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UNITED NATIONS

NATIONS UNIES



Testifying before the International Criminal Tribunal for Rwanda

Tribunal pénal international
pour le Rwanda

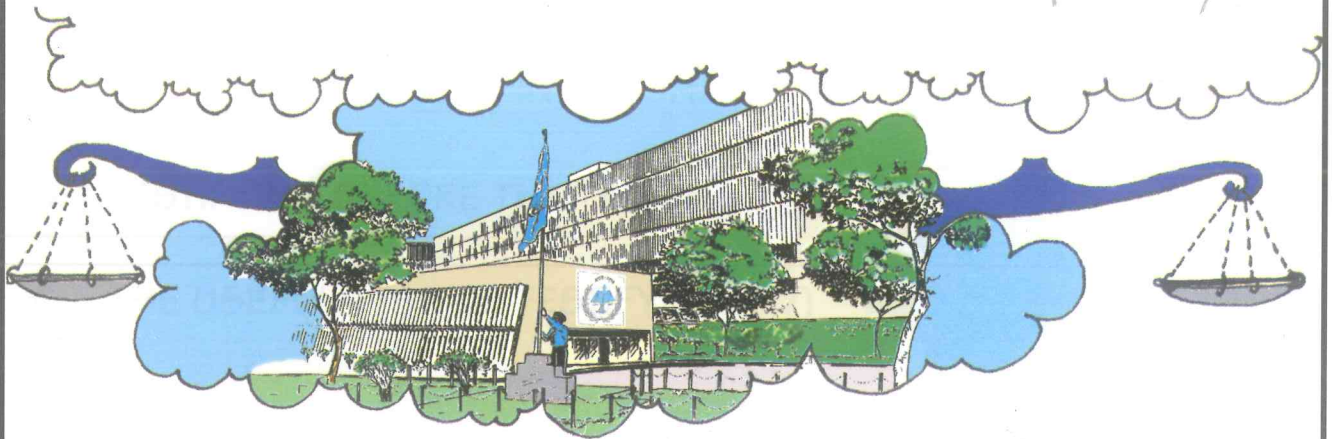
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INTRODUCTION



The International Criminal Tribunal for Rwanda (ICTR), has two Witnesses and Victims Support Sections, responsible *inter alia*, for ensuring the safe travel of prosecution and defence witnesses separately from their places of residence to Arusha and for ensuring their safety and upkeep right from the moment they arrive in Arusha. The witnesses are briefed about their stay in Arusha and about the conduct of the trials before the Tribunal. After testifying, these two Sections are responsible for ensuring the safe return of the witnesses to their respective places of residence.

Moreover, for a proper administration of justice, the Tribunal has decided to reinforce its information campaign aimed, in particular, at potential witnesses and members of the public interested in learning about various proceedings.

The Tribunal's has observed, time and again, that many of the people who would wish to come and testify are not sufficiently informed about the provisions in the Statute and the Rules of Procedure and Evidence of the Tribunal relating to the giving of testimony, or about their rights under those provisions.

For example, the victims and potential witnesses are not aware that the Tribunal provides witnesses with all the assistance that they need to travel safely and to testify under reliable and favourable conditions. Nor are they aware that the Rules of Procedure and Evidence contain specific provisions for the concealment of the identities of the witnesses from the general public and the media and that witnesses considered to be at risk can be given special protection by the Tribunal.

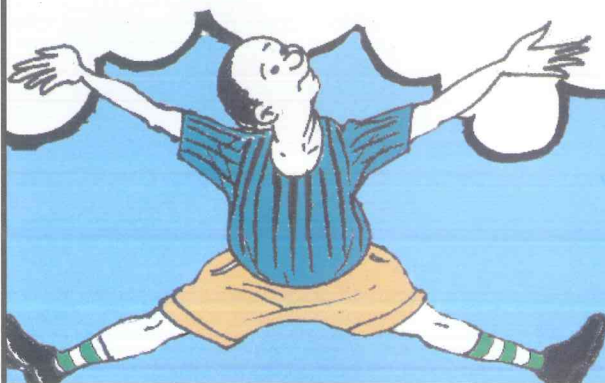
This guide makes use largely of rhetorical drawings so as to enable potential witnesses, especially those from the rural areas to gain a clear understanding of the conditions under which witnesses testify.

Each drawing is accompanied by a comment or a provision from the Rules, explaining the meaning and significance of the picture and the message conveyed by the picture. As the popular saying goes, "A picture is worth more than a thousand words" and it is in this spirit that the following illustrations and narrative have been made.

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A. THE INTERNATIONAL CRIMINAL
TRIBUNAL FOR RWANDA,
BASED IN ARUSHA, TANZANIA



BRIEF OVERVIEW OF THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

The International Criminal Tribunal for Rwanda (ICTR) is the *second* Tribunal of its type, the other being the International Criminal Tribunal for the Former Yugoslavia. ICTR was set up on 8 November 1994 by Resolution 955 of the United Nations Security Council. By its Resolution 997, adopted subsequently on 22 January 1995, the Security Council established the seat of the Tribunal in Arusha, Tanzania.

The principal mandate of the Tribunal is to prosecute persons responsible for genocide, and other serious violations of the International Humanitarian Law committed in the territory of Rwanda and Rwandan citizens responsible for other such violations of International Law committed in the territory of neighbouring States, between 1 January 1994 and 31 December 1994.

The three principal organs of the Tribunal are: The Chambers, The Office of the Prosecutor and The Registry.

1. THE CHAMBERS

The Tribunal has three Trial Chambers, based in Arusha, and one Appeals Chamber based in The Hague, The Netherlands, which is common to both ad hoc international tribunals.

2. THE OFFICE OF THE PROSECUTOR

The Prosecutor is responsible for the investigation and prosecution of genocide suspects within the context of the Tribunal's mandate.

The Office of the Prosecutor is a separate organ of the International Tribunal for Rwanda. The Prosecutor serves both the International Criminal Tribunal for Rwanda and the International Criminal Tribunal for the Former Yugoslavia. For the Rwanda Tribunal, she is helped by a Deputy Prosecutor based in Kigali.

The Office of the Prosecutor comprises two Sections and one Unit:

- The Investigation Section, charged with collecting information and evidence against suspects who fall within the jurisdiction of the Tribunal;
- The Prosecution Section, composed of trial attorneys responsible for handling all cases before the Tribunal and legal advisers responsible for conducting investigations and prosecutions;
- The Evidence Unit is a technical unit of the Office of the Prosecutor.

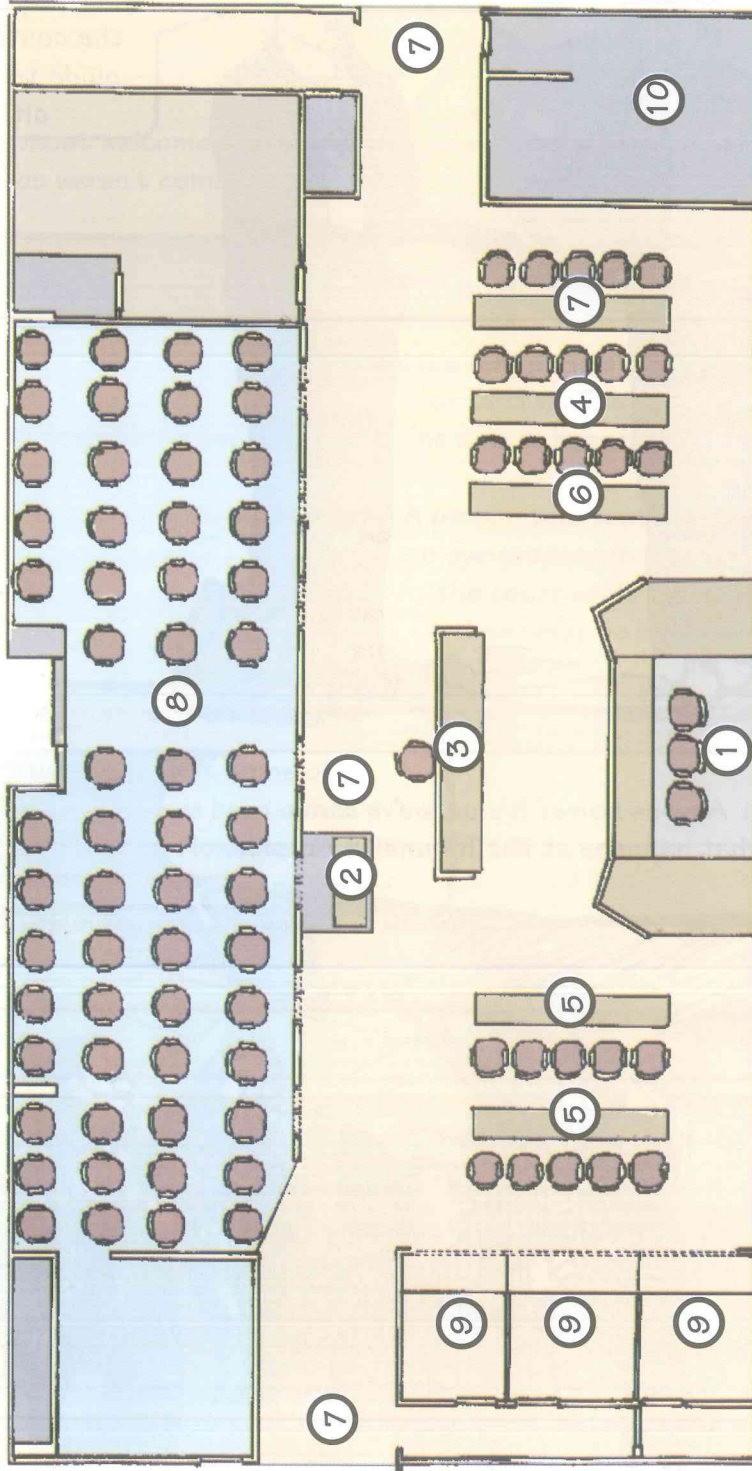
3. THE REGISTRY

The Registry is responsible for the administration and management of the Tribunal. It is headed by the Registrar, who has the rank of a United Nations Assistant Secretary-General and who represents the Secretary-General of the United Nations.

The Registry is composed of two main Divisions: The Judicial and Legal Services Division and the Division of Administration.

The Judicial and Legal Services Division is divided into five Sections, of which two are responsible for providing assistance to and protection for witnesses and victims. Under its witnesses and victims support system, the Tribunal has, to date, arranged for the travel of over 250 witnesses (both prosecution and defence witnesses) to Arusha, from 17 different countries in Africa, America and Europe.

THE INSIDE OF A COURTROOM AT THE TRIBUNAL:



- | | |
|--------------------------|-----------------------------|
| 1. The Judges. | 6. The Defence Team. |
| 2. The Witness. | 7. Security Staff. |
| 3. Registry Staff. | 8. The Public Gallery. |
| 4. The Accused. | 9. Interpreters. |
| 5. The Prosecution Team. | 10. Technical Control Room. |

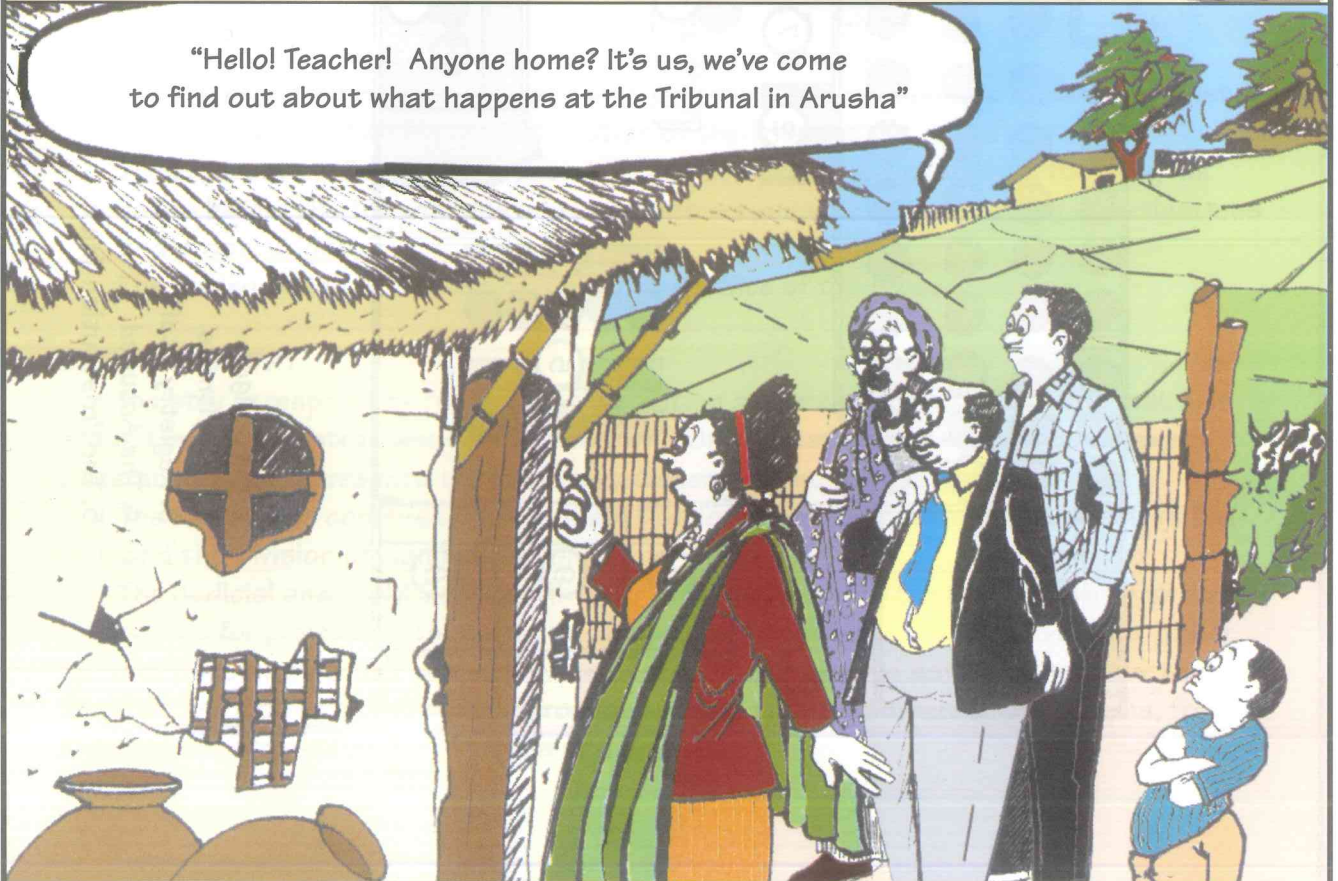
B. TESTIFYING BEFORE THE TRIBUNAL

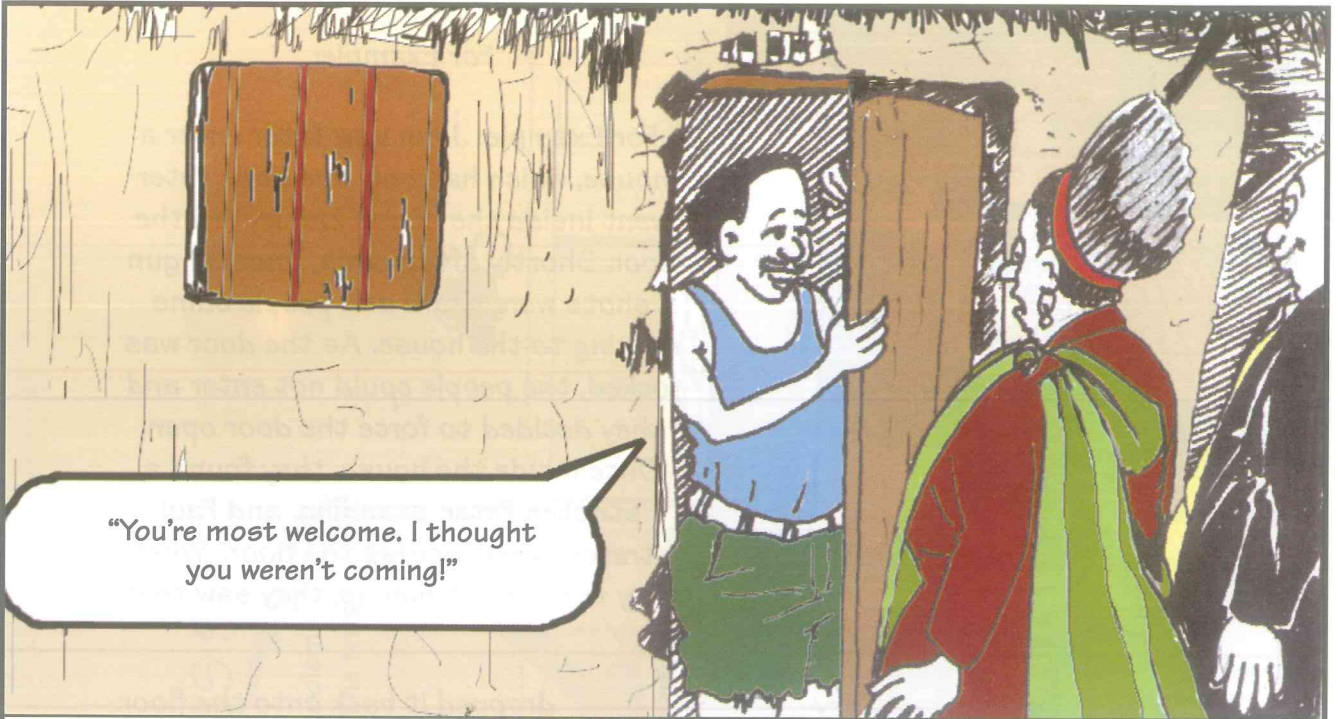
Some key aspects in the production of evidence.



Teacher, thank you for your help in explaining the contents of the guide to your fellow citizens.

"Hello! Teacher! Anyone home? It's us, we've come to find out about what happens at the Tribunal in Arusha"



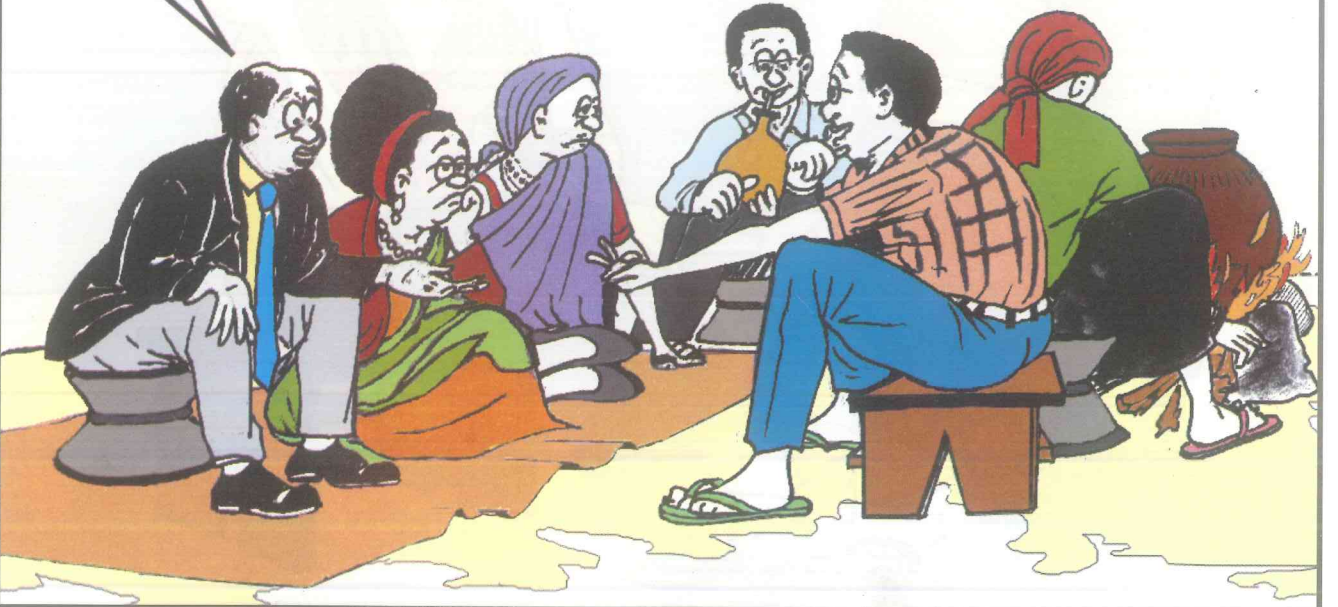


"You're most welcome. I thought you weren't coming!"

Oh, it's very simple really. The testimony can be either oral or written. The witness must tell the court what he saw or heard, or what he knows of the accused.

A person who testifies to what he has seen is called an eye-witness in English, which means that he tells the court what he saw with his own eyes rather than what he has been told by someone else.

We have heard that some of our neighbours have been called to go and testify. However, they don't know how the testimony before the Tribunal - actually goes.



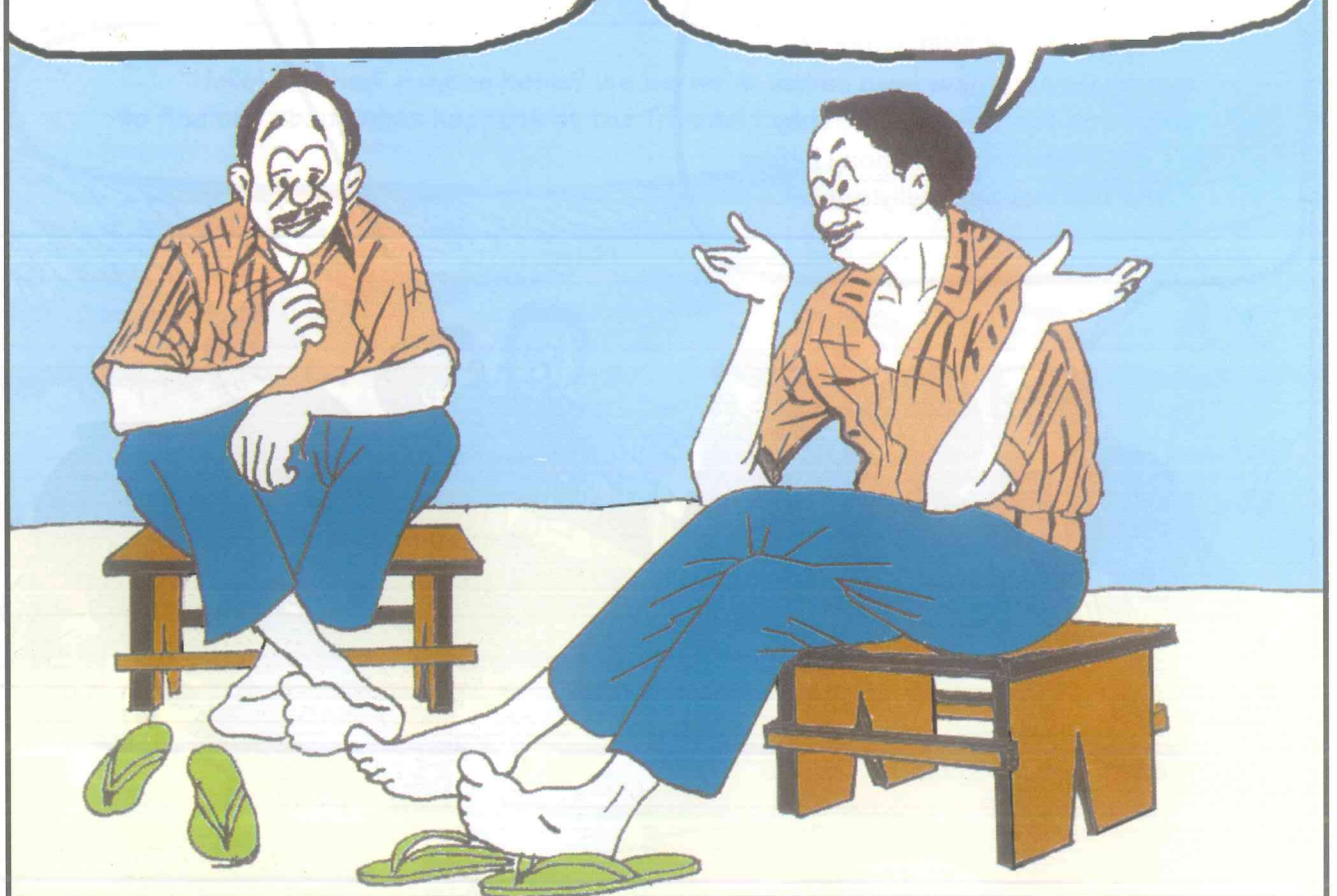


For Example:

For Example: John saw Peter enter a house, which has only one door. Peter went inside the house and locked the door. Shortly afterwards, unusual gun shots were heard and people came running to the house. As the door was locked, the people could not enter and they decided to force the door open. Once inside the house, they found a stricken Peter, standing, and Paul stretched out across the floor. When they tried to lift him up, they saw that

he was already dead. They carried out a thorough search and found that Peter had hidden a pistol under his armpit. They even found a cartridge nearby but, one of them was too scared to touch it. Another person said "Hey! Give me way so that I can look at that cartridge". When he examined it, he found that it was still very hot and

dropped it back onto the floor. Those who had come to help and see what had happened, arrested Peter, claiming that he had just killed Paul. No-one had seen Peter shoot Paul, but given the circumstances, they concluded that no-one else apart from Peter could have shot Paul. This is what is known as indirect proof.f.



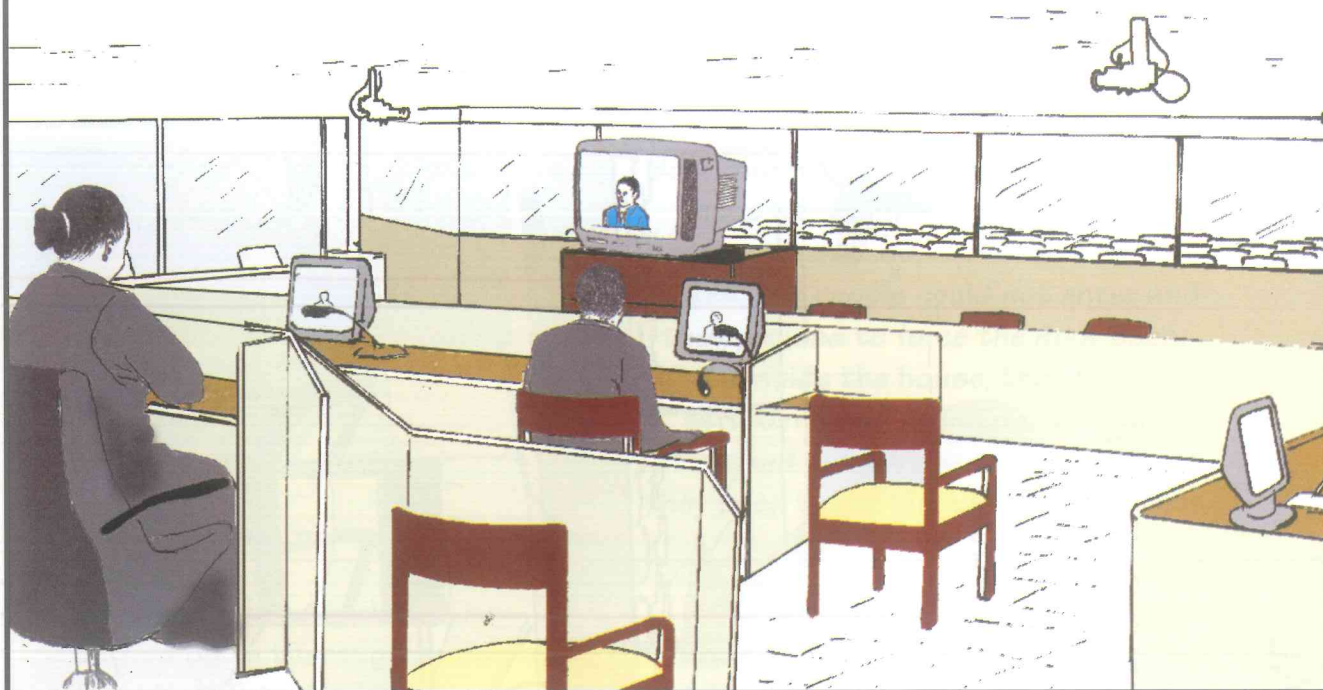
INSIDE THE TRIBUNAL

THE PLACE WHERE THE WITNESS SITS

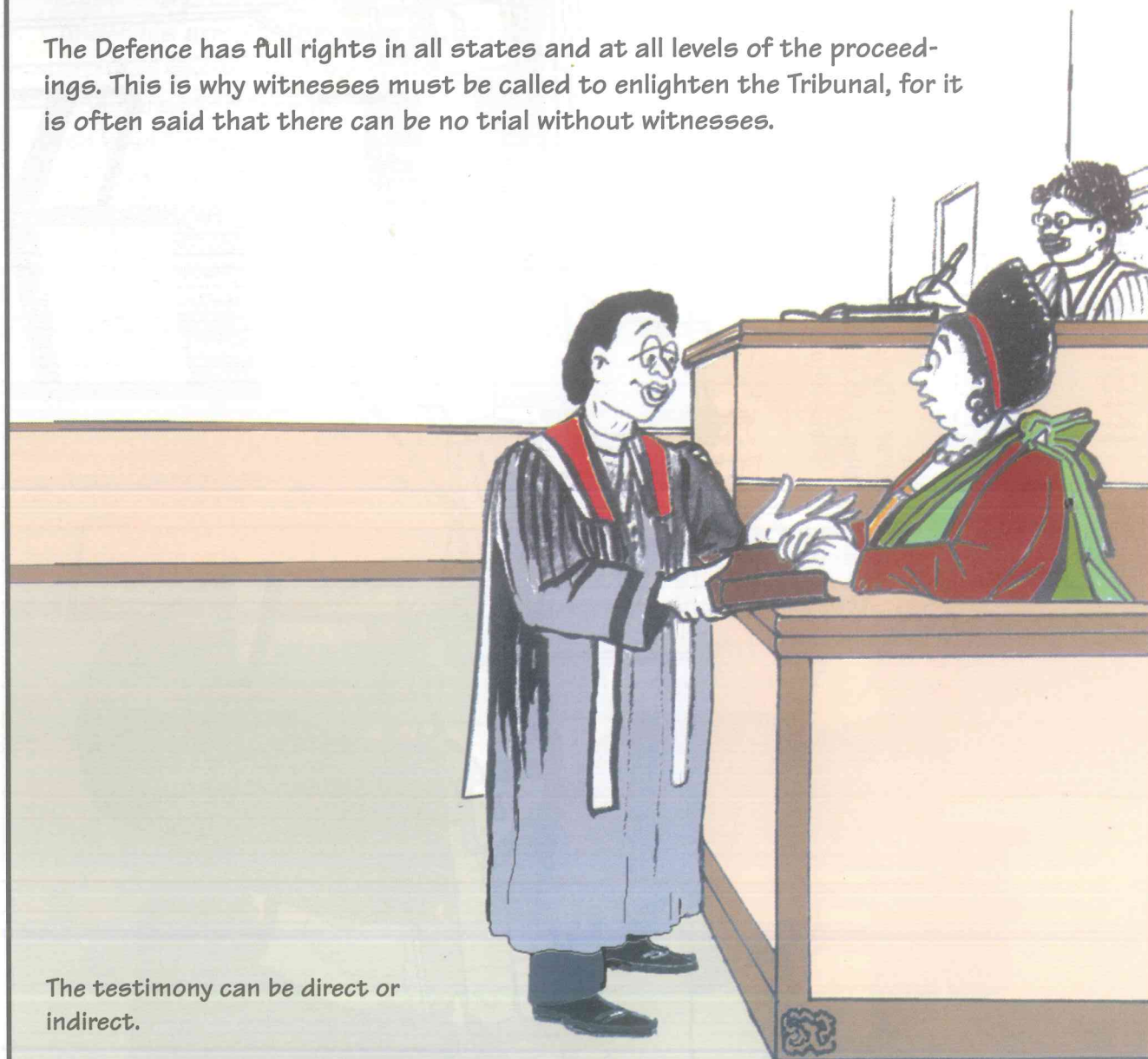
Before testifying, you must first make the following solemn declaration: I do hereby solemnly declare that I will tell the truth, the whole truth and nothing but the truth.



The statement can be given by means of a video conference.



The Defence has full rights in all states and at all levels of the proceedings. This is why witnesses must be called to enlighten the Tribunal, for it is often said that there can be no trial without witnesses.



The testimony can be direct or indirect.

When evidence is given directly, the Judge has little difficulty in assessing it.

"I see what you mean"

However, indirect evidence, poses some problems for the Judge. Evidence by common repute likewise.



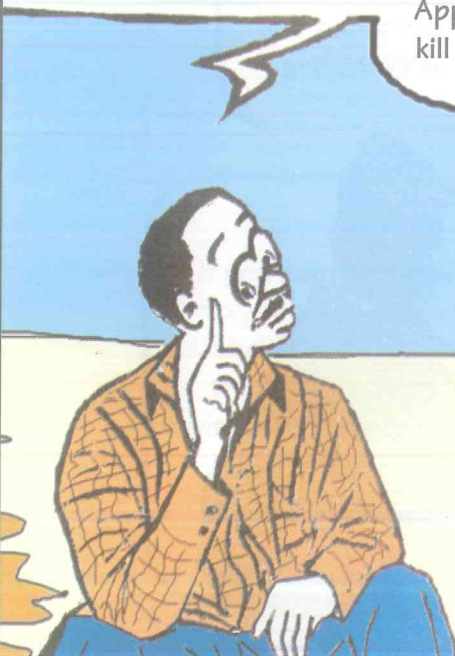
For example:

I overheard that some people spent the night drinking at Peter's house, and when they became dead drunk, a fight broke out and Peter was repeatedly severely beaten.

Apparently, it was his son, named Kanyamahane, who was going to kill him. Then the witness claims, "Kanyamahane beat up his father,

Peter", although the witness was not actually present at Peter's house, and had not even heard the family shouting at the time of the incident. Yet, he asserts that he knows Kanyamahane and that he was the one who beat up his father.

In general, the law attaches no value to such testimony. But there are exceptions, especially if the witness is dead. Normally, this type of testimony is rarely admitted, because in such cases, the truth can often be interspersed with lies and gossip.

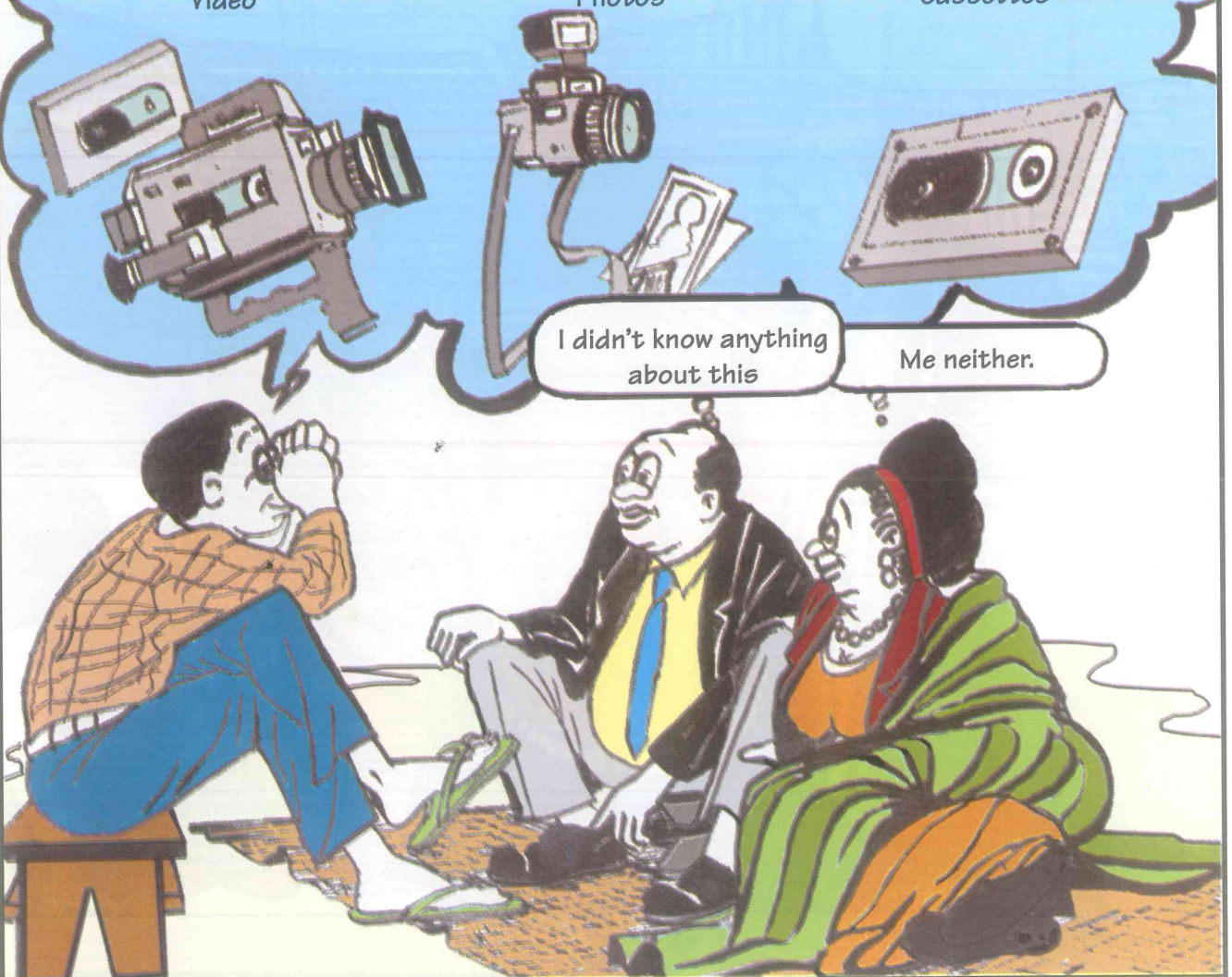


There is demonstrative evidence, also called scientific evidence, such as videocassettes, audio cassettes, photographs, etc. which are legally admissible. They are used for illustration purpose or as examples to further enlighten the judges. Thus, witnesses who are in possession of such evidence can present them.

Video

Photos

Cassettes



I didn't know anything about this

Me neither.



Let's go and sit in the sun, while I tell you about the benefits of testifying.

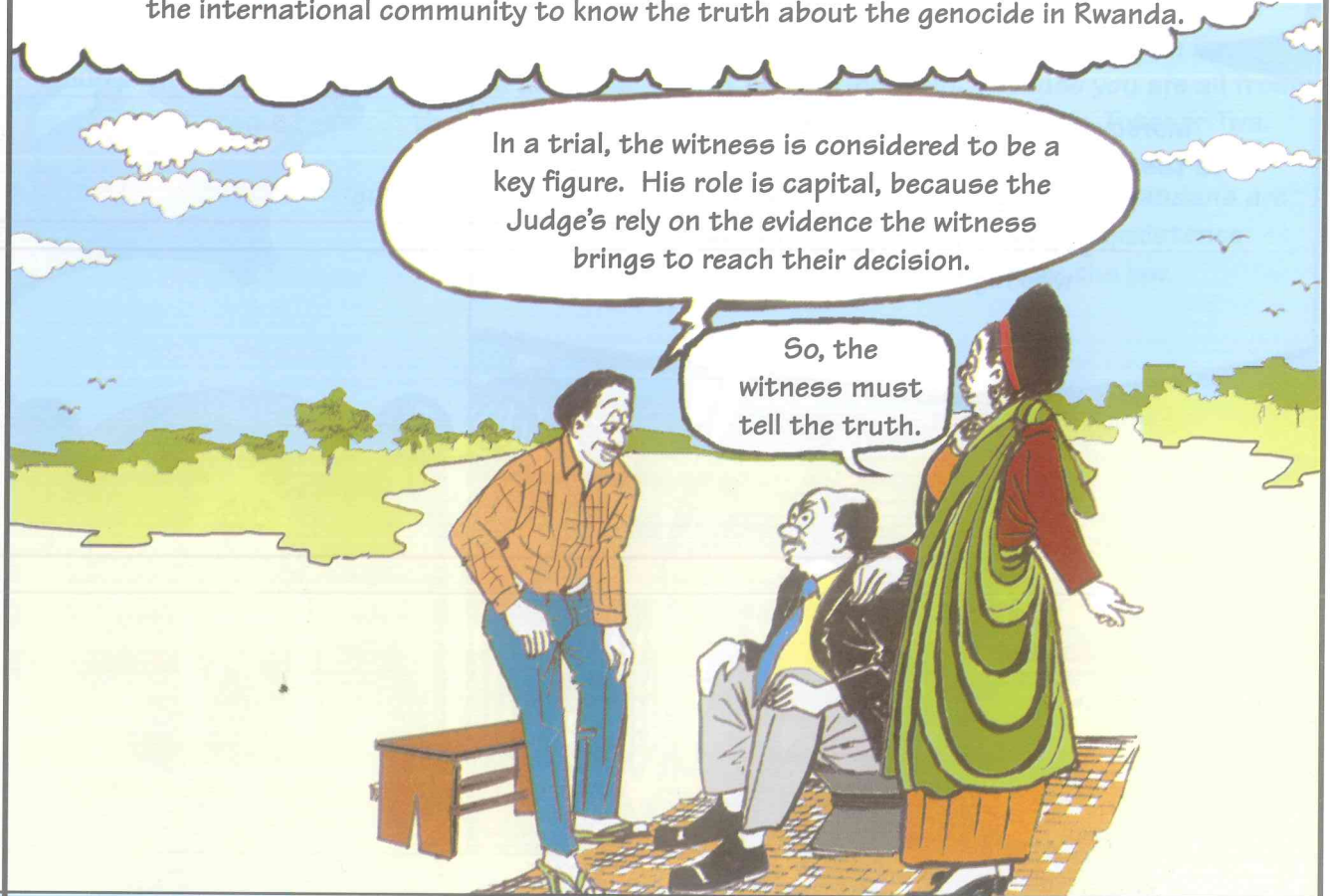
Sounds good. It's more pleasant outside.

C. THE USEFULNESS OF TESTIFYING

Your testimony will not only enable the Judges to render a fair judgement, it will help the international community to know the truth about the genocide in Rwanda.

In a trial, the witness is considered to be a key figure. His role is capital, because the Judge's rely on the evidence the witness brings to reach their decision.

So, the witness must tell the truth.



If you happen to be an eye-witness to genocide, or even a murder, you have the responsibility, indeed the duty, to testify about it. The witness is required to tell the truth, for it is the only way to restore damaged social relations.

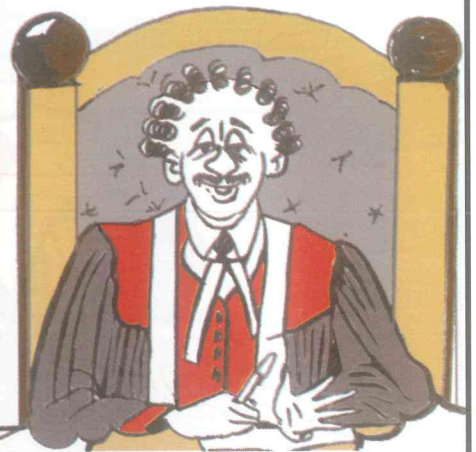
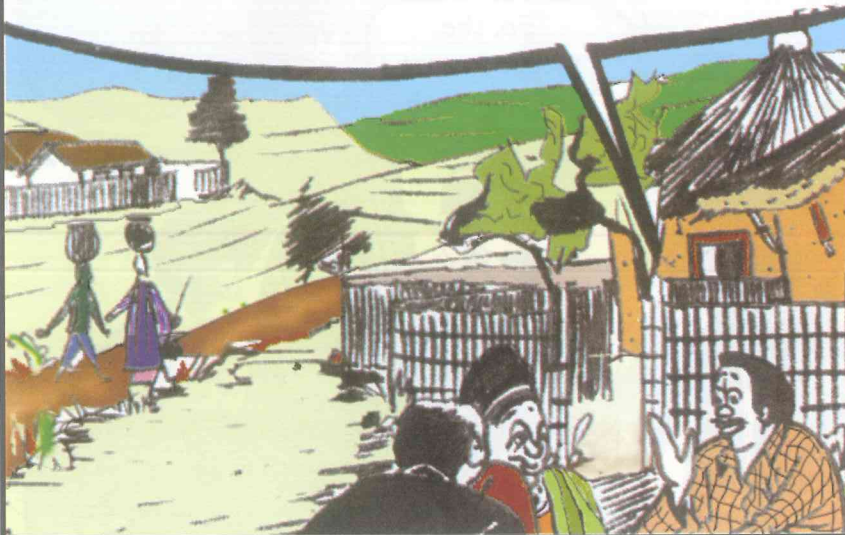


I agree with you.
Reconciliation is a must.

Reconciliation must be achieved without suspicion. In this regard, the witness must be careful not to be like those who testified against Christ or against Paul before Felix in "Acts 24:1.

Moreover, what would be the point in refusing to testify? State what you know without omitting anything, specify the time, the place, if you remember it, and whether it was night-time or daytime.

The Tribunal will assess the truth of your testimony and the value to give it.



Give a true testimony based on what you saw so as to allow the Prosecutor to better prepare her case. It requires the courage of the man who throws himself into the water to save a drowning man, knowing full well that he himself could lose his life. Have the same courage to help the Defence Counsel to prepare his case. Provide evidence that establishes the guilt or innocence of the accused.



Talk clearly and explain yourself well.



Be brave and do not give into fear.



Tell them what you saw.



For pity's sake, have the courage of the doctor who decides to fight an Ebola or cholera epidemic, so as to save human lives. Be brave and wise: Do not accuse innocent, because you are all from the same country, you are all Rwandans, be it Hutú, Tutsi or Twa. However, do not hold back any information that might reveal the guilt of the accused. Help people to understand that all Rwandans are equal, that they all belong to the same nation; that coexistence is the norm and that they are all equal before the law.

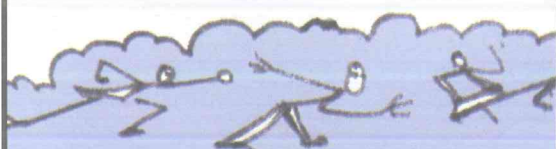
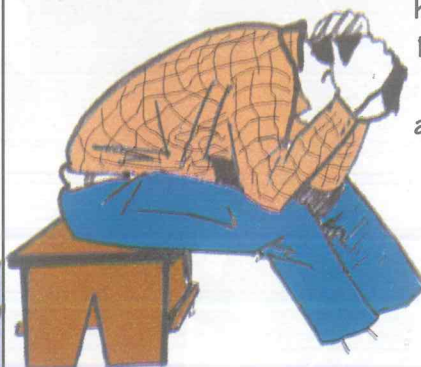



Do not give false testimony against the innocent or the guilty, and do not refuse to testify because you are not a family member or friend of the accused, or because you do not wish to poison your relationship with others or because you want to avoid problems that might put your life at risk.

Refusing to testify amounts to disregard for the laws and for your country. Examine your conscience in order to find solution.

Ask yourself this: What good would it really do to have a recurrence of the events that

happened during the Rwandan genocide? No one but you has the answer to the restoration of trust between the Rwandan people.





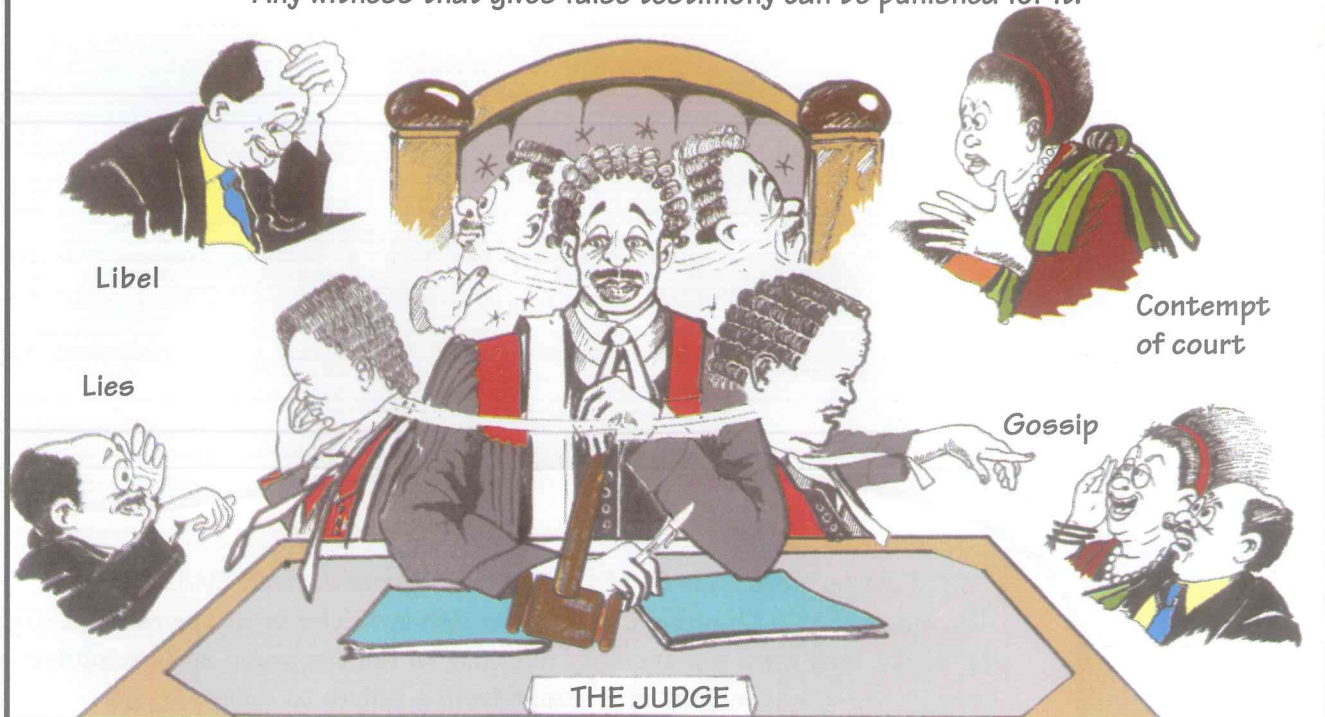
The solution is none other than telling the truth. It should, therefore, be understood that to give false testimony before the Tribunal constitutes an offence, if it is proved that you have done so, since you have already sworn to tell the truth, the whole truth and nothing but the truth.

So, aware that there are serious consequences for giving a false testimony.

I understand!

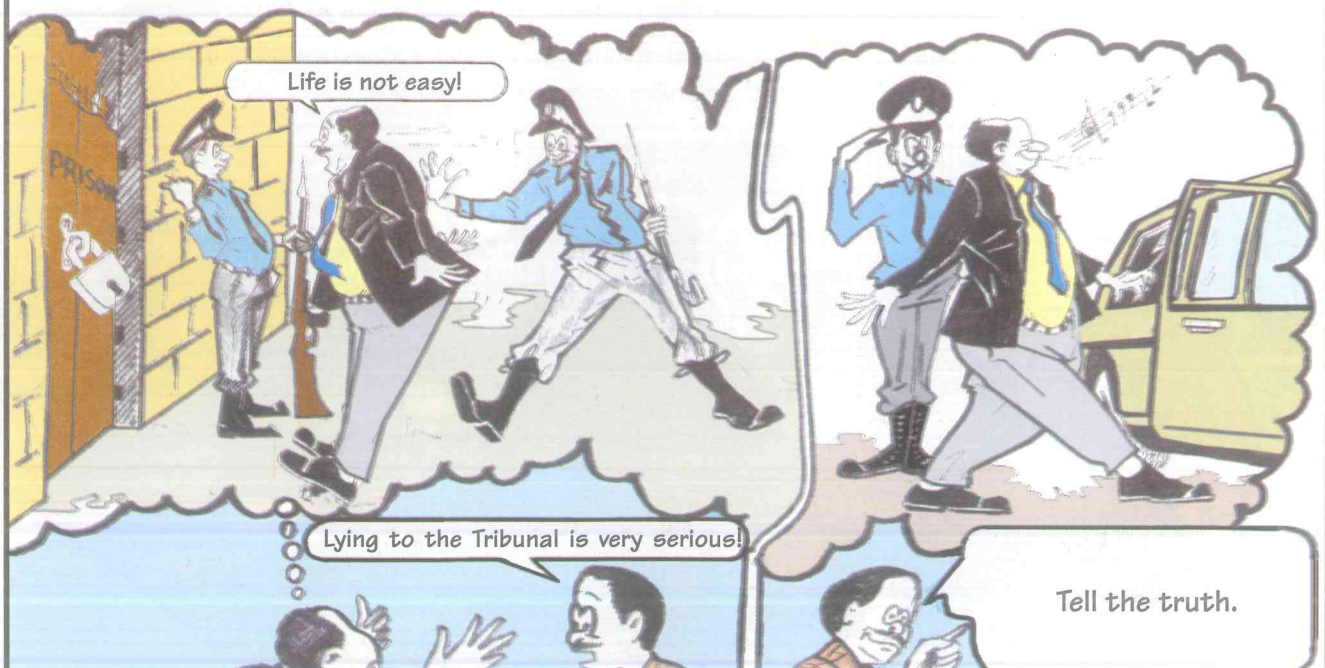
D. THE CONSEQUENCES OF FALSE TESTIMONY AND OTHER PENALTIES


Any witness that gives false testimony can be punished for it.



Did you know that Article 210 of the Rwandan Penal Code provides that “any person called to testify in court and who is found guilty of making false statement may be sentenced to a term of imprisonment of two months up to a year, and fined an amount not exceeding Fr. 10000 or either one of these penalties”?

Similarly, Rule 77 of the Rules of Procedure of ICTR provides that “a witness who refuses or fails contumaciously to answer a question relevant to the issues before a Chamber may be found in contempt of the Tribunal. The Chamber may impose a fine not exceeding USD10,000 (about 4,000,000 FRWA) or a term of imprisonment not exceeding six months”.





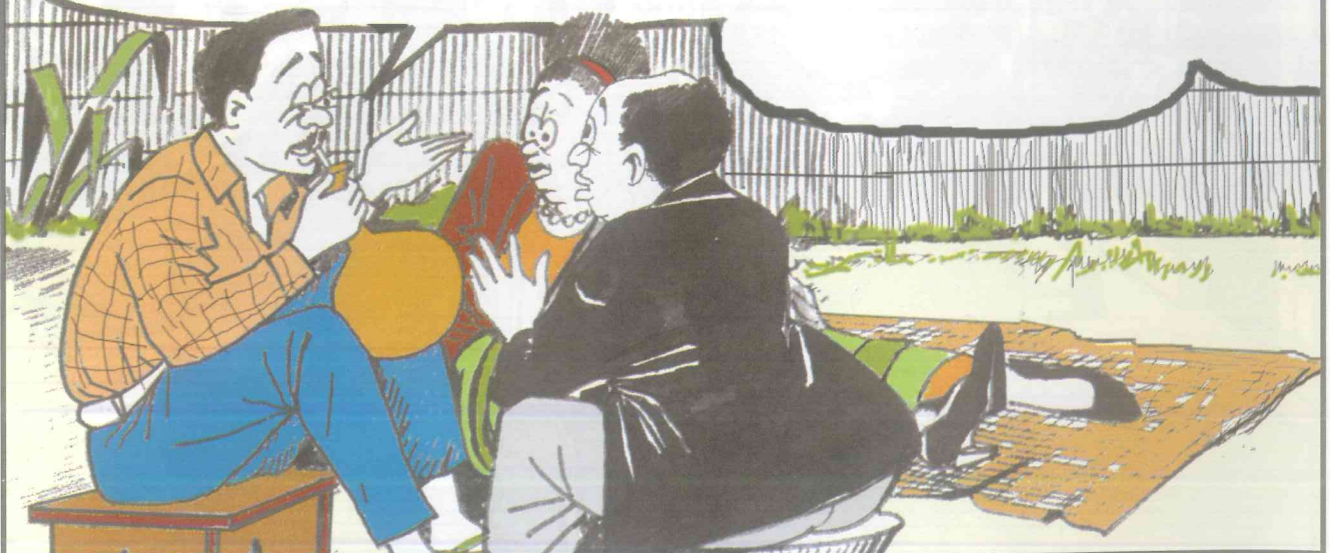
Furthermore, Rule 91 of the Rules of Procedure and Evidence provides that a Chamber can with its own initiative or at the request of a party, may warn a witness of his duty to tell the truth and the consequences that may result from a failure to do so.

If a Chamber has strong grounds for believing that a witness may have knowingly and wilfully given a false testimony, the Chamber may direct the Prosecutor to investigate the matter with a view to the preparation and submission of an indictment for false testimony.

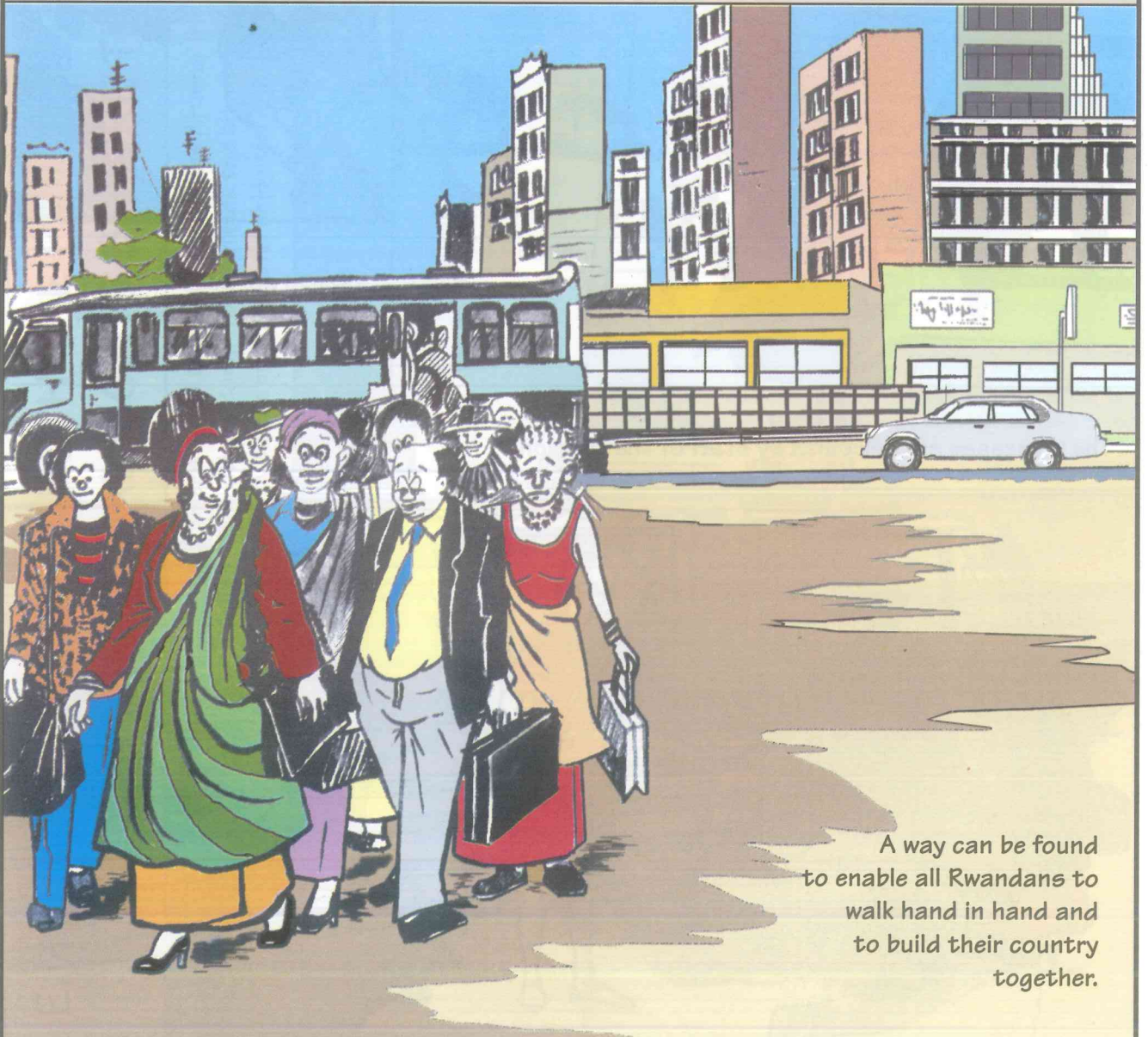
So then, it is important that a person called to testify in a trial before the Tribunal knows that disobeying the Chamber's order, without reason, makes him liable to imprisonment or a fine, in the same way as does the giving of a false testimony.

The solemn declaration a witness makes prior to testifying is not a joke. In the genocide trials going on at present the entire world has come together to discover the truth about the causes and the identities of the perpetrators of those events.

So, do not go there to make up stories.



Your testimony will not only allow the Judge to render a fair judgement, it will also allow the international community to know the truth about the Rwandan genocide.



A way can be found to enable all Rwandans to walk hand in hand and to build their country together.

ARRIVAL OF THE WITNESSES IN ARUSHA

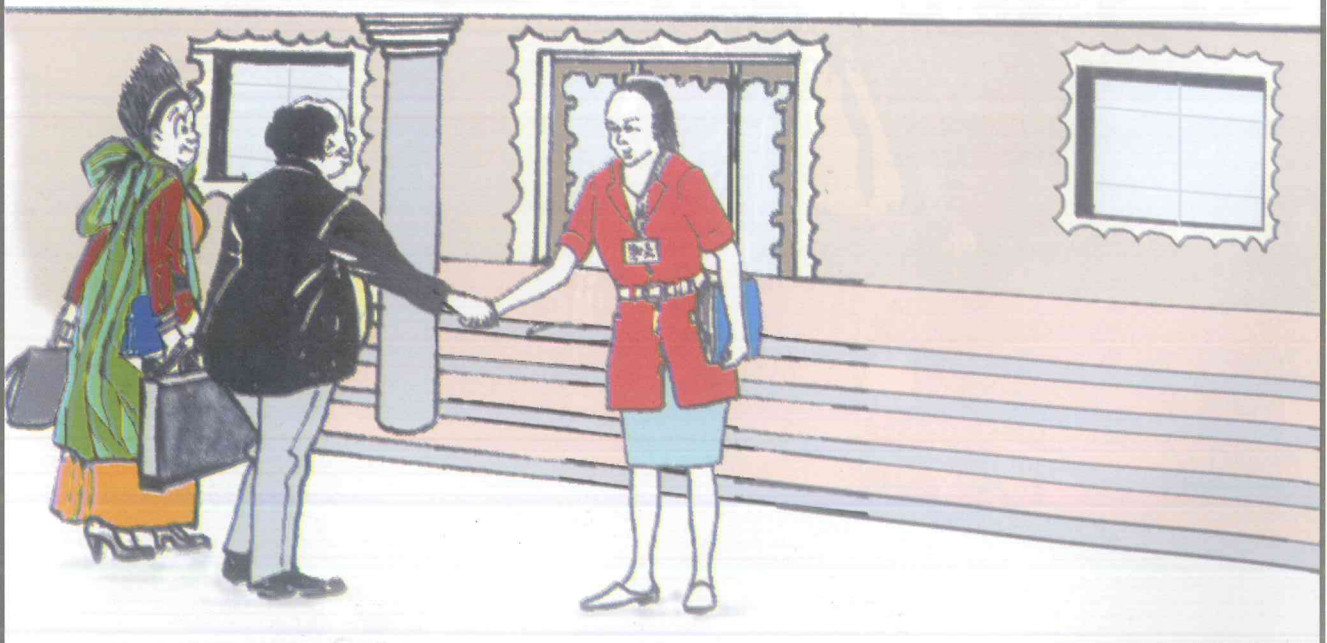


The witnesses are taken to a safe place and their identity is kept confidential.



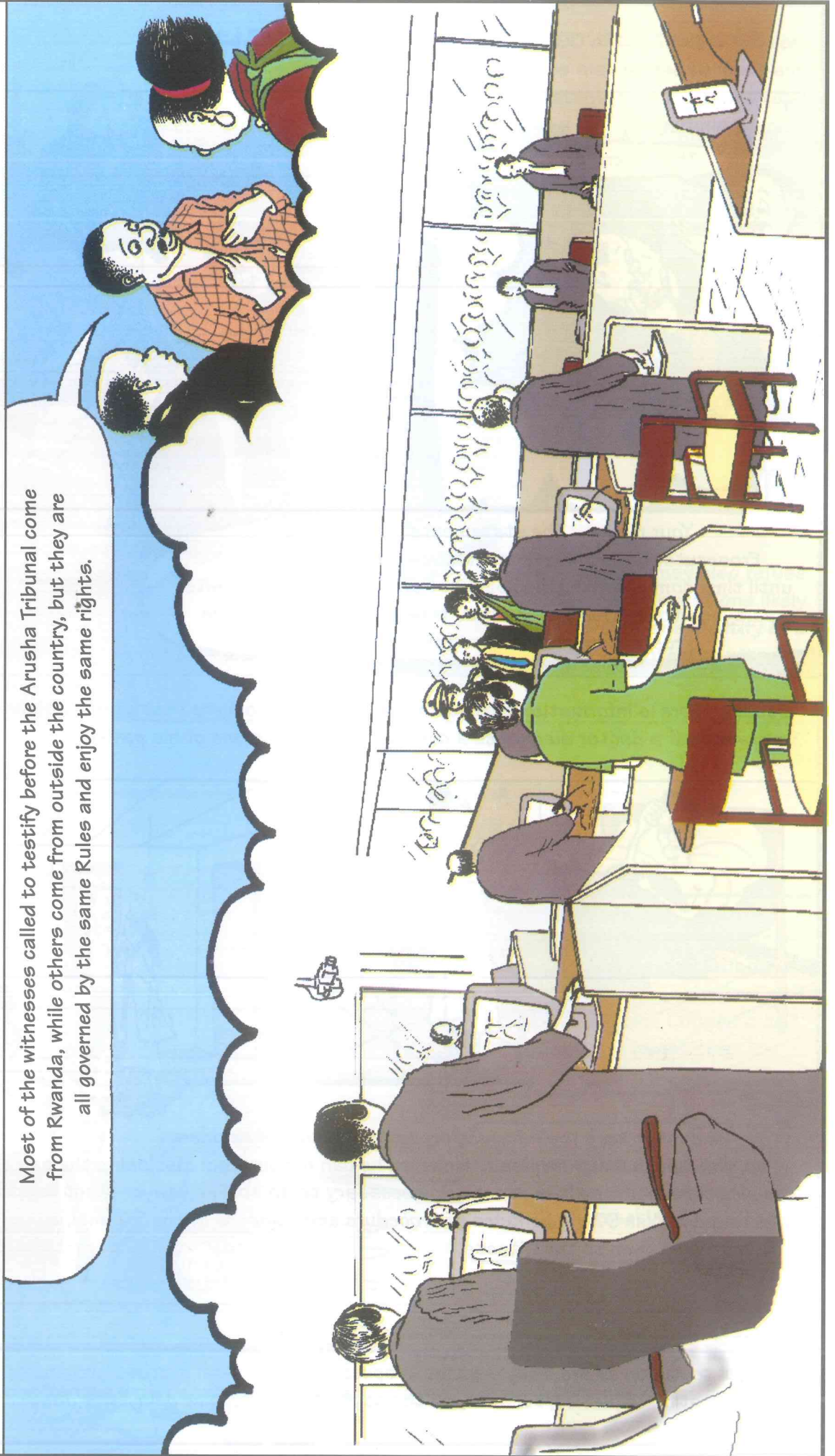
Infants are allowed to accompany their parents.

The witnesses are welcomed by staff of the Section.

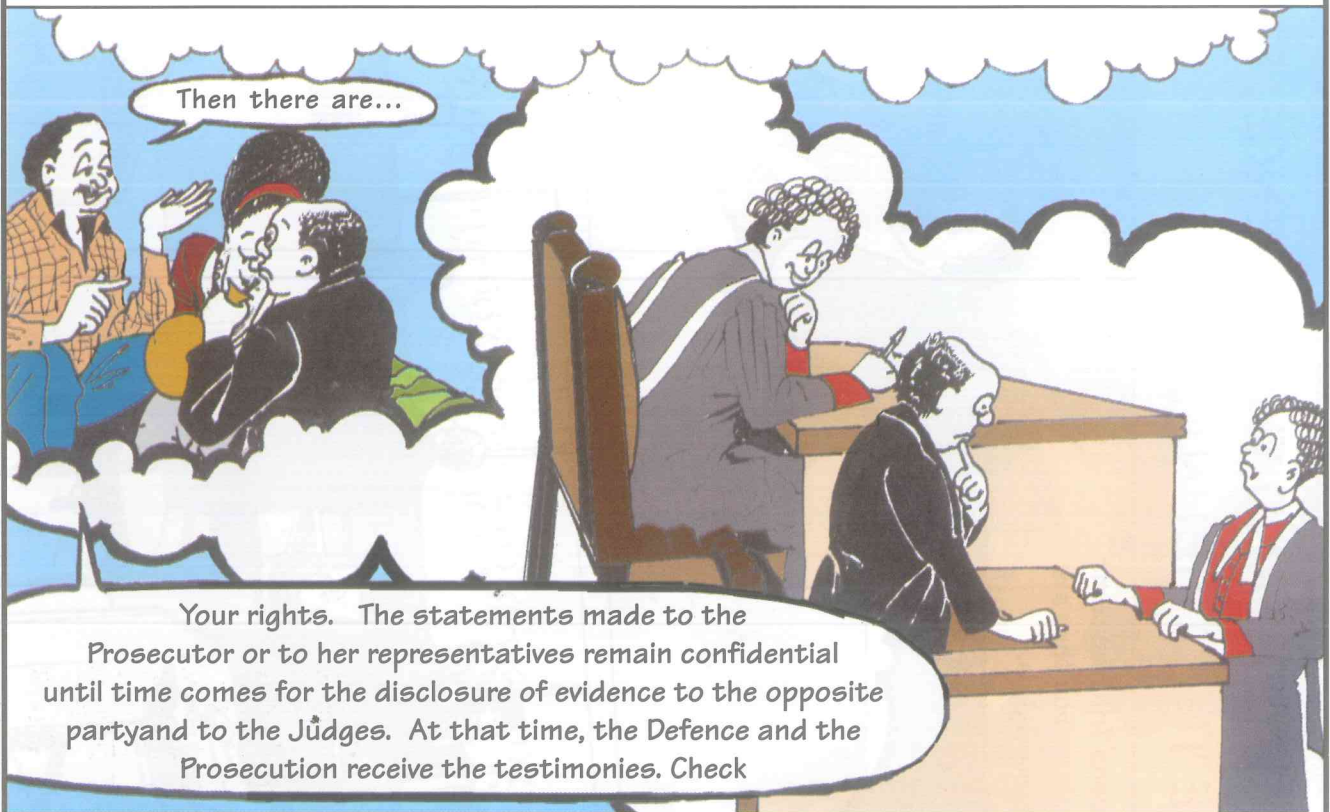


E. ALL WITNESSES, OF BOTH THE PROSECUTION AND THE DEFENCE, ENJOY EQUAL RIGHTS BEFORE THE TRIBUNAL

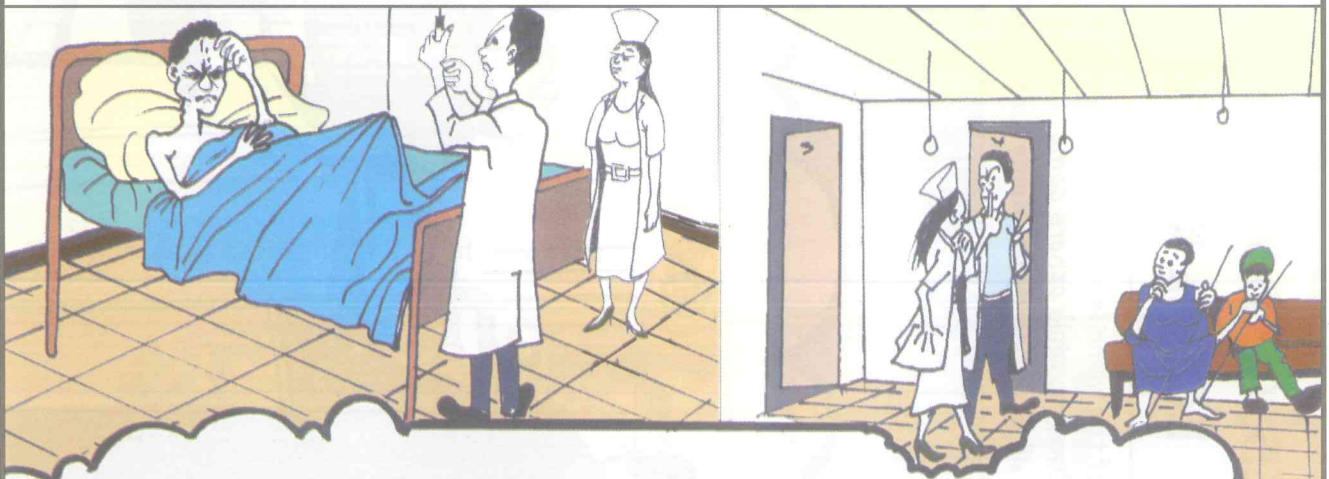
Most of the witnesses called to testify before the Arusha Tribunal come from Rwanda, while others come from outside the country, but they are all governed by the same Rules and enjoy the same rights.



F. SPECIAL RIGHTS

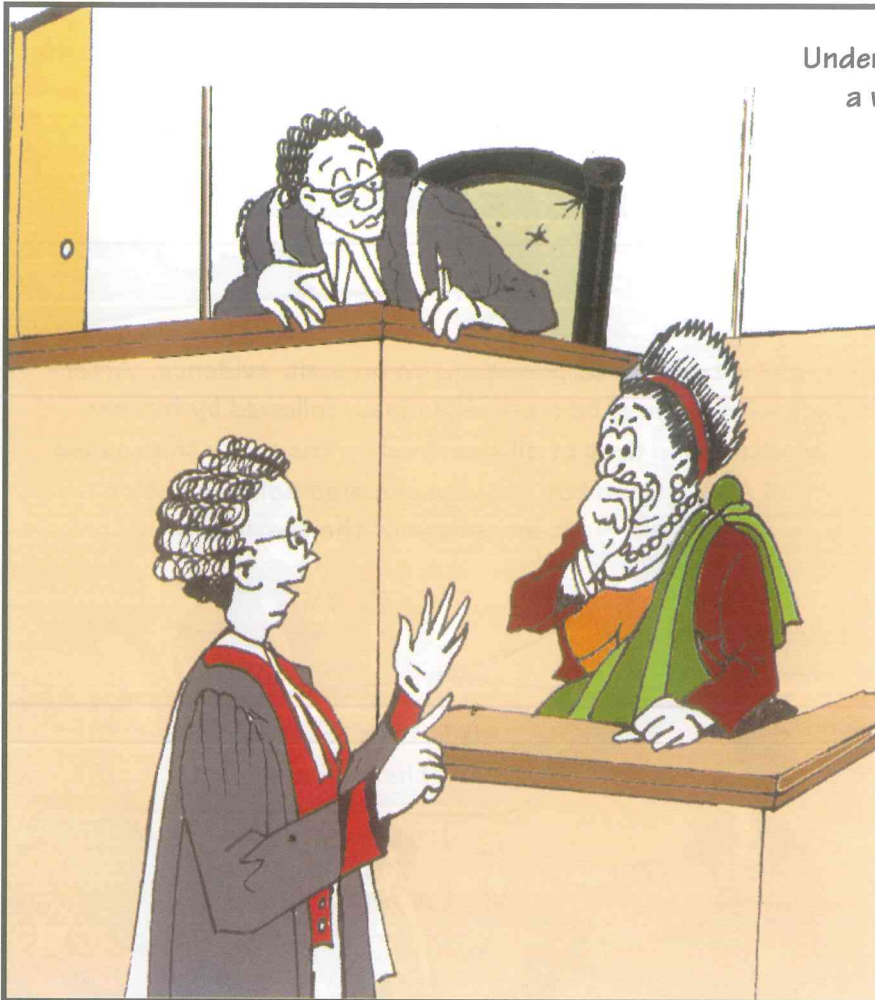


Usually, there is information that can be disclosed and others that cannot. Here's an example, if a doctor diagnoses a contagious illness in one of his patients,



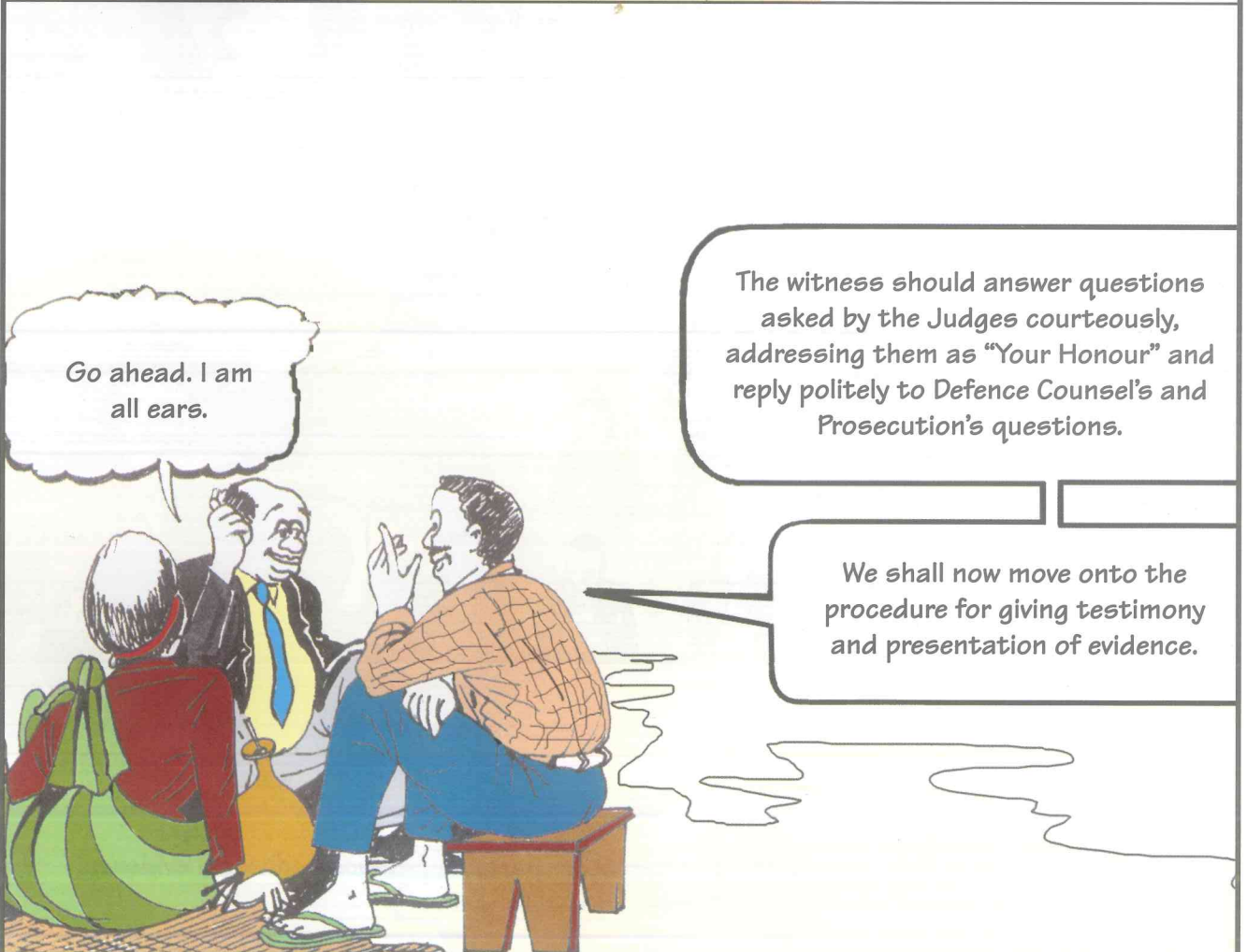
he cannot keep the information secret because if he does so, the disease might spread. However, he can refrain from disclosing the name of the sick person unless it is absolutely necessary to do so. The Lawyer-client relationship is addressed in Rule 97 of the Rules of Procedure and Evidence of the Tribunal, a copy of which is automatically given to the witness.

Truthful testimonies are a key element in speeding up the trial process and ensuring a proper administration of justice, because, as the saying goes, "Justice delayed is Justice denied".



Under Rule 90 of the Tribunal's Rules, a witness may refuse to make any statement which might tend to incriminate him.

A witness may also refuse to answer questions likely to reveal the identify of a protected witness.



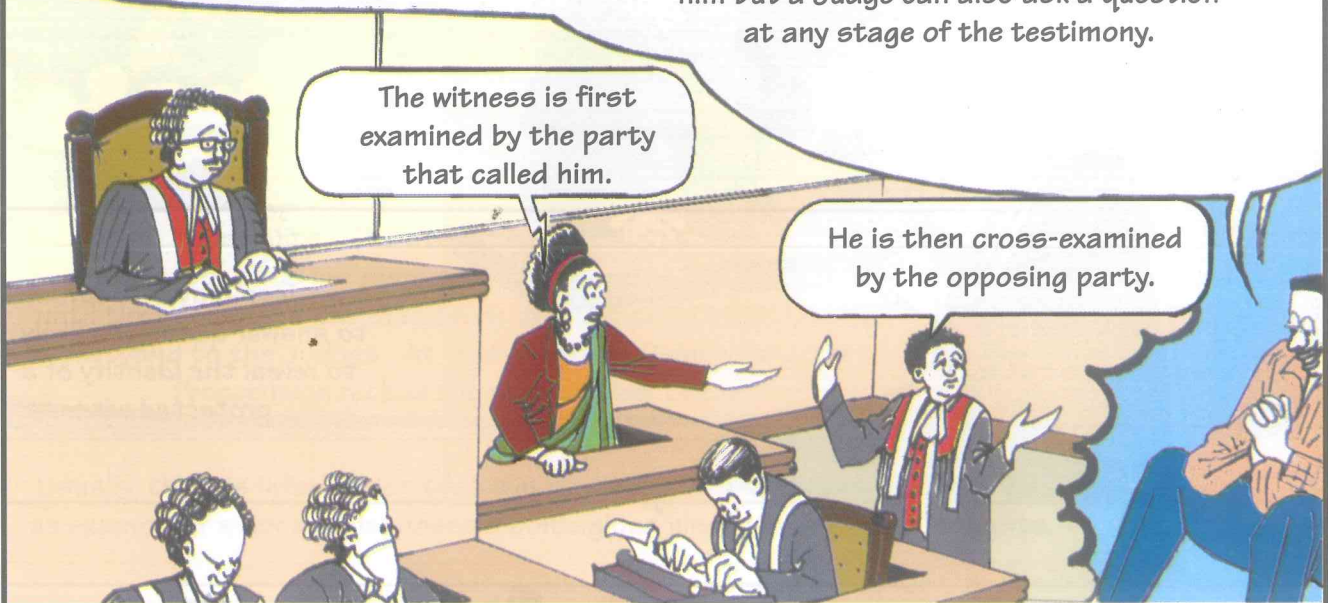
Go ahead. I am all ears.

The witness should answer questions asked by the Judges courteously, addressing them as "Your Honour" and reply politely to Defence Counsel's and Prosecution's questions.

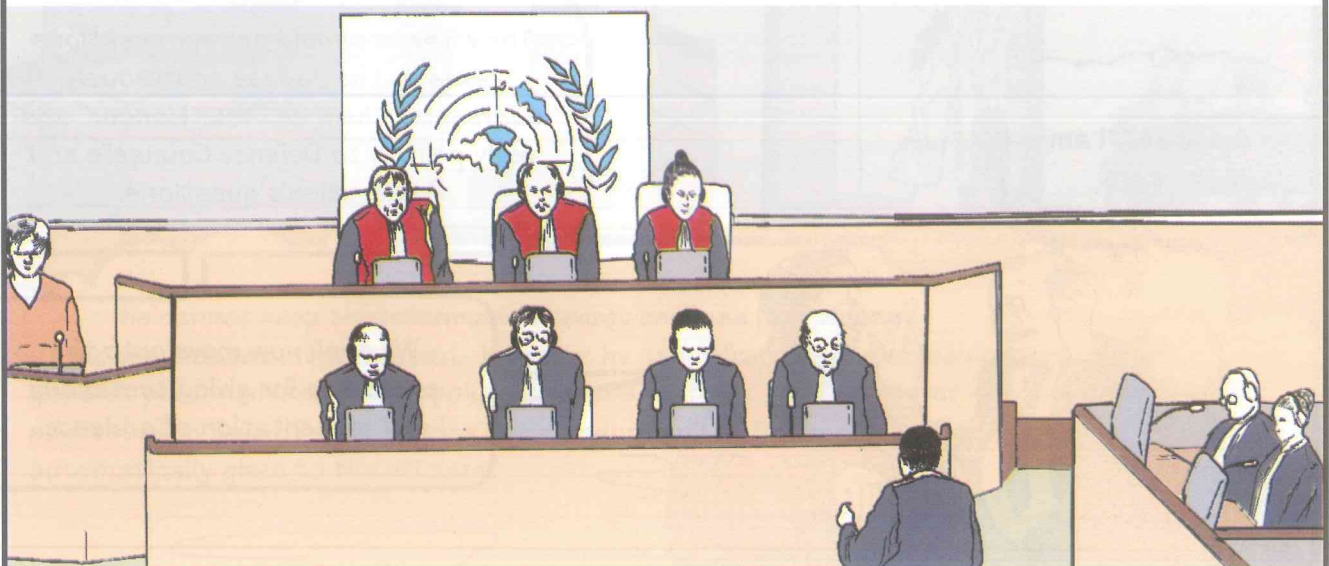
We shall now move onto the procedure for giving testimony and presentation of evidence.

G. PROCEDURE FOR THE GIVING OF TESTIMONY AND THE PRESENTATION OF EVIDENCE

Each of the parties may call witnesses to the stand to present evidence. After the examination-in-chief, each witness may be cross-examined, followed by further enquiry on direct examination. The witness is first of all examined by the party that called him but a Judge can also ask a question at any stage of the testimony.



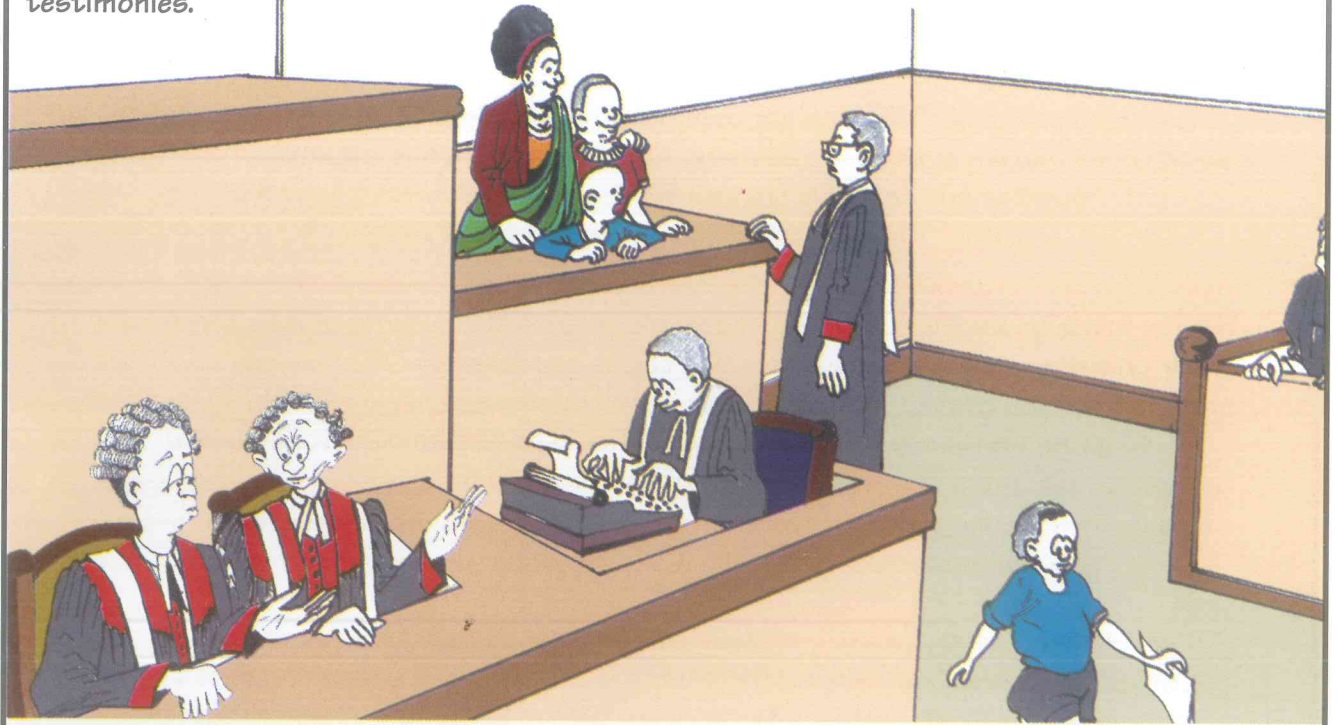
A Trial Chamber may order that the number of witnesses be reduced or that the examination be cut short.



Rule 98 –

The Trial Chamber may, *proprio motu*, order either party to produce additional evidence. It may itself summon witnesses and order their attendance.

Minors may be called to testify but their depositions must be corroborated by other testimonies.



A judgement cannot be based on the sole testimony of a minor.

Rule 96 of The Rules of Procedure and Evidence sets out rules of evidence in cases of sexual violence.

For reasons of decency, such cases may be heard in camera, if the Trial Chamber so decides.

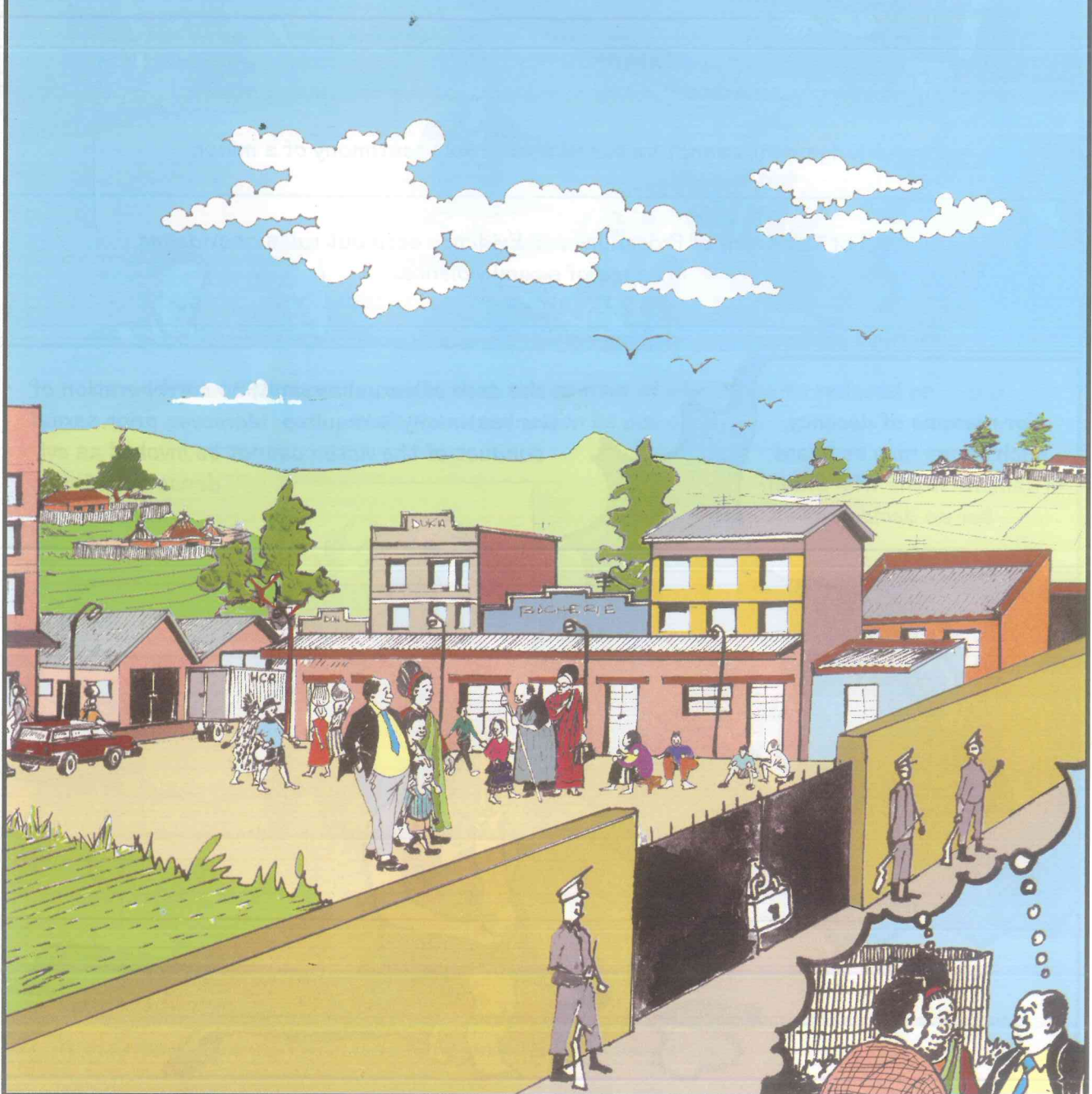
In the case of sexual assault, no corroboration of the testimony is required. Moreover, prior sexual conduct of the victim cannot be invoked as evidence or defence.



H. PROTECTION AFTER TESTIFYING

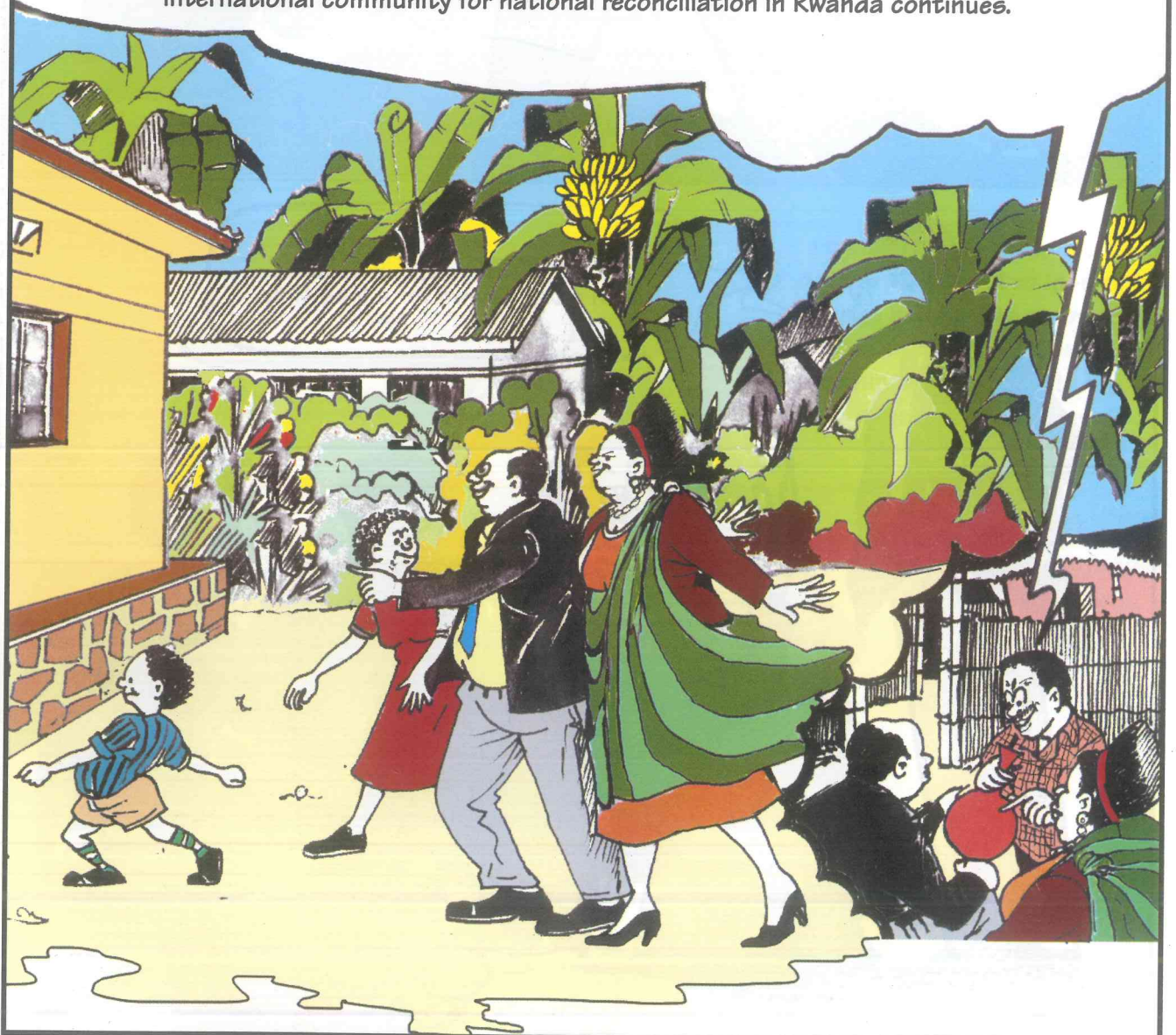
Both the UN and the country have the duty to work out protective measures for witness after they have testified. This does not apply only to witnesses living inside the country, but also to those who live outside the country. In-depth reflection is required on this matter, but it is not desirable that an individual should have to leave his home country because he has testified.

In any State under the rule of law, the State ensures the security of its citizens and their property. People who have testified can be relocated to other villages under the protection of the State. Having to leave one's country and place of birth, subsequent to giving testimony before the Tribunal would be tantamount to disguised banishment of that individual.



Every person has the right to live in the place of his choice, be it in his own country or abroad. Witnesses can decide, of their own free will, to seek domicile in any place where their security will be assured. That is quite understandable!

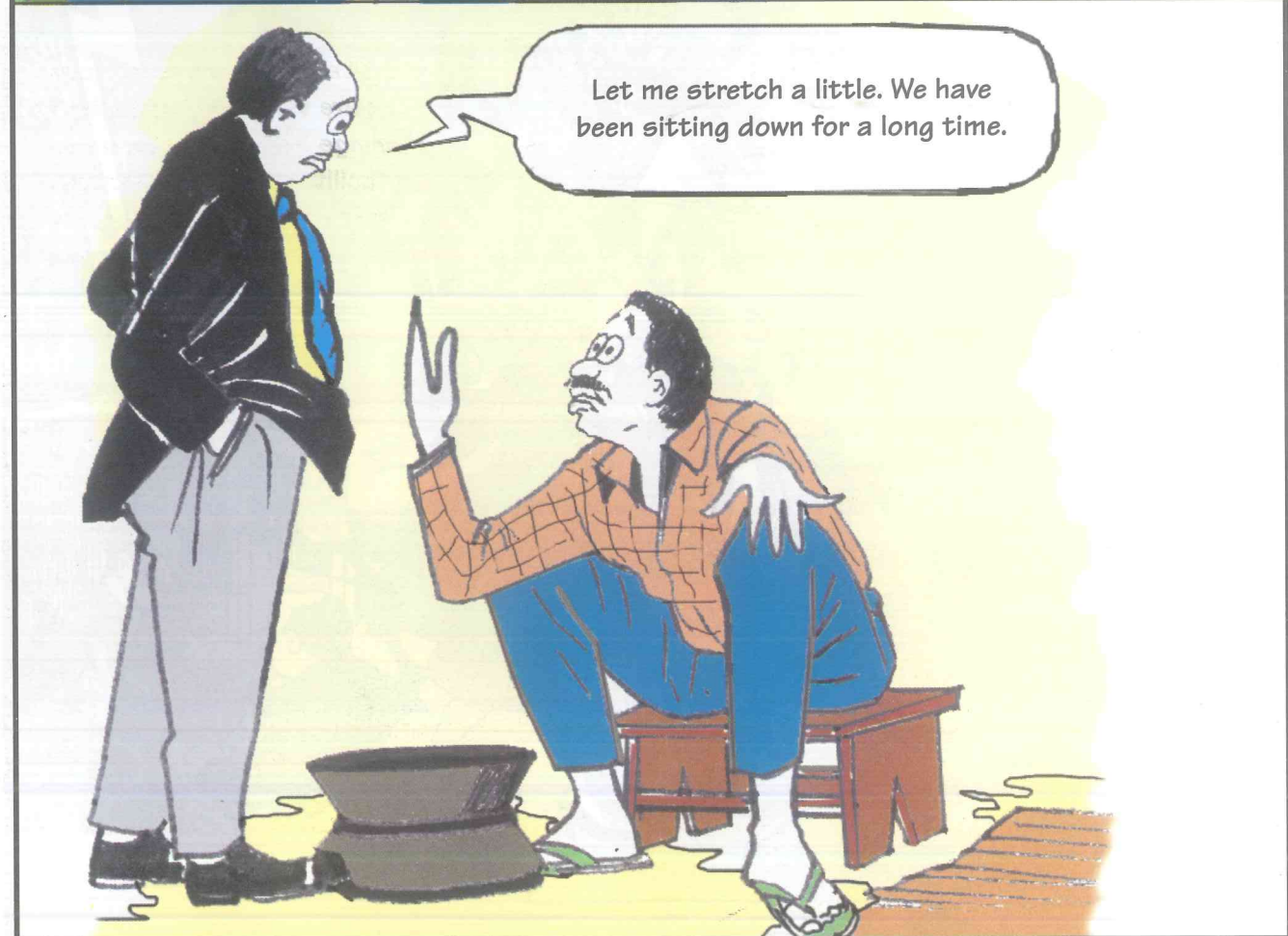
These people must then be relocated to another place inside the country or in a foreign country. Either way, it is unfortunate, but it is a personal decision. Witnesses must be afforded special protection for as long as the search by the international community for national reconciliation in Rwanda continues.





Remain seated for a few more minutes and I will finish.

Will my daily activities not be affected by my stay in Arusha?



Let me stretch a little. We have been sitting down for a long time.

I. LOSS OF EARNINGS AS A RESULT OF THE TRIAL



Now I have full information on this issue. Even though the testimony itself is not paid for, the Tribunal must compensate witnesses for the loss of earnings incurred as a result of going to Arusha to testify.



However, the witness must declare the expected loss of earnings beforehand so as to facilitate the assessment procedure and thus avoid any possible disagreement.

J. TRAVEL ASSISTANCE

The Tribunal bears the cost of your travel from your place of residence to and from the Tribunal.



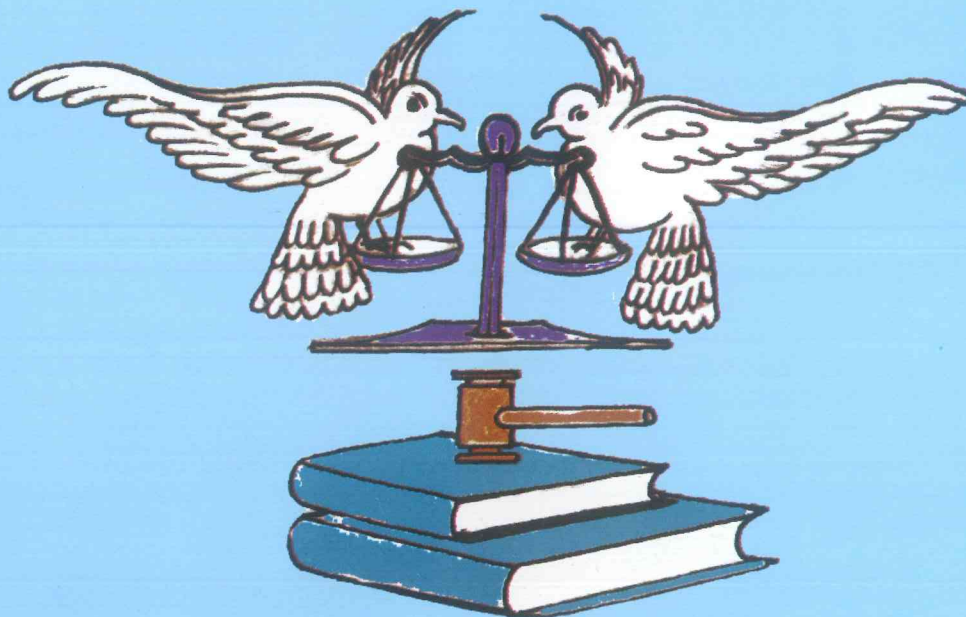
Various facilities are made available during the travel.



K. CONCLUSION

"There can be no recovery without peace and there can be no peace without justice, just as there can be no justice whilst the rights of man and the primacy of these rights are not respected". (Kofi Annan).

Reconciliation will only be possible if people testify truthfully and objectively.



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