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THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

CASE NO.: ICTR-98-44A-T

THE PROSECUTOR
OF THE TRIBUNAL

AGAINST

JUVENAL KAJELIJELI

5 OCTOBER 2001
0930H
MOTION

Before: Judge William H. Sekule, Presiding
Judge Winston Churchill Matanzima Maqutu
Judge Arlette Ramaroson

Registry: Mr. John Kiyeyeu
Mr. Abraham Koshopa

For the Prosecution:
Mr. Ibukunolu Babajide
Ms. Ifeoma Ojemeni

For the Accused:
Professor Lennox Hinds
Professor Nkeyi Makanyi Bompaka

Court Reporters:
Rex Lear
Kelly Allemang

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

2 MR. PRESIDENT:

3 The proceedings are called to order. Could
4 the Registry introduce the matter coming
5 before the Trial Chamber this morning,
6 please?

7 MR. KIYEYEU:

8 Thank you, Mr. President.

9
10 Trial Chamber II, of the International
11 Criminal Tribunal For Rwanda, composed of
12 Judge William H. Sekule, presiding, Judge
13 Winston Churchil Matanzima Maqutu and Judge
14 Arlette Ramarason, is now sitting in open
15 session, today, Friday, the 5th of October
16 2001, for the continued trial, when this
17 Chamber will deal with procedural matters
18 relating to the admission or non-admission
19 in evidence of the statement of Witness GDD,
20 PW9 in the matter of the Prosecutor versus
21 Juvenal Kajelijeli, Case Number
22 ICTR-98-44A-T.

23

24 Thank you, Mr. President.

25 MR. PRESIDENT:

1 Thank you, Mr. Kiyeyeu of the Registry.

2

3 May we have the appearance of the parties,
4 starting with the Prosecution, please?

5 MS. OJEMENI:

6 With due respect, Your Honour, Ifeoma
7 Ojemeni appears with Ibukunolu Babajide and
8 Dorothy Marotine for the Office of the
9 Prosecutor.

10 MR. PRESIDENT:

11 Thank you, learned counsel.

12

13 Can we also have the appearance of the
14 Defence?

15 PROFESSOR HINDS:

16

17 Lennox Hinds representing Mr. Kajelijeli,
18 assisted by Professor Bompaka and
19 interpreter Emile Dusabe.

20 MR. PRESIDENT:

21 Thank you, learned counsel.

22

23 Today we deal, firstly, with the question of
24 the statement of the Witness GDD, the
25 Defence were working on it. Are you ready,

1 Professor Hinds?

2 PROFESSOR HINDS:

3 Yes, Your Honour. Professor Bompaka will
4 make the submission.

5 MR. PRESIDENT:

6 Yes, learned counsel.

7 PROFESSOR BOMPAKA:

8 I'm quoting the request of the Chamber, we
9 considered the initial statements made by
10 Witness GDD, those witness (sic) were made
11 on the 26th of June and 21st of July 2000.
12 We looked at those initial statements.
13 We also examined the testimony before this
14 Chamber by Witness GDD. Now, based on that
15 examination, Mr. President, Your Honours,
16 based on that examination the following was
17 found -- or what did we observe, Mr.
18 President, Your Honours.

19 MR. PRESIDENT:

20 We are not making an assessment of the
21 statement. Just tell us the areas that were
22 contradictory and the witness's attention
23 was drawn to it. We're not making
24 submissions as to declarations at this
25 stage.

1 PROFESSOR BOMPAKA:

2 Indeed, that's what I'm trying to say or do.
3 I wanted to identify the inconsistencies or
4 discrepancies. If you will allow me to
5 continue, you will find those
6 inconsistencies or discrepancies in my
7 submission. We noted the following.

8 MR. PRESIDENT:

9 We are not submitting, at this stage; you
10 just point out the areas that we were going
11 through this process, highlighted, that kind
12 of comment or assessment will come at a
13 later stage, at the time of the submission,
14 when this matter is closed. We -- the
15 procedure, I think, is known. Just say
16 which area that you were drawn to the
17 attention of the witness, highlighted,
18 without any further comment. We know why
19 they are so highlighted. We are not being
20 invited, at this stage, nor do we invite
21 anybody at this stage to tell us what they
22 amount to.

23 PROFESSOR BOMPAKA:

24 Thank you, very much, Mr. President.

25

1 Well, take the statement signed 26 June
2 2000, on page 4.

3 THE INTERPRETER:

4 I'm sorry those documents the interpreters
5 don't have.

6 PROFESSOR BOMPAKA:

7 In the second paragraph it talks about the
8 day of 7th April, 1994. We also highlighted
9 paragraph 3, which talks about the attack
10 against the Nvuka family and --

11 MS. OJEMENI:

12 Your Honour, just to ask the Court, we've
13 already highlighted. It's just a question
14 of tendering. We've already done so. We've
15 agreed. We've already done that, so it's a
16 question of just submitting the statements.

17 MR. PRESIDENT:

18 Yes.

19 PROFESSOR BOMPAKA:

20 Can I continue, Mr. President?

21

22 So, we considered the two statements.
23 Counsel for Mr. Kajelijeli would like to
24 tender this document as evidence, and we did
25 have a working session with the Prosecutor.

1 MR. PRESIDENT:

2 Yes, the areas that are highlighted, is that
3 correct, Professor, in that statement?

4 PROFESSOR BOMPAKA:

5 Yes.

6 MS. OJEMENI:

7 Yes, Your Honour, but we have also read into
8 records the second statement dated 21st July
9 2000; so we don't intend to tender it in
10 evidence, because we've already read out the
11 relevant portion into records yesterday.

12 MR. PRESIDENT:

13 No. I think we must do the same, so that we
14 can have some references. The idea, we
15 shall come back to that, you never know what
16 might arise at a later stage.

17 MS. OJEMENI:

18 Since the Defence did not raise this,
19 because the Court ordered the Defence,
20 yesterday, to look into the areas that they
21 considered inconsistent, and I thought they
22 would bring the second statement, as well,
23 they didn't make any reference to the second
24 statement. And I thought that having read
25 the relevant paragraph into records that it

1 will suffice, but, all the same, we can do
2 that right now.

3 MR. PRESIDENT:

4 I think that is the best way, because you
5 never know what might happen at the end and
6 the Trial Chamber would like it, as a
7 possible course.

8 MS. OJEMENI:

9 I'll do it right away, in a minute.

10 PROFESSOR HINDS:

11 May it please the Court, perhaps it might
12 help us move forward.

13

14 Mr. Kajelijeli, at this stage, tenders as
15 Defendant's Exhibit 7A and B, the statement
16 of June 23, 2000, that will be 7A.
17 Statement of 26 --

18 PROFESSOR HINDS:

19 Well, it's 26 of June.

20 MR. PRESIDENT:

21 2000.

22 PROFESSOR HINDS:

23 Two thousand and the statement of July 21st
24 2000 as 7B.

25 MR. PRESIDENT:

1 July 21 as Exhibit 7.

2 PROFESSOR HINDS:

3 B, one is 7A, one is 7B.

4 MR. PRESIDENT:

5 This is 7B.

6 PROFESSOR HINDS:

7 Now with respect to 7A, which is the

8 statement of June 26, we have highlighted.

9 MR. PRESIDENT:

10 As highlighted.

11 PROFESSOR HINDS:

12 As highlighted and we have highlighted on

13 page 4, just for the record, paragraphs 1,

14 paragraphs 2, paragraphs 3, paragraphs 4.

15 With respect to that same document at page 5

16 we have highlighted paragraph 2, we have

17 highlighted Mr. Kajelijeli's name in the

18 next paragraph and then we have highlighted

19 a portion of the next paragraph related to

20 inconsistencies between the witness's

21 testimony in Court and his statement. Now,

22 we would, with respect to --

23 MR. PRESIDENT:

24 Let us finish that one.

25

1 Learned counsel for the Prosecution, any
2 objection to that statement? You are
3 discussing the statement of 26th June 2000,
4 as highlighted by the Defence.
5 MS. OJEMENI:
6 No objection, Your Honour.
7 MR. PRESIDENT:
8 So let the statement of Witness GDD as 26
9 June 2000, as highlighted, be Exhibit 7A.
10 PROFESSOR HINDS:
11 That's right.
12 MR. PRESIDENT:
13 Okay, next.
14 PROFESSOR HINDS:
15 Now, with respect to 7B, we are proposing
16 that that whole document be submitted,
17 because there's a comparative analysis. The
18 basis of our objection was that there were
19 statements made to the members of the ICTR
20 on July 21st which were not made on June 26
21 and there's no way that the Court will be
22 able to assess this, based upon what we are
23 doing, unless we submit both documents.
24 MR. PRESIDENT:
25 But that fact was never drawn to the

1 attention of the witness.

2 PROFESSOR HINDS:

3 No. In fact, I'm saying exactly what you

4 have said. Didn't you say you wanted both

5 statements?

6 MR. PRESIDENT:

7 Yes. We are coming down to the question of

8 omission, whereby I think --

9 PROFESSOR HINDS:

10 Absolutely, and how are you going to deal

11 with omissions unless you look at both

12 statements?

13 MR. PRESIDENT:

14 Maybe both statements should be formally

15 admitted.

16 PROFESSOR HINDS:

17 Maybe it's the translation or the time of

18 the morning. I've just said we are

19 submitting both statements. You that said

20 that's what you wanted and I thought we were

21 on the same page?

22 MR. PRESIDENT:

23 Okay, sorry Professor.

24 PROFESSOR HINDS:

25 We're on the same page?

1 MR. PRESIDENT:

2 Yes.

3 PROFESSOR HINDS:

4 With respect to 7B, 7B is being submitted by
5 Mr. Kajelijeli, in its entirety, and I don't
6 think that there is any objection, on the
7 part of the Prosecutor. They read all of
8 the paragraphs of this statement.

9 MR. PRESIDENT:

10 It is brief.

11 PROFESSOR HINDS:

12 No, they read it. They read the first
13 paragraph into the record, but we still
14 believe the whole statement should be
15 submitted and that's why we are making the
16 application.

17 MS. OJEMENI:

18 May I respond to that when I bring the
19 highlighted statement? I'm just doing it
20 now, I'll respond to that.

21 MR. PRESIDENT:

22 Well, the admission of the entire statement
23 of 21st.

24 MS. OJEMENI:

25 Yes, Your Honour. I'll respond to that

1 because we drew the Court's attention to
2 that particular statement, but I'm doing the
3 highlighting and I'll respond to that.

4 MR. PRESIDENT:

5 But you have no objection?

6 MS. OJEMENI:

7 I have an objection. That's why I'm
8 responding to it.

9 MR. PRESIDENT:

10 All right, while you are there, Professor,
11 you have stated that the Prosecution is not
12 -- in order not to repeat --

13 PROFESSOR HINDS:

14 I am not sure what the procedures we're
15 using now, whether we are now going to end
16 up with Prosecutor's exhibits with respect
17 to the same document, but I thought that it
18 was: A. A Defence document based upon our
19 submissions; that we had a right, either, A,
20 To submit something or not to submit
21 anything. I thought that was the ruling.

22

23 Now, if the Prosecutor has objections, they
24 may so state the objections; but now what I
25 think is happening is we are now having

1 another document, which is highlighted, and
2 I'm not quite sure what that is.
3 MR. PRESIDENT:
4 No, let us be very clear. We have dealt
5 with the statement of 26 June 2000, as
6 highlighted, admitted as Exhibit 7A.
7 PROFESSOR HINDS:
8 Correct.
9 MR. PRESIDENT:
10 Right. Now, you said, Professor, that
11 further omissions, or whatever, that these
12 statements will be admitted.
13 PROFESSOR HINDS:
14 Yeah, I am proposing that we submit the
15 entire statement.
16 MR. PRESIDENT:
17 So, apart from the highlighted areas, on
18 Exhibit 7A --
19 PROFESSOR HINDS:
20 Right.
21 MR. PRESIDENT:
22 The entire statement is also admitted, for
23 the omissions, I suppose.
24 PROFESSOR HINDS:
25 Yes.

1 MR. PRESIDENT:
2 So that should be very clear. Then we move
3 on to statement made on the 27th July, 2000
4 -- 21st July, 2000.
5 PROFESSOR HINDS:
6 Correct.
7 MR. PRESIDENT:
8 The Defence says that you, in turn, produce
9 the entire statement.
10 PROFESSOR HINDS:
11 Correct.
12 MR. PRESIDENT:
13 Okay.
14 PROFESSOR HINDS:
15 Correct.
16 MR. PRESIDENT:
17 So, Prosecution, you have any objection
18 to --
19 MS. OJEMENI:
20 I wouldn't call it an objection, it's a
21 statement. We -- yesterday, the Defence
22 made references to Exhibit 7A, that's the
23 first statement, and in respect to the
24 second statement, dated 21st July, he barely
25 drew the Court's attention to the omissions.

1 He referred to it as omissions and the
2 record reflects what omissions he drew the
3 Court's attention to; but we read
4 paragraphs, certain paragraphs, two
5 paragraphs, to be precise, of that statement
6 and we intend to tender the exhibit as
7 highlighted.

8 MR. PRESIDENT:
9 As a Prosecution exhibit?

10 MS. OJEMENI:
11 As a Prosecution exhibit.

12 MR. PRESIDENT:
13 Why not?

14 MS. OJEMENI:
15 That's what we intend to do.

16 MR. PRESIDENT:
17 You are entitled to do so, those are
18 separate documents.

19 MS. OJEMENI:
20 Yes. We have no objection, if he wants to
21 tender it.

22 MR. PRESIDENT:
23 In any case we can't make the exhibits, the
24 Prosecution exhibit must be properly
25 labelled, as well as a Defence exhibit must

1 be so labelled, so there is no problem about
2 that one.

3 MS. OJEMENI:
4 No problem.

5 MR. PRESIDENT:
6 So, let us proceed, Professor Hinds. To
7 conclude, the statement of Witness GDD of
8 21st July 2000.

9 PROFESSOR HINDS:
10 Correct.

11 MR. PRESIDENT:
12 The entire statement is admitted as Exhibit
13 7B.

14 PROFESSOR HINDS:
15 Correct.

16 MR. PRESIDENT:
17 There's no objection. Okay, the other
18 exhibit, the exhibit or statement of 26 June
19 2000, as highlighted, has been admitted as
20 Exhibit 7A.

21
22 (Exhibits No. 7A-7B were admitted).

23 PROFESSOR HINDS:
24 Correct.

25 MR. PRESIDENT:

1 But also the entire statement has been
2 produced for omissions.
3 PROFESSOR HINDS:
4 Correct.
5 MR. PRESIDENT:
6 Good.
7 PROFESSOR HINDS:
8 Correct.
9 MR. PRESIDENT:
10 So we are through with the Defence exhibits.
11 PROFESSOR HINDS:
12 The Defence exhibit.
13 MR. PRESIDENT:
14 We turn to the Prosecution. The
15 Prosecution, please.
16 PROFESSOR HINDS:
17 Your Honour, do I submit these?
18 MS. OJEMENI:
19 I also submit that that statement be kept
20 under seal, because it has the particulars.
21 MR. PRESIDENT:
22 Yes. In fact, all the statements be kept
23 under seal for the reasons they contain the
24 personal particulars of the concerned, who
25 is a protected witness.

1
2 Yes.
3 MS. OJEMENI:
4 Your Honours, the Prosecution humbly submits
5 a request that the second statement of
6 Witness GDD, dated 21st July 2000 be
7 admitted as Exhibit P14.
8 MR. PRESIDENT:
9 As highlighted.
10 MS. OJEMENI:
11 As highlighted. Am I correct?
12 MR. PRESIDENT:
13 Could you check?
14 MS. OJEMENI:
15 P14, I've highlighted.
16 MR. PRESIDENT:
17 Any objection?
18 PROFESSOR HINDS:
19 Not really, it's a redundant exercise, but
20 so be it.
21 MR. PRESIDENT:
22 No objection?
23 MS. OJEMENI:
24 No objection.
25 MR. PRESIDENT:

1 So, let the statement of Witness GDD of 21st
2 July 2000, as highlighted by the
3 Prosecution, be admitted as Exhibit P14.
4
5 (Exhibit No. P14 was admitted)
6 MS. OJEMENI:
7 And be kept --
8 MR. PRESIDENT:
9 And be kept under seal, because it contains
10 personal particulars of Witness GDD who's a
11 protected witness. That concludes the
12 evidence the evidence of GDD, which was
13 carried forward from his testimony
14 yesterday.
15
16 Yes, next Counsel -- counsels?
17 MS. OJEMENI:
18 We received a motion.
19 MR. PRESIDENT:
20 Yes.
21 MR. BABAJIDE:
22 Filed by the Defence, which is in French. I
23 don't know if Your Honours are in a position
24 to hear us this morning, though we got it
25 this morning.

1 MR. PRESIDENT:

2 Yes. Are you ready to hear it?

3 MR. BABAJIDE:

4 My Lord, this is a Defence motion, so the
5 ball is in their court. Obviously, you can
6 see that I am dressed in a slightly
7 different garb this morning. It's proof of
8 the ambush, but we are willing and ready to
9 proceed, if the Defence wishes to continue.
10 Thank you, My Lord.

11 PROFESSOR BOMPAKA:

12 We filed a motion before the Chamber for a
13 witness to be recalled. This is the
14 submission of Defence. From the 2nd to the
15 25th of July, 2001, Prosecution called
16 witnesses GBV, GBE, GDF, GBH, GBO and GAO,
17 all those witnesses before your Chamber. On
18 the 25th of July 2001, the Defence
19 highlighted the inconsistencies in the
20 initial statements and submissions made
21 before the Chamber by witness GBV, GDO, and
22 GAO. On the 23rd of July 2001, during the
23 cross-examination of Witness GAO, who is a
24 detainee at the Ruhengeri prison, Defence
25 sought, without obtaining any result,

1 statements made by the witness to the
2 judicial authorities in Rwanda. Now, for
3 the ongoing session, which will be adjourned
4 today, Prosecutor kept the following
5 Prosecution witnesses GDD, GDQ, GAP, who are
6 all detainees at the Ruhengeri prison.
7 During the mission to Rwanda taken by the
8 lead counsel from the 18th to the 27th of
9 September 2001, he had the opportunity to
10 collect statements made by detainee GAO,
11 statements made to the Rwandan courts, and
12 those statements were handed over or served
13 on the Prosecutor yesterday. Following an
14 analysis of those documents, a number of
15 inconsistencies or discrepancies have
16 arisen, inconsistencies between previous
17 statements made by Witness GAO and testimony
18 before the Chamber.
19
20 The Defence would, therefore, seek and pray
21 that GAO be recalled before your Chamber,
22 after Witness GDD, and this would then be at
23 your next session. This is being sought in
24 the interest of justice and it is for that
25 purpose that Defence prays that Witness GAO

1 be recalled. Further, Defence would want
2 that statements made by witnesses GBD, GDQ
3 and GAD or their statements before the
4 courts in Rwanda be handed over to it, that
5 is to the Defence, to enable it to highlight
6 the discrepancies, that is between the
7 testimonies that they made before this
8 Chamber and their statements to the Rwandan
9 courts. Defence is seeking the intervention
10 of this Court, so that the entire file be
11 made available to it, that is to the
12 Defence. That is our submission, Mr.
13 President, Your Honours.

14 MR. BABAJIDE:

15 May it please you, My Lords. First and
16 foremost, the Prosecution wishes to put on
17 record that the proper administration of
18 justice was put in jeopardy by the way this
19 instant motion was put before Your
20 Lordships. Be that as it may, the
21 Prosecution will respond to it.

22

23 We find it quite astounding that matters
24 that had been already ruled upon in this
25 Court, issues that had been ventilated and

1 resolved, are rehashed and brought back
2 before Your Lordships by way of a recent
3 motion. Apart from the fact that this is a
4 thorough waste of time and a redundant
5 activity, it is, indeed, an embarrassment to
6 the Prosecution.

7
8 First and foremost, with regard to the issue
9 of obtaining material before a sovereign
10 court in another jurisdiction, this Court
11 has repeatedly made the position extremely
12 clear to the Defence. Our responsibility on
13 this side of the bar is to disclose to the
14 defendant material within our custody. We
15 have done that. A fundamental cardinal
16 principle of this Court is equality of arms
17 and, from what transpired yesterday, My
18 Lords, it is obvious that this equality of
19 arms is not only a theory, but that it works
20 in practice.

21
22 What the Prosecution has been unable to
23 obtain from the government of Rwanda has
24 been obtained by my learned friend on the
25 other side and we are duly grateful to him

1 for disclosing it to us at the close of play
2 yesterday. It is the responsibility of
3 counsel for the Defence to exercise due
4 diligence and obtain the material he
5 requires and that he must do on his own.
6
7 He's welcome to consult, he's welcome to
8 talk to us and we will use our best
9 endeavours to assist him, if possible. He
10 has not done that yet. When he does it, we
11 will do; but whatever he obtains he should
12 put on notice to us.
13
14 Be that as it may, My Lords, this is the
15 motion we are arguing this morning.
16
17 I see no particularisation here.
18
19 What are the inconsistencies?
20
21 What, exactly, does he want to recall this
22 witness to come and talk about? He has
23 obtained the material. I would have thought
24 -- in other jurisdictions where I have
25 practised, My Lord, and I am happy to tell

1 you this is the third, Nigerian and United
2 Kingdom, due diligence require counsel to
3 put on notice the record of the testimony of
4 the witness in question, the material, the
5 new material on which he intends to impeach
6 or confirm his testimony, and bring it
7 before this Court, to give you an
8 opportunity to weigh and determine whether
9 this is an activity that is worth the
10 expense and time of this Court. He has not
11 done that. We just have bland statements
12 reaching here that he requires to call
13 witnesses based on material that he has not
14 particularised.

15
16 Perhaps in other jurisdictions we would have
17 insisted on an individual avit(ph) to verify
18 what he has said, but on this occasion we
19 will not do that.

20
21 My Lord, it is at your discretion to recall
22 witnesses, but before you do that, you must
23 take cognizance of Rule 70(G) and Rule 70(H)
24 of our Rules. It is your responsibility and
25 duty to save judicial time and make judicial

1 economy.

2 MR. PRESIDENT:

3 Rules what, can you repeat?

4 MR. BABAJIDE:

5 Rules 90(G), My Lords, and 90(H), I'll read

6 them out.

7 MR. PRESIDENT:

8 90(G) .

9

10 Yes, okay, we know 90(G) and the other

11 section was?

12 MR. BABAJIDE:

13 G, H, the next one, G and H.

14 MR. PRESIDENT:

15 I don't see it.

16 PROFESSOR HINDS:

17 Neither do I, Your Honour.

18 MR. BABAJIDE:

19 I was looking at the ICTY rules. I will find

20 it.

21

22 If you will give me just a second.

23 MR. PRESIDENT:

24 Take your time.

25 MR. BABAJIDE:

1 My Lords, it's not our Rules. The Rules in
2 the Hague are slightly different on this
3 point, but the point in our Rules it is
4 90(F), actually, My lord, "The Trial Chamber
5 shall exercise control over the mode and
6 order of interrogating witnesses and
7 presenting evidence so as to make the
8 interrogation and representation effective
9 for the sentiment of the truth and avoid
10 needless consumption of time."

11
12 Our argument is very simple, My Lords. This
13 is an exercise, this is a voyage that will
14 involve a needless consumption of time and
15 it is a bounding duty from my learned
16 friends on the other side to particularise
17 and make clear to Your Lordships the exact
18 nature of the reasons why they want you to
19 move on this voyage and, unfortunately, they
20 have not done so this morning. And on this
21 basis, My Lords, it is our submission that
22 until such particularisation is made, until
23 abundant proof is brought before this Court
24 to show the exact particulars of the nature
25 of testimony which they intend to recall

1 these witnesses for, this motion should be
2 denied. Thank you.

3 MR. PRESIDENT:

4 Thank you, learned counsel. Before you sit
5 down, Mr. Babajide, with regard to the
6 possible securing of documents and the
7 discussion in this motion, did we hear you
8 correct, saying that if approached you are
9 prepared to help?

10 MR. BABAJIDE:

11 That is absolutely correct, My Lord. But I
12 remember during our session here this week,
13 one of the senior trial attorneys involved
14 in the Media Case assisted the Court by
15 providing information that in the Media Case
16 the Prosecutor wrote to the attorney general
17 of Rwanda and the attorney general of Rwanda
18 responded by saying that he would only make
19 the criminal histories of these detained
20 witnesses available and no more. But,
21 fortunately, we saw that, through due
22 diligence and in exercise of equality of
23 arms, my learned friend has been able to do
24 more than we have been able to do. We are
25 willing to listen to them, as for whatever

1 they want from us, and we will make further
2 inquiries; particularly in light of the fact
3 that now he has been able to make more
4 progress than we were able to make with our
5 best endeavours.

6 MR. PRESIDENT:
7 We will study, because, perhaps it might be
8 important if these things were followed up
9 and maybe at sometime completed in good
10 time, then you move forward in a complete
11 way, perhaps.

12 MR. BABAJIDE:
13 Truly so, My Lords.

14 MR. PRESIDENT:
15 But not withstanding, without prejudice to
16 what you have just said, bigger issues.

17 MR. BABAJIDE:
18 Truly so, My Lords. And we will also do our
19 best to secure these materials, but then the
20 important issue at stake here is; has my
21 learned friend --

22 MR. PRESIDENT:
23 No, we are just dealing with that aspect.

24 MR. BABAJIDE:
25 We are most grateful, My Lords. We will do

1 our best on this side of the bar.

2 MR. PRESIDENT:

3 Yes, Professor.

4 PROFESSOR BOMPAKA:

5 Mr. President, Your Honours, what is our
6 purpose here before this Court? We are
7 seeking the truth. We are seeking to
8 establish justice. I did say, earlier on,
9 the lead counsel went to Rwanda and was able
10 to compile several documents that may be
11 useful in the establishment of justice. Why
12 could those documents not be consulted,
13 therefore. Why should those documents not
14 be taken into consideration? Our purpose is
15 the truth be seen to come to light, if the
16 documents are here we can go through them,
17 peruse them, we can recall the Witnesses
18 GAO, so that we see justice can be done.
19 Why do we talk about time, we talk about
20 solarity, we can find time. We can work
21 expeditiously, the documents are here, the
22 lead counsel can have the documents and he
23 can bring all these documents.

24 PROFESSOR HINDS:

25 Your Honour, this Court, at our prior

1 proceeding, heard the testimony of GAO. GAO
2 sat on the stand and said he was able to
3 obtain his own files, he said his statements
4 that he made in court, concerning
5 Kajelijeli, were, in fact, the exact
6 statements he made in Rwanda. That's what
7 he said. The Court instructed if the
8 witness had his file it would be produced,
9 the Prosecutor could take a look at it, we
10 could take a look at it, and if there was
11 any information that was useful, either side
12 could use the information. You know the
13 forcefulness of the argument I made then,
14 because the witness was right here. I said,
15 have him bring the file, let us deal with it
16 right now to save time. The arguments I
17 have been making I've been making them ad
18 nauseam. I believe in all of the
19 jurisdictions that I've practised the party
20 who produces a witness has an obligation,
21 with respect to discovery relating to that
22 witness. The Rules here are somewhat
23 different. And so now we have a situation
24 where the Prosecution says they do not have
25 the information, but the history and record

1 of this Tribunal is very clear. There is a
2 government to government relationship
3 between the Tribunal and the Ministry of
4 Foreign Affairs of the government of Rwanda,
5 pursuant to United Nations Security Council
6 resolution. There's an agreement, a
7 cooperation agreement. The Prosecution
8 would not be able to proceed. I would not
9 be able to proceed. And you, as judges,
10 would not be able to proceed if that
11 cooperation agreement was a myth, we
12 wouldn't be able to have any proceedings.
13 That is very clear.

14
15 Now, the Defence is not in the same position
16 as the Prosecutor. That is very clear.
17 Everybody knows that. We are not dealing in
18 Alice in Wonderland. We know, for example,
19 that witnesses who come here come here under
20 agreements between the government of Rwanda
21 and this Tribunal. Now, it is true that I
22 can proceed and try to get information, but
23 my ability to get information, quite
24 frankly, is not the same level as their
25 ability to get information, if they want to

1 get the information. And that's the
2 position I'm taking. I went there and with
3 a great effort and using a lot of guile, was
4 able to get the information. But I insist
5 that they should put forth an effort to try
6 to obtain the information prior to the
7 witnesses coming here, so that we do not
8 have a process of recalling witnesses. It
9 is a waste of this Tribunal's time, which
10 cannot be a weight put on our shoulders. It
11 isn't our witness. I could see if it was
12 our witness we were calling. We have made
13 timely applications. When I went to Rwanda
14 the last time I went through 1,000 pages,
15 not only trying to get information on GAO,
16 but based upon our knowledge of all the
17 other witnesses who are being called by the
18 Prosecution we were trying to get
19 information there, there wasn't enough time.
20 And so, therefore, when we looked through
21 that set of documents we saw nothing. I
22 believe that the Prosecution should be
23 requested by this Chamber to do everything
24 within their ability to try to obtain the
25 documents with respect to GDD, GAP and GDQ.

1 Those are the witnesses we know that they
2 intend to call. GDD has just been on the
3 stand. If we obtain information concerning
4 GDD and after studying that information if
5 we see that there are inconsistencies with
6 respect to prior statements that he made, we
7 certainly want to reserve our right to
8 recall him. We are not saying that we want
9 to recall GDD, we don't know whether or not
10 he has made any inconsistent statements. We
11 do not want to be in a situation where we
12 recall a witness and the Court says
13 Professor Hinds, why did you call this
14 witness, where are the inconsistencies? So
15 we, in the first instance, want to have the
16 statements. If we have the statements and
17 the witness was on the stand we would
18 examine the witness with respect to the
19 statements. And we say that before the next
20 set of witnesses are called, that inquiry
21 should be made. That is the application
22 that we are making.

23

24 Now, with respect to GAO, the Court has
25 already ruled and it's in the record. If

1 either party got -- obtained the information
2 and I went and travelled and got the
3 information, I've turned it over to them.
4 If they think that there isn't
5 inconsistencies let them say so, but they
6 know that there is and the argument that
7 counsel is making is an argument without any
8 kind of substance, because he has a
9 statement, he knows what the statements are.

10 MR. PRESIDENT:

11 Thank you, learned counsel.

12

13 We are talking about possible statements of
14 these witnesses, but I heard Professor
15 Bompaka talking about a file and that is --
16 that could be, perhaps, something else.

17 PROFESSOR HINDS:

18 A file, no, I don't, from -- Professor
19 Bompaka said that I obtained statements out
20 of GAO's file. We turned those statements
21 over to the Prosecution.

22 MR. PRESIDENT:

23 Because I heard, perhaps, I beg your pardon,
24 but perhaps a reference was being made to
25 the entire file that an accused person might

1 have.

2 PROFESSOR HINDS:

3 No, we had access to his entire file.

4 MR. PRESIDENT:

5 Okay, I understand, there was something
6 wrong with the translation, perhaps.

7 PROFESSOR HINDS:

8 We had access or I, as lead counsel, had
9 access to the entire file of that witness
10 and 31 other detainees who are not involved
11 here. They made all of that available to
12 me. Looking through the file, I then,
13 obtained statements that I felt these were
14 his confessions, every time he was
15 interrogated, etcetera, and I took those.

16

17 (Pages 1 to 36 by Rex Lear)

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2 MR. PRESIDENT:

3 Before there must be statements, which like
4 the ones you're saying, otherwise it becomes
5 quite difficult. They have got to be
6 identified or talked about.

7 PROFESSOR HINDS:

8 Your Honour, I have been doing this for 35
9 years. So the point I am making here is the
10 following: We have obtained the statements.
11 We have dealt with the question of the
12 probative value and also the relevance.
13 We've turned them over to the Prosecutor.

14 MR. PRESIDENT:

15 I am not addressing what you have collected.
16 I am addressing as a general principle, the
17 issues that are being discussed here.

18 PROFESSOR HINDS:

19 Right.

20 MR. PRESIDENT:

21 They've got to be identified. When you talk
22 about statements, what kind of statements?
23 I know you've obtained statements, that's a
24 different matter. I am talking about the
25 motion that is under discussion here.

1 PROFESSOR HINDS:
2 Yes.
3
4 Your Honour, you, in a ruling, back in
5 July--
6 MR. PRESIDENT:
7 Yes.
8 PROFESSOR HINDS:
9 --said if the witness -- if we were able to
10 access the document, either side would be
11 able to use it.
12 MR. PRESIDENT:
13 Yes, the confessional statement he is
14 alleged to have made.
15 PROFESSOR HINDS:
16 Whatever statement he made.
17 MR. PRESIDENT:
18 Yes.
19 PROFESSOR HINDS:
20 Now, if you want now for us to provide an
21 analysis of each of the statements...
22 MR. PRESIDENT:
23 No.
24 PROFESSOR HINDS:
25 I don't know, what are we talking about? We

1 have the statements. We now want to recall
2 the witness. Counsel on the other side
3 suggested that what we ought to have done
4 was to annotate the statement.

5 MR. PRESIDENT:

6 I am not talking about GAO now. I am
7 talking about the general, you know,
8 framework of the motion and what kind of
9 statements I envisaged.

10 PROFESSOR HINDS:

11 Oh, I'm sorry, Your Honour.

12 MR. PRESIDENT:

13 I'll come to GAO later. That's just a point
14 clarification. So that's what I am talking
15 about.

16 PROFESSOR HINDS:

17 The statements that we are questioning are
18 prior statements that have been made that
19 are relevant pursuant to Rule 68. Rule 68
20 of these Tribunal's rules speaks to the
21 issue of credibility. Speaks to the issue
22 of whether or not there are exculpatory
23 material and if, in fact, the witness in his
24 statement makes certain references that
25 relates to credibility under the rules. We

1 are entitled to that disclosure and
2 certainly to examine the witness with
3 respect to those. That was our application
4 pursuant to Rule 66(b) and 68 as you recall.
5 That was the initial motion that we made.

6 MR. PRESIDENT:

7 Yes.

8 MR. BABAJIDE:

9 My Lords, we have two points of
10 clarification. The first is a point of law.
11 And I think my learned friend must carefully
12 realize that there are judicial functions of
13 this Tribunal and there are administrative
14 functions of this Tribunal, and he should
15 not confuse the administrative functions of
16 this tribunal with the judicial functions of
17 this Tribunal.

18
19 What we have here, My Lords, and which was
20 given to us at the close of the day
21 yesterday, are 26 pages of material in
22 Kinyarwanda. And it is obvious now why my
23 learned friend is unable to particularize
24 anything whatsoever in his motion. We're
25 just being asked to go on a fishing

1 expedition. We don't intend to do that. We
2 don't even have the resources to do that,
3 My Lord. We have equality of arms. It's
4 his responsibility in defence of his client
5 to get this material and notate them,
6 analyze them and do whatever he wishes to do
7 with them at the proper time when he has his
8 opportunity to defend his client. Thank
9 you, My Lords.

10 MR. PRESIDENT:

11 Yes.

12 PROFESSOR HINDS:

13 Your Honour, I have the materials in
14 Kinyarwanda. I have presented it to them.
15 I have an annotated analysis of each sheet,
16 each page annotated to the trial transcript.
17 To suggest -- I have done my work. Now,
18 should I now give him the trial transcripts
19 and so on? No. I am not under the duty to
20 do that, I am under the duty to give him the
21 documents. Now, if this Chamber orders that
22 I should now provide to the Chamber an
23 annotated analysis of all of the
24 inconsistencies before the Chamber rules on
25 whether we are entitled to recall the

1 witness, I am prepared to do that. But that
2 is the argument that he is making. Why
3 should I have to do that? I am an officer
4 of the Court. I've said that we have
5 analyzed the statements. There are prior
6 inconsistencies with the statements that we
7 have gotten. We want to recall that
8 witness. We have said with respect to the
9 other witnesses we are looking for
10 statements which are confessions, other
11 statements that are made by the witness. If
12 there are any cooperation agreements that
13 have been reached for their testimony, all
14 of that is information that, in fact,
15 impacts on the credibility of the witness.
16 And all of that has been in our prior moving
17 papers, where we have set forth what we are
18 looking for. This is not a brand new
19 motion. It's a continuing application that
20 we have made.

21 MR. PRESIDENT:

22 Yes, there was one other matter,
23 Mr. Babajide, before we go forward. These
24 witnesses we have here, we are talking about
25 the witnesses that are subject to the matter

1 of this motion, were transferred from
2 Rwanda?
3 MR. BABAJIDE:
4 Yes, My Lord.
5 MR. PRESIDENT:
6 Are you aware of how long they have to stay
7 here? You're not aware, no?
8 MR. BABAJIDE:
9 We're not aware at the moment. We intend to
10 do a housekeeping motion after that. After
11 consulting with them, other arms of the
12 Registry.
13 MR. PRESIDENT:
14 Yes, all right. Yes, we will reserve the
15 decision on the two motions. I think they
16 are basically two. The recalling of Witness
17 GAO and the request by the Defence to the
18 Trial Chamber to secure a statement of the
19 remaining witness; that is, GDD and GDQ and
20 the other one is GAP. We'll reserve on
21 that. But we can make, perhaps, a general
22 comment here that any resource, if it does
23 happen, might not mean you're hearing
24 evidence. It will be on specific issues
25 that need to be addressed for the reasons

1 advanced. That is number one.

2

3 Two, we are aware of the position of the

4 four witnesses -- I think they are four.

5 That is the subject matter of this motion,

6 and two of whom who have recently given

7 evidence. And considering the link that is

8 there concerning their presence here and the

9 motion that have been filed and argued by

10 the parties, the Trial Chamber, having

11 deliberated, would like to make a ruling

12 with regard to these witnesses. And the

13 ruling is to the following effect:

14 Considering the Trial Chamber's order for

15 the transfer of four detained witnesses

16 pursuant to Rule 90bis in the present case,

17 June, 2001; further to a Prosecutor's motion

18 for the transfer of detained witnesses

19 pursuant to Rule 90bis and 73(a) of the

20 Rules of Procedure and Evidence. The Rules

21 (the motion filed on the 2nd of April, 2001)

22 concerning that the said detained witnesses

23 known under the pseudonyms of GDD, GAO, GDQ

24 and GAP were temporarily transferred to the

25 detention facility in Arusha to testify.

1 After having deliberated, the Chamber notes
2 that Witness GAO testified from 23rd to 25th
3 of July, 2001, and Witness GDD from 2nd to
4 4th October, 2001.

5
6 Two, the Defence states that it now has
7 available previous available statements of
8 Witness GAO made before the Rwandan
9 authorities and that the Defence would now
10 like to have the said witness, GAO,
11 recalled. The Defence also have intimated
12 through its motion to recall Witness GDD
13 when his previous statement eventually
14 becomes available. The Chamber notes that
15 two other detained witnesses transferred to
16 be called at trial; namely, Witness GDQ and
17 Witness GAP remain to be heard.

18
19 For the above reasons the Trial Chamber
20 orders pursuant to 9bis, that the four
21 detained witnesses known under the
22 pseudonyms of GAO, GDD, GDQ and GAP shall
23 remain temporarily detained at the Tribunal
24 detention facilities in Arusha until
25 otherwise order by the Chamber so as to

1 testify. Instruct the Registrar to transmit
2 this order to the Government of Rwanda in
3 Tanzania and to ensure that it is properly
4 executed. This order is of today, 5th
5 October 2001.

6
7 Yes, the idea is to make these matters to be
8 sorted out in order.

9
10 Yes?

11 MS. OJEMENI:
12 In view of this ruling, is there still need
13 to file an ex parte motion for the extension
14 of the estate?

15 MR. PRESIDENT:
16 No, that was supposed to take care of that,
17 so that at least -- to give time for the
18 Trial Chamber to deliberate and make
19 decisions on the motions that have been
20 filed here today.

21
22 Okay. Any other matter?

23 PROFESSOR HINDS:
24 Yes, Your Honour.

25 MR. PRESIDENT:

1 First of all, Professor Hinds, the accused
2 is not here for the same reason, I suppose?

3 PROFESSOR HINDS:

4 Yes, and as set forth in the record over the
5 last two days. Your Honour, just some
6 housekeeping matters. I know that we are
7 scheduled --

8 MR. PRESIDENT:

9 We are coming to that. That case is
10 rescheduled to resume again on the 26th of
11 November and go on up to 13th December.

12 PROFESSOR HINDS:

13 Of December, yes. With respect to that,
14 Your Honour, we have a list of witnesses
15 whom the Prosecutor had notified us back in
16 June that they intended to call. Of that
17 list, there are some witnesses who were not
18 called. I don't know if they do intend to
19 call them. Some were sick and some were not
20 called for other reasons and we would like,
21 as soon as possible, to have a list of
22 witnesses that the Prosecution intends to
23 call and order in which they intend to call
24 those witnesses so that we would be
25 sufficiently advised. I know that we were

1 given a list as to the detained witnesses,
2 but I don't know if there are any other
3 witnesses whom the Prosecutor intends to
4 call at this point in time. That's on one
5 matter.

6 MR. PRESIDENT:

7 Yes.

8 PROFESSOR HINDS:

9 We sent a communiqu that we had sent off to
10 the Minister of Justice and Minister of
11 Internal Affairs for notice to the Court of
12 some of the problems we are having. We are
13 not expecting this Tribunal to do anything
14 about it. We are trying to resolve the
15 matters between the Defence and the Ministry
16 of Justice and Internal Affairs in Rwandan.
17 We just wanted you to be apprised of a
18 problem which may impact on us and at some
19 point down the road in terms of our
20 witnesses inside the country. So we
21 notified you of it and we sent copies to the
22 Minister of Internal Affairs and Minister of
23 Justice of Rwanda.

24 MR. PRESIDENT:

25 Thank you, Professor Hinds.

- 1 MS. OJEMENI:
2 With regard to the witnesses we are calling
3 in the next trial period, we'll definitely
4 put our learned friend on notice in
5 compliance with the order of protected
6 witnesses. We'll furnish him with the
7 unredacted, and then the order of calling
8 them at least 21 days before the 26th. That
9 I assure him. So the first week of
10 November, he will definitely get all that.
- 11 PROFESSOR HINDS:
12 Your Honour --
- 13 MS. OJEMENI:
14 I am still on my feet. But we are calling
15 the remaining witnesses. We have notified
16 this Court -- and I believe my learned
17 friend has the pretrial brief -- that we'll
18 be calling 15 fifteen witnesses. And, if
19 there is need be, we'll call the remaining
20 six, because in the trial brief we advise
21 this Chamber that we'll be calling 23
22 witnesses.
- 23 THE PRESIDENT:
24 Twenty-three?
- 25 MS. OJEMENI:

1 Twenty-three. But in the opening statement
2 we stated that we would call 15 witnesses,
3 and the 15 witnesses are known to my learned
4 friend. And when we'll decide within the
5 order before the month is drawn out, we'll
6 definitely communicate that to my learned
7 friend.

8 MR. PRESIDENT:

9 Yes. Thank you, Learned Counsel.

10 PROFESSOR HINDS:

11 My understanding from Ms. Ojemeni is that
12 the Prosecution is going to proceed pursuant
13 to the pretrial brief and we will then take
14 notice thereof. I don't think there are 23
15 witnesses on the pretrial brief, but that's
16 another issue. I think we're dealing with
17 15 witnesses. What we would like is the
18 order of those witnesses. I know they will
19 comply with respect to the unredacted
20 statement. But if they know the order at
21 this time, it will help us so that we can
22 move forward as soon as they can give us the
23 order of the witnesses that they intend to
24 call.

25 MR. PRESIDENT:

1 Yes, I think -- yes?

2 MS. OJEMENI:

3 I finished with that. There is a second
4 issue that he raised concerning his
5 communication with the Ministry of Rwanda.
6 If the outcome will impact having him act on
7 this case, it's only fair that my learned
8 friend put us on notice. That is just a
9 little thing I want to say.

10 PROFESSOR HINDS:

11 No problem. We'll get you a copy of the
12 communiqu that we sent to the Minister of
13 Justice pronto. In fact, before I leave the
14 courtroom, I'll present you with a copy.

15 MR. PRESIDENT:

16 And these other matters with regard to, you
17 know, the arrangement of witnesses, if they
18 could be worked out, you know, the sooner
19 the better, so that at least there is every
20 chance of moving forward whenever we next
21 meet.

22 MS. OJEMENI:

23 Yes, Your Honour, the spirit is there.
24 We've always demonstrated that. So
25 definitely in the next two weeks at most, my

1 learned friend will note the order.
2 MR. PRESIDENT:
3 Yes, that's important. Okay, then. That
4 done, we'll adjourn these proceedings to
5 26th November at 9.30 in the morning when
6 we'll resume these proceedings again. So,
7 until then, these proceedings stand
8 adjourned.
9 (Court recessed at 1105H)
10 (Pages 37 to 52 by Kelly Allemang)
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C E R T I F I C A T E

We, Rex Lear and Kelly Allemang, Official Court Reporters for the International Criminal Tribunal for Rwanda, do hereby certify that the foregoing proceedings in the above-entitled cause were taken at the time and place as stated; that it was taken in shorthand (stenotype) and thereafter transcribed by computer; that the foregoing pages contain a true and correct transcription of said proceedings to the best of our ability and understanding.

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

(1 to 36)

Rex Lear

(37 to 52)

Kelly Allemang