

UNITED NATIONS
INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

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BEFORE: THE HON. JUDGES OF THE APPEAL CHAMBERS

REGISTRAR: Mr. ADAMA DIENG

DATE FILED:

THE PROSECUTOR

v.

SEMANZA

CASE NO. ICTR-97-20-A

ICTR-97-20-A
16th June 2003
(75/A - 22/A

NOTICE AND GROUNDS OF APPEAL AGAINST THE JUDGEMENT OF
TRIAL CHAMBER THREE IN ICTR-97-20-T PROSECUTOR V. LAURENT
SEMANZA DATED 15th MAY 2003
(ARTICLES 24 OF THE STATUTE AND RULE 108 OF THE RULE OF
PROCEDURE AND EVIDENCE)

THE OFFICE OF THE PROSECUTOR:

Mr. Norman Farrell
Senior Appeals Counsel

LEAD DEFENCE COUNSEL:

Chief Fuatabong Acha Charles Achaleke TAKU

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NOTICE AND GROUNDS OF APPEAL

Prosecutor v. Laurent Semanza

ICTR-97-20-T

- Pursuant to Article 24 and Rule 108 of the Rules of Evidence and Procedure of the ICTR
- Pursuant to the Practice Direction on Formal Requirements for Appeals from Judgement dated 11th June 2003

Date of Judgement appealed against: 15th May 2003

Part of the Judgement appealed against: Judgement in respect of Counts 3, 5, 10, 11, 12 and 14 and decisions relating to the various motions contained in specific grounds of Appeal with the date and specificity indicated.

This Defence reserved the right to file further grounds of Appeal and/or amend or modify the existing grounds depending on the outcome of the Defence motion for extension of time limit to file notice and grounds of Appeal pursuant to Rule 108, 116(A)(B) and 3 dated 29th May 2003.

I. BRIEF PROCEDURAL RELEVANT BACKGROUND TO THIS NOTICE AND GROUNDS OF APPEAL.

On or about the 26th March 1996 the Accused, Laurent Semanza was arrested in Yaounde, Cameroon pursuant to an International Warrant issued by the office of the Public Prosecutor of Rwanda.

On or about the 1st April 1996 the Accused was brought before the Advocate-General of the Central Provincial Court of Appeal Mr. Messina Teme where he recorded a cautionary statement "Procès-verbal d'interrogatoire" denying any involvement in genocide and other crimes in Rwanda, stating the following alibi:-

"Depuis le 1^{er} octobre 1990, les autorités actuelles au Rwanda ont lancé des attaques contre la population faisant plusieurs victimes et de déplacés. Ce qui ferait que personnellement, j'ai quitté (redacted) mon lieu de résidence en Avril 1994 pour me diriger vers la frontière que j'ai franchie le 14 juillet 1994. C'était pratiquement la guérilla qui lançait les attaques et lorsqu'elle aurait massacré les populations dans un coin, elle progressait dans un autre.

Les attaques étaient particulièrement lancées contre les Hutus ainsi que contre tous ceux qui avaient des liens avec eux, que ce soit dans le cadre du mariage ou d'autres relations sociales.

Les localités où se retrouvaient la plupart des Hutu était désignées à la guérilla par des éclaireurs puis par les habitants de la localité concernée ou par les éléments de la guérilla natifs de cette localité.

On or about 15th April 1996 the Prosecutor of the ICTR submitted a request for provisional measures in respect of the accused pursuant to R.40.

On or about the 6th May 1996 the Prosecutor extended the measures by three weeks.

On or about the 15th October 1996 the Prosecutor of ICTR wrote the Accused and seven others informing them that she did not intend to press charges against them and

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that since 16th April 1996 she had determined that the Tribunal had no jurisdiction over them. This letter was also sent to Cameroonian authorities.

On or about the 21st February 1997 the Central Provisional Court of Appeal rejected the Rwandese request and ordered immediate release of the Accused. The same day by a telephone call from Kigali the Accused was rearrested.

On or about the 23rd February 1997 the Prosecutor filed a new request for provisional measures.

On or about the 3rd March 1997 the Tribunal issued an order for the transfer of the Accused to UNDF (Rule 40 bis)

On or about the 29th September 1997 the Accused filed a writ of habeas corpus ad subjiciendum challenging the legality of his arrest and detention by the Prosecutor.

On or about 23rd October 1997 the indictment against the Accused was confirmed by Judge Aspegren.

On or about the 19th November 1997 the Accused was transferred to the Detention facility of the Tribunal.

On or about the 16th February 1998 the Accused made his initial appearance before the Tribunal and pleaded not guilty of seven counts contained in the initial indictment.

On or about the 10th December 1998 the Trial Chamber granted the Prosecutor's motion for Protection of witnesses and ordered that the Prosecutor should disclose all unredacted statements and documents to the Defence including the identity of all witnesses at least 21 days prior to the date of their testimony.

On or about the 21st January 1999 the Accused filed a motion contesting his arrest and detention.

On or about 31st May 1999 the Prosecutor submitted a motion to amend the indictment.

On or about the 18th June 1999 the Trial Chamber by an oral decision granted the motion for amendment. The Prosecutor filed the first amended indictment on 23rd June 1999.

On 24th June 1999 the Accused pleaded not guilty to the amended indictment.

On 2nd July 1999 the Prosecutor filed the second amended indictment. The Accused was never called to plead to it.

On the 16th August 1999 the Accused filed a motion praying the Trial Chamber to nullify all the counts based on Article 3 of the Geneva Convention 1949 for lack of specificity and vagueness.

On or about the 1st September 1999, the Trial Chamber rendered a decision permitting the Prosecutor to amend the indictment "with understanding that the Prosecutor will provide greater specificity as to facts relating to the new charges". The Accused was never called to plead.

On the 29th September 1999 the Defence motion was denied but the Trial Chamber ordered the Prosecutor to amend the indictment and to provide greater specificity to paragraphs 3.4, 3.6, 3.9, 3.15, 3.16, 3.17 and 3.18 and information in support of counts 7, 9, 13 and in particular the nexus between the Accused and the non-international nature of the conflict in Rwanda.

On or about the 12th October 1999 the Prosecutor filed a third amended indictment. The Accused was never called to plead to this amended indictment.

On the 5th November 1999 the Defence filed a notice of motion for incompetence, lack of jurisdiction and quashing of the third amended indictment pursuant to Rules 50 (C) and 72 (1)(ii)

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On 9th November 1999 the Prosecutor filed Prosecutors request to supplement records on Appeal with "Procès-verbal de l'interrogatoire" dated 1st April 1996 attached.

On the 27th January 2000, the Defence filed a brief in reply to the response to the preliminary brief in support of the 12th October 1999 Notice of Appeal against the Trial Chamber III order of 6th October 1999 on the Defence motion to set aside the arrest and detention of Laurent Semanza as unlawful.

On or about the 25th April 2000 the Defence filed a motion for subpoena, recording of depositions in points 4 and 6 of which the Defence revisited the question of alibi again as well as the safety concerns of the proposed witnesses.

On the 31st May 2000 the Appeal Chamber delivered its judgement on Semanza's appeal against his illegal arrest and detention as well as denial of justice. The said decision also admitted the "Procès-verbal d'interrogatoire au Cameroon (1st April 1996)" into evidence in the interest of justice.

On 30th June 2000 the Defence filed a motion for orders declaring the entire proceedings null and void due to persistent violations of Rules 66, 67, 69, 71, 73bis, Articles 1, 2, 3, 4, 5, 6, 7, 8 and 20 of the Statute of the Tribunal. Its supplementary motion was filed on 30th July 2000.

On the 23rd August 2000 decision on Defence motion for the exclusion of evidence on the basis of violations of the Rules of Evidence, Res Gestae, hearsay and violations of the Statute and Rules of Evidence.

On the 23rd August 2000, Decision of the Defence extremely urgent application for subpoena to compel consistent disclosure, better and further particulars.

On 11th September 2000, this motion dated 30th June 2000 and the supplementary motion was dismissed but the question of the internationality of the armed conflict raised in the motion was never addressed.

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On 21st September 2000 the Accused filed a motion for all disclosures to be done in French, a language he understands.

On the 13th October 2000 Defence filed a motion concerning documents communicated to the Accused in English a language he does not understand.

On the 20th October 2000 the motion for subpoena and disposition was dismissed.

On 3rd November 2000 the Trial Chamber granted the Prosecutors for Judicial Notice and Presumption of facts pursuant to Rules 94 and 54 stating¹ that it denied the Prosecutor requests made in the motion (i) to create evidentiary presumptions on the basis of the facts in Appendices A and B and (ii) to take judicial notice of inferences that may be drawn from the judicially noticed facts.”

On the 14th November 2000 the Accused filed supplementary motion to the motion of 12th October 2000 concerning documents communicated to the Accused in English, a language that he does not understand².

On the 15th November 2000 the Defence filed a Defence motion for the interpretation of Rules 87(A)(B)(C)(D) and 90(F)(G) of the Rules of Evidence and recall of witness as a result of restrictions placed on the Defence in the use of witness statements in cross-examination.

On 1st December 2000, the Trial Chamber dismissed the Defence motion for interpretation thus maintaining the restrictions.

On 24th January 2001 the Prosecutor filed an urgent motion for review of the decision of Judicial Notice dated November 2000.

¹ Point 42, 43, 45, 46, 47, 48(d) of the decision

² The Chamber ruled on 4th December 2000 at paragraph 5 that it was an issue to be addressed to the Registry and not the Trial Chamber.

On 2nd February 2001 the Prosecutor filed a motion for review of the decision on the Prosecutor's motion for Judicial Notice and presumption of facts pursuant to Rules 94 and 54 (RR 120 and 73).

On 4th February 2001 the Defence filed a preliminary reply to the Prosecutor's further motion for Judicial Notice pursuant to Rules 94 and 54.

On the 5th February 2001 the Defence while on mission in Europe filed a preliminary reply seeking time to file a reply to the Prosecutor's motion for review.

On 7th February 2001 the Trial Chamber dismissed the Prosecutor's motion for review.

On or about the 9th February 2001 the Trial Chamber granted leave for the Kingdom of Belgium to file an amicus curiae.

On the 12th February 2001 the Prosecutor filed a further motion for Judicial Notice pursuant to Rules 94 and 54.

On 15th March 2001 the Trial Chamber dismissed the Prosecutor's further motion for Judicial Notice pursuant to Rules 94 and 54 with the Trial Chamber stating inter alia "Moreover, the chamber is not inclined to consider as adjudicated facts within the meaning of Rule 94 (B) the propositions that Tutsis were killed in Rwanda with the intent to destroy their ethnic group and that serious bodily or mental harm was occasioned to persons perceived to be Tutsis with the intent to destroy their ethnic group".

On or about 21st March 2001 the Prosecutor filed Prosecutor's urgent motion for leave to call additional witnesses (R.73bis(E)) followed by memorial and a book of authorities in which he made a request to henceforth prosecute Semanza as an accomplice of Rugambarara.

On or about the 18th April 2001 the Prosecution was permitted to call some witnesses amongst them Mr. Kaiser, Dr. Ruzindana and VN who rectified the voice on the audio

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cassettes of the intercepted telephone conversations in which one Rugambarara took responsibility of the crimes in the localities for which the Accused is charged.

On or about 13th September 2001 the Defence filed a motion for acquittal on the basis that the indictment was defective and the Prosecutor had not made out a prima facie case against the Accused on the basis of the said defective indictment. The motion was denied.

On or about the 11th October 2001 the Defence made its opening statement in which it attacked the indictment again as well as the credibility of the Prosecution case.

On or about the 6th February 2002 the Trial Chamber dismissed the Defence motion for judicial notice.

On or about the 5th of March 2002 the Prosecutor filed a motion to call rebuttal evidence.

On or about the 7th March 2002 the Prosecutor filed a supplementary motion for rebuttal.

On or about the 21st March 2002 the Defence filed the reply.

On or about 27th March 2002 the Trial Chamber granted the Prosecution motion for rebuttal ruling inter alia "the Defence of Alibi goes directly to the issue of guilt or innocence of the Accused in this case and therefore a central matter for determination"³.

On or about the 24th April 2002 the Defence filed a motion to call a rejoinder pursuant to R.85 (iv).

On or about the 30th April 2002 the Trial Chamber denied the Defence motion and thereafter denied other further motions to reconsider its earlier decisions.

³ Paragraph 10, page 3 of the ruling.

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On or about the 2nd May 2002 the Trial Chamber issued a scheduling order directing the Prosecutor and the Defence to file their submissions on the 12th June 2002.

On or about the 12th June 2002 as required by the Trial Chamber the Defence and the Prosecutor filed written submissions the same day without the Defence knowing the contents of the requisitions in the Prosecution's submissions.

On or about the 17th, 18th and 19th June 2002 both the Prosecution and Defence made closing arguments.

On or about the 15th May 2003 about 11 months after the Trial Chamber Three delivered its judgement in this case, hence this Appeal.

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II. NOTICE AND GROUNDS OF APPEAL

Take Notice that the Accused being dissatisfied with his conviction on counts 3,5,10,11, 12 and 14 of the indictment as per judgement passed on the 15th May 2003 do hereby file the following grounds for appeal:-

A. GROUND 1

BIAS AGAINST PRESUMPTION OF INNOCENCE, BURDEN OF PROOF (ARTICLES 19(1), 20(1)(2)(3)(e) and RULE 14)

The Trial Chamber erred in exhibiting bias against the Accused in favour of the Prosecutor and persistently manifested this bias in its rulings and pronouncements in open court when it was clear that the Trial Chamber denied the Accused the safeguards of a fair trial, presumption of innocence relieved the Prosecutor of the burden of proof and placed the burden on the Accused to prove his innocence and thus violated Articles 19(1), 20(1)(2)(3) 4 (e) and Rule 14.

A.1 PARTICULARS OF ERROR AND BIAS

- 1) On the 23rd September 1999 the Hon. Judge Ostrovsky in comments to Mr. Andre Dumont⁴ Defence Counsel speculated on the guilt of the Accused. (Article 20(3) of the statute).
- 2) The Trial Chamber persistently refused the Accused the right to cross-examine Prosecution witnesses or even to raise fundamental issues in favour of the Defence⁵.
- 3) In a misinterpretation of its decision on judicial notice and presumption of facts dated the 3rd November 2000⁶, the Trial Chamber since the 8th of November 2000 held that it had made up its mind that genocide as defined in Article 2(1) of the

⁴ Page 2, lines 9-10 of the Transcript of 23rd September 1999.

⁵ Transcript of 6th November 2000, pg. 112, l.23-25; pg. 113, l1; pg. 151, l.15-24; p.153 l.2-16; pg. 19, l.7, 22-25; p.198 l.1-7, Transcript of 8th November 2000, p.103, l.20-23; p.104, l.24-25; p.105. l.5-8; Transcript of 6th November 2001 p.12, l.21-24; p.13 l.1-7, pp. 132-133; p.140, p.142, pp. 144-145, p.174, pp. 175-176, pp 178-179

Statute had been taken judicial notice of and limited the parties to the alleged participation of the Accused and furthermore, that systematic attacks on a massive scale was carried out against the Tutsi population and that there was genocide⁷. The Trial Chamber in its decision dated 15th May 2003 merely adopted this position adopted at the commencement of the Trial⁸. By the above finding the Trial Chamber reversed the burden of proof, pre-empted the Defence from mounting an effective defence to the indictment and denied the Accused the presumption of innocence in violation of Articles 19(1), 20(1) (2)(3)4(e) of the Statute and this led to a miscarriage of justice.

- 4) The Trial Chamber violated Articles 19(1), 20(1)(2)(3) of the Statute and Rule 86(B) of the Rules by imposing a scheduling order and date for the filing of Defence submissions without the benefit of being served with the Prosecution brief to enable it to reply⁹.

B. GROUND 2

B.1 INVALIDATION OF THE INDICTMENT

The Trial Chamber erred in law in proceeding to assume material and personal jurisdiction in trying, conviction and sentencing the Accused person based on a fundamentally defective indictment and this led to a miscarriage of justice, hereby violating Articles 1, 6, 19(1), 20(2)(3) 4(a) 22(2) and Rules R5, R.47(C), R.50, R72(H).

⁶ in particular paragraphs 36

⁷ Transcript of 8th December 2000 p. 28 l. 20-23 and page 29, l.1-3 (French version) and pgs. 23-29 and pg. 40-42 of the English version.

⁸ Paragraph 423, 424, 441 and 442 of the judgement.

⁹ Scheduling order of 2nd May 2002.

B.1.1 PARTICULARS OF ERROR

- 1) The Trial Chamber erred in law in dismissing the Defence motions.
 - i) Seeking dismissal of the Counts of violation of Article 3 Common to the Geneva Conventions for lack of evidence filed on September 23, 1999 in its decision dated 29th September 1999.
 - ii) Defense motion for dismissal of the entire proceedings filed on 30th June 2000 and 14th July 2000 in its decision dated 11th September 2000, which raised serious challenges to the indictment and the jurisdiction of the Trial Chamber to entertain and hear the case.
- 2) After dismissing the above motions the Trial Chamber erred in law and misdirected itself in holding that no preliminary challenges were made to the indictment at the pretrial stage of the proceedings¹⁰ whereas not only were such challenges raised at the pretrial stage but they were reiterated during the Defence opening statement, the Defence motion for judgement of acquittal in respect of Laurent Semanza after quashing the counts contained in the Third Amended indictment filed on 13th September 2001 and dismissed with unjustified sanctions.
- 3) The Trial Chamber erred in law and misdirected itself after arriving at the findings it did in its decision dated 29th September 1999 "Decision on the Defence motion seeking dismissal of the counts of violations of Article 3 Common to the Geneva Conventions for lack of evidence" it instead dismissed the motion rather than grant it and this led to a miscarriage of justice.
- 4) The Trial Chamber further erred in law in light of the finding it made¹¹ regarding the third amended indictment annexed to the judgement and in proceeding to invalidate part of the indictment only; and without any legal justification based on the Statute, the Rules and Procedure of Evidence of the ICTR, retaining specific paragraphs of the partially invalidated indictment to ground convictions and

¹⁰ Paragraph 41- 45, p.11-12 of the judgement

¹¹ Paragraphs 46-59, p.12-15 of the judgement

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sentences on Counts 3, 5, 11, 12 and 14 of the indictment¹² and this led to a miscarriage of justice.

- 5) The Trial Chamber erred during judgement in altering or modifying piecemeal or otherwise manipulating the allegations laid out in the indictment to the prejudice of the accused contrary to the Provisions of Article 18 of the Statute and Rule 50 of the Rules of Procedure and Evidence and thus violated the Rights of the Accused enshrined in Article 20 of the Statute of the Tribunal.
- 6) The Trial Chamber erred at the end of the Prosecution case in dismissing outright without due consideration, the Defence motion for acquittal after quashing of the counts contained in the third amended indictment Rule 98 bis of the Rules of Procedure and Evidence and this decision prejudiced the Defence right to a fair trial regard had to the defects in the said indictment¹³ and thus led to a miscarriage of justice.
- 7) The Trial Chamber erred to raise witness protection concerns imposed by the Prosecutor without orders from the Trial Chambers to justify perceived vagueness, lack of specificity in the indictment whereas the decision of the Trial Chamber on the Prosecution application for the Protection of witnesses dated 10th December 1998 covered only witnesses in attachment A with conditions that the identity of witnesses be disclosed to the Defence at least 21 days prior to their testimony¹⁴.

B.2 INVALIDATION DUE TO ILLEGAL MODIFICATION OF INDICTMENT

Pursuant to the Prosecutor's urgent motion for leave to call additional witnesses (R.73bis E) dated the 21st March 2001, supported by the Prosecutor's memorial and book of authorities dated the 21st March 2001 and the arguments in open court and the transcripts¹⁵ of Prosecution witnesses VN, Kaiser and Ruzindana,

¹² Para. 9-14, p.3-4; para.421-438, 461-465, 475-499, pages 130-150 of the judgement.

¹³ Paragraphs 41-45, p.11,12 of the judgement

¹⁴ Paragraphs 41-45, p.11,12 of the judgement.

¹⁵ Transcript of 18th April 2001

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and following the indication¹⁶ by the Prosecutor in her memorial¹⁷ that by virtue of the evidence contained in the cassettes and their transcriptions, the Prosecutor was prosecuting the Accused henceforth as an accomplice in the crimes committed in the different localities listed in the indictment and not as a principal offender, the Trial Chamber erred in law in not directing the Prosecutor to amend the indictment in respect of this application or to invalidate the entire indictment and acquit the Accused as a result of this reality and this led to a violation of Articles 19(1), 20(2)(3)(4)(a), 22(2) and Rule 50(A)(B) and therefore a miscarriage of justice.

C. GROUND 3

The Trial Chamber erred in law and misdirected itself in finding that substantial portions of the indictment as laid are irreparably bad and yet without any application for amendment, proceeded Suo Moto to pick and chose from a plethora of varied vague and unconnected events listed in the indictment to convict the Appellant and this led to a miscarriage of justice and a violation of Articles 18, 19(1), 20(2)(3) and 50(A)(B).

C.1 PARTICULARS OF ERROR

- 1) The indictment as laid hereunder inter alia; is irreparably bad, vague and imprecise and ought to be dismissed or quashed and the judgement invalidated.
 - a) Count One
 - “ By his acts referred to in paragraphs 3.7 to 3.16 above...”
 - b) Count Three
 - “ By his acts in relation to the events described in paragraphs 3.7 to 3.16 above...”

¹⁶ At point 3, 4, 5, 6 and 7 of the judgement
¹⁷ pages 5012 and 5013

c) Count Four

“ By his acts in relation to the events described in paragraphs 3.7 to 3.16 above...”

d) Count Five

“ By his acts in relation to the events described in paragraphs 3.7 to 3.16 above...”

The Trial Chamber erred and acted improperly by reconstructing the above counts in which disjunctive events were charged together to constitute the crimes charged therein by picking some of the events and disqualifying others and further erred¹⁸ to bring together separate parts of different counts of the indictment as laid to constitute specific offences and proceeded to convict and sentence the Appellant therein in particular “paragraph 3.8 of the indictment (Count 11) under and (part of Count 12), crime against humanity”. And this has occasioned a miscarriage of justice.

2) The Trial Chamber misdirected itself in failing to call upon the Appellant to plead to the reconstructed or modified Counts 3, 5, 10, 11, 12 and 14 in violation of Article 20 of the Statute and Rule 50(B); as well as the rules of natural justice especially as substantial legal changes were authorized by the Trial Chamber or made by the Chamber itself, with regard to the third amended indictment in particular to the non-international character of the conflict and the nexus to the Accused and this led to a miscarriage of justice.

D. GROUND 4

D.1 ALIBI

The Trial Chamber erred in law and misjudged or miscomprehended the alibi of the Accused required under R.67(9)(ii) which was already in the Prosecutor’s custody; wrongly basing it on the peripheral issue of the date of the death of

¹⁸ Paragraph 10 page 3 of the judgement

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Mbaraga Bizuru and the RPF advance in Bicumbi and Gikoro and this misjudgment and miscomprehension led to a miscarriage of justice¹⁹.

D.1.1 PARTICULARS OF MISDIRECTION

- 1) In Exhibit P.28 "Procès-verbale d'interrogatoire" in Cameroon which was in the Prosecutor's custody ab initio, the Accused raised the following alibi later on corroborated by all his witnesses KNU, PFM, SAM, CBN, SDN, SAP, CYM3, DCN, Nyetera, Professor Pascal Ndengejeho as well as Prosecution Exhibits P5-18(a)(d), all issues raised in the cross-examination of Prosecution 1st witness Duclos:-
 - i) That through infiltration the RPF conducted guerilla war tactics and attacked prominent Hutus in certain localities.
 - ii) That as a result the Accused was attacked and he was no longer in the locality in April 1994
 - iii) That as the tactics persisted he moved towards Zaire frontier which he finally crossed in July 1994
- 2) The Trial Chamber failed to focus its analysis on the particular answers to the following relevant and pertinent issues:-
 - i) Did any of the rebuttal witnesses in particular XXXK on whom it relied, see the Accused in the locality in April 1994?
 - ii) Did any of the rebuttal witnesses in particular XXXK know the exact date of the attack on the Accused's house, the cause of his escape, since they were neighbors?

¹⁹ Paragraph 110, p.31 of the judgement.

iii) Did XXX see the Accused drive the red vehicle of APEGA in 1994 since it was the vehicle allegedly used by him to commit the crimes alleged?

By avoiding the above issues raised by the alibi and focusing instead on the alleged date of the death of Mbaraga Bizuru and the RPF advance the Trial Chamber arrived at a conclusion no trier of fact could have arrived at and this led to a miscarriage of justice²⁰.

3) By basing its finding on the alleged RPF advance and the alleged flight of all the important persons in the locality the Trial Chamber ignored the contents of Exhibit D.44 which pointed to the fact that despite such testimony of the alleged RPF advance prominent persons listed in that exhibit remained in the locality after all.

Relief sought: The Accused respectfully urges the Trial Chamber to make an appropriate finding sustaining the Accused's alibi and thus acquitting him on the counts he was wrongly convicted.

D.2 REBUTTAL AND REJOINDER

The Trial Chamber erred in law and in fact misdirected itself in entertaining and granting the Prosecutor's motion for leave to call Rebuttal evidence²¹, while denying the Defence motion to call a Rejoinder thereto²², and further erred in using the evidence so improperly elicited to discredit the Alibi of the Accused²³ and this violated the Accused's rights under Articles 19(ii) and 20(i)(2)(3) of the Statute and 85A(iv), 89(c) leading to the miscarriage of justice.

D.2.1 PARTICULARS OF MISDIRECTION

1) The Trial Chamber misdirected itself in finding over the Defence objections that the Prosecution became aware of the alibi of the Accused for the first time during

²⁰ Para. 110, p.31 of the judgement.
²¹ RR 54, 89(b), 89(c) and 89(c) of 7th March 2002, 22nd March 2002, 27th March 2002 respectively
²² Rule 85A (iv), 27th March 2002, 30th April 2002

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the Defence case²⁴, whereas immediately upon his arrest in Cameroon on 26th March 1996, the Accused made a statement dated 1st April 1996 in which he asserted his alibi in the clearest terms²⁵ and this alibi came to the custody of the Prosecutor who through her motion to supplement records on Appeal²⁶ 9th November 1999 made it part of the proceedings in this case²⁷.

- 2) The Trial Chamber misdirected itself in not finding that the following issues which the Trial Chamber considered in the rebuttal to discredit the Defence alibi²⁸ were indeed promptly raised during cross-examination of Prosecutor's investigation, Pierre Duclos²⁹ and this led to a miscarriage of justice and violated Articles 19(1) 20(1)(2)(3) of the Statute.
 - a) The burning of the house of the Accused in the night of 8th April 1994 leading to his flight³⁰.
 - b) The burning to death of Mbaraga Bizuru in the red pick-up car of APEGA Saint Laurent³¹.
- 3) The Trial Chamber and the parties had on record the notice and prayers of the Defence motion³² for subpoena, recording of depositions dated 20th April 2000 and the list of Semanza's property occupied by the RPF since 9th April 1994³³.
- 4) The existence on record of the following evidence of Alibi was in custody of the Prosecutor ab initio :-

²³ Pages 20 –40, paragraphs 77-148 of the judgement

²⁴ Paragraphs 3-10, 12 of the Decision dated 27th March 2002

²⁵ Exhibit D34

²⁶ Exhibit D34

²⁷ Judgement of Appeal Chamber dated 31st May 2000, Exhibit P.27, paragraphs 22-45

²⁸ Pages 20-40 of the Judgement.

²⁹ Cross-examination of witness Duclos; 16th October 2000, pages 126-136

³⁰ Cross-examination of witness Duclos; page 128, l.19-25; p.129, ll-25; p.130, ll-9, 20-25; p.131, l.6-15

³¹ Cross-examination of witness Duclos; p. 135, ll-25

³² Paragraph 4 & 6, 2nd proviso

³³ Exhibit P.29

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- a) The confessional statement of Munanira Etienne³⁴ produced by Prosecution witness VN during the proceedings and Exhibit D.40.
- b) The declaration of VAZ produced by the Prosecutor³⁵ (admitted by the majority as evidence of alibi).
- c) The Defence motion for the calling of witness VZ to testify or admitting his declaration as well as those of witnesses VL, VH, VK and an extract of Hopes and Despair³⁶ and the Trial chamber decision dated 27th September 2000.
- d) The existence on record of the following Prosecutor's witness (VA, VS, VAA, VAC, VT, VAS, VAT, VAY, VQ, VZ) declarations filed and disclosed to the parties on the 10th November 1999³⁷.
- e) The existence on record of the Defence opening statement at pages 52 lines 5-18 of the transcript of 1st October 2001, the Defence disclosure of witness statements³⁸, Defence motions for acquittal (article 98 bis) dated 20th July 2001.
- f) The alibi contained in the audiocassettes of telephone conversations³⁹ and the evidence of Mr. Kaiser, Prosecution witnesses VN, Ruzindana⁴⁰.

Relief sought: The Accused respectfully urge the Appeal Chamber to find that the Trial Chamber in ignoring the above facts in evaluation of the evidence came to a conclusion no trier of fact would have come to, and this led to a miscarriage of justice.

³⁴ Exhibit D.1

³⁵ Exhibit D44

³⁶ African Rights report 1995

³⁷ See list of Prosecution protected witnesses attached to the order of 10th December 1998

³⁸ R.73 ter. dated 30th July

³⁹ Exhibit P.11

⁴⁰ Transcript of 18th April 2001

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D.2.2

- 1) The Trial Chamber erred in law by finding that R.85(A) does not limit the rebuttal evidence to instances when presentation of such evidence could be in the interest of justice⁴¹ thereby violated Article 19 of the Statute, Rule 89(C), the standards set by the Appeal Chamber in ICTR-97-20-A⁴², as well as the threshold set by the Trial Chamber itself in ICTR-99-46-T (Prosecutor v. Andre Ntagerura and Emmanuel Bagambiki and Samuel Imanishiwe)⁴³, in Trial Chamber 1's decision dated 13th May 2003 in the Prosecutor v. Ferdinand Nahimana, Jean-Bosco Barayagwiza and Hassan Ngeze Case No. ICTR-99-52-T⁴⁴; Trial Chamber 2 decisions on Prosecutor v. Kajelijeli Case No. ICTR-98-44A-T⁴⁵ on 12th May 2003 and Prosecutor v. Kamuhanda ICTR-99-54A-T on 13th May 2003, and this led to the miscarriage of justice.
- 2) Upon granting the motion for rebuttal, the Trial Chamber improperly evaluated the evidence of XXK and relied on her speculative, imprecise and uncorroborated evidence about the periphery issue of the possible date of the death of Mbaraga Bizuru and the RPF advance in the locality⁴⁶ while neglecting the more specific, precise, cogent evidence of the witness in corroboration of the defence alibi and witnesses about his absence from the locality and the impossibility of him ever driving the red pick-up vehicle of APEGA to transport Interahamwe and commit crimes listed in the indictment at Musha church, Mwulire Hill or elsewhere in Bicumbi and Gikoro commune as stated in the uncorroborated account of Prosecution witness VP and believed by the Trial Chamber⁴⁷. (Transcript of 4th December 2000 page 57)(VM transcript of 6th March 2001)
- 3) In its evaluation of the evidence of the alibi, the Trial Chamber failed to consider the totality of the evidence adduced, its probative value and failed to resolve the doubts created by material contradictions and inconsistencies in the Prosecutor's

⁴¹ Decision of Prosecutor to call Rebuttal evidence, page 2 paragraph 10

⁴² Interlocutory Appeal, Prosecutor v. Semanza, 31st May 2000, Exhibit P.27 paragraphs 22 to 45

⁴³ Decision on Prosecutor for leave to call evidence in Rebuttal pursuant to Rules 54, 73 and 85(A)(iii) dated 21st May 2003

⁴⁴ Decision on Prosecutor application for Rebuttal

⁴⁵ Decision on Prosecutor motions to call rebuttal evidence

⁴⁶ Paragraph 111, page 3 of judgement

case about the presence and participation of the Accused in the crimes at each site listed in the indictment in favour of the accused and this violated Articles 19(1) 20(1)(2)(3) 22(2) of the Statute.

- 4) In its evaluation of the evidence in respect on Counts 3, 5, 10, 11, 12 and 14 the Trial Chamber relied on unreliable, discredited and unbelievable evidence while dismissing material contradictions on material elements of the crimes alleged as immaterial due to the discriminatory application of unjustified criteria like "trauma of the events"⁴⁸ and no trier of fact would have safely relied on such evidence and the unproven criteria and its discriminatory application to safely convict.
- 5) The Trial Chamber erred in not ensuring the compliance with R.66 of the Rules of Procedure and Evidence with regards to the disclosure of the full identity and witness statements prior to their testimony and further erred in allowing witnesses to testify out of the scope of the order dated 27th March 2002⁴⁹ introducing into the evidence over defence objections peripheral and/or evidence re-enforcing the Prosecution's case and thus violated the rights of Article 19(1), 20(iv), 20(1)(2)(3) of the Statute.
- 6) The rebuttal evidence adduced, the procedure by which it was authorized and presented, the reasons considered for its admission, the unreasonable and prejudicial scope of the evidence permitted and elicited the refusal of the Trial Chamber to permit cross-examination on the credibility of the witnesses and the wrong evaluation of the evidence elicited in relation to the indictment led to a conclusion no reasonable trier of fact would have arrived at and led to a miscarriage of justice.
- 7) In permitting the evidence in rebuttal the Trial Chamber erred in basing in the main as reason for permitting the rebuttal the fact that the "the defence of alibi

⁴⁷ Paragraphs 217-220 at pages 63-64 of the judgement
⁴⁸ VA Transcript of 7th March 2001 pages 56-58, 62-63; VM Transcript of 6th March 2001 pages 62, paragraphs 211 and 212 of the judgement
⁴⁹ page 29, para.105; page 30, para.106; page 31, para.110, 111, 120; page 36, para.129; page 37; page 39, para.141; page 40 para.144, 145, 147, 148 of the judgement.

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goes directly to the issue of guilt or innocence of the Accused in this case and therefore a central matter for determination”⁵⁰ thus neglecting the defences raised, the presumption of innocence as well as the burden of proof, and thus violated Articles 19(1) 20(2)(3) 22(2) of the statute as well as the fundamental tenets of fair trial, natural justice and this led to a miscarriage of justice.

Relief sought: By its wrong use of the procedure to strengthen the Prosecutor’s case the Trial Chamber came to conclusions no reasonable Tribunal could have come to and so wrongly convicted the Accused and the judgement ought to be reversed and a judgement of acquittal entered.

E. GROUND 5

The judgement was altogether unreasonable and unwarranted having regard to the totality of the evidence adduced at the trial and ought to be reversed and the Accused acquitted.

F. GROUND 6

The Trial Chamber erred to have restrained the Defence from using the statements of Prosecution witnesses to cross-examine them pursuant to Rules 87 and 90 despite repeated protests from the Defence⁵¹ and accorded the Prosecution unlimited latitude to use the statements of Defence witnesses to cross-examine despite objections from the Defence and a demand for a ruling on the scope to which a party may be allowed to cross-examine with a witness statement which ruling the Trial Chamber refused to make and thus violated Articles 19(1), 20(4)(e) of the Statute and Rules 87 and 90 of the Rules of Procedure and Evidence and this led to a miscarriage of justice.

⁵⁰ Page 3, paragraph 10 of 27th March 2002 on the Prosecutor’s motion for rebuttal

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G. GROUND 7

The Trial Chamber erred to have refused the Accused the right to be present at status conferences permitted under R.65 bis (A) despite his insistence to be present and this violated Article 19(1) and 20(4)(d) of the Statute and this led to a miscarriage of justice.

H. GROUND 8

The Trial lacked transparency and credibility and the fundamental essence of fairness under Article 19(1) of the Statute when the Prosecuting Attorney in this case suddenly became the Senior Legal advisor to the Trial Chambers several months before the judgement was delivered and this perception conveyed an appearance of unfairness had led to a miscarriage of justice.

I. GROUND 9

I.1 JUDICIAL NOTICE

The Trial Chamber in finding the Accused guilty in Counts 3, 5, 10, 11, 12 and 14 relied on inferences drawn from its decision on Judicial Notice namely:-

- Between 6th April 1994 and 17th July 1994 citizens native of Rwanda were severely identified according to the following ethnic classifications:- Tutsi, Hutu, Twa
- The following state of affairs existed in Rwanda in between 6th April 1994 and 17th July 1994. "There were throughout Rwanda widespread or systematic attacks against a civilian population based on Tutsi ethnic identification. During the attacks, some Rwandese citizens killed or caused some serious bodily or mental harm to persons perceived to be Tutsi. As a result of the

⁵¹ Defence motion for interpretation of Rules 87(A)(B)(C)(D) and 90(F)(G) of the Rules of Procedure and Evidence dated 15th November 2000; The Decision on the Defence motion for interpretation dated 1st December 2000, The transcript of 6th November 2000

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attacks, there was a large number of deaths of persons of Tutsi ethnic identity”.

The Trial Chamber erred and misdirected itself in drawing the above inferences and wrongly applied the same to the case at bar in the following prejudicial ways and thus violated the rights of the Accused and Article 19(1), 20(1)(2)(3)(4)(e) and 22(2) of the statute.

I.1.1 PARTICULARS OF ERROR AND MISDIRECTION

- 1) By drawing the inferences the Trial Chamber violated its own orders dated 3rd November 2000 and 15th March 2001.
- 2) The Trial Chamber by drawing inferences contrary to its own orders relieved the Prosecutor of the burden of proof in the entire case and put the burden on the Defence to prove its innocence⁵² and thus violated Article 19(1), 20(1)(2)(3)(4)(e) of the statute.
- 3) The inferences drawn are at variance with the evidence adduced namely:-
 - a) That documents in Part B of Annex II to the judgement especially documents from IV to X show that both Hutus, Twas and Tutsis were victims of massacres during the period in question, and that the RPF occupied sizeable parts of the Rwandese territory during the period in question and massacres occurred in the localities.
 - b) That the Prosecution investigation led by Prosecution witness Duclos did not corroborate the inferences drawn because the alleged victims of the massacres comprised all the following ethnic groups Tutsi, Hutus and Twas and all of these victims were exhumed and given a decent burial in a public ceremony in which Prosecution witness VV and Cheffo Mupenzi were present and Cheffo Mupenzi testified about the events that took place in Musha Church⁵³.

⁵² Decision on Judicial Notice of 15th March 2001.

⁵³ Transcript of 29th March 2001, pages 11, 15-11, page 46 1.12-20

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- c) That the forensic reports⁵⁴ carried out at the alleged sites and on Duclos' findings⁵⁵ state clearly that the ethnic composition of the alleged victims cannot be ascertained to be exclusively either Tutsi or Hutu or Twa.
- d) The Trial Chamber in the light of the above erred in failing to draw any inferences in favor of the Accused with regard to the specific doubts about the ethnic groups of the alleged victims and this led to a miscarriage of justice.
- 4) The Trial Chamber erred in law in granting the Prosecutor's motion for Judicial Notice and presumption of facts on the basis of Rule 94 and 54⁵⁶ and further erred in denying the parties the right to be heard on the merit of the motion pursuant to Rule 94(B) despite applications to this effect as well as several opportunities that avail themselves to this effect⁵⁷.
- 5) The Trial Chamber further violated the letter and spirit of Rules 94, Articles 20(2)(3) of the Statute by taking Judicial Notice that between 1st January 1994 and 17th July 1994 in Rwanda there were an armed conflict not of an International character without stating from which "adjudicated facts or documentary evidence from other proceedings of the Tribunal relating to the matter at issue in the current proceedings" they were taking Judicial Notice and in complete disregard that the said fact taken Judicial Notice of formed the very foundation and/or basis on which the indictment is laid in counts 5, 10, 11, 12 and 14 on which the accused was convicted and this led to a miscarriage of justice.
- 6) Having improperly taken Judicial Notice in the judgement of the fundamental elements of the crimes laid down in the indictment as per Part A of Annex II of the judgement the learned judges erred in applying the said facts taken Judicial Notice of, in an inconsistent manner annex II part A to the law and facts in this case in issue and this reality is clearly stated in the majority and dissenting

⁵⁴ Exhibit D.42

⁵⁵ Exhibit D.28

⁵⁶ Decision of 3rd November 2000

⁵⁷ Prosecutor motion for review of Decision of Judicial Notice and Prosecutor further motion for Judicial Notice pursuant to RR. 94 and 54

opinions in the counts on which the Appellant was convicted as well as the Trial Chamber approach to the sentences imposed.

- 7) The Trial Chamber erred in law and in fact in further taking Judicial Notice of the instruments and documents listed in Part B, and failing to apply the exculpatory parts of the said documents in favour of the Accused especially points listed in paragraph 3⁵⁸, which either negated the findings in points 2 and 3 in Part A or made them contested and contestable facts thus invalidating the decision of Judicial Notice.
- 8) The Trial Chamber erred in law and applied double standards in its assessment and ruling on the issue of Judicial Notice by holding that all the facts and documents contained in the Defence motion for Judicial Notice dated 6th February 2002 were either irrelevant to the trial or contained disputable facts requiring proof at the trial when in effect most of the issues and documents contained the matters for which the Chamber had taken judicial notice of in the Prosecutors motions for Judicial Notice.
- 9) The Trial Chamber erred in law in finding that its decision on Judicial Notice and presumption of facts (Rules 94 and 54) constituted the required **mens rea** to justify a conviction on Counts 3,5 (Majority Decision), 10, 11, 12 and 14 while then drawing unjustified and unreasonable inferences therefrom to ground convictions and this led to miscarriage of justice.⁵⁹
- 10) The said decision of Judicial Notice relied on is wrong in law and violate the letter and spirit of Rules 94 and 54 of the rules having regard to the fact that the matters on which Judicial Notice was taken are neither undisputed facts of common knowledge and/or adjudicated or documentary evidence from other proceedings of the Tribunal relating to the matter at issue in the current proceedings or issue a summons, subpoena, warrant and transfer order necessary for the purposes of an investigation or for the preparation or conduct of the trial but legal conclusions and/or statutory provisions lifted from the Statute of the Tribunal and this led to a

⁵⁸ Points 1, ii, iii, iv, v, vi, vii, viii, ix, x of Annex B to motion for Judicial Notice.

⁵⁹ Para. 52 & 54, page14; para. 420, 422, 423, 424, 427- 436, pages 130-131 of the judgement.

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violation of Articles 19(1), 20(2)(3) and 22(2) of the Statute and a miscarriage of justice.

11) The Trial Chamber erred in law in relying on the said decision of Judicial Notice of November 3, 2000 and the inferences drawn therefrom to make findings that crimes were committed in Bicumbi and Gikoro and as a result convicting the Accused on Count 3 and 5 whereas the Trial Chamber in its decision on Judicial Notice Rule 94(B) dated 15th March 2003 and in point 2 of its decision dated 3rd November 2002 had expressly declined to draw any such inferences.

12) The Trial Chamber further erred in relying on the decision of Judicial Notice of November 3, Rules 94 and 54 to find specific intents in Count 3 whereas the combined effects of the evidence adduced, the specific findings of defects in the indictment and the decision on the Judicial Notice Rule 94 (B), 15th March 2001 show that the Prosecution did not prove the "specific intent" (*doloris specialis*) "plan" a policy to ground a conviction on Count 3 nor did she lead credible corroborated evidence of specific acts and violations by the Accused elsewhere from which such intention could be inferred.

13) The Trial Chamber erred in relying on the same inferences drawn from its decision of Judicial Notice and presumption of facts to constitute the required *mens rea* for the commission of the crimes listed in Count 3 and Count 5 (majority) Counts 10, 11.⁶⁰

14) Apart from improperly drawing the wrong inferences from its decisions on Judicial Notice as couched both in the order and the statutory provisions from which it is lifted, the Trial Chamber improperly drew conclusions and inferences from violations at specific sites it had held the accused not criminally not liable to invariably impute the same as the *mens rea* required to convict on Counts 3, 5, 10, and 11⁶¹ (the events of Mabare Mosque) (see the separate opinion of Judge Dolenc).

⁶⁰ Paragraphs 439 - 443, 461-465, 475-488; p. 136-148 of the judgement.

⁶¹ Paragraphs 439, 445, 448, 449, 450, 461, 464, 465; p.136-142 of the judgement.

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15) In its contestable application of the inferences drawn from its decision on Judicial Notice, the majority of the Trial Chamber erred in not making a succinct identification of the different elements of specific conduct from which reasonable inferences may be drawn before their application to the facts in the case to prove the required mens rea in Counts 3, 5, 10 and 11 and this led to a miscarriage of justice.

16) In its decision on Judicial Notice dated the 3rd November 2000 the Trial Chamber erred in law and misdirected itself in taking Judicial Notice of document no. iii in part B of annex II to the decision of judicial notice titled "Commission pour le memorial du génocide et des massacres au Rwanda", "Rapport préliminaire d'identification des sites du génocide et des massacres au d'avril-juillet 1994 au Rwanda" whereas the said pages of the document filed and annexed to the proceedings by the Prosecutor concerned only the locality of Kibuye and not the sites listed in the indictment; and thus were thus irrelevant to the proceedings and therefore the inferences drawn therefrom to support the convictions in this case violated Articles 19(1), 20(2)(3) and 22(2) of the statute as well as R.94(B) of the Rules of Evidence and Procedure and led to a miscarriage of justice.

J. GROUND 10

J.1 COUNTS OF INDICTMENT

The Trial Chamber further erred in not considering and evaluating the totality of the evidence adduced or elicited and the Defence thereto in respect of each count and specific sites to which they relate, nor evidence that pointed to the innocence of the Accused nor did it resolve any material contradictions or inconsistencies in the Prosecution evidence in favour of the accused and therefore drew inferences and conclusions no reasonable trier of fact could have drawn to sustain convictions

J.1.1 PARTICULARS OF ERROR

Its ruling on the multiple defects in the indictment as well as its attempts to salvage piecemeal parts of the indictment notwithstanding, the Trial Chamber erred in not

considering and resolving the material contradictions in the following evidence elicited by the Prosecutor in favour of the Defence and thus violated Articles 19(1) 20(1)(2)(3) 4(e) and 22(2) of the statute.

- On the 7th April 1994, the following Prosecution witnesses place the Accused at several places VAM places him at Gitamu⁶², VN at Bicumbi communal office⁶³ while VAK at Kanzu⁶⁴ while,
- On the 8th April 1994, VI placed him at his home in Gihumuza⁶⁵, VAM at Nzige⁶⁶, VAP at Muyumbu⁶⁷, VAR at Mwulire⁶⁸, VM at Musha⁶⁹, VAQ place him at Muyumbu⁷⁰, DCH at Kabuga⁷¹
- On the 9th April 1994, VM at Musha⁷², VA at Musha⁷³,
- On the 10th April 1994 VN places him at Rwamagana⁷⁴, VA places him at Musha
- On the 11th April 1994 VD places him at Gikoro⁷⁵, Guichaoua places him at Gitarama⁷⁶.
- On the 12th April 1994, VD places him at Gikoro⁷⁷, VAK places him at Mabare⁷⁸.

⁶² Transcript of 13th March 2001, p.24 (French version)

⁶³ Transcript of 9th November 2000, p.63 (French version), p.61 (English version)

⁶⁴ Transcript of 15th March 2001, p.102-105 (French version)

⁶⁵ Transcript of 15th November 2001, p.65-68 (French version)

⁶⁶ Transcript of 13th March 2001, p. 31(French version)

⁶⁷ Transcript of 6th December 2000, p.136 (French version)

⁶⁸ Transcript of 12th March 2001, p.78 (French version)

⁶⁹ Transcript of 7th March 2001, p.90 ss (French version)

⁷⁰ Transcript of 14th March 2001, p.87

⁷¹ Transcript 16th April 2002, p.34 (English version)

⁷² Transcript 7th March 2001, p.135 (French version)

⁷³ Transcript 7th March 2001, p.60-63

⁷⁴ Transcript 9th November 2000, p.75 (English version), p.83 (French version)

⁷⁵ Transcript of 14th March 2001, p.18

⁷⁶ Transcript 24th April 2001, p.82 (English version)

⁷⁷ Transcript 14th March 2001, p.19 & p.28 (French version)

⁷⁸ Transcript 15th March 2001, p.96 (French version)

- On the 13th April 1994, VD places him at communal office⁷⁹, VM places him at Musha⁸⁰, VV at Nzige⁸¹, VA at Musha⁸²
- On the 14th April 1994, VM places him at Kabuga and then at Mukabuga⁸³

Relief sought: Had any reasonable trier of fact considered and analyzed the above facts elicited by the Prosecution in favour of the Accused as we urge the Appeal Chamber to do, the verdict of acquittal would have been entered in his favour in all the counts for which he was convicted.

K. GROUND 11

The Trial Chamber failed to consider the totality of evidence adduced in this case especially evidence favorable to the Defense and further evaluated the evidence in a piecemeal prejudicial and discriminatory manner and this led to a serious miscarriage of Justice:- (The Order of Consideration, and evaluation of evidence)⁸⁴

K.1 PARTICULARS OF ERROR

The Trial Chamber failed to make any evaluation and/or findings on the plethora of exhibits tendered in this case by the Prosecution and Defence which mainly exculpated the Accused and this led to a miscarriage of justice, leading to conclusions no trier of fact would have arrived and thus violated Article 19(1), 20(1)(2)(3) and 22(2).

⁷⁹ Transcript 14th March 2001, p.49

⁸⁰ Transcript 7th March 2001, p.142

⁸¹ Judgement, point No. 180 p.53 cote 7434

⁸² Transcript 7th March 2001 page 82 (French version)

⁸³ Transcript 15th April 2002, p.119 (English version)

K.1.1 PARTICULARS OF ERROR

The Trial Chamber failed to set any reasonable and legally supported standard for its assessment of the credibility of witnesses and this failure led to a miscarriage of justice.

K.1.2 PARTICULARS OF ERROR

- 1) In assessing the credibility of witness VA in her testimony on the events of Musha Counts 3, 5, 11, and 13 the Trial Chamber without any evidence in support, excused her self contradiction, lapse of memory and material inconsistencies on the "trauma of the events" but failed to draw the necessary inferences in favor of the accused in the case where the accounts of this "traumatized" witness differed radically with that of another prosecution witness allegedly present at the specific site on the date and time listed in the indictment namely VM⁸⁵ and this led to a miscarriage of justice.
- 2) The Trial Chamber failed to establish a reasonable threshold and/or standard to justify how it believed or disbelieved or relied on the conflicting accounts of one Prosecution Witness against another and further failed to resolve any doubts in favor of the accused and thus violated Article 19(1), 20(1)(2)(3) and 22(2) of the Statute and this led to a miscarriage of justice.
- 3) The Trial Chamber erred in using legally unjustified criteria like "relations with the accused", "acquaintances", "friendship", "working relations" and other superficial reasons to find competent and compellable defence witnesses not credible on aspects where their testimony favor the accused then invoked portions of their testimony out of context to support the Prosecutors case and yet failed to use the same criteria to assess the credibility of Prosecution Witness VAM, VV, VAK, VN, VI, VP, VAR, VAD and the unsubstantiated use of their testimony to

⁸⁴ Paragraphs 38-148 Defence Case, paragraphs 149-158 pages 10-44 of the judgement.

⁸⁵ Para. 425, 426, 429, 486, 487,493,515,526,549, pages. 131-149 & 155, 158,159 & 163 of the judgement.

justify the convictions and thus violated Article 19(1), 20(1)(2)(3) and 22(2) of the Statute leading to a miscarriage of justice.

- 4) The Trial Chamber erred in law and misdirected itself in misconstruing the indictment in respect of Count 5⁸⁶ in the analysis of some of its paragraphs⁸⁷ and Count 14⁸⁸ in relation to some other paragraphs⁸⁹ and holding the accused guilty as a principal perpetrator in both counts without making a finding about the allegation of conspiracy as laid in the indictment and canvassed by the Prosecutor in her motion dated 21st March 2001 "Prosecutor urgent motion for leave to call additional evidence, the Defence reply thereto and oral arguments thereto"⁹⁰, and this failure led to a miscarriage of justice.
- 5) Having admitted the audio cassettes⁹¹ subject of the motion and submissions of the Prosecutor, the Trial Chamber erred in law not to weigh its exculpatory effects on the entire case in favor of the Accused under Rule 68 and thus violated Article 19(1), 20(1)(2)(3) and 22(2) of the Statute and this led to a miscarriage of justice.
- 6) The Trial Chamber after considering relations to the Accused as the threshold for assessing credibility of Defence Witness it erred in failing to extend the same threshold in assessing the credibility of Prosecution witnesses namely VN, VAM, VP, VAK, XXK and VAR whom from evidence presented had one form of relations or another with the Accused or with particular victims and thus violated Article 19(1), 20(1)(2)(3) and 22(2) of the statute.
- 7) Hon. Judge Ostrovsky unexplainably adopted the separate opinion of Judge Dolenc⁹² to acquit on count 7 but failed to follow the same principle in Count 5 when the law and facts and reasonable analysis of the evidence and the indictment as laid indicated he ought to have consistently followed the same reasons to acquit in respect of Count 5 and 3 point 465 and 436 (Count 3)

⁸⁶ Paragraphs 461, 462 p. 141 of the judgement

⁸⁷ Paragraphs 451, 452, 454, 455, 464, 465 of the judgement

⁸⁸ Paragraphs 3.19

⁸⁹ Paragraph 495-499, p. 149-150 of the judgement

⁹⁰ Transcript of 26th March 2001 pages 14 - 35

⁹¹ Exhibit P.11

⁹² Point 536, p.161 of the judgement.

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L. GROUND 12

L.1 COUNT 3 (MUSHA CHURCH)

In relying on the following testimonies of Prosecution witnesses VA, VM and VAK to convict the Accused for his alleged participation in the crimes at Musha church the Trial Chamber found⁹³ that the Accused: -

- 1) Gave instructions to separate Hutus from Tutsis⁹⁴
- 2) Recruited the Interahamwe to take part in the attacks and to kill Tutsis⁹⁵
- 3) Gave instructions to Bisengimana to burn down the church so as to kill the refugees present⁹⁶.
- 4) Was present and made utterances against Tutsi at Mabare mosque on the 12th April 1994⁹⁷.

But the Trial Chamber in considering the above in the light of judicial notice dated 3rd November 2000 and 15th March 2001, failed or ignored to consider the following more favourable evidence that pointed to the innocence of the Accused and/or evaluated the above evidence in a discriminatory and inconsistent manner that led to the miscarriage of justice as hereunder in violation of Article 19(1), 20(1)(2)(3) and 22(2):-

- 1) Exhibit D.44 – The Declaration of the Conseiller de Secteur of Mabare (VAZ)
- 2) The Declarations of VZ with a list of refugees present in the church attached who was present all along in the church, allegedly held a meeting with the educated refugees on the 9th April 1994, participated in church service every morning, gave an interview about the events in Washington Post of 15th April 1994, read into the transcript during the cross examination of MTP on 24th October 2001 (see testimony of VA, and VM 7th April 2001).

⁹³ paragraph 195 of the judgement

⁹⁴ Paragraphs 196, 429 and 430 of the judgement

⁹⁵ Paragraphs 206, 429, 430

⁹⁶ Paragraphs 425 and 429

⁹⁷ Paragraphs 429, 434, p. 132, 134

- 3) The audiocassettes of the intercepted telephone conversations and, their transcriptions, as well as the evidence of Mr. Kaiser⁹⁸, Dr. Ruzindana⁹⁹, and Prosecution witness VN¹⁰⁰ on the exculpatory effects of the corrections made by them.
- 4) The material contradictions in the accounts of Prosecution witnesses VA¹⁰¹ and VM¹⁰² about the alleged role of the Accused in the crimes in Musha Church.
- 5) Other Prosecution evidence putting the Accused elsewhere on the same date and time, especially the testimonies of VAD and that of VAK (Mabare).
- 6) Order of Trial Chamber dated 15th March 2001 and the Trial Chamber's failure to comply with its own order in the decision of 3rd November 2000, not to draw any inferences from the facts judicially notice with regard to any alleged violations in Bicumbi and Gikoro¹⁰³ and the wrong application of the decision in Akayesu's case on specific intent¹⁰⁴ to the contradictory, uncorroborated, discredited and inconsistent accounts of a few Prosecution witnesses acceptable to the Trial Chamber on discriminatory, unjustifiable, unwarranted and unfair criteria.
- 7) The Trial Chamber failed to consider the import of its own finding of the innocence of the Accused in of any violations at Mabare Mosque¹⁰⁵ and yet using the same facts to find specific intent proven by him to commit the crimes in Count 3 as well as the required mens rea in counts 5, 10, 11 and 12.
- 8) Evidence on record of Prosecution witness VV is that, it was Rugambage who distributed arms in her locality as well as transported soldiers to and distributed the arms that were used to attack refugees in Musha Church¹⁰⁶.

⁹⁸ Transcript of 18th April 2001

⁹⁹ Transcript of 18th April 2001

¹⁰⁰ Transcript of 18th April 2001

¹⁰¹ Pages 56,57, 58, 62, 63, 81, 82 of the Transcript of 6th March 2001

¹⁰² Transcript of 6th March, 2001

¹⁰³ Paragraph 423, p. 130 of the judgement

¹⁰⁴ Paragraph 313-314, p.93 of the judgement

¹⁰⁵ Paragraph 244, p.70, 71 of the judgement

¹⁰⁶ Transcript of 29th March 2001, p. 12, l. 16-25; p. 16 l.5, p.18, l.3-15; p.20, l10-11, p.21 l.1-18, p40. l.3-12; p.48, l.18-25

M. GROUND 13**M.1 COUNT 11 & 12. (TORTURE AND MURDER OF VICTIMS A, B, C)**

- 1) Having found as it did that it was fundamentally wrong for the Prosecutor to lump together unrelated allegations of torture and murder committed at different places and therefore without any link to either the intention or the different categories of perpetrator's to the violations into one category¹⁰⁷, the Trial Chamber violated Articles 17(4), 18(1), 19(1), 20(1)(2)(3) 4(e) of the Statute, Rules 47(G), 50(A) of the Rules of Procedure and Evidence by modifying, correcting or in the manner conceived and presented by them the indictment at paragraph 10, page 3 of the judgement thus depriving the Accused the possibility of preparing his case in consequence of this modification and/or correction and this led to the miscarriage of justice.

M.1.1 PARTICULARS OF ERROR

Paragraph 10 of the judgement page 3 states that

“during the Musha attack, the Accused, along with Gikoro Bourgmestre Paul Bisengimana, cut off the arm of Victim C, resulting in his death (paragraph 3.18). For this act the Accused is charged with torture (part of Count 11) and murder (part of Count 12) as crimes against humanity with serious violations of Common Article 3 and Additional Protocol II (part of Count 13).”

The indictment as laid states in Count 11 “By his acts in relation to the events described in paragraphs 3.17 and 3.18 above, Laurent Semanza is responsible for the torture of Victim A, Victim B and Victim C....”

Count 12 of the indictment as laid “By his acts in relation to the events described in paragraphs 3.17 and 3.18 above, Laurent Semanza is responsible for the murder of Victim A, Victim B and Victim C...”

¹⁰⁷ Paragraphs 46-61, p. 12-17

The Trial Chamber erred in law in modifying the indictment as laid above and proceeding to convict the accused on the version modified by the Trial Chamber itself and this led to a miscarriage of justice.

- 2) Having found that the Prosecution presented insufficient evidence based solely on the uncorroborated contradictory versions of credible witness VA¹⁰⁸ found at pages 63 of transcript of 7th March 2001 and pages 166 and 177 of the transcript of 7th March 2001 (about the different versions of the alleged amputations in the church) to prove that the Accused worked in close collaboration with Bisengimana to organize the massacre at Musha Church as alleged in the indictment at counts 11 and 12 or in its modified version by the Trial Chamber *Suo Moto*, the Trial Chamber erred in coming to the conclusion¹⁰⁹ that the Accused alone committed the crimes, a finding no trier of fact could have arrived at and thus led to a miscarriage of justice therefore violating Articles 19(1) 20(1)(2)(3) and 22(2) of the Statute.
- 3) The Trial Chamber erred in its evaluation of the evidence and improperly invoked its findings based on the uncorroborated and discredited testimony of Prosecution witness VAK in Mabare (for which he was found not liable)¹¹⁰ and that of Prosecution witness VA in Musha Church partly unproven¹¹¹ to enter a verdict of guilty on these counts a finding no reasonable trier of fact would have come to and this led to a miscarriage of justice thus violating Articles 19(1) 20(1)(2)(3) and 22(2) of the Statute.
- 4) The Trial Chamber erred in not laying down a credible criteria on how it believed its credible witness VA (victim of a trauma of the events¹¹²) on some aspects disbelieved her in others and preferred her testimony to that of VM who was allegedly present in the church when their testimony differed in the following material elements of the crimes alleged and thus violated Articles 19(1) 20(1)(2)(3) and 22(2) of the Statute;-

¹⁰⁸ Paragraphs 195, 196, 211 at page 63 of the judgement

¹⁰⁹ Paragraph 213, p. 62

¹¹⁰ Paragraph 462, p.141

¹¹¹ Paragraph 195-196, 207, p.62

¹¹² Paragraph 212 of the judgement

- i) VM did not see Semanza amputate any persons hand or hear him give any instructions to anyone to burn down the church¹¹³.
 - ii) VA saw someone amputate the hands of a baby in Musha church¹¹⁴.
 - iii) VA saw Bazira and Habyarimana amputate the hands of the baby¹¹⁵.
 - iv) VA saw Semanza amputate the hand of someone and Hategeka amputate a leg¹¹⁶.
 - v) VD did not see Semanza at Musha church on 13th April 1994¹¹⁷.
 - vi) VA stated that Semanza amputated one hand of Rusanganwa and Bisengimana amputated another and thereafter Semanza amputated a hand and a leg and Bisengimana amputated a hand and a leg¹¹⁸.
 - vii) VA saw Semanza dressed in the Interahamwe kinge¹¹⁹.
 - viii) VM saw Semanza dressed in a black trouser and shirt¹²⁰.
 - ix) VA saw Semanza drive a brown truck¹²¹, while VM saw Semanza drive a red APEGA pick-up truck with which he later drove on the refugees in Mukabuga¹²².
 - x) The indictment as laid at paragraph 3.18 states that Semanza and Paul Bisengimana each cut off an arm (part of Count 12)
- 5) The Trial Chamber in the face of the non-disclosure of the identity of the victims imposed by the Prosecutor contrary to the protective orders of 10th December 1998 and Rule 66 and the several, contradictory versions of the alleged amputation and the absence of any direct and unequivocal evidence led to link victims A, B and C in the indictment to any of the alleged amputees, the Trial Chamber erred in drawing the conclusion¹²³ that victim C is Rusanganwa and that the Accused alone tortured and murdered him, a conclusion no reasonable trier of

¹¹³ Transcript of 6th March 2001 pp. 134-145

¹¹⁴ Transcript of 7th March 2001 p. 63

¹¹⁵ Transcript of 7th March 2001 p. 116-117

¹¹⁶ Transcript of 7th March 2001 p. 74

¹¹⁷ Transcript of 14th March 2001 p. 36

¹¹⁸ VA Transcript of 7th March 2001

¹¹⁹ VA Transcript of 7th March 2001

¹²⁰ VM Transcript of 7th March 2001

¹²¹ VA Transcript of 7th March 2001

¹²² VM Transcript of 7th March 2001

¹²³ Paragraphs 58, 211 and 212, p.15 & 62 of the judgement

fact could have arrived at and violated Articles 19(1) 20(1)(2)(3) and 22(2) of the Statute

- 6) In its application of its decision of Judicial Notice to the facts elicited in support of the indictment and the Defence put forth, the Trial Chamber erred and failed to consider the evidence of both Prosecution and Defence witnesses about the ethnic composition of the victims at Musha Church and Mwulire as well as forensic reports obtained by the Prosecutor's investigator Mr. Heuts¹²⁴ and the reports of Professor Le Comte and Vohrauer dated 20th February 2002¹²⁵ which corroborate each other and which all negated the allegation in the indictment wrongly sustained by the judges that victims were targeted, tortured and/or murdered because of their ethnic origin and this led to wrong convictions in Counts 3, 5, 10, 11, 12 and 14 of the indictment as modified by the judges¹²⁶ thus violated Articles 19(1) 20(1)(2)(3) and 22(2) of the Statute.

N. GROUND 14

N.1 MWULIRE

The Trial Chamber erred in giving weight to the contradictory, unreliable and impeached account of Prosecution witnesses VP and VN to convict thus disregarding other evidence that either discounted the credibility placed on the said witnesses accounts or rendered them unreliable and this led to a miscarriage of justice, thus violating Articles 19(1) 20(1)(2)(3) and 22(2) of the Statute

N.1.1 PARTICULARS OF ERROR

- 1) The Trial Chamber failed to consider or evaluate the testimony of Prosecution witness XXX that the Accused never drove the red pick-up truck of APEGA in

¹²⁴ Exhibit D.27A & D.28B, D.28 1-35

¹²⁵ Exhibit D.42

¹²⁶ Refer to testimony of VV about decent burial of victims (Tutsis) to contradict Duclos exhibits (memorials) Transcript of 29th March 2001. p.9, 1.22-23; p43, 1.2-6

1994 which VP alleged the Accused used to convey the Interahamwe and “equipment” to Mwulire on the 18th April of 1994¹²⁷.

- 2) XXX’s testimony in the transcript of 24th April 2002 contradicts the assertion by VP that the Accused transported Interahamwe to Mwulire on 18th April 1994 with the red vehicle of APEGA.
- 3) One of the Interahamwe Munanira Etienne¹²⁸ in a confession (obtained by Prosecution witness VN)¹²⁹ and the exhibit (obtained by the Prosecutor and the Rwandese authorities)¹³⁰ exculpates the Accused in this and all crimes listed in the indictment.
- 4) The neglect of the Trial Chamber in considering these pieces of exculpatory evidence led to a miscarriage of justice.
- 5) The Trial Chamber erred in law and in fact by not evaluating the totality of the evidence adduced in respect of this site namely the testimonies of VP, VN, VAR, Exhibits D1 and D40, Court Document No. 5, audio cassettes of telephone conversation P.11 and further failed to consider the question of credibility concerning Prosecution witness VN (a self confessed RPF spy who recruited young people for the RPF war effort, tortured Munanira Etienne to implicate one Lizinde in the alleged massacres¹³¹, informant about events in Bicumbi and Gikoro in Court document No. 5, Bourgmestre in 1994 etc), explained away material contradictions in the Prosecution witness statements about the alleged presence and participation of the Accused with reasons not on record, rather than resolve those contradictions in favour of the Accused and this led to a finding no reasonable trier of fact would have relied on to convict thus violating Articles 19(1) 20(1)(2)(3) and 22(2) of the Statute.

¹²⁷ Para. 217, p. 63 & para. 451, p.138 of the judgement; pages 104-106 Transcript of 9th November 2000; pp 60-61 of Transcript of 14th November 2000;

¹²⁸ Pages 58 and 78, Transcript of 4th December 2000

¹²⁹ Exhibit D.1

¹³⁰ Exhibit D.40

¹³¹ Exhibit D.40

- 6) The Trial Chamber erred in considering the alleged number of dead victims as an aggravating factor based on speculative and uncorroborated evidence while unjustifiably denying the Defence motion to admit in evidence the declaration of Prosecution witness VZ who painstakingly documented the number of refugees in Musha Church and annexed to his statement to the Prosecutor and the information from African Rights that correctly corroborated the number of victims that were in the church and died as a result of the assault of the church and thus violated Articles 19(1) 20(1)(2)(3) and 22(2) of the Statute.

- 7) The Trial Chamber erred in finding that the Accused transported weapons, Interahamwe and soldiers to specific sites listed in the indictment (Counts 3, 5, 11, 12) and incited the perpetrators to commit offences in others (Counts 10 and 14) whereas the various Prosecution witnesses gave uncorroborated and contradictory evidence about the type of vehicle by which such transportation was effected, the precise identity of whom they alleged to be the Accused, his participation and method of participation and the time and date of such participation and rather than resolve the inconsistencies and contradictions elicited in favour of the Accused, the Trial Chamber instead proceeded to use such wrongly evaluated evidence to convict; a conclusion no reasonable fact finder could have arrived at (see the testimonies of Witnesses VV, VA, VM, VD, VAM, VAR, VAK, VP, VN) thus violated Articles 19(1) 20(1)(2)(3) and 22(2) of the Statute.

- 8) The Trial Chamber erred in law and in fact in relying on the uncorroborated account of VAM to hold that the Accused was present at the location in which he allegedly incited the Interahamwe to search and kill Victims D, E, F, G, H, J and their neighbor and baby whereas other accounts of the events of the 8th April 1994 namely from Prosecution witnesses VA (Musha), VI (Gahengeri), VAQ (Muyumbu), VAK, VAR plus Exhibit D1 and D40 taken together or separately contradict VAM in every material particular.

- 9) The Trial Chamber erred in law and in fact in failing to take into consideration the criteria of "relation" applied to the testimony of Defence witnesses when assessing the Defence alibi in the evaluation the testimony of VAM, VAK and VAR about the alleged presence of the Accused and the incitement to kill Victims

D, E, F, G, H, J and their neighbor and child as well as his alleged presence in Mabare Mosque whereas those witnesses voluntarily testified to the bad relations against the Accused reasons that might have pushed them to lie¹³².

O. GROUND 15

The Trial Chamber erred in law and in fact by relying on the uncorroborated evidence of VAM¹³³ to convict the Accused in Count 14 and ignored or failed to consider other evidence that pointed to the innocence of the Accused of the crimes laid in the indictment and this led to a miscarriage of justice.

O.1 PARTICULARS OF ERROR

- 1) The indictment at paragraph 3.19 alleged that the Accused and Juvenal Rugambarara acted in concert to commit this crime¹³⁴. Prosecution witness VN in interpreting Exhibit. P.11 - D.2¹³⁵ stated that Rugambarara took sole responsibility for this and all other crimes in Gikoro and Bicumbi hence, the Prosecutor's motion to pursue the Accused rather as a co-conspirator¹³⁶. The learned judges in considering this count neither applied the facts to the indictment as laid nor to the evidence adduced nor to the law.
- 2) The Trial Chamber did not consider the evidence of VAQ¹³⁷ which placed the Accused in Gahengeri, VA who placed the Accused in Musha church, VAR¹³⁸ who placed the Accused in Mwulire.
- 3) The Trial Chamber failed to consider the testimony of VAM that it was the Bourgmestre Rugambarara who brought the Interahamwe who were her neighbors known to her and who allegedly killed her children and further failed to consider

¹³² Transcripts of 12th March 2001. 13th March 2001.
¹³³ Paragraphs 264-269 of the judgement
¹³⁴ Transcript of 13th March 2001 lines 8-13, page 130, lines 21-25
¹³⁵ Transcript of 18th April 2001 at pages 88-110
¹³⁶ Prosecution motion for additional evidence
¹³⁷ Transcript of 14th March 2001 page 87, 1.9-15, Transcript of 15th March 2001 pages 88-92
¹³⁸ Transcript of 12th March 2001 page 40

the weight of the influence of the Bourgmestre against that of the Accused who exercised no official functions then¹³⁹.

- 4) The Trial Chamber erred in holding that failure by the Prosecutor to lead any evidence linking any of the victims with the pseudonyms victim D, victim E, victim G, victim H and victim J, a neighbour and her son was adequately covered by witness protection concerns¹⁴⁰ whereas all matters of witness protection concern were adequately taken care of by the order of witness protection dated 8th December 1998, Article 21 of the statute, Rules 69 and 75 none of which expressly permitted the Prosecutor not to establish a factual link between the victims listed as such in the indictment and evidence on oath.
- 5) The Prosecutor alleged that he had evidence by the way of death certificate to prove the death of the children of VAM¹⁴¹ but refused to produce or tender same and the Trial Chamber failed to draw the inference that either the children were never killed or had she produced the evidence it would have worked against her.
- 6) The Trial Chamber failed to draw the necessary inferences of bias against VAM, VAR and VAK who testified against the Accused in respect of this count on account of their relationships¹⁴².

P. GROUND 16

In the light of the physical evidence tendered¹⁴³ and the forensic and scientific analysis and findings conducted on the said physical evidence and at the respective sites of the massacres¹⁴⁴ the Trial Chamber erred to rely on the accounts of Prosecution witnesses VA and VV to find the Accused guilty in

¹³⁹ Transcript of 13th March 2001 page 103 l.21-25, page 117, page 40 l.7-8, page 42 Paragraphs 55, 56, 57 and 58 of the judgement

¹⁴¹ Transcript page 47, l.14-19

¹⁴² VAR Transcript of 12th March 2001, VAM Transcript of 13th March 2001 pages 84, l.11-18; p.81 l.13-20; page 111, l.22-25, page 112, l.1-18

¹⁴³ Exhibit P.5

¹⁴⁴ Exhibits D.28 and D.42

Counts 3, 5, 10, 11 and 12 of the indictment¹⁴⁵ and this led to a miscarriage of justice and violated Articles 19(1) 20(1)(2)(3) and 22(2) of the Statute

P.1 PARTICULARS OF ERROR

- 1) Prosecution witness VV testimony that she saw the church burning¹⁴⁶ is not supported by the evidence,
- 2) Prosecution witness VA testimony that on the 13th April 1994 Semanza came with the Interahamwe and fuel with which Manda and Twagirayeza climbed on the roof and burnt the youngman¹⁴⁷ is not supported by the evidence
- 3) Prosecution witness VV said that she relied on the account of Cheffo Mepunzi that it was Rugambage who committed the crimes in Musha Church¹⁴⁸
- 4) Prosecution witness VA saw Semanza at Musha Church at 10am on the 13th April 1994
- 5) VV saw Semanza at Nzige more than 20 kilometers away¹⁴⁹ at 10.00am¹⁵⁰
- 6) VV saw Semanza addressing a large rowdy crowd¹⁵¹
- 7) VA saw Semanza in Musha Church cutting the hand of Rusanganwa and some other persons at about the same time.
- 8) VA states that about the same time (10.00am) she was in a hideout in Nzige¹⁵² and from a distance of 90 feet, about 30 meters¹⁵³ was able to hear Semanza make a speech about Tutsi women in the company of Major Rugambage, Paul Bisengimana even though they were face to face¹⁵⁴, he was talking normally and not shouting or using a microphone¹⁵⁵ and was surrounded by a large rowdy crowd¹⁵⁶

¹⁴⁵ Paragraphs 197, p.59 of the judgement.

¹⁴⁶ P. 9, lines 15-18 of Transcript of 29th March 2001, Page 44, 1.20; page 45, 1.11-25; page 15, 1.9-11

¹⁴⁷ Transcript of 7th March 2001, pages 79-80; paragraph 169 of the judgement

¹⁴⁸ Transcript of 29th March 2001, page 48 lines 18-25

¹⁴⁹ Map exhibit. P. 3

¹⁵⁰ Transcript page 14, line 20

¹⁵¹ Transcript of 29th March 2001, page 31 lines 6-8, page 32 1.2-5, p.33, 1.3,4-5

¹⁵² Paragraph 180 of judgement

¹⁵³ Transcript of 29th March 2001, pages 18-19 and 57-58

¹⁵⁴ Transcript page 26, 1.7-9

¹⁵⁵ Transcript of 29th March 2001 page 25, lines 15-25

¹⁵⁶ Pages 32, 1.2-5, 33, 1.3

9) VV who had allegedly just been raped and due to the criteria of the “trauma of the events” used by the judges to assess the credibility of VA, could not have been in a position to see fire on the church from her alleged hideout in Nzige¹⁵⁷

In relying on the above material contradictory and implausible accounts to convict rather than acquit the Trial Chamber came to conclusions no trier of fact could have come to, to convict on Counts 3, 5, 10, 11, 12 and 14 and this led to a miscarriage of justice.

Q. GROUND 17

COUNTS 3, 5, 10, 11, 12, 14: WRONG INFERENCES ABOUT GENOCIDAL INTENT AND INTERNAL ARMS CONFLICT

In finding the Accused guilty of Count 3 and Count 5, 10, 11, 12 and 14 (Crimes against humanity) the Trial Chamber erred in relying on the same set of facts to hold that the Accused intent was in order to further genocidal intent and at the same time the war efforts of Rwandese government whereas no evidence was ever led to prove the said genocidal intent nor any conflict of an internal nature as alleged in the indictment or even any war efforts and this led to a miscarriage of justice¹⁵⁸.

Q.1 PARTICULARS OF ERROR

The court erred in finding that an armed conflict of a non-international character existed in the localities of Gikoro and Bicumbi¹⁵⁹ whereas the Prosecution witness Duclos had testified to the effect that there were no parties to the conflict and in its ruling dated the 11th September 2000, the Trial Chamber had expressively refused to rule on the character of the alleged conflict and the rebuttal evidence led by the Prosecutor is to the effect that the RPF advance came to the locality after the 18th April 1994¹⁶⁰.

¹⁵⁷ Paragraph 180, p.53 of the judgement.

¹⁵⁸ Paragraphs 435, 336, 441, 442, 375- 379, 386, 387, 389, 390, 394, 395, 499, 511, 512, 514, 516, 518, 519, 520 of the judgement.

¹⁵⁹ Paragraph 511 to 520

¹⁶⁰ Paragraphs 110 and 111 of the judgement.

Q.2 PARTICULARS OF ERROR

In finding that an armed conflict of a non-international character existed based on its decision on judicial notice¹⁶¹, the Trial Chamber acted in violation of its very decision of judicial notice and in misinterpretation of the documents in annex II part B annexed to the judgement which contains evidence to the contrary.

R. GROUND 18

COUNTS 11 & 12: ALLEGED RAPE OF VV

The Trial Chamber erred in its evaluation of the evidence of Prosecution witness VV with regard to her alleged rape and the killing of her sister whereas her account of what transpired was contradictory and imprecise and any reasonable trier of fact would have resolved the contradictions and imprecision in favour of the Accused.

R.1 PARTICULARS OF ERROR

- 1) The Trial Chamber in failing to resolve the doubts created by the inconsistencies by the witness in recounting the different versions of the alleged inciting language e.g. *"It is unfortunate that you didn't rape the women and young girls before killing them to taste Tutsi flesh"* in the Accused's favor violated Articles 19(1), 20(2)(3) of the Statute and this led to a miscarriage of justice¹⁶².
- 2) The Trial Chamber in not finding that a reasonable evaluation of the testimony of Prosecution witness VV either taken separately or with other Prosecution evidence cast reasonable doubts to the fact that she saw Semanza any time in April 1994 and that he participated in any criminal enterprise whatsoever, as her following statements prove, *"did not know the date she saw Semanza"*¹⁶³, *"so many persons*

¹⁶¹ Paragraphs 514 of the judgement.

¹⁶² Transcript of 29th March 2001. page 10, l.11-13, page 9 l.1-18, page 36 l.16-18, page 39 l.1-4, page 39, l. 2-24, page 40, l.2

¹⁶³ page 14, l.10

at the scene"¹⁶⁴, "crowd was surrounding Semanza"¹⁶⁵, "rowdy crowd"¹⁶⁶, "know persons who attacked her"¹⁶⁷, "people killed her sister afterwards"¹⁶⁸, "saw him at 10.00am"¹⁶⁹, "wore Kaunda suit"¹⁷⁰, "sister stayed in the house"¹⁷¹, "was hiding at about 30 metre away"¹⁷² wrongly applied to the facts to the law and thus wrongly convicted the Accused and this led to a miscarriage of justice.

S. GROUND 19

S.1 EXPERT EVIDENCE, INFLUENCE AND IMPACT THEREOF

- 1) Having held that "a simple showing of an accused individual's general influence" is not an element to hold an Accused liable for the crimes of others¹⁷³ the Trial Chamber erred in proceeding to ignore the evidence of VAM while rely on evidence of a hearsay nature from Professor Guichaoua, held by the Trial Chamber not to be a fact witness¹⁷⁴ and who refused to disclose his sources of expertise¹⁷⁵ to convict on Count 3 and as an aggravating factor¹⁷⁶ and thus violated Articles 19(1), 20(4), 94 bis(ii), 95 of the Statute.
- 2) The Trial Chamber erred in law in admitting into evidence inadmissible evidence namely Professor Guichaoua's report "Semanza the Great Bourgmester" whereas the said report in substance was based on heresy facts elicited from doubtful and undisclosed sources by a person who had never known Semanza, had never written about him before and was not competent to testify on facts on the subject¹⁷⁷ and thus violated Rules 44 and 95 of the Rules of Procedure and Evidence.

¹⁶⁴ p. 31, l. 6-8
¹⁶⁵ p.32 l.2-5
¹⁶⁶ p.38 l.3,4-5
¹⁶⁷ p.6 l.17-20
¹⁶⁸ p.11 l.15-22
¹⁶⁹ p.14. l.20
¹⁷⁰ p.5
¹⁷¹ p.19 l. 19-20
¹⁷² p.23 l.14-22
¹⁷³ Para. 402, page 122 of the judgement
¹⁷⁴ Paragraph 110, page 31 of the judgement
¹⁷⁵ Transcript of 23rd April 2001. P.2, l.12-25; P.3 l.1-19; P.84 l.10-25; P.85 l. 1-16; Pgs. 91, 92 l.15-25;
p.93, l.1-25; p.95, l.1-25
¹⁷⁶ Paragraph 573 of the judgement

- 3) The Trial Chamber erred to have admitted Professor Guichaoua as an expert witness on the alleged influence of the Accused¹⁷⁸ despite the objections by the Defence whereas from the alleged expertise and report tendered “Semanza the Great Bourgmester” and his refusal to disclose the sources on which his information was based. The admission of this evidence which ought to have been disallowed led to a miscarriage of justice.

S.1 PARTICULARS OF ERROR

- a) The Trial Chamber erred to allow the witness testify as an expert witness and as a rebuttal witness in the same proceedings and erred to rely on his evidence in the analysis of the evidence and as an aggravating factor during sentencing¹⁷⁹.
- b) The Trial Chamber erred in disregarding the testimony and reports of Professor Pascal Ndengejeho and Antoine Nyetera whereas their testimonies were eye witness accounts of Principal actors on the Rwandese political scene who gave credible, first hand, unchallenged and uncontradicted evidence and whose admitted reports were supported by all the acquired sources that informed and corroborated their testimony as opposed to Professor Guichaoua who refused to disclose his sources, filed a report about a person he has never known or met and yet the Judges unjustifiably considered him credible and this led to a miscarriage of justice¹⁸⁰.
- c) The Trial Chamber erred in its assessment of the evidence and finding that the Accused person was a person of influence despite its earlier finding barring the testimony and/or the deposition of Madame Habyarimana on the alleged influence of the Accused and this led to a miscarriage of justice¹⁸¹.

¹⁷⁷ Para.106, page 30; para.110, page 31; para.140, page 39 of the judgement

¹⁷⁸ Para. 106, p. 30 of the judgment

¹⁷⁹ Para.573, p. 173 of the judgement

¹⁸⁰ Para.106,p.30; para.110, p. 31; para. 140,142, p. 39 of the judgement

¹⁸¹ Defence motion for subpoena and deposition of 25th April 2000.

Relief sought: For the Appeal Chamber to evaluate the impact of the finding of the Trial Chamber on each conviction and sentence and accordingly acquit the Accused.

T. GROUND 20

T.1 MULTIPLE CHARGING AND MULTIPLE CONVICTION

The principle of law enunciated in Prosecutor v. Musema states that multiple charges and multiple convictions may be permissible in cases where the same conduct violates distinct interests punishable under distinct statutory provisions possessing material distinct elements. The charges in this cases as laid and modified through the directions of the Trial Chamber on the 18th June 1999 and 12th October 1999 as well as the modification effected by the Trial Chamber itself in its understanding of the indictment¹⁸²; clearly show that the judges erroneously applied the principle to conduct likely to violate different forms of the same crime envisaged and punishable under the same statutory provision rather than conduct violating statutory provisions.

T.1.1 PARTICULAR OF ERRORS

- 1) The wrong application of the jurisprudence led to confusion and a miscarriage of justice in that ;
 - a) Judge Ostrovsky convicted and acquitted using the same principles¹⁸³ of the indictment and the entire panel alluding to the same principles categorized the different counts and sentenced the convict based on the principle of “close relationship”, “connected events”, “same factual foundation”, “torture and murder encompassing the accused personal participation in the torture and murder of Rusanganwa”, “these three counts (are) based on connected events”, “(Since) these crimes (are) based on connected events”, “(Since) there crimes (are) based on identical set of facts” etc.¹⁸⁴ even though it is clear from the records that they were neither unanimous on the issue nor consistent in their

¹⁸² Paragraphs 9-14, p. 3-4 of the judgement (counts that later formed the basis of conviction)

¹⁸³ Count 5 and 7

¹⁸⁴ Counts 3, 5, 10, 11, 12, 14

outstanding and application of the principle to the counts on which they convicted.

- 2) The Trial Chamber in passing stiff sentences against the convict/appellant especially in counts 11, 12 and 14 invoked the principles of the fundamental Human Rights of the victims.
- 3) The Trial Chamber erred in law by declining to use the same principle in its implementation of the decision of the Appeal Chamber dated 31st May 2000, wherein the Appellant was a victim of the abuse of his fundamental rights by the chief law enforcer of the ICTR conferred with large prosecution powers under the Statute and the Rules charged with the prosecutorial of violations of international crimes against the fundamental rights, freedom and rights of persons and this double standards led to an unjustifiably inconsequential reduction of only six months for this gross violation of international law and UN conventions notably:- The Body of Principles for the protection of all persons under any form of detention or imprisonment¹⁸⁵
- 4) The Chamber in its analysis and implementation of the Appeal Chamber decisions on the principles of cumulative charges and convictions failed to make a distinction between conduct that violate distinct crimes in the same Statutory provisions and conduct that violates distinct provisions of different statutory instruments as a result failed to appreciate the fact that in the case at bar, a distinctive crime punishable under the same Statute could well be the actus reus or event, the mode or method or manner by which the completed or consummated crime was committed namely murder through torture (part of Count 11), and murder (part of Count 12) as crime against humanity¹⁸⁶.

¹⁸⁵ Resolution 43/173 adopted by the UN General Assembly on 15th December 1980, Articles 7,9,10 of the Universal Declaration of Human Rights 1948, Article 9(1) (2) (3) (4), 12(1) (3) 14, 22(2), 26 of the International Covenant on Civil and Political Rights; Optional Protocol Articles 3, 5 of the European Convention of Human Rights, The American Convention at San Jose; The African Charter on Human and Peoples Rights

Relief sought: By misapplying the principle of cumulative charging and conviction to the case at bar the Trial Chamber wrongly convicted the Accused in Counts 10, 11, 12 and 14 and therefore we urge the Appeal Chamber to quash the convictions.

U. GROUND 21

The Trial Chamber in failing throughout the proceedings to protect the rights of the Accused to be tried in the language he understands despite objections further erred in delivering the judgement in English only after eleven months of deliberation while wrongly stating that the judgement was delivered in English and French with the English copy being authentic and thereby violated his rights under Articles 20(4)(a)(f), 31 of the statute, Article 13(6) of the Directive for registry and Rule 3 of the Rules of Procedure and Evidence¹⁸⁷.

V. GROUND 22

V.1 SENTENCING¹⁸⁸

The Trial Chamber erred in law and misdirected itself in not following the guidelines contained in Articles 22(2) 23(1)(2) of the Statute of the ICTR as well as Rule 101(B)(iii) and (C) of the Rules of Procedure and Evidence in meting out the sentence on the Accused and this led to a miscarriage of justice.

V.1.1 PARTICULARS OF ERROR

- a) The Trial Chamber erred in misconstruing the letter and spirit of Rule 101 (C) of the Rules by applying both consecutive sentencing and concurrent sentencing to the Accused whereas the rule ordained that the judgement should be served consecutively or concurrently and not both¹⁸⁹.

¹⁸⁶ Paragraph 10, p.3 of the judgement

¹⁸⁷ Para. 581, p. 176-177; Para.594 p. 7289; para. 83 p.7273; para. 38 of the judgement.

¹⁸⁸ Paragraphs 555-591, p. 165-179 of the Judgement

¹⁸⁹ Paragraphs 589, p. 179 of the judgement.

- b) The qualification and/or characterization of the counts in the manner used by the Trial Chamber as justification for and the basis on which it inflicted cumulative and consecutive sentences against the Accused in violation of the guidelines in Articles 23(1)(2), 22(2) of the Statute and Rules 101(B)(iii) and (C) of the Rules and Procedure and Evidence was most unjustified, unreasonable and unwarranted and led to a miscarriage of justice¹⁹⁰.
- c) The Trial Chamber erred in law and misdirected itself in purporting to sentence the Accused following the general practice regarding prison sentences in the Courts in Rwanda whereas its implementation is at variance with Article 18 of Law No. 8/96 of 30th August 1996¹⁹¹ and upon finding of mitigation, it did not invoke the range of sentences favorable to the Accused in Article 83 of the Rwandese Penal Code¹⁹².
- d) The Trial Chamber erred in law in its execution of the decision of the Appeal Chamber dated 31st May 2000¹⁹³ in considering only paragraph 87 thereof and considering the said decision merely as a mitigating factor¹⁹⁴ whereas a proper consideration, application and execution of the decision of the Appeal Chamber¹⁹⁵ and orders¹⁹⁶ based on a scrupulous examination of the motivations for the decision could have led the Trial Chamber, upon finding the Accused guilty, to imposed a sentence under Articles 22 and 23 and R.101 and thereafter proceed to a profound reduction pursuant to the guidelines on reduction of sentences under the Rwandese laws in express execution of the Appeal Chamber decision and orders, as ordained by that decision and this failure led to a miscarriage of justice and a violation of Articles 19(1) 22(2), 23(1).

¹⁹⁰ Paragraphs 585- 589, p. 178-179 of the judgement.
¹⁹¹ The Organic Law in the Prosecution of Offences constituting the Crime of genocide and Crimes against humanity committed since 1st October 1990
¹⁹² Paragraphs 585-587, 589 p. 178, 179 of the judgement.
¹⁹³ Exhibit P.27
¹⁹⁴ Paragraphs 579-580, pg. 175-176 of the judgement.
¹⁹⁵ Paragraphs 127 & 128 at pg. 40 of the judgement
¹⁹⁶ point 3 & 6 at pg. 41 of the judgement

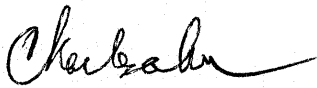
e) In considering sentencing under Article 23 as ordered by the Appeal Chamber decision of 31st May 2000¹⁹⁷ the Trial Chamber erred in not considering the following factors retained by the Appeal Chamber in their correct perspective and this led to a miscarriage of justice:-

- a. The violation of the Accused right during arrest and detention in Cameroon.
- b. The violation of his rights during his transfer and detention at the UNDF in Arusha.
- c. The refusal and/or neglect by Third Chamber III to hear his motion for habeas corpus challenging the above violations (majority decision).

III. RELIEF SOUGHT ON EACH GROUND

On the basis of each ground of Appeal herein taken separately or collectively, the Accused respectively urge the Appeal Chamber to set aside the judgement, conviction and sentence on each count and discharge and acquit the Accused with substantial damages as ordered in the Appeal Chamber decision of 31st May 2000.

This^{16th}..... day of June 2003.



Signed:

Lead Defence Counsel of Semanza

Chief Fuatabong Acha Charles Achaleke Taku

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Date:	Transmitted: <i>16-6-2003</i>	Document's date: <i>16-6-2003</i>		No. of Pages: <i>54</i>	
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