18 Article 2 and recited in paragraph 3(A) of  
19 Appendix A, including killings or causing  
20 serious bodily harm to members of a group."  
21 Paragraph 37 continues, "In the interest of  
22 safeguarding the accused's right to a fair  
23 trial, and in the interest fostering  
24 judicial economy and consistency, this  
25 Chamber takes judicial notice of some of the

1 facts contained in Appendix A to the revised  
2 memorial as indicated in Annex A to this  
3 decision." That is the end of paragraph 37.  
4 And then if we go to Appendix A --

5 MR. TAKU:

6 My Lord, we beg to defer now, this motion is  
7 being argued. The Defence has applied that  
8 this matter be deferred.

9 MR. PRESIDENT:

10 Mr. Taku, I will give you the floor later,  
11 but it's impossible to interrupt him when he  
12 is speaking.

13 MR. TAKU:

14 But the application is standing. The  
15 application for this matter to be deferred  
16 is standing, My Lord. You allowed him to  
17 argue right to the end to read this into the  
18 record, how do we have the time to answer to  
19 this. This issue be deferred for us to  
20 bring our arguments here for Your Lordships  
21 to make appropriate directions.

22 MR. PRESIDENT:

23 Mr. Taku, let him finish, after that I will  
24 give you the floor.

25

1 MR. TAKU:

2 Then what would be the reason, My Lord, for  
3 my application for the issue to be deferred?

4 MR. EBOE-OSUJI:

5 Your Honour, my friend was posing or  
6 paraphrasing your decisions. So, I thought  
7 I would read it so it is clear to everyone.

8 JUDGE WILLIAMS:

9 I think there is a little bit of confusion.  
10 I just want to say, if I understand clearly,  
11 what you are dealing with. The Chamber has  
12 given a decision. In that decision, the  
13 Chamber took judicial notice of certain  
14 matters in an Annex which is attached; is  
15 that correct?

16 MR. EBOE-OSUJI:

17 Yes, Your Honour.

18 JUDGE WILLIAMS:

19 So far as my position is, those documents,  
20 if the Chamber is taking judicial notice of  
21 them, then there is no need for any proof of  
22 those documents any further.

23 MR. EBOE-OSUJI:

24 That's what we think.

25

1 JUDGE WILLIAMS:

2 Wait. The documents now to be admitted  
3 simply need to be tendered and marked as an  
4 exhibit in the proceedings. And, so, I  
5 don't see what all these arguments is going  
6 on about.

7 MR. EBOE-OSUJI:

8 Your Honour, that is the clarification I was  
9 seeking or the direction I was seeking from  
10 the Chamber as to how to approach it, and  
11 what to do. That's all, simply. There is  
12 no need to belabour the point.

13 MR. PRESIDENT:

14 Therefore, I can understand that you are  
15 satisfied with these explanations?

16 MR. EBOE-OSUJI:

17 By His Honour, Judge Williams, yes.

18 MR. PRESIDENT:

19 Therefore, there is no question.

20 MR. TAKU:

21 My Lord, we are parties in this case. We  
22 are dealing with an issue which the Defence  
23 came here today not knowing that we are  
24 going to deal with. We are dealing with a  
25 matter which is more complicated than



1           Your Lordships think about, because the  
2           application for judicial notice started in  
3           1999. And every time a decision is  
4           rendered, the Prosecutor ask for it to be  
5           reviewed. If Your Lordships take a  
6           decision, based on the decision of November,  
7           without asking that the decision of March  
8           2001 be brought to the attention of Your  
9           Lordships, which was -- which, in fact,  
10          modified your decision of November, My Lord;  
11          I think a miscarriage of justice would be  
12          done to the Defence, in this case.

13  
14          I urge Your Lordships that Your Lordships  
15          should not hurry about responding to the  
16          Prosecutor. Your Lordships should ask your  
17          assistants or the Registry to bring all the  
18          documents in respect of this case, in  
19          particular your last decision of March 2001.  
20          And I say so for good reason, My Lord. If  
21          I heard Prosecutor well, the Prosecutor was  
22          not talking about documents, per se, he was  
23          talking about judicial notice of genocide.  
24          Now, judicial notice of genocide, My Lord,  
25          is a very -- you take judicial notice of a

1 crime that a crime has been committed in a  
2 specific context of an accused person before  
3 Your Lordships. Then, what are we here for?  
4 Then what are we here for?

5  
6 So, My Lord, what I intend to say is that in  
7 your decision of March 2001, Your Lordships  
8 stated that in respect of this particular  
9 case of genocide, Your Lordship were not  
10 prepared to take judicial notice of  
11 genocide, and that the Prosecutor had to  
12 prove. And that is why he had to prove.

13 JUDGE WILLIAMS:

14 Mr. Taku.

15 MR. TAKU:

16 Yes, My Lord.

17 JUDGE WILLIAMS:

18 I find that when we start into these things  
19 it just goes on and on and on. It is clear,  
20 the Prosecutor filed different motions with  
21 regard to judicial motions, only one of  
22 those motions was granted, the others were  
23 rejected. So, those are rejected doesn't  
24 come into the picture any more. We can only  
25 deal with the one that we granted.



1                   Now, with regard to the one that we granted,  
2                   those issues in that decision that we said  
3                   we would take judicial notice of, those  
4                   matters can be presented to the Court. And  
5                   the Court has already said it will take  
6                   judicial notice of them. So, therefore,  
7                   they become an exhibit in the case. That's  
8                   all. I don't know why we are arguing back  
9                   and forth.

10       MR. TAKU:

11                   I want Your Lordship to be clear, but do  
12                   Your Lordship agree that in your subsequent  
13                   decision in rejecting the application in  
14                   March 2001, Your Lordships also said the  
15                   Prosecutor should prove genocide. That  
16                   genocide must be proved, but the Prosecutor  
17                   --

18       MR. PRESIDENT:

19                   Mr. Taku --

20       JUDGE WILLIAMS:

21                   But you are trying to get us to interpret  
22                   our own decision.

23       MR. TAKU:

24                   But that is what he is doing, My Lord.

25

1 JUDGE WILLIAMS:

2 No, the decision would speak for itself.

3 And whatever we said we would take judicial  
4 notice of is to be presented to the Court  
5 for judicial notice. That's all. It  
6 doesn't go any further than that.

7 MR. TAKU:

8 My Lord, to close this debate, I want the --  
9 because we don't want to come here again  
10 with another motion for Your Lordship to  
11 interpret your decision of March 2001, that  
12 Your Lordship was not prepared to take  
13 judicial notice of genocide, and that it was  
14 for the Prosecutor to prove that. If Your  
15 Lordship did not resolve the issue, be sure,  
16 My Lord, we give notice that tomorrow, when  
17 we come tomorrow, it should be put on the  
18 list, we are going to raise another motion.  
19 Your Lordship say that it was for him to  
20 prove genocide.

21 MR. PRESIDENT:

22 Mr. Taku.

23 MR. TAKU:

24 Yes, My Lord.

25

1 MR. PRESIDENT:

2 Mr. Taku, the decision of the Chamber dated  
3 3rd November 2000, says in the paragraph B,  
4 "Grants the Prosecutor's motion and takes  
5 judicial notice of the facts and documents  
6 described in Annex A and in Annex B,  
7 attached hereto. Orders that this decision  
8 become part of the trial record of this  
9 case. G. Denies the Prosecutor's request  
10 made in the motion first to create evidence  
11 that the presumption on the basis of the  
12 text in Appendix A and B; and, two, to take  
13 judicial notice of inferences that may be  
14 drawn from the judicial notice of facts."  
15  
16 Therefore, it's better to read the decision  
17 and not to have such a discussion.

18 MR. TAKU:

19 My Lord, my concern is not about that  
20 decision which was well understood. My  
21 decision is about your subsequent decision  
22 that Your Lordships --

23 JUDGE WILLIAMS:

24 No, but the subsequent decision don't matter  
25 because we refused that. What is important

1 is this decision that Judge Ostrovsky has  
2 just pointed out to you. And you were not  
3 going to ask us to go and reinterpret our  
4 decision. Our decision is our decision.

5 MR. TAKU:

6 Most obliged, My Lord. My Lord, I give you  
7 notice that tomorrow morning, it should be  
8 included on the list of issues we have for  
9 tomorrow morning that the Defence is  
10 bringing a motion based on the decision of  
11 March 2001.

12 JUDGE WILLIAMS:

13 You mean that decision that Judge Ostrovsky  
14 --

15 MR. TAKU:

16 Not this, My Lord. The one of March 2001,  
17 My Lord. We want it to be included for  
18 tomorrow, My Lord.

19 JUDGE WILLIAMS:

20 Look, we are not going to go and relook our  
21 decisions. When the Trial Chamber gives a  
22 decision, that matter is closed, and you  
23 cannot ask us go back and look at a decision  
24 that we have given.

25

1 MR. TAKU:

2 My Lord, I think it is right of the Defence,  
3 what will the Defence need to do in order to  
4 defend Mr. Semanza in the light of your  
5 decision of 2001? That's what we are going  
6 to ask, My Lord.

7 JUDGE WILLIAMS:

8 But that decision will speak for itself.  
9 You don't perhaps go and bring us a motion  
10 to go and consider our own decision. Our  
11 decision speaks for itself.

12 MR. TAKU:

13 Your Lordship is prejudging, the motion has  
14 not been tabled. We ask, My Lord,  
15 respectfully, that it should be put on the  
16 record for tomorrow that the Defence would  
17 bring a motion based on the decision of  
18 March 2001, My Lord. Your Lordship may not  
19 prejudge that --

20 JUDGE WILLIAMS:

21 I'm just telling you that if you are asking  
22 any court to go and reconsider or interpret  
23 what its decision is, that is unacceptable.  
24 That's all I'm telling you.

25

1 MR. TAKU:

2 No, My Lord. We would just want to know the  
3 scope of what the Defence is entitled to do  
4 in the Defence of Semanza. Is the  
5 Prosecution entitled to prove genocide; yes  
6 or no? Or you have already taken judicial  
7 notice of genocide, and therefore, the  
8 prosecutor does not need to prove it. That  
9 is the question, My Lord. In the light of  
10 that decision --

11 JUDGE WILLIAMS:

12 Then you look at the decisions that the  
13 Tribunal has given and that will indicate  
14 what our position was. We are not going to  
15 go and interpret our decisions. Our  
16 decisions speak for itself.

17 MR. TAKU:

18 Yes, My Lord, we agree. If your decisions  
19 speak for itself, then your decision of  
20 March 2001 would speak for itself when we  
21 raise our motion. It might well be your  
22 reply tomorrow, My Lord, but we have the  
23 right to raise that issue tomorrow. And we  
24 want it to be -- we want it, My Lord, to be  
25 put on record that we are coming back

1 tomorrow on this issue. It is our right,  
2 My Lord, and we think that that Your  
3 Lordship will look at it even if it means  
4 prejudging the issue, and taking a decision  
5 Your Lordship has taken, then may well be  
6 so, but we ask, My Lord, that you should put  
7 on the record for tomorrow.

8 JUDGE WILLIAMS:

9 We are not ruling to put any -- so, don't  
10 ask us to rule that.

11 MR. TAKU:

12 My Lord, I'm not saying Your Lordship should  
13 rule. I'm saying even though it had been  
14 prejudged --

15 JUDGE WILLIAMS:

16 Nothing has been prejudged. What I've said  
17 to you, this Court will not go and interpret  
18 its decision. The decision of the Court  
19 speaks for itself. So, don't misinterpret  
20 my language. My language is clear. I  
21 always speak very clear and precise. I'm  
22 saying that you are not to ask this Court to  
23 go and interpret its decision. The decision  
24 of the Court speaks for itself.

25

1 MR. TAKU:

2 My Lord, Your Lordship should be patient and  
3 wait for my motion tomorrow. It may well be  
4 that the decision taken would be exactly the  
5 position you are taking now, but we should  
6 be given a chance to be heard. I think it's  
7 our right to be heard, My Lord. So, we  
8 should be giving the possibility tomorrow.

9 MR. PRESIDENT:

10 Nobody denied your right, no doubt.

11

12 And I think we can finish for today, and  
13 we'll resume our work tomorrow at 9:30. The  
14 proceedings are adjourned.

15

16 (Court recessed at 1700H)

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19 (Pages 113 to 183 by Haruna Farage)

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C E R T I F I C A T E

We, Judith Kapatamoyo, Karlene Ruddock and Haruna Farage, 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 no way interested in the result of said cause.

\_\_\_\_\_  
Judith Kapatamoyo (pgs 1-67)

\_\_\_\_\_  
Karlene Ruddock (pgs 68-112)

\_\_\_\_\_  
Haruna Farage (pgs 113-183)