

RWANDA / JUDGMENT

# THE PROSECUTOR V. LAURENT SEMANZA TRIAL JUDGMENT

ICTR-97-20-T

## COURT

International Tribunal for Rwanda

## DECIDED

15 May 2003

## CASE / FILE NUMBER

ICTR-97-20-T

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### # THE PROSECUTOR V. LAURENT SEMANZA TRIAL JUDGMENT

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## Text

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UNITED NATIONS

NATIONS

UNIES

International

Criminal

Tribunal

for Rwanda

Tribunal

P~nal International

pour le Rwanda

TRIAL CHAMBER III

Before

Judges:

Registrar:

Judgement

of: Yakov  
Ostrovsky,  
Presiding  
Lloyd  
G. Williams,  
QC  
Pavel  
Dolenc  
Adama Dieng  
15 May 2003  
THE PROSECUTOR

Original: English  
Ve  
LAURENT  
SEMANZA  
Case No. ICTR-97-20-T

## JUDGEMENT

AND SENTENCE Counsel for the Prosecution: Chile Eboe-Osuji Counsel for the Defence: Charles Acheleke Taku Sadikou Ayo Alao

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The Prosecutor

- v. Laurent Semanza, Case No. ICTR-97-20-T I. INTRODUCTION A. The Tribunal and its Jurisdiction
1. This

## Judgement

in the case of The Prosecutor

- v. Laurent Semanza is rendered by Trial Chamber III ("Trial Chamber" or "Chamber") of the International Criminal Tribunal for Rwanda ("Tribunal"), composed of Judge Yakov Ostrovsky, presiding, Judge Lloyd G. Williams, QC, and Judge Pavel Dolenc.
- 2. The Tribunal was established by the United Nations Security Council after the Council considered official United Nations reports indicating that genocide and widespread, systematic, and flagrant violations of international humanitarian law had been committed in Rwanda. 1 The Security Council determined that this situation constituted a threat to international peace and security; determined to put an end to such crimes and to bring to justice the persons responsible for them; and expressed conviction that the prosecution of such persons would contribute to the process of national reconciliation and to the restoration and maintenance of peace. Consequently, on 8 November 1994, the Security Council acting under Chapter VII of the United Nations Charter adopted Resolution 955 establishing the Tribunal. 2
- 3. The Tribunal is governed by the Statute annexed to Resolution 955 ("Statute"), and by its Rules of Procedure and Evidence ("Rules"). 3
- 4. Pursuant to the Statute, the Tribunal has the authority to prosecute persons responsible for serious violations of international humanitarian law committed in the territory of Rwanda and Rwandan citizens responsible for such violations committed in the territory of neighbouring states. Under Article 1 of the Statute, *ratione temporis* jurisdiction is limited to acts committed between 1 January 1994 and 31 December 1994. The Tribunal has *ratione materiae* jurisdiction over genocide, crimes against Report of the Secretary-General on the Situation in Rwanda, UN Doc. S/1994/924; Preliminary Report of the Independent Commission of Experts Established Pursuant to Security Council Resolution 935 (1994), UN Doc. S/1994/1125; and Reports of the Special Rapporteur for Rwanda of the UN Commission on Human Rights, UN Doc. S/1994/1157, Annexes I and II. 2 UN Doc. S/RES/955 (1994).

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The Prosecutor

- v. Laurent Semanza, Case No. ICTR-97-20-T humanity, and serious violations of Article 3 common to the Geneva Conventions ("Common Article 3") and Additional Protocol II thereto, as provided in Articles 2, and 4 of the Statute. The provisions of Articles 2, 3, and 4 are set out below in Chapter IV. B. The Indictment
- 5. The initial indictment against Laurent Semanza ("Accused") containing seven counts was submitted by the Prosecutor on 16 October 1997 and was confirmed by Judge Lennart Aspegren on 23 October 1997.

6. On 31 May 1999, the Prosecutor moved the Chamber for leave to amend the initial indictment by adding seven new counts. On 18 June 1999, the Chamber orally granted the Prosecution application after having noted no objection from the Defence. However, the Chamber ordered the Prosecution to further substantiate the concise statement of facts in the indictment with respect to the new charges, in particular those based on Common Article 3 and Additional Protocol II. The written

### reasons

for the Chamber's decision were reserved. The Prosecution filed the first amended indictment on 23 June 1999. On 24 June 1999, the Prosecution made an oral application for leave to correct minor translation discrepancies between the English and French versions of the first amended indictment. The Trial Chamber orally granted leave to do so. On 2 July 1999, the Prosecutor filed the second amended indictment to comply with the Chamber's decision of 24 June 1999. On 1 September 1999, the Chamber handed down the written version of the decision rendered orally on 18 June 1999 with respect to the Prosecutor's Motion for Leave to Amend the Indictment. In compliance with that decision, on 12 October 1999, the Prosecutor filed the third amended indictment ("Indictment"). This Indictment contains the final version of the Prosecutor's charges and is the basis of the present

### Judgement.

The text of the Indictment is set out in Annex I to this

### Judgement.

3 The Rules were adopted on 5 July 1995 and were successively amended on 12 January 1996, 15 May 1996, 4 July 1996, 5 June 1997, 8 June 1998, 4 June 1999, 1 July 1999, 21 February 2000, 26 June 2000, 31 May 2001, and 5 and 6 July 2002.

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- v. Laurent Semanza, Case No. ICTR-97-20-T
7. The Indictment charges the Accused with fourteen counts of genocide, crimes against humanity, and serious violations of Common Article 3 and Additional Protocol II.
8. The Indictment alleges that the Accused acted with the intent to destroy the Tutsi population in Rwanda as an ethnic or racial group. It is further stated that the Accused's acts formed part of a widespread or systematic attack against the Tutsi civilian population on political, ethnic, or racial grounds and that these acts were committed during and in conjunction with a non-international armed conflict in the territory of Rwanda between its Government and the Rwandan Patriotic Front ("~F").

9. It is alleged in the Indictment that the Accused organized, executed, directed, and personally participated in attacks, which included killings, serious bodily or mental harm, and sexual violence, at four locations in Bicumbi and Gikoro communes during the month of April 1994. The Indictment alleges that the Accused is responsible for crimes that occurred on or about 10 April 1994 at Ruhanga church in Gikoro commune (paragraph 3.10); between 9 and 13 April 1994 at Musha church in Gikoro commune (paragraph 3.11); between 7 and 20 April 1994 at Mwulire Hill in Bicumbi commune (paragraph 3.12); and about 12 April 1994 at Mabare mosque in Bicumbi commune (paragraph 3.13). For his alleged involvement in the attacks at Ruhanga church, Musha church, Mwulire Hill, and Mabare mosque, the Accused is charged with: genocide (Count
- 1) and complicity to commit genocide (Count 3); murder (Count 4), extermination (Count 5), persecution (Count 6), and rape (Count crimes against humanity; rape and other serious violations of Common Article 3 and Additional Protocol II listed in Article 4(a) of the Statute (Count 7), and rape other forms of indecent assault as serious violations of Common Article 3 and Additional Protocol II (Count 9).
10. The Indictment also states that during the Musha church 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, and with serious violations of Common Article 3 and Additional Protocol II (part of Count 13).

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- v. Laurent Semanza, Case No. ICTR-97-20-T
11. The Indictment further alleges that between 1991 and 1994, the Accused chaired meetings during which he made threatening remarks against Tutsi, and where he incited, planned, and organized the massacres of Tutsi civilians (paragraphs 3.7 and 3.8), for which he is charged with direct and public incitement to commit genocide (Count 2).
12. The Indictment asserts that between 7 and 30 April 1994, in Gikoro commune, the Accused incited a group to rape Tutsi women before killing them, resulting in the rape of two women and the death of one of them (paragraph 3.17). For this event, the Accused is charged with rape (Count 10), torture (part of Count 11), and murder (part of Count
- 12) as crimes against humanity; and with serious violations of Common Article 3 and Additional Protocol II (part of count 13).

13. Finally, the Indictment alleges that on 8 April 1994, the Accused instigated a group of Interahamwe in Bicumbi to kill members of a particular Tutsi family, resulting in the death of four family members and two neighbours (paragraph 3.19), for which he is charged with murder as a crime against humanity (Count 14).
14. For all the Counts, except for incitement to commit genocide (Count 2) and complicity in genocide (Count 3), the Accused is charged cumulatively with all forms of personal responsibility pursuant to Article 6(1) and with superior responsibility under Article 6(3) of the Statute. C. The Accused
15. The Indictment alleges that the Accused was born in 1944 in Musasa commune, Kigali Rural prefecture, Rwanda. He was bourgmestre of Bicumbi commune for more than twenty years, until being replaced by Juvenal Rugambarara in 1993. After he ceased to serve as bourgmestre, the Accused remained a member of the Mouvement Rpublicain National et D~mocratique ("MRND"), which, up to 1994, was the political party of the President of Rwanda, Juvrnal Habyarimana. The Accused was nominated as an MRND representative to the National Assembly which was to be established pursuant to the Arusha Accords.

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### The Prosecutor

- v. Laurent Semanza, Case No. ICTR-97-20-T II.THE PROCEEDINGS A. Procedural

## Background

16. On or about 26 March 1996, the Accused was arrested in Cameroon pursuant to an international arrest warrant issued by the Office of the Public Prosecutor (Parquet gOnOral) of Rwanda.
17. On 15 April 1996, the Prosecutor of the Tribunal submitted to the authorities of Cameroon a request for provisional measures in respect of the Accused and others, pursuant to Rule 40. On 6 May 1996, the Prosecutor requested the authorities of Cameroon to extend the detention of the Accused by three weeks.
18. On 17 May 1996, the Prosecutor informed the authorities of Cameroon of her intention to proceed only against four of the twelve suspects named in the request for provisional measures, not including the Accused.
19. On 21 February 1997, the Court of Appeal for the Centre Province in Yaound6, Cameroon, dismissed the Rwandan request for extradition and ordered the release of the Accused. On the same day, the Prosecutor of the Tribunal submitted a new request for the provisional detention of the Accused pursuant to Rule 40.

20. On 3 March 1997, the Tribunal issued an Order, filed the following day, requesting the authorities of Cameroon to transfer the Accused to the Tribunal's Detention Facility pursuant to Rule 40bis. 4 21. On 29 September 1997, while awaiting transfer to the Tribunal, the Accused filed a writ of habeas corpus ad subjiciendum with the Tribunal, challenging the lawfulness of his detention in Cameroon. The Defence withdrew the writ on 6 July 2000. 5
22. The indictment against the Accused was confirmed on 23 October 1997, 6 and the Accused was transferred to the Tribunal's Detention Facility on 19 November 1997. 4 Prosecutor
- v. Semanza, Case No. ICTR-97-20-DP, Order for Transfer and Provisional Detention, TC, 3 March 1997. 5 T. 6 July 2000
- p. 37. See also Notice of Discontinuance of Writ of Habeas Corpus by Defendant, filed on 6 July 2000.

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### The Prosecutor

- v. Laurent Semanza, Case No. ICTR-97-20-T
23. On 16 February 1998, the Accused made his initial appearance before the Tribunal and pleaded not guilty to the seven counts contained in the initial indictment.
24. On 18 June 1999, the Trial Chamber granted the Prosecutor's motion to amend the indictment. 7 On 23 June 1999, the Prosecutor filed the first amended indictment. On 24 June 1999, the Accused made a further appearance and entered a plea of not-guilty on the charges contained in the first amended indictment. There were no further pleas with respect to the second and third amended indictments, which only corrected translation errors or clarified the

### facts

alleged in the first amended indictment and did not contain any new charges.

25. On 24 August 1999, the Defence filed a motion to set aside the arrest and detention of the Accused as unlawful. On 6 October 1999, the Chamber denied the Defence Motion. 8 On 12 October 1999, the Accused appealed the Trial Chamber's decision. In its decision rendered on 31 May 2000, the Appeals Chamber found that certain of the Accused's rights had been violated during his arrest and detention. 9 The Appeals Chamber ordered that the appropriate remedy would be financial compensation if the Accused is found not guilty or a reduction in sentence if he is found guilty.
26. On 3 November 2000, the Chamber took judicial notice of certain

**facts**

and documents listed in Annex II, to this

**Judgement.**

~°

27. On 9 February 2001, the Chamber granted leave to the Government of the Kingdom of Belgium to file an amicus curiae brief and to make

**submissions**

about the scope of Common Article 3 and Additional Protocol II. 11 6 Prosecutor

- v. Semanza, Case No. ICTR-97-20-I, Decision Confirming the Indictment, TC, 23 October 1997. 7 Prosecutor
- v. Semanza, Case No. ICTR-97-20-I, Oral Decision on the Motion by the Office of the Prosecutor for Leave to Amend the Indictment, TC, T. 18 June 1999 pp. 55-56. Prosecutor
- v. Semanza, Case No. ICTR-97-20-I, Written Decision on the Motion by the Office of the Prosecutor for Leave to Amend the Indictment, TC, 1 September 1999. 8 Prosecutor
- v. Semanza, Case No. ICTR-97-20-I, Decision on the Motion to Set Aside the Arrest and Detention of Laurent Semanza as Unlawful, TC, 6 October 1999. 9 Semanza
- v. Prosecutor, Case No. ICTR-97-20-A, Decision, AC, 31 May 2000. ~° Prosecutor
- v. Semanza, Case No. ICTR-97-20-I, Decision on the Prosecutor's Motion for Judicial Notice and Presumption of Facts Pursuant to Rules 94 and 54, TC, 3 November 2000. I I Prosecutor
- v. Semanza, Case No. ICTR-97-20-T, Decision on the Kingdom of Belgium's Application to File an Amicus Curiae Brief and on the Defence Application to Strike the Observations

**Page 15****The Prosecutor**

- v. Laurent Semanza, Case No. ICTR-97-20-T
28. On 6 February 2002, the Chamber partially granted a Defence motion filed on 13 November 2001 and took judicial notice of the following documents: Ddcret-Loi No. 10/75: Organisation et fonctionnement de la prJfecture [au Rwanda], and DJcret-Loi No. 18/75 du 14 aoat 1978, to the extent that it amended or otherwise modified Ddcret-Loi No. 10/75.12 B. The Trial 29. The trial started on 16 October 2000 with the opening of the Prosecution case. The Prosecutor conducted her case during five periods: 16 to 17 October 2000; 6 to 15 November 2000; 4 to 7 December 2000; 6 to 20 March 2001; and 18 to 25 April 2001. Over the course of twenty-nine trial days, the Prosecutor called twenty-four witnesses and entered eighteen

exhibits into the record.

30. On 20 July 2001, the Defence filed a Motion for a Judgement of Acquittal. 13 In its decision of 27 September 2001, the Chamber denied this motion. 14
31. The Defence case opened on 1 October 2001 and was conducted during four periods: 1 to 10 October 2001; 22 October 2001 to 14 November 2001; 26 to 28 November 2001; and 28 January 2002 to 28 February 2002. Over the course of forty- four trial days, the Defence called twenty-seven witnesses and entered forty-five exhibits into the record.
32. At the end of the Defence case, the Prosecutor filed a Motion for Leave to Call Rebuttal Evidence to respond to the Defence of Alibi. With the Chamber's leave, the Prosecution called three rebuttal witnesses during the period of 15 to 25 April 2002.<sup>15</sup> of the Kingdom of Belgium Concerning the Preliminary Response by the Defence, TC, 9 February 2001. The brief was filed on 16 October 2000. In a letter dated 29 May 2002, the Belgian Government advised the Chamber that it did not wish to make oral

### submissions.

The Belgian Government further stated that it wished to pursue only the submissions regarding the nexus between the acts covered by Article 4 of the Statute of the Tribunal and the armed conflict. 1z Prosecutor

- v. Semanza, Case No. ICTR-97-20-T, Decision on the Defence Motion for Judicial Notice and Presumption of Facts Pursuant to Rules 94(B) and 54, TC, 6 February 2002. t3 Defence Motion for a Judgement of Acquittal in Respect of Laurent Semanza after Quashing the Counts Contained in the Third Amended Indictment. ~4 Prosecutor
- v. Semanza, Case No. ICTR-97-20-T, Decision on the Defence Motion for a Judgement of Acquittal in Respect of Laurent Semanza after Quashing the Counts Contained in the Third Amended Indictment (Article 98bis of the Rules of Procedure and Evidence) and Decision on the

## Page 16

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- v. Laurent Semanza, Case No. ICTR-97-20-T
33. After the completion of the Prosecution case in rebuttal, the Defence filed a Motion for Leave to Call Rejoinder Witnesses. The Chamber denied this motion. 16 34. The parties submitted their final trial briefs on 12 June 2002. On 17 June 2002, the Prosecutor presented her oral closing arguments. On 18 June 2002, the Defence presented its oral closing arguments. On 19 June 2002, the parties completed rebuttal and rejoinder to the closing arguments, and the Presiding Judge declared the trial hearing closed pursuant to Rule 87(A). C. Evidentiary Matters

35. Rule 89 sets out the general provisions of the Tribunal's rules of evidence. In accordance with this Rule, a Chamber may admit any relevant evidence which it deems to have probative value. Furthermore, in cases not otherwise provided for under the Tribunal's rules of evidence, the Chamber is bound to apply rules of evidence which best favour a fair

## determination

of the matter before it and which are consonant with the spirit of the Statute and the general principles of law. The Chamber is not bound by national rules of evidence. 36. The Chamber observes that in this case, prior written statements of witnesses were not systematically tendered into evidence in their entirety. Rather, when the parties used such statements during examination, they read the relevant portions of the statements into the record. Only in the case of Witness CBN did the Chamber admit the entire statement into evidence. 17 When inconsistencies were raised between the content of a prior statement and the testimony during trial, the Chamber's point of departure was the account given by a witness in his testimony in court. The Chamber notes that differences between prior statements and testimony in court may be due to various factors, such as the lapse of time, the language used, the questions put to the Prosecutor's Urgent Motion for Suspension of Time-Limit for Response to the Defence Motion for a

## Judgement

of Acquittal, TC, 27 September 2001. ~5 Prosecutor

- v. Semanza, Case No. ICTR-97-20-T, Decision on the Prosecutor's Motion for Leave to Call Rebuttal Evidence and the Prosecutor's Supplementary Motion for Leave to Call Rebuttal Evidence, TC, 27 March 2002. 16 Prosecutor
- v. Semanza, Case No. ICTR-97-20-T, Decision on Defence Motion for Leave to Call Rejoinder Witnesses, TC, 30 April 2002. ~7 This followed the witness's sworn acknowledgement that the statement was genuine and the Prosecutor's waiver of her right to cross-examine the witness. T. 31 October 2001

p. 87.

## Page 17

The Prosecutor

- v. Laurent Semanza, Case No. ICTR-97-20-T witness, the accuracy of interpretation and transcription, and the impact of trauma on the witness. However, when the inconsistencies cannot be explained to the satisfaction of the Chamber, the probative value of the testimony may be questioned. D. Witness Protection

## Issues

37. Part of the evidence adduced by the parties was given in closed sessions due to witness protection concerns. In analysing evidence received during closed sessions in this Judgement, the Chamber was mindful of the need to avoid unveiling identifying particulars of protected witnesses so as to prevent disclosure of their identities to the press or the public. At the same time, the Chamber wished to provide in the

## Judgement

as much detail as possible to make it easy to follow its reasoning. In view of these concerns, when referring to evidence received in closed sessions in this Judgement, the Chamber used language designed not to reveal protected information yet specific enough to convey the basis for its reasoning.

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- v. Laurent Semanza, Case No. ICTR-97-20-T 10 III.THE DEFENCE CASE
38. The Defence raised several arguments, described below, in an effort to challenge the jurisdiction of the Tribunal, the validity of the Indictment, and the sufficiency of the evidence supporting the Prosecution's case, including a defence of alibi. A. The Accused's Detention in Cameroon
39. The Defence advanced the argument, previously rejected by the Appeals Chamber, that the Tribunal lacks jurisdiction because the Accused was detained in Cameroon in violation of Rule 40bis. 18 The Defence noted that the Prosecutor had justified this period of detention to the Trial Chamber and the Appeals Chamber as force majeure, a failure on the part of Cameroonian authorities to transfer the Accused quickly. 19 The Defence asserted that this issue should be reexamined because, subsequent to the Appeals Chamber's ruling, a Cameroonian court found that the declaration of Judge Mballe, on which the Prosecutor based her argument, is a "false document in Cameroonian Courts". 2° The Defence submitted that Judge Mballe's declaration was therefore "null and void" and concluded that the Prosecution's use of the declaration "vitiates everything", requiring the immediate release of the Accused. 21
40. The Appeals Chamber settled the issue of the violation of Rule 40bis in connection with the Accused's detention in Cameroon pending his transfer to the Tribunal. 22 The Appeals Chamber held that the Accused's fight to be promptly charged pursuant to Rule 40bis could not have been violated because the initial indictment against the Accused had already been confirmed at the time of his transfer to the Tribunal's Detention Facility. 23 Although the Appeals Chamber alluded to the rationale behind the Cameroonian authorities' failure to transfer the Accused, mentioning not only the declaration of Judge Mballe but also that of

U.S. Ambassador 18 T. 18 June 2002 pp. 94-96; Conclusions de la dOfense apr~s la cl6ture des d~bats suite ~t la d~cision de la 3~me Chambre en date du 2 Mai 2002, filed 12 June 2002, ["Defence Closing Brief"] pp. 7-8. 19 T. 18 June 2002

p. 94; Defence Closing Briefp. 7. 20 T. 18 June 2002

p. 95; Defence Closing Briefp. 7. z1 T. 18 June 2002 pp. 95-96; Defence Closing Briefp. 8. 22 Semanza

v. Prosecutor, Case No. ICTR-97-20-A, Decision, AC, 31 May 2000, paras. 91-104.

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### The Prosecutor

- v. Laurent Semanza, Case No. ICTR-97-20-T 11 David Scheffer as well as other evidence, the Appeals Chamber's holding is not based solely on this peripheral discussion. The Chamber therefore holds that the attempt of the Defence to reargue this settled issue based solely on the peripheral matter of the validity of Judge Mballe's attestation is without merit. B. The Nullity of the Indictment Due to Vagueness and Cumulative Charges 41. The Defence raised a number of challenges to the Indictment asserting that it was vague and thus prejudiced the Accused's ability to organize his defence. 24
- 42. As the primary accusatory instrument, an indictment must contain a concise statement of the facts detailing the crime or crimes with which an accused is charged. 25 The accused also has a right to be "promptly" informed "in detail" of the nature of the charges against him.<sup>26</sup> The Chamber emphasises that allegations of vagueness should normally be dealt with in the pre-trial stage. 27 The Defence has not offered any explanation for its delay in raising many of its specific challenges to the Indictment until its Closing Brief. Nonetheless, the Chamber finds that its duty to ensure the integrity of the proceedings and safeguard the rights of the Accused warrants full consideration of the arguments of the Defence. 28
- 43. The Chamber emphasises that at this post-trial phase it is concerned only with defects in the Indictment that actually prejudiced the rights of the Accused. 29 The Chamber notes that the Defence failed to articulate any particular instance of prejudice.
- 44. The fundamental question in determining whether an indictment was pleaded with sufficient particularity is whether an accused had enough detail to prepare his defence. 3° The indictment must state the material

### facts

underpinning the charges, but z3 Semanza, Decision, AC, 31 May 2000, para. 100. 14 Defence Closing Brief pp. 16-19. z5 Article 17(4); Rule 47(C). 26 Articles 19(2), 20(4)(a). 27 Kupreskt'c, Judgement, AC, para. 79. See also Rule 72(F). z8 Kupreskic, Judgement, AC, para.

79. See also Kayishema and Ruzindana, Judgement, AC, paras. 95, 97; Ntakirutimana, Judgement, TC, para. 52. 29 Kupreskic, Judgement, AC, paras. 115-125 (undertaking prejudice

## analysis

for vagueness allegations raised in the post-trial phase). 30 Kupreskic, Judgement, AC, para. 88.

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- v. Laurent Semanza, Case No. ICTR-97-20-T 12 need not elaborate on the evidence by which such material

## facts

are to be proved. 31 The Chamber assesses the materiality of a particular fact in the context of the alleged criminal conduct with which the accused is charged. 32

45. In cases where the Prosecutor alleges that an accused personally committed the criminal acts, an indictment generally must plead with particularity the identity of the victims, the time and place of the events, and the means by which the acts were committed. 33 The specificity required to plead these kinds of facts is not necessarily as high where criminal responsibility is predicated on accomplice liability or superior responsibility. 34 The Chamber is also mindful that even when personal participation is alleged, situations may exist where the nature or scale of the alleged crimes makes it impracticable to require a high degree of specificity in the identity of victims or the dates of commission. 35

### 1. Failure to Specify Precise Dates of Criminal Acts

46. The Defence argued that the Indictment failed to specify the dates of the alleged acts by using language such as: (i) "on or about" a particular date in paragraphs 3.10, 3.13, and 3.18; (ii) "between" two specific dates in paragraphs 3.7, 3.11, 3.12, 3.15, 3.16, and 3.17; (iii) "as of the beginning of 1994" in paragraph 3.8; and (iv) "as early as 1991" in paragraph 3.9. 36
47. The Prosecutor's use of "on or about" a particular date in paragraphs 3.10, 3.11, 3.12, 3.13, 3.18, and 3.19 did not prejudice the Accused in this case because the underlying events actually occurred on the particular dates set out in each of these paragraphs.
48. In paragraphs 3.11 and 3.12, the Chamber finds that "between" appropriately refers to two relatively narrow five to thirteen day ranges when the Accused allegedly 31Kupreskic, Judgement, AC, para. 88. 32Kupreskic, Judgement, AC, para. 89. 33Kupresla'c, Judgement, AC, para. 89. 34See Brdjanin and Talic, Case No. IT-99-36, Decision on Objections by Momir Talic to the Form of the Amended Indictment, TC, 20 February 2001, paras. 18-20. 35 Kupreskic, Judgement, AC, para. 89. 36 Defence Closing Brief

- p. 16. Though the Defence complained about the use of "on or about" only in paragraphs 3.10, 3.13, and 3.18, the Chamber notes that this phrase is also in paragraph 3.11, 3.12, and 3.19.

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- v. Laurent Semanza, Case No. ICTR-97-20-T 13 "organized" the Musha church and Mwulire Hill massacres. Though both paragraphs also refer to the Accused "execut[ing]" the massacres during this same period, intimating personal participation and thus requiring greater specificity, each of these paragraphs clarifies any ambiguity by averring the particular date on which the Accused is alleged to have physically participated in the massacres.
49. Paragraph 3.17 refers to a specific event on a single date when the Accused allegedly instigated a particular group of men to rape and kill Tutsi women, "immediately" resulting in the commission of those criminal acts. This type of an allegation should generally be pleaded with particularity concerning the date on which it occurred. However, the Chamber finds that "between April 7 and April 30" is appropriate in this instance because Prosecution Witness VV, the sole witness, could not recall the exact date, and thus the date could not be pleaded with greater particularity. Moreover, the paragraph describes the event and the Accused's alleged conduct in detail.
50. The Chamber finds the date ranges used in paragraphs 3.7, 3.8, and 3.9 to be problematic. Paragraph 3.7 alleges that "between 1991 and 1994" the Accused chaired meetings where he made threatening remarks toward Tutsis. Paragraph 3.8 alleges that the Accused chaired meetings where he incited and planned the killings of Tutsi civilians "as of the beginning of 1994". Paragraph 3.9 alleges that the Accused trained and distributed weapons to Interahamwe "as early as 1991 ... until 1994". These paragraphs allege in a general way instances of specific conduct which, if proven, are either criminal or could be used to infer mens rea in support of a criminal conviction. The Indictment's use of these exceedingly broad date ranges provides grossly inadequate notice of particular conduct or events, making it difficult for the Accused to prepare his defence. Though the Prosecutor is allowed a degree of latitude where the exact dates of events are not known to her, the one to four year ranges in paragraphs 3.7, 3.8, and 3.9 are not acceptable, particularly where the allegations are devoid of any other detail that might assist the Accused in identifying the events alluded to in the Indictment. Notably, these paragraphs even neglect to mention the most basic of details such as the commune where the events allegedly occurred.
51. The Chamber also finds that the date ranges used in paragraphs 3.15 and 3.16 are impermissibly vague. These paragraphs refer broadly to the Accused's responsibility

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- v. Laurent Semanza, Case No. ICTR-97-20-T 14 as a superior and as an accomplice to the direct perpetrators' unspecified rapes and other acts of sexual violence which allegedly occurred in Bicumbi and Gikoro "between 6 April and 30 April". This date range is problematic in particular because these paragraphs fail to identify any specific criminal act, particularise the location where the acts occurred, or specify the Accused's conduct or his relationship with any known principal perpetrator. 52. The Chamber notes that the broad allegations in paragraphs 3.7, 3.8, 3.9, 3.15, and 3.16 leave the impression that the Prosecutor had not obtained any particular and specific information or evidence regarding these allegations. Under such circumstances, the Accused cannot possibly be expected to effectively prepare a defence.
- 2. Failure to Specify Precise Locations of Criminal Acts
- 53. The Defence argued that in paragraphs 3.7, 3.8, 3.9, 3.15, 3.16, and 3.19, the Indictment failed to specify the precise locations where certain violations allegedly occurred. 37
- 54. As discussed above, the Chamber finds paragraphs 3.7, 3.8, 3.9, 3.15, and 3.16 impermissibly vague because they lack even the most general details about where the alleged acts took place.
- 55. Considering witness and victim protection concerns, the Chamber finds that the Indictment alleges sufficient detail concerning the murders alleged in paragraph 3.19. 38 The Chamber notes that the "particular house in Bicumbi Commune" was that of protected Prosecution Witness VAM's son and further identification could have disclosed the identity of Witness VAM. Upon the disclosure of the witness's personal details to the Accused consistent with the witness protection order, the Defence would have had adequate notice of the location of the underlying crimes. 37 Defence Closing Briefp. 18. 38 See generally Prosecutor v. Semanza, Case No. ICTR-97-20-I, Decision on the Prosecution Motion for Protection of Witnesses, TC, 10 December 1998.

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- 3. Failure to Specify the Identity of Victims
- 56. The Defence challenged the Prosecution's failure to disclose the identity of Victims A through H and J in paragraphs 3.17 through 3.19 of the Indictment. 39
- 57. Taking into account witness protection concerns, the Chamber finds that the Prosecutor adequately identified Victims A and B in paragraph 3.17 as well as Victims D through H and J in paragraph 3.19. The Chamber notes that Victim A is protected Prosecution Witness VV whose cousin is Victim B. The Chamber further notes that Victims D through H and J are the family members and neighbours of protected Prosecution Witness VAM. Therefore, the

identification of these victims in the Indictment would have disclosed the identities of protected witnesses. The Chamber notes that the disclosure to the Defence of the particulars of Prosecution Witnesses VV and VAM pursuant to the witness protection order provided adequate identification of the victims in these paragraphs in sufficient time to prepare a defence.

58. The Chamber finds that the Prosecutor's use of the pseudonym "Victim C" in paragraph 3.18 is inappropriate, particularly because there is no apparent victim or witness protection concern justifying the use of a pseudonym as opposed to the victim's name. The Chamber, however, cannot identify any particular prejudice flowing from this lack of specificity. The Chamber notes that this paragraph specifically alleges that the Accused cut the victim's arms during an interrogation in Musha sector on 13 April 1994. The Defence notably did not find either the date or location of this act vague. In light of the particularity with which the event was pleaded, the identity of Victim C became readily apparent to the Defence when Prosecution Witness VA, who testified about this event, disclosed the victim's name in her written statement and during her testimony on 7 March 2001.
4. Failure to Specify the Form of Participation
59. The Defence argued that the Indictment was vague because it failed to specify the role played by the Accused in the alleged violations of the Statute, and instead alleged for each count that the Accused engaged in one or all possible forms of participation

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- v. Laurent Semanza, Case No. ICTR-97-20-T 16 that might give rise to criminal responsibility. 4° The Chamber notes that it is vague to plead all possible forms of criminal responsibility in the Indictment for each criminal act charged to an accused unless the Prosecutor actually intends to prove each of the forms of responsibility. 41 The Chamber notes that the ambiguity which exists in this charging strategy may be cured where the paragraphs referenced in each count of an indictment provide greater detail concerning the accused's participation. In this case, each paragraph of the Indictment provides further specificity concerning the Accused's conduct, indicating, for example, whether he allegedly personally participated in a massacre. Moreover, the Chamber cannot identify any possible prejudice to the Accused. In light of the potential for ambiguity, the Chamber emphasises that the Prosecutor should not plead what she does not intend to prove. 42
5. Cumulative Charges
60. The Defence asserted that the vague and speculative nature of the Indictment is aggravated by the fact that the Accused was cumulatively charged with multiple crimes for conduct arising out of a single incident. 43 The Defence also submitted that it is inadmissible in law for an indictment to charge the same acts as genocide, crimes against humanity, and

violations of Common Article 3 and Additional Protocol II. 44 Moreover, the Defence argued that it was impermissible to simultaneously charge an individual for both genocide and complicity to commit genocide. 45 The Chamber finds that these arguments lack merit and emphasises that the Appeals Chamber has confirmed the propriety of charging cumulatively. 46 39 Defence Closing Brief pp. 21-23. 40 Defence Closing Briefp. 19.

41Brdjanin and Talic, Case No. IT-99-36, Decision on Form of Further Amended Indictment and Prosecution Application to Amend, TC, 26 June 2001, para. 8; Brdjanin and Talic, Case No. IT-99-36, Decision on Objections by Momir Talic to the Form of the Amended Indictment, TC, 20 February 2001, para. 11. 42 Brdjanin and Talic, Case No. IT-99-36, Decision on Objections by Momir Talic to the Form of the Amended Indictment, TC, 20 February 2001, para. 11. 43 Defence Closing Brief pp. 19-21, 73, 74. 44 Defence Closing Brief

p. 19. 45 Defence Closing Brief

p. 73. 46 Musema, Judgement, AC, para.

369. See also Bagilishema, Judgement, TC, paras. 108-109; Kunarac, Judgement, AC, para. 167; Celebici, Judgement, AC, para. 400.

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6. Conclusion 17 61. The Chamber finds that paragraphs 3.7, 3.8, 3.9, 3.15, and 3.16 of the Indictment are impermissibly vague and that for this reason they prejudiced the Accused's ability to prepare his defence. The Chamber therefore will not consider these paragraphs in its factual or legal findings. Consequently, the Chamber cannot enter a conviction for direct and public incitement to commit genocide (Count 2), which is based solely paragraphs 3.7 and 3.8, and rape as a crime against humanity (Count 8), which based solely on paragraphs 3.15 and 3.16.

62. The Defence's remaining arguments concerning the lack of precision of the Indictment with respect to dates, locations, identities of witnesses, and forms of participation as well as cumulative charging lack merit for the

### reasons

set forth above. C. The Prosecution's Failure to Prove that Genocide Occurred in Bicumbi and Gikoro

63. The Defence submitted that the Prosecution failed to introduce evidence that genocide was committed in Bicumbi and Gikoro communes. 47 The Defence argued that the Prosecution never presented proof that civilian Tutsis were targeted and killed as alleged in paragraphs 3.3 and 3.4.2 of the Indictment. 48 In support of this claim, the Defence argued that the evidence revealed that both Hutus and Tutsis were killed without any distinction. 49 The

Defence supported this argument with reference to the report of United Nations Special Rapporteur Degni S6gui, the testimonies of Witnesses VD, VF, VAO, MTP, BP, BZ, and Ndengejeho, and the report of Lecomte and Vorhauer: ° The Defence also asserted that the Prosecution never clearly identified the authors of the crimes, and asserted that Special Rapporteur Degni S6gui's report indicated that the RPF massacred Hutus and Tutsis at the Church of Saint Paul of Kigali. 51 47Defence Closing Brief pp. 75, 77. 48Defence Closing Brief pp. 8-9, 78. 49Defence Closing Brief

- p. 9. 50Defence Closing Briefp. 9. 5~Defence Closing Brief pp. 9, 11. The Chamber notes that what occurred at the Church of St. Paul of Kigali is not relevant to this case.

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64. In addition, the Defence argued that the Prosecution failed to introduce evidence that there was a premeditated planning for the crimes that occurred, rather than a spontaneous reaction to President Habyarimana's death. 52 The Defence asserted also that the Prosecution did not introduce proof of the Accused's intent to commit genocide.
65. The Chamber will address whether the Prosecution established that genocide occurred in Bicumbi and Gikoro in its factual and legal findings. D. The Prosecution's Failure to Establish a Nexus Between an Internal Armed Conflict and the Death of Civilians in Bicumbi and Gikoro
66. The Defence argued that the Prosecution never established the existence of a non-international armed conflict in Rwanda. 53 Rather, the Defence argued that "monumental" evidence reflected the existence of an international armed conflict involving Uganda. 54
67. The Defence also argued that the Prosecution never introduced evidence that the alleged crimes that occurred in Bicumbi and Gikoro had a nexus to an internal armed conflict or that the Accused would have intended the attacks that occurred in those localities to form part of a non-international armed conflict in Rwanda. 55 68. The Defence asserted that the failure to introduce evidence of a nexus between the civilian deaths and an internal armed conflict requires the dismissal of the counts related to both Article 3 (crimes against humanity) and Article 4 (serious violations Common Article 3 and Additional Protocol II) of the Statute. 56
69. The Defence also submitted that the counts related to crimes against humanity should be dismissed because the Prosecution had alleged in the Indictment that these acts were committed to advance a war effort. The Defence asserted that the 52Defence Closing Briefp. 11. 53Defence Closing Brief pp. 12, 15. 54Defence Closing Brief pp. 123, 124, 125. 55Defence Closing Briefp. 12. 56Defence Closing Brief pp. 14, 16, 45.

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- v. Laurent Semanza, Case No. ICTR-97-20-T 19 Prosecution had not proven the existence of this war effort. 57 The Defence also noted that the Prosecution failed to prove that there was a widespread or systematic attack or that the Accused had knowledge of a widespread or systematic attack. 58 70. The Chamber will consider these matters in its factual and legal findings. E. Personal Jurisdiction and Superior Responsibility
- 71. The Defence asserted that the Accused could not be criminally responsible for the criminal acts of the Interahamwe or other government agents because he held no administrative or military position within the Rwandan government or within the Interahamwe militia that would have allowed him to either plan, order, or be informed of the preparations of the crimes alleged in the Indictment. 59 The Defence also concluded that the Tribunal therefore lacked personal jurisdiction. 6° 72. The Tribunal has personal jurisdiction over the Accused pursuant to Articles 1, 5, and 8 of the Statute because he is a natural person alleged to have committed crimes on the territory of Rwanda within the Tribunal's temporal and subject matter jurisdiction. The question of whether the Accused is criminally responsible as a superior is a mixed question of fact and law that goes solely to the issue of criminal responsibility rather than jurisdiction. The Chamber will consider whether a superior-subordinate relationship existed between the Accused and others in its subsequent findings. F. Challenges to the Credibility of Witnesses and the Sufficiency of the Evidence Supporting the Prosecution's Case 73. The Defence raised a number of challenges to the credibility of the Prosecution's witnesses and to the sufficiency of the evidence supporting the Prosecution's case with respect to each count in the Indictment. In addition, the Defence asserted that material contradictions in the testimony of Prosecution witnesses involving times, 57Defence Closing Brief pp.15-16, 116. 58Defence Closing Brief
- p. 124. 59Defence Closing Brief
- p. 23. 60Defence Closing Brief pp. 32-33.

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- v. Laurent Semanza, Case No. ICTR-97-20-T 20 dates, and locations preclude the Chamber from entering a conviction. 61 According to the Defence, the Indictment and Prosecution witnesses assert that the Accused simultaneously participated in massacres at numerous locations. 62 The Defence submitted several examples of the alleged internal inconsistencies in the Prosecutor's case as well as conflicts between that case and the Accused's alibi.

74. The Chamber will consider these arguments when making its findings. G. Alibi 75. At trial the Defence advanced an alibi to establish that the Accused could not have committed the acts alleged in the Indictment. The Chamber notes that the Accused's alibi involves a continuous narrative that spans the period of the crimes alleged in the Indictment. Therefore, to preserve the integrity of the alibi, the salient testimony including the Prosecutor's rebuttal of the alibi and an assessment of its credibility and reliability are set forth below.
76. The Chamber will fully consider the evidence of the Accused's alibi when determining whether the Prosecutor has proved the Accused's guilt beyond a reasonable doubt. I. Notice of Alibi
77. The Chamber recalls that the Defence presented its evidence supporting the Accused's alibi without providing the advance notice prescribed in Rule 67(A), though the Defence indicated that it was aware of the alibi from the very beginning of the case.<sup>63</sup> The Defence explained that it had failed to give notice because the Accused needed to ask his family to search his personal items for "medical bills, petrol bills, or documents related to transportation."<sup>64</sup> The Defence asserted that without this corroborating proof, it was not "legally" in a position to disclose the alibi.<sup>65</sup> The Defence thus opted to proceed under Rule 67(B) and "allow the  
61See Defence Closing Brief
- p. 94. 62See Defence Closing Brief pp. 34-35. 63T. 18 June 2002 pp. 59, 60. 64T. 18 June 2002
- p. 62. 65T. 18 June 2002
- p. 62.

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- v. Laurent Semanza, Case No. ICTR-97-20,T 21 Prosecutor to criticise [its] position."<sup>66</sup> The Chamber permitted the Defence to present the Accused's alibi based on Rule 67(B) and then allowed the Prosecutor to present rebuttal evidence limited exclusively to the alibi.
78. In its closing argument, the Prosecutor highlighted that the Defence had at least six opportunities during the proceedings to provide notice of its intent to assert an alibi, but failed on each occasion. 67 Based on the repeated failure of the Defence to give advance notice, the Prosecution urged the Chamber to draw adverse inferences against the Accused. 68
79. The Defence asserted, however, that the Prosecution had some notice of its alibi in the form of (i) proems-verbal taken in Cameroon in which the Accused indi cated that he fled his residence on 8 April 1994, 69 and (ii) the request of the Defence to the Prosecution to disclose names of the RPF members illegally occupying the Accused's home since 9 April 1994. 70 80. The Chamber recalls its earlier finding that the Defence failed to give notice of

its intent to enter the alibi defence as required by Rule 67(A)(ii)(a). 71 In addition, the Chamber has taken due note of the Defence's assertions that the Accused gave notice of his alibi in the form of the Cameroonian procOs-verbal taken after his arrest and the Defence's request for disclosures concerning the occupation of the Accused's home in Gahengeri. The Chamber finds that such notice does not satisfy the requirements plainly set forth in Rule 67(A)(ii)(a). Neither of the documents indicates "the place places at which the accused claims to have been present at the time of the alleged crime". 72 These documents provide only a cryptic indication that the Accused was not at his home, without any reference as to where he was at any particular time. 81 The Chamber also is not convinced by the asserted explanation of the Defence for failing to give proper notice based on its lack of and search for corroborating physical 66T. 18 June 2002 pp. 62-63. 67T. 17 June 2002

- p. 105. 68T. 17 June 2002 pp. 105-109. 69T. 18 February 2002 pp. 101-102. 70Defence Closing Brief pp. 46-47. 7~Prosecutor
- v. Semanza, Case No. ICTR-97-20-I, Decision on the Prosecutor's Motion for Leave to Call Rebuttal Evidence and the Prosecutor's Supplementary Motion for Leave to Call Rebuttal Evidence, TC, 27 March 2002, para. 10.

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- v. Laurent Semanza, Case No. ICTR-97-20-T 22 evidence, none of which was ever produced. Rule 67 does not require an accused to disclose the extent and nature of the underlying proof of his alibi prior to the trial. 73
- 82. Notwithstanding the non-compliance of the Defence with the provisions of Rule 67(A)(ii)(a), the Trial Chamber emphasises that it fully considered the Accused's in light of Rule 67(B). However, where, as in this case, the Defence fails to show good cause for its failure to act in accordance with Rule 67(A)(ii)(a), the Chamber may take into account this failure when weighing the credibility of the alibi defence. 74
- 2. Gahengeri-Bicumbi (period of mourning): End of March 1994- 8 April 1994
- 83. The Defence in its closing arguments and in its Closing Brief asserted that the Accused remained at his home in Gahengeri from 28 March 1994 until 8 April 1994 in observation of the traditional period of mourning after an unknown assailant killed his daughter Nyinwumubyeyi Marie-M6re de Dieu ("Mubyeyi") on 28 March 1994. 75 The Defence explained that Mubyeyi was buried the next day and that the mousing period was set to end on 9 April 1994. 76 The Defence submitted that the Accused and his family remained at their home during the mourning period, according to Rwandan tradition, until they were forced to flee the region when their home came under attack on the night of 8 April 1994. 77

84. The Accused testified that his daughter Mubyeyi was killed by a bullet fired over the wall of his residential compound at around 5:30 p.m. in the evening. 78 The Accused could not recall the date, but stated that she was killed on 26 or 27 March 72 Rule 67(A)(ii)(a) (emphasis 73 Kayishema and Ruzindana, Judgement, AC, para. 112 ("[i]f the Defence is not in a position to produce evidence of the accused's whereabouts, it is, nevertheless, at liberty to disclose to the Prosecutor, and then produce before the Trial Chamber, all evidentiary material likely to raise doubts as to the accused's responsibility for the crimes charged"). 74 Kayishema and Ruzindana, Judgement, TC, para. 237, aff'd Kayishema and Ruzindana, Judgement, AC, para. 117. See also Rutaganda, Judgement, TC, para. 298. 7s Defence Closing Briefp. 33. The Chamber notes that the Accused's daughter was referred to by the Prosecutor, the Defence, and Defence witnesses interchangeably as "Mubyeyi", "Umubyeyi", or "Marie-Mère de Dieu". 76 Defence Closing Brief
- p. 33. The Chamber notes that no witness testified, as the Defence submits, that Mubyeyi's burial was 29 March. This submission contradicts the Accused's testimony that she was buried on 4 April. T. 28 February 2002 pp. 114-115. 77 Defence Closing Briefp. 33. 78 T. 18 February 2002
- p. 51.

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- v. Laurent Semanza, Case No. ICTR-97-20-T 23 1994. 79 He later testified that Mubyeyi died on either 27 or 28 March and that she was buried on 4 April 1994. 80 The Accused explained that after his daughter's death, he and his family remained at their home in Gahengeri in observation of the traditional period of mourning and received guests.81 The Accused indicated that he was observing the mourning period as late as 8 April 1994. 82
85. Defence Witness PFM indicated that she was at the Accused's home when Mubyeyi was killed, g3 The witness did not recall the exact date of Mubyeyi's death, but testified that someone had fired into the garden from outside the wall of the compound and killed her between 7:00 and 8:00 p.m., sometime between 20 and 30 March 1994.84 Witness PFM believed that Mubyeyi had been killed by the RPF 8s Witness PFM testified whose elements, according to her, had infiltrated the area. that the Accused and his family were preparing to end the mourning period when the president died and that the period was to end on 9 April 1994. 86
86. Witness PFM testified that she saw the Accused on 6 April 1994 when he informed her that the President of Rwanda had been killed. 87 Witness PFM also stated that she saw the Accused on the morning of 7 April 1994, and stated that he was visibly sad at the death of the president and that he was smoking a cigarette' 88 The witness testified that she then spent most of her time on 7 April 1994 praying in the chapel located in the upper part of the Accused's compound with the Accused's wife and older children.89 The witness stated that

she spent part of 8 April 1994 hiding under a bed because of intense shooting she heard outside the Accused's compound. 9° Witness PFM testified that she saw the Accused in the living room of his house in the evening of 8 April 1994:

- (i) between 7:00 and 8:00 p.m., speaking with a man whom she did not know; (ii) "later on", as the Accused continued to drink beer with the man 79T. 18 February 2002 pp. 49, 50. 80T. 28 February 2002 pp. 114-115. 81T. 18 February 2002 pp. 49-50. 82T. 18 February 2002
- p. 125; T. 18 February 2002
- p. 141 (French). 83T. 13 November 2001 pp. 63, 75-76. 84T. 13 November 2001 pp. 75, 76, 77. 85T. 13 November 2001
- p. 77; T. 14 November 2001
- p. 3. 86T. 14 November 2001 pp. 34, 75; T. 14 November 2001 pp. 38, 83 (French). 87T. 13 November 2001 pp. 43-44. 88T. 13 November 2001
- p. 45. 89T. 13 November 2001 pp. 45-46. 90T. 13 November 2001
- p. 47.

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- v. Laurent Semanza, Case No. ICTR-97-20-T 24 and Bizuru, a neighbour, who had just arrived; and (iii) around 11:00 p.m., when she fled the compound with the Accused and his family. 9t
- 87. Witness PFM attested that after 6 April 1994, the Accused "never" left his compound on foot and noted that his vehicle was "always" in the garage. 92 She explained that she would have seen him leave because the windows of the chapel in the main house in the Accused's compound and of her room in the compound faced the garage and that if the Accused had left his room, he would also have passed by the chapel in the main house. 93
- 88. Defence Witness KNU testified that she stayed at the Accused's home in Gahengeri from 2 until 8 April 1994 when she fled with the Accused and his family. 94 She testified that she was invited to the Accused's home by one of his children to assist in preparations for the end of the mourning period. 95 The witness testified that she did not know the exact date or cause of Mubyeyi's death and could only state that she died in the month of March during the school exam period before the Easter holiday. 96
- 89. Witness KNU testified that the Accused and his family remained at home from 6 April 1994 until the night of 8 April 1994, when they fled. 97 The witness acknowledged, however, that she did not see the Accused at all times throughout that forty-eight hour period and that she did not keep track of the Accused's whereabouts. 98 The witness testified that she saw the Accused smoking on the morning of 7 April 1994 and noted that he appeared sad. 99 The witness also recalled one other unspecified occasion when she saw him in the sitting room

of the house. ~°° Witness KNU stated that she spent part of the day on 8 April 1994 praying in the children's chapel in the building on the south part of the compound and then went to 9t T. 13 November 2001 pp. 47-48. 92 T. 13 November 2001

p. 62. 93 T. 13 November 2001

p. 62. 94 T. 12 November 2001 pp. 22, 57-59, 65, 71. 95 T. 12 November 2001 p. 47; T. 12 November 2001 pp. 52-53 (French) (<~Elle m'avait demandé d'aller les assister pour préparer la célébration de fête de fin., de levée de deuil>). 96 T. 12 November 2001

p. 48. 97 T. 12 November 2001 pp. 22, 23, 26-27, 66-69, 71, 74. 98 T. 12 November 2001

p. 68; T. 13 November 2001

p. 6. 99 T. 12 November 2001

p. 23. 100 T. 12 November 2001

p. 67.

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v. Laurent Semanza, Case No. ICTR-97-20-T 25 bed around 8:00 or 9:00 pm. ~°I Witness KNU also explained that while she was at the Accused's residence, she stayed in the house on the south part of the compound while the Accused stayed in the house on the north end.<sup>1°2</sup> The witness testified that she visited the Accused's home regularly on various holidays and that she was very fond of him. <sup>1°3</sup>

90. Defence Witness MLZ testified that he was a frequent visitor at the Accused's home and a friend of his children. <sup>104</sup> He stated that he was aware that the Accused had lost his daughter Mubyeyi and that he noticed an atmosphere of mourning when he arrived at the Accused's home on 8 April 1994 around noon. ~°5 Witness MLZ stated that he saw the Accused once on 8 April 1994, around 4:00 p.m. <sup>1°6</sup>

91. The Chamber finds that the close personal relationships that Witnesses PFM, KNU, and MLZ had with the Accused and his family call into question their credibility. In this regard the Chamber highlights their exaggerated assertions that the Accused remained consistently at home, whereas the Accused was seen by these witnesses at his home on only a handful of brief occasions during the relevant period.

92. The Chamber emphasises that Witnesses PFM, KNU, and MLZ attest only to six brief sightings of the Accused at his home in Gahengeri between 6 and 8 April 1994:

- (a) in the evening of 6 April (PFM);
- (b) in the morning of 7 April (KNU, PFM); 4:00 p.m. on 8 April (MLZ);

- (d) around 7:00 p.m. or 8:00 p.m. on 8 April (PFM); around 11:00 p.m. on 8 April (KNU, PFM); and (f) on one unspecified occasion (KNU). Other than those sightings, Witnesses KNU, PFM, and MLZ, who arrived only on 8 April 1994, claim to have spent most of their time outside the presence of the Accused in either the children's south residence, one of the two chapels, or hiding under their beds. Furthermore, though PFM asserted that she would have seen the Accused leave the house from either the chapel or a bedroom, the Chamber recalls that on 7 April 1994 the witness was focused on prayer in the chapel, and on 8 April 1994 she hid under a bed. Therefore, the Chamber does not find that Witnesses KNU, 10tT. 12 November 2001 pp. 27, 28, 29. 102T. 12 November 2001 pp. 26, 83, 85. 103T. 12 November 2001 pp. 50, 61. 104T. 26 October 2001
- p. 55. 1o5T. 26 October 2001 pp. 29-30, 32. 106T. 26 October 2001 pp. 21, 24.

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- v. Laurent Semanza, Case No. ICTR-97-20-T 26 PFM, and MLZ provide reliable testimony for the proposition that the Accused remained at home at all times from 6 to 8 April 1994.
93. The Chamber also does not find that the mourning of Mubyeyi's death reliably corroborates the proposition that the Accused remained consistently at home between 6 and 8 April 1994. The Chamber emphasises that the record is not sufficiently specific about the scope and nature of Rwandan mourning traditions.
3. Gahengeri-Bicumbi (RPF attack): 8 April 1994
94. The Defence asserted that at various times on 7 and 8 April 1994, the Accused's home in Gahengeri was threatened by intense gunfire. ~°7 The Defence submitted that in the face of this attack, the Accused and his family fled their home around 11:00 p.m. on the night of 8 April 1994 with the assistance of a neighbour called Bizuru, who was an APEGA driver, and sought refuge that night in Nzige. 1°8
95. The Accused testified that on 7 April 1994 he heard gunfire for about forty minutes between 3:00 and 4:00 p.m., which intensified on 8 April 1994 and lasted about four hours until 6:00 p.m.1°9 The Accused noted that his neighbours informed him that the shots he heard were fired by white people travelling on the Gihumuza road in vehicles bearing UNAMIR inscription. 110
96. The Accused testified that around 10:30 p.m. on 8 April 1994, he was at home speaking with his neighbour Bizuru when a security guard informed him that his home was under attack. 11~ The Accused stated that his children were awakened and that around 11:00 p.m. the family fled the compound to go to Nzige in his white Audi, which he drove, and a white pick-up truck, driven by Bizuru. 112 The Accused explained that the assailants fired shots at them as they left the compound with their lights off.113 The Accused also testified that he learned after fleeing that a female member of the RPF who had defected from the gendarmerie was

- among those who 107Defence Closing Briefp. 34. 108Defence Closing Brief pp. 37-38. 109T. 18 February 2002 pp. 52, 54, 55, 56. 110 T. 18 February 2002 pp. 55, 56. 111T. 18 February 2002 p. 57. 1~2T. 18 February 2002 pp. 57, 58; T. 21 February 2002
- p. 107. 113T. 18 February 2002
- p. 57.

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### The Prosecutor

- v. Laurent Semanza, Case No. ICTR-97-20-T 27 directed the attacks against his residence and that the RPF had sent her on a mission to kill him. 114
97. Defence Witness KNU testified that on 8 April 1994, the Accused's household servants awakened her and the other children around 11:00 p.m. and informed them that RPF elements and Tutsis from Kajevuba and Runyinya armed with traditional weapons and guns had encircled the compound, 115 The witness stated that she and other members of the household then fled the compound to Nzige in a white pick-up truck driven by Bizuru and a white Audi driven by the Accused. 116 She noted that "[they] could not see properly" in the fog and rain because their vehicle lights were off and the only light came from the lights on the fence of the compound. 117 The witness explained, nonetheless, that from the back of the pick-up truck, she could see a group of people standing behind the fence armed with guns and what looked like spears. ~ 18
98. Defence Witness PFM testified that she heard gunfire for a brief period in the evening of 7 April 1994 and that on 8 April 1994, the gunfire was different and more intense, lasting all day. 119 She noted that at around 10:30 or 11:00 p.m., a household servant came to the chapel in the house on the lower part of the compound and informed the witness that he had seen armed men and soldiers from Runyinya nearby, running toward the house. 12° Witness PFM stated that she then personally informed the Accused and his wife that the compound was under attack and that it was necessary to flee. 121 She explained that the Accused's wife gathered the sleeping children and that they fled the compound in the back of Bizuru's white truck and in the Accused's Audi. The witness stated that she heard a few gunshots about five seconds after the vehicles left the gate with their lights off. 122 The witness noted that they then spent the night in Nzige. 123 114 T. 19 February 2002 pp. 112-113. 115T. 12 November 2001 pp. 29, 30. 116 T. 12 November 2001 pp. 33-34. 117 T. 12 November 2001
- p. 33. 118 T. 12 November 2001
- p. 34. 119 T. 13 November 2001 pp. 46, 47. 120 T. 13 November 2001 pp. 48-49. 121 T. 13 November 2001
- p. 49. 122 T. 13 November 2001 pp. 49-50. 123 T. 13 November 2001

p. 50.

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99. Defence Witness MLZ testified that he came to the Accused's compound on 8 April 1994 around noon seeking safety from the gunfire in the vicinity. 124 He explained that he entered the Accused's compound through a door normally left unlocked while bullets were flying overhead. 125 The witness testified that he spent the evening chatting with the other children and went to bed at around 7:00 p.m. 126 The witness testified that he did not hear anything throughout the evening, but noted that the servants told him the next morning that the Accused and his family had fled during the night at around 11:00 p.m. 127 The witness testified that he left the Accused's home in the morning of 10 April 1994 and that the situation at that time seemed calm. 128 Witness MLZ then stayed in a neighbouring home until 13 April 1994 when he saw the RPF come from Gikoro commune and saw the torching of the Accused's home. 129
100. Defence Witness DCN, who lived in Gahengeri near the Accused, 130 testified that on 7 April 1994 he heard sustained gunfire emanating from the Gihumuza forest close to the Accused's residence and, according to what people said, fighting had erupted between commune police officers and RPF infiltrators. 131 The witness explained that he fled Bicumbi, like most of the population, on 19 April 1994 when the RPF took control of the commune between 18 and 20 April 1994. 132 Witness DCN stated that when he fled, he passed through Nzige, Karengé, and Bugesera, and explained that people were saying that the Accused must have fled on 8 or 9 April 1994 when his home was torched and that they did not know where he was. 133
101. Defence Witness MV testified that she heard from the Accused's neighbours that the Accused fled Bicumbi on 9 April 1994, noting that because the Accused was "well loved" in the commune, whatever happened to him was public knowledge. 134 124 T. 26 October 125 T. 26 October 126 T. 26 October 127 T. 26 October 128 T. 26 October 129 T. 26 October 130 T. 22 October ~31 T. 22 October 131 T. 22 October 132 T. 22 October 133 T. 22 October 134 T. 22 October 2001 pp. 19-21, 22. 2001 pp. 20-21. 2001
- p. 38. 2001 pp. 40, 41. 2001 pp. 44, 45. 2001 pp. 46, 47. 2001 pp. 31, 35. 2001 pp. 24, 25, 35, 36. 2001 pp. 25, 76. 2001 pp. 56, 57. 2001 pp. 132, 133, 134.

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102. Defence Witness BGN2, who was from Bicumbi, testified that he heard from other refugees that the Accused fled two days after the president was killed when the RPF, led in part by a woman who had defected from the gendarmerie, surrounded and attacked his home in Gahengeri. 135 The witness explained that the RPF wanted to kill the Accused because he was an important and popular person who had refused to join their ranks. 136
103. Defence Witness Nyetera testified that the Accused and his family fled Bicumbi on 8 April 1994 based on his own personal investigations conducted in Belgium and what he heard from people who saw the family flee to Gitarama. 13v 104. Defence Witness SAP testified, without recalling the date, that from Kabuga he could see flames in Bicumbi and that people fleeing from Bicumbi told him that the Accused's home had been torched. 138 The witness noted that some people were saying that the Accused had fled while others were saying he had died. 139 The witness later confirmed his prior written statement, in which he had stated that the Accused had fled after the death of the president. 14°
105. Prosecution Rebuttal Witness XXK testified that everyone in Gahengeri, including the Accused, fled on 18 or 19 April 1994.141 The witness, who identified the Accused in court, explained that she lived near the Accused and was a family friend. 142 She explained that in the early morning of 18 or 19 April 1994, Bizuru, whom she knew well, stopped by her home and told her he was leaving with the Accused's family. 143 The witness noted that she did not personally see the Accused leave at this time. 144 Witness XXK testified that she fled later that day around 5:30 p.m., but did not know at the time that Bizuru was dead. 145 She explained that she later learned in a refugee camp that Bizuru died somewhere in Nzige secteur between 135 T. 27 136 T. 27 137 T. 11 t38 T. 23 139 T. 23 140 T. 23 141 T. 23 142 T. 23 143 T. 23 144 T. 23 145 T. 23 November 2001 pp. 84, 85, 92-93. November 2001 p. 85. February 2002 pp. 53, 90, 119, 120. October 2001 pp. 115, 116. October 2001 pp. 115, 116. October 2001 pp. 127, 128, 129. April 2002 pp. 18, 113. April 2002 pp. 16, 17, 19-20, 55, 57-58. April 2002 pp. 12, 18, 48, 49, 50, 51, 52. April 2002 pp. 51, 52. April 2002
- p. 64.

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### The Prosecutor

- v. Laurent Semanza, Case No. ICTR-97-20-T 30 19 and 21 April 1994 as he returned to collect his family. 146 The witness highlighted that she saw the remains of his burned vehicle in Nzige after returning from exile. 147 The witness also stated that the day after she fled, she again passed by the Accused's home on her way to the Rwamagana refugee camp and saw that it had been set on fire. t48 106. Prosecution Expert Witness Andr6 Guichaoua opined in his rebuttal testimony that according to his sources, the Accused remained in Bicumbi beyond 9 April 1994 and that his flight from Gahengeri likely corresponded to the RPF's offensive there on 19 or 20 April 1994.149

107. The Chamber does not find the accounts of Witnesses KNU and PFM concerning the attack on the Accused's home to be credible or reliable. In addition to their close personal relationships with the Accused, the Chamber also notes their exaggerated accounts of the attack. Moreover, the Chamber notes that MLZ, who was allegedly in the house with KNU and PFM at the time, heard nothing of what would presumably have been a significant attack lending an air of incredibility and internal inconsistency to the Defence's proposition.
108. The Chamber also finds that testimonies of Defence Witnesses DCN, MV, BGN2, and Nyetera are not reliable because they consist solely of vague assertions gleaned from other people, lacking even the slightest indicia that their unidentified sources had any first hand knowledge. The Chamber also notes that Defence Witness DCN's friendship with the Accused's children and his past collaboration with the Accused in MRND youth recruitment undermine his credibility. The Chamber, nonetheless, finds that Defence Witness DCN's detailed first-hand account of his flight from the RPF advance in Bicumbi around 19 April 1994 is credible and reliable. The Chamber also notes the consistency of his account with that of Prosecution Rebuttal Witness XXK. 146T. 23 April 2002 pp. 36, 53-54, 76-77, 112. 147T. 23 April 2002 pp. 35, 36, 41, 46-47, 53-54, 55, 56. 148T. 23 April 2002 pp. 96, 97. 149T. 22 April 2002
- p. 13.

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- v. Laurent Semanza, Case No. ICTR-97-20-T 31 109. The Chamber does not find the testimony of Witness SAP concerning the date of the Accused's flight and the torching of his house to be reliable, noting that it is based primarily on the sighting of flames somewhere in Bicumbi from Kabuga and on vague, conflicting accounts from unidentified people fleeing from Bicumbi. The Chamber also recalls that though the witness claimed to have known the Accused since 1978, he did not recognize the Accused in court, until after the Defence counsel suggested that the Accused looked younger after being in detention. 15° 110. The Chamber recalls that Prosecution Expert Witness Guichaoua was called to testify concerning the Accused's ascent to power in Bicumbi and the nature of his authority in the commune, and not as a fact witness concerning the Accused's whereabouts or the RPF offensive. Therefore, the Chamber does not find his testimony particularly reliable concerning the Accused's presence in Bicumbi during the relevant time.
111. The Chamber finds the detailed testimony of Prosecution Rebuttal Witness XXK concerning Bizuru's actions on 18 or 19 April 1994 to be reliable and credible, particularly because of her first-hand knowledge. The Chamber also notes the consistency between Witness XXK's and Defence Witness DCN's accounts of when the residents of Bicumbi fled the RPF advance. The Chamber also fully notes the suggestion of the Defence that Witness XXK's present marital circumstances may result in her bias. Even if true, the Chamber does not find this to

impugn her credibility, recalling that the witness clearly held the Accused in high esteem as evidenced by her desire to greet him in court and by her respectful references to him while testifying. ~51

4. Nzige-Bicumbi: 9 April 1994 112. The Defence submitted that after spending the night in Nzige, the Accused telephoned Kanombe Camp in Kigali from the commune office to ask for protection and that he was urged to flee the region. 152 The Defence asserted that the Accused's presence for several hours at the commune office is confirmed by several witnesses 150 T. 23 October 2001
- p. 47. 1sl T. 23 April 2002
- p. 117. 15z Defence Closing Brief pp. 35, 36.

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- v. Laurent Semanza, Case No. ICTR-97-20-T 32 and an audio recording made of his call to Kanombe Camp, entered into evidence as Exhibit P 11.153
113. The Accused testified that on the morning of 9 April 1994, he went to the commune office in Nzige at around 7:00 a.m. to make a few telephone calls and that he was later joined by some members of his family. 154 The Accused stated that he telephoned Kanombe Camp from the commune office to explain what had happened the night before, but the camp commander was unavailable, and the Accused was advised to leave the area immediately to save his life. ~55 The Accused noted that when he went to the commune office, Bizuru left Nzige to collect his family and that while at the commune office making telephone calls, he learned that Bizuru had been killed and that Bizuru's vehicle was burned. 156 The Accused stated that after learning this news, he left the commune between 11:00 a.m. and 12:00 noon and took the Bugesera road to the home of one of his friends in Ruhango, Gitarama prefecture, arriving there 157 around 11:00 p.m. 114. The transcript of the intercepted conversation between the Accused and Camp Kanombe reflects that the Accused "just met" the Bourgrnestre of Giti who "fled to Gikoro commune" because the "Inkotanyi" were in Rutare. 158
115. Defence Witness PFM testified that on the morning of 9 April 1994, Bizuru left Nzige to return to his home, located near the Accused's compound, notwithstanding the Accused's attempts to dissuade him because of reports from their household staff that assailants had taken over the neighbourhood. 159 Witness PFM stated that after Bizuru left, the Accused's family went to the commune office and that about thirty minutes later people from Kanzige came running to inform them that Bizuru had just been killed and his vehicle burned. 16° The witness noted that upon hearing this news, the Accused then entered the commune office to telephone Kigali 153Defence Closing Brief pp. 37, 38. 154T. 18 February 2002

- p. 71; T. 21 February 2002 pp. 77, 78, 81, 82, 83. 155T. 18 February 2002 pp. 71, 75; T. 21 February 2002 pp. 79, 80, 81. 156T. 18 February 2002 pp. 71, 72; T. 21 February 2002 pp. 79, 108, 109, 110. 157T. 18 February 2002 pp. 84, 88; T. 21 February 2002 pp. 75, 79, 110. 158Exhibit P 1 l(c)
- p. 16. 159T. 13 November 2001 pp. 50, 51. 160T. 13 November 2001
- p. 51.

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### The Prosecutor

- v. Laurent Semanza, Case No. ICTR-97-20-T 33 to ask for protection. 161 The witness stated that the Accused returned from the office five minutes later and explained that there was no way to protect them because "assailants were everywhere along the road they had to use." 162 The witness testified that they then fled Nzige and arrived at the home of the Accused's friend in Ruhango, Gitarama, late that night. 163 The witness explained that on their way to Ruhango they took the road to Muhure, passing through Karengé, crossing the Nyankariro bridge, and continued on their way, stopping briefly at the Bugesera market so the young children could eat. 164 The witness also noted that they took the road to Muhure because they did not believe that the assailants who had come from Rwamagana and Gikoro near Byumba, had arrived in that region yet. 165
116. Defence Witness KNU testified that on the morning of 9 April 1994, the Accused sent Bizuru back to the Accused's home to retrieve some items. 166 She stated that she and the others had accompanied the Accused to the commune office, but that they remained outside in the compound while the Accused went alone into the office to make a phone call. 167 She explained that the Accused telephoned Kanombe Camp in Kigali because he had just learned that Bizuru had been burned in his vehicle. 168 The witness explained that she accompanied the Accused and his family as they left the commune office around noon in the Accused's Audi and a pick-up truck. 169 The witness noted that they arrived at the house of a friend of the Accused in Ruhango, Gitarama between 11:00 p.m. and 1:00 a.m. that night. 170
117. Defence Witness CBN, who identified the Accused in court, stated in her written declaration, which was admitted into evidence, that she saw the Accused at the commune office in Nzige for about three hours on the morning of 9 April 1994, that 161T. 13 November 2001
- p. 52. 162T. 13 November 2001
- p. 52. 163W. 13 November 2001 pp. 52-54. 164T. 13 November 2001 pp. 52-54. 165T. 13 November 2001
- p. 52. 166T. 12 November 2001 pp. 38-39. 167T. 12 November 2001 pp. 36, 37, 116. 168T. 12 November 2001 pp. 116, 121. 169W. 12 November 2001
- p. 38. 170T. 12 November 2001

p. 40.

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- v. Laurent Semanza, Case No. ICTR-97-20-T 34 the Accused explained that he was fleeing with his family to Gitarama, and that he was not able to get in touch with Kigali in order to request soldiers to protect him. 171 118. The Chamber notes that in contrast to the Accused's testimony, the transcript of the intercepted telephone call, which the Defence acknowledged is between the Accused and Camp Kanombe, does not indicate that the RPF had just attacked the Accused's home, that the Accused had to flee his home, or that someone from the camp urged the Accused to flee Nzige. Instead, the transcript reflects that the Accused "just met" the Bourgrnestre of Giti who "fled to the Gikoro commune" because the Inkotanyi were in Rutare. 172 The transcript is inconsistent with the Accused's testimony and therefore undermines the credibility and reliability of the Accused's testimony concerning the attack on his house and his flight. 119. The Chamber also notes that the credibility and reliability of Defence Witness CBN's statement is rendered questionable by her lengthy working relationship with the Accused.
120. The Chamber recalls its finding that the testimony of Prosecution Rebuttal Witness XXX, which indicates that Bizuru was alive as late as 18 or 19 April 1994, is reliable and credible.
5. Gitarama Prefecture: 9 April 1994- May 1994 121. The Accused testified that on 18 April 1994, he left Ruhango and relocated to Murambi centre in Gitarama town because he had been spending a lot of money on petrol travelling sixty kilometres daily between the two areas to check on his business of selling potatoes and transporting them between Gisenyi and Ruhengeri. 173 The Accused explained that while he lived in Murambi, he continued to look after his business. 174 The Accused stated that on 15 May 1994, the Inkotanyi advance forced him to flee from Murambi to Gisenyi where he remained until crossing into Goma, Zaire, on 17 July 1994.175 171T. 31 October 2001 pp. 76, 77, 82, 85, 86; Exhibit D 21 pp. 4-5. Seesupra note 17. 172 Exhibit P 1 l(c)
- p. 16. 173 T. 18 February 2002 pp. 90, 91, 92, 96; T. 27 February 2002 pp. 62, 63. 174 T. 18 February 2002
- p. 96. 17s T. 18 February 2002 pp. 95, 96.

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122. Defence Witness PFM testified that on the morning of 10 April 1994, she accompanied the Accused to Gitarama town where he made a call to Gisenyi around 9:00 or 10:00 a.m. to order the return of his trucks to Gitarama for the transport of potatoes. 176 The witness indicated that from 10 April 1994 until fleeing to Gisenyi on 20 May 1994 she accompanied the Accused every day to Gitarama town and remained in the market with him each day while the trucks were unloaded and the potatoes were sold. 177 The witness explained that she always accompanied the Accused while they were in Gitarama looking after the trucks and that he did not leave her "alone at any occasion except when he went to the bathroom. " 178 The witness noted that she accompanied the Accused to Gisenyi and again when he fled to Goma, Zaire. 179
123. Defence Witness KNU testified that she remained with the Accused and his family in Ruhango, Gitarama, from 9 until 12 April 1994 and that she did not see the Accused again after that date. 180 124. Defence Witness CYS testified that he stayed with the Accused and his family at the home of the Accused's friend in Ruhango, Gitarama, from 9 until 18 April 1994. 181 The witness noted that during his stay the Accused mainly remained in his room, but that he occasionally went to Gitarama town with his children to look after his trucks. ~82 The witness testified that he accompanied the Accused to Gitarama town 183 and that he saw the Accused again in when he left Ruhango on 18 April 1994, Gisenyi, fleeing to Zaire. 184 Witness CYS noted his own involvement in a trading business between Kigali and Gitarama, which the witness did not abandon even during the war, and that he transported potatoes between Gisenyi and Kibuye, which required him to periodically go to Gisenyi on business. 185 176 T. 13 November 2001 pp. 55, 56. 17v T. 13 November 2001 pp. 56, 61. iv8 T. 13 November 2001
- p. 62. 179 T. 13 November 2001 pp. 61-62. 180 T. 13 November 2001 pp. 8, 9. 181 T. 26 November 2001 pp. 62, 63, 69. 18z T. 26 November 2001 pp. 63, 64. 183 T. 26 November 2001
- p. 63. 184 T. 26 November 2001 pp. 64-65. 185 T. 27 November 2001 pp. 15, 16, 49.

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- v. Laurent Semanza, Case No. ICTR-97-20-T 36 125. Defence Witness CYM3 testified that he saw the Accused, whom he identified in court, on t 1 April 1994 standing next to his vehicle near the Gitarama market. 186 The witness indicated that he recognized the Accused because in Rwanda the name of the owner is written on the side of his vehicle. ~87 The witness also saw the Accused on 13 July 1994 in Gisenyi and 18 July 1994 in Goma, Zaire. ~88
126. Defence Witness SAM testified that he spoke with the Accused in Ruhango market around 9:00 a.m. on 12 April 1994. 189 The witness stated that the Accused recounted his flight on 8 April 1994 and noted that he was staying with a friend in Ruhango. ~9° The witness noted that he also saw the Accused in Gitarama on 20 April 1994. 191

127. Defence Witness TDB testified that he heard that the Accused's house was destroyed a few days after the death of the president. ~92 The witness also explained that the RPF attacked his own home near Musha church on the night of 13 April 1994, killing his wife and daughter and that that night he fled to Ruhango, Gitarama, where he saw the Accused on 14 April 1994.~93 The witness explained that he had past professional contacts with the Accused, but noted that he was not the Accused's friend. 194 128. In addition, other Defence witnesses testified that they saw the Accused in Gitarama on 25 April 1994 (SAP), 195 at the beginning of May 1994 (SDN1), 196 and on 12 May 1994 (BGN2). 19v
129. Prosecution Rebuttal Witness DCH stated that he met the Accused between 8 and 12 April 1994 at a roadblock near the Kabuga mosque, about two kilometres from 186 T. 18v T. 188 T. 189 T. t9o T. 191 T. 192 T. 193 T. 194 T. 195 Z. 196 Z. 197 Z. 5 November 2001 pp. 17, 41, 42, 43, 130. 5November 2001
- p. 41. 5 November 2001
- p. 43. 8 October 2001 pp. 61, 88. 8 October 2001
- p. 62. 8 October 2001
- p. 88. 4 October 2001 pp. 64, 65. 4 October 2001 pp. 65, 66. 4 October 2001
- p. 69. 23 October 2001
- p. 68. 30 October 2001
- p. 39. 27 November 2001
- p. 87.

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- v. Laurent Semanza, Case No. ICTR-97-20-T 37 the Bicumbi commune border on the road from Kigali to Kibungo or Rwamagana. 198 Witness DCH also testified that on 14 April 1994 the Accused came to Kabuga and asked for reinforcements for an attack on refugees at Ruhanga church in Gikoro. 199 The witness confirmed that the Accused was among the attackers at Ruhanga church in Gikoro on 16 April 1994. 200 130. The Chamber is primarily concerned with the reliability and credibility of Defence Witnesses PFM, KNU, CYS, SAM, CYM3, and TDB because each provided a first-hand account placing the Accused in Gitarama prefecture during the relevant period when the Prosecutor alleged that he was committing crimes in Bicumbi. 131. The Chamber finds that Defence Witness PFM's exaggerated account of never leaving the Accused's side except when he was in the bathroom lacks credibility and further reflects the inherent bias in her testimony flowing from her close relationship to the Accused.

132. The Chamber finds that Witness CYS's testimony does not reliably account for the Accused's consistent presence in Gitarama prefecture between 9 and 18 April
1994. The Chamber notes that during the period when the Accused allegedly remained in Ruhanga, the witness was periodically in Gisenyi looking after his own potato transport business. In addition, though the witness stated that the Accused frequently travelled to Gitarama town, the Chamber notes that the witness can only attest to the Accused actually travelling to Gitarama town on 18 April 1994 when the witness allegedly accompanied him. The Chamber also finds that the friendship between Witness CYS, his family, and the Accused may call into question his credibility. Furthermore, the Chamber notes that CYS stated that the Accused spent most of his time in his room whereas the testimony of the Accused and PFM reflect that the Accused spent a significant portion of every day in Gitarama town. 133. The Chamber notes that Defence Witness TDB's identification of the Accused in Gitarama town on 14 April 1994 appears credible and reliable because it is an unbiased first hand account. The Chamber notes, however, that from the witness's 198 T. 15 April 2002 pp. 67, 86-89. 199 T. 15 April 2002
- p. 119. zoo T. 15 April 2002 pp. 138, 139.

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### The Prosecutor

- v. Laurent Semanza, Case No. ICTR-97-20-T 38 testimony it is not able to reliably determine if the attack on the witness's home on 13 April 1994 was conducted by the RPF.
134. The Chamber does not find Witness CYM3's sighting of the Accused in Gitarama market on 11 April 1994 particularly credible or reliable because the identification is based primarily on seeing a car with the Accused's name written on its side.
135. The Chamber finds that Witness SAM's relationship with the Accused as a neighbour and frequent visitor to his home calls into question the credibility of the testimony of his discussions with the Accused on 12 and 20 April 1994.
136. The Chamber notes that Witness KNU did not provide any detailed testimony concerning the Accused's presence in Gitarama.
137. The Chamber does not find the Prosecution Rebuttal Witness DCH's testimony reliable or credible concerning the Accused's activities during the relevant events. In particular, while the witness places the Accused at the Ruhanga church massacre in Gikoro between 14 and 17 April 1994, the Chamber recalls that this is inconsistent with the evidence proffered by Prosecution witnesses in the case in chief suggesting that the massacre occurred on 10 April 1994. Furthermore, though the witness claimed to be well acquainted with the Accused and characterized him as his "boss", the Chamber highlights that in the witness's guilty plea before the Rwandan courts, he implicated a number of his accomplices while notably failing to mention the Accused.

## 6. Impossibility

138. The Defence also asserted as part of the alibi that it would have been physically impossible for the Accused to participate in the acts or be at the sites as alleged in the Indictment. The Defence submitted that in the aftermath of the attack on the president's plane it was difficult to move around in the entire territory of Rwanda. <sup>2°</sup> The Defence attempted to corroborate this assertion by pointing to the 20i Defence Closing Briefp. 34.

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### The Prosecutor

- v. Laurent Semanza, Case No. ICTR-97-20-T 39 testimony of several witnesses who attested that they did not see the Accused at the massacre sites. <sup>2°</sup>2
139. Defence Expert Witness Pascal Ndengejeho testified that it would have been impossible for the Accused to travel from Gahengeri to Gikoro because, even before President Habyarimana's plane was shot down, the RPF had completely taken over the area. <sup>2°</sup>3 The Accused also explained that the RPF occupied the entire area, making it impossible to travel. <sup>2°</sup>4 Furthermore, Defence Witness ZC testified that the Accused could never have set foot in Ruhanga in Gikoro commune in April 1994 because he would have had to pass through nearby Rugende where he had enemies who were "ready to attack him using sharp objects". <sup>2°</sup>5 140. Prosecution Expert Witness Andr6 Guichaoua testified in rebuttal that during April and May 1994 many dignitaries and political and military authorities travelled between Murambi, Gitarama, and Kigali each day and that, therefore, the Accused could have easily spent the nights in Murambi and have travelled to Bicumbi during the days. <sup>2°</sup>6 141. Prosecution Rebuttal Witness DCH, a state employed bus driver, testified that beginning on 20 April 1994, he transported people six times a day from Kigali to Gitarama, covering the distance in one hour. <sup>2°</sup>7
142. The Chamber does not find the testimony of Defence Expert Witness Ndengejeho, concerning the location of the RPF in Gikoro commune to be reliable because his information appears to be based principally on unidentified sources and on the account of a professor who avoided Gikoro because he was told by someone that the RPF controlled the area.
143. The Chamber finds Defence Witness ZC's testimony that the Accused had enemies in Rugende credible, but does not find it reliable for the proposition that these enemies would have prevented his passage through the place in a vehicle. 202 Defence Closing Briefp. 35. 203 T. 30 January 2002 pp. 110-114. 2o4 T. 18 February 2002
- p. 95. <sup>z05</sup> T. 6 November 2001 pp. 41, 55; Defence Closing Briefp. 34. <sup>z06</sup> T. 22 April 2002 pp. 20-22.

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## The Prosecutor

- v. Laurent Semanza, Case No. ICTR-97-20-T 40
- 144. The Chamber finds Prosecution Expert Witness Guichaoua's general testimony concerning the ability of officials to travel between Gitarama and Kigali reliable, but does not accept the extension of this testimony to cover the ability of the Accused to travel from Kigali to Bicumbi and Gikoro.
- 145. The Chamber finds Prosecution Rebuttal Witness DCH's testimony about transporting people from Kigali to Gitarama credible and reliable, but also does not accept the extension of this testimony to cover the ability of the Accused to travel from Kigali to Bicumbi and Gikoro.
- 146. The Chamber will consider whether evidence reflects that it was impossible for the Accused to move around his locality in its factual findings.
- 7. General

**Conclusion**

- 147. The Chamber has carefully considered the evidence submitted in support of the Accused's alibi and recalls that a significant portion of the evidence is incredible and unreliable. Moreover, in the opinion of the Chamber, the claim by the Defence that it was aware of the alibi from the beginning of the case, but decided, without good cause, not to give notice of it, suggests that the Accused's alibi was an afterthought.
- 148. The Chamber emphasises that the failure of the Defence to submit credible and reliable evidence concerning the Accused's alibi in no way undermines the presumption of his innocence. The Prosecutor alone bears the burden of proving the Accused's guilt beyond a reasonable doubt, despite the existence of the alibi. Accordingly, the Chamber will fully consider the evidence of the alibi in making its findings about whether the Prosecutor proved beyond a reasonable doubt the Accused's involvement in the alleged crimes. 207 T. 16 April 2002 pp. 23-26, 27, 29.

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## The Prosecutor

- v. Laurent Semanza, Case No. ICTR-97-20-T 41 IV. THE PROSECUTION CASE A. Paragraph 3.10 of the Indictment 149. Paragraph 3.10 of the Indictment reads: On or about 10 April 1994, Laurent SEMANZA worked in close cooperation with the Bourgmestre of Gikoro, Paul BISENGIMANA, to organize and execute the Ruhanga massacres, Gikoro commune, where thousands of persons had taken refuge to escape the killings in their sector.

## 1. Allegations

150. Witness VF testified that in the morning of 10 April 1994, after Paul Bisengimana and the police attacked her hill, she fled towards Ruhanga where she heard that people were resisting attacks. 2°8 En route, the witness travelled through Rugende, a small commercial centre. 2°9 At approximately 10:00 a.m., the witness concealed herself in a bush to avoid Interahamwe militiamen, who were chasing people. 21° From her hiding place, which was five metres from the road, she observed the Accused, whom she identified in court, in a white pick-up truck with armed soldiers in the uniform of the Presidential Guard. 21~ She noted that the Accused was not armed. 212 The witness testified that the soldiers began to shoot, killing many people in Rugende, and she fled on to Ruhanga. 213 In contradiction to her prior statement, the witness denied that Bisengimana was also in the vehicle with the Accused. 214 151. Later the same day, the witness joined a group of between 15,000 and 20,000 mostly Tutsi refugees, including her relatives, at the school and Protestant church in Ruhanga. 215 Soon after, the Presidential Guards and Interahamwe surrounded the complex and shot some of the unarmed refugees who were resisting the attacks using 2°8T. 6 209 T. 6 21°T. 6 21i T. 6 212 T. 6 213 T. 6 214 T. 6 215 T. 6 December 2000 pp. 26-27, 99, 111. December 2000 pp. 27, 96, 98, 101. December 2000 pp. 27, 58-59, 100. December 2000 pp. 23-24, 27-28, 100-104. December 2000
- p. 28. December 2000 pp. 28-29. December 2000 p. 107. December 2000 pp. 28-29, 49-50, 113, 114.

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### The Prosecutor

- v. Laurent Semanza, Case No. ICTR-97-20-T 42 stones and pieces of wood. 216 The witness testified that the Presidential Guards ordered the women and children who were hiding indoors to move outside to be killed by the Interahamwe. 2~7 Witness VF testified that the Interahamwe partially undressed her and others, doused them with petrol, and set them on fire. 218 The refugees, including the witness, were also beaten with clubs and machetes. 219 The witness testified that almost all of the other refugees died during this attack and that she was seriously injured. 22° The witness, who suffered serious injuries affecting her ability to clearly identify those around her, could not confirm that the Accused was present during the attack, but, nevertheless, concluded that the attack was committed by members of the Presidential Guard led by the Accused, since they were the same soldiers whom she had seen earlier in the day in Rugende with him. 221
152. Prosecution Witness VAO testified that she learned about the events at Ruhanga from a woman whom she met in a refugee camp in May 1994 and who, according to her, is now dead. 222 This woman told VAO that many people were raped and killed at the Protestant church in Ruhanga, which was later torched. 223 The woman told VAO that the refugees at the church initially resisted the Interahamwe, who left to seek reinforcements and returned

with the Accused.<sup>224</sup> The witness was told that the Accused ordered the Interahamwe to rape the survivors and that the women and girls were raped. <sup>225</sup> The witness also recalled hearing that the Presidential Guard and other people with guns from Bicumbi were also present, but gave no details<sup>Y 6</sup>

153. Pierre Duclos, a Prosecution investigator, testified that when he visited Ruhanga, the church was completely destroyed. <sup>227 216 T. 217T. 218 T. 219 T° 220 T. 221 Y. 222 Y. 123 T. 224 T. 225 T. 226 T. 227 T. 6 December 2000 pp. 30, 114. 6 December 2000 pp. 30-31. 6 December 2000 pp. 33, 46, 117. 6 December 2000 pp. 33, 46. 6 December 2000</sup>
- p. 47. 6 December 2000 pp. 31-32, 49, 117. 20 March 2001 pp. 55, 58. 20 March 2001 pp. 56, 58. 20 March 2001
- p. 56. 20 March 2001
- p. 58. 20 March 2001
- p. 97. 16 October 2000
- p. 79.

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### The Prosecutor

- v. Laurent Semanza, Case No. ICTR-97-20-T 43 154. The Accused testified that he could not go to Ruhanga because he had enemies there who would have killed him <sup>228</sup> He recalled that on 10 April 1994 he was in Ruhango in Gitarama prefecture. <sup>229</sup>
155. Defence Witness ZC testified that he had never heard that the Accused led attacks on Ruhanga in 1994. <sup>230</sup> He stated that the Accused had enemies in Rugende who were prepared to attack him and that, therefore, the Accused could not go to Ruhanga. <sup>23~</sup> The witness explained that in order to travel from Gahengeri to Ruhanga, one would necessarily pass through Rugende. <sup>232</sup> The witness had not heard that the Accused passed through Rugende with armed escorts in 1994, which, had it happened, would not have escaped the notice of the local population, according to him. <sup>233</sup> Witness ZC also denied that the Accused could have been accompanied by armed escorts since all soldiers were fighting a war.<sup>234</sup> The witness subsequently admitted that there might be an alternate route to Ruhanga through Musha. <sup>235</sup>
156. Defence Witness BZ testified that he conducted an investigation into the events in Ruhanga and was given information about these events by the conseiller of Mfumbwe. <sup>236</sup> The witness explained that some people from Gikomero sought refuge at Ruhanga parish after killing a cellule official. <sup>237</sup> The witness testified that when people heard that an official had been killed, they called the gendarmes in Kabuga. <sup>238</sup> According to this witness, the gendarmes opened fire on the refugees at Ruhanga, leaving many victims. <sup>239</sup> The witness was not told that the Accused was present in Ruhanga during this event. <sup>24° 2z8T. 18</sup>

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- p. 127. 2z9T. 18 February 2002
- p. 127. 230T. 6 November 2001 pp. 54, 55. 231T. 6 November 2001 pp. 55, 113. 232T. 6 November 2001 pp. 42, 82, 83. 233T. 6 November 2001 pp. 87, 110, 111. 234T. 6 November 2001 pp. 87, 110, 111. 23sT. 6 November 2001 pp. 88-99. 236 T. 2 October 2001
- p. 34. 237 T. 2 October 2001 pp. 33, 34. The Chamber notes that line 23 of page 33 of the English transcript refers to the parish "in Gikomero" rather than Gikoro. This is inconsistent with the witness's testimony in Kinyarwanda. 238 T. 2 October 2001 pp. 33, 34. 239 Z. 2 October 2001
- p. 34. 24o T. 2 October 2001
- p. 35.

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### The Prosecutor

- v. Laurent Semanza, Case No. ICTR-97-20-T 44 157. Defence Witness MV testified that she heard that five days after the death of the president, RPF supporters began attacking Hutus in Ruhanga, an area with mainly Tutsi inhabitants. 241 According to her, some Hutus fled to Kabuga and others to Rugende. 242 The witness explained that residents of Rugende accompanied the Hutus back to their homes in Ruhanga. 243 Halfway there, they were attacked by the people of Ruhanga and RPF soldiers. 244 The Hutus fled and sought assistance from the gendarmes of Kabuga. 245 The witness saw the gendarmes travelling on foot to Ruhanga. 246 She heard that the gendarmes were then attacked near the church and the school in Ruhanga, resulting in a fight between the gendarmes and the RPF soldiers in which some people, both Hutu and Tutsi, were killed. 247 Witness MV was not told that the Accused was present during the events at Ruhanga and did not see his white car passing through Rugende. 248 158. Defence Witness SWT testified that he did not observe the killings in Ruhanga in April 1994, but that he heard from refugees who had fled Ruhanga that they were attacked during the night by people wielding guns and knives. 249 The witness explained that his sector conseiller asked twenty unarmed 25° young people to escort the refugees back to the site of the attack. 251 When they arrived, the group was attacked again and the young people, who were under the leadership of the Interahamwe, 252 returned to get reinforcements from the gendarmes. 253 They reported that some of the witness's neighbours were amongst the attackers. 254 The witness explained that neither the people who assisted those being attacked nor the gendarmes were from the Accused's commune. 255 The witness testified that he did not hear the Accused's name mentioned in relation to the fighting, which lasted for ten or eleven 241T. 22 October 2001
- p. 114. z42 T. 22 October 2001
- p. 115. 243 T. 22 October 2001

- p. 118. 244 T. 22 October 2001
- p. 119. 245 T. 22 October 2001
- p. 119. 246 T. 22 October 2001 pp. 134-135. 247 T. 22 October 2001 pp. 119, 123, 126. 248 T. 22 October 2001 pp. 128, 129, 134. 249 T. 25 October 2001 pp. 70-72. zso T. 25 October 2001
- p. 89. z51 T. 25 October 2001
- p. 72. 25z T. 25 October 2001
- p. 88. 253 T. 25 October 2001
- p. 72. 254 T. 25 October 2001
- p. 72. 255 T. 25 October 2001
- p. 74.

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### The Prosecutor

- v. Laurent Semanza, Case No. ICTR-97-20-T 45 days, and did not think that the Accused had any relationship with the incident because he lived too far away. 256
- 2. Findings 159. The Chamber has carefully considered the evidence of Prosecution Witnesses VF and VAO. Witness VF gave detailed eye-witness testimony about the events at Ruhanga church on 10 April 1994. However, as a result of her injuries, the witness was unable to confirm that the Accused was at the scene, but assumed that he was since she could identify the Presidential Guards with whom she saw the Accused earlier in the day. The Chamber is not convinced that this assumption is reliable, since, as Witness VF admitted, she had difficulty making identifications as a result of her injuries. The other Prosecution witness to testify about the Ruhanga church events in the Prosecution's case-in-chief, Witness VAO, could offer only hearsay evidence. Although she was told that the Accused was at the scene, the Chamber cannot be certain of the accuracy or time frame of the events she described. Witness VAO was also the only witness to testify about rapes occurring during the attack at Ruhanga church, again solely on the basis of hearsay. 160. The Chamber recalls that Prosecution Witness DCH, who testified extensively about events at Ruhanga church, was called as a rebuttal witness for the sole purpose of rebutting the defence of alibi. In rejecting the Defence request to call rejoinder witnesses, the Chamber reaffirmed that "[a]ny evidence adduced in rebuttal that falls outside this narrow issue will not be considered by the Chamber in its deliberations."<sup>257</sup> Therefore, the Chamber emphasises that the evidence of Witness DCH may be used only to rebut the Accused's alibi and cannot be used to support the substance of the Prosecution's case against the Accused. The Chamber is of the opinion, moreover, that to rely on the evidence of Witness DCH to convict the Accused of direct participation in the Ruhanga massacre would violate the Accused's right to a fair trial, since

the Accused was not given the opportunity to respond to the new allegations that were raised only in the Prosecutor's rebuttal. The Chamber notes 256 T. 25 October 2001

- p. 74. 257 The Prosecutor
- v. Semanza, Case No. ICTR-97-20-T, Decision on Defence Motion for Leave to Call Rejoinder Witnesses, TC, 30 April 2002, para. 13.

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### The Prosecutor

- v. Laurent Semanza, Case No. ICTR-97-20-T 46 that the evidence of Witness DCH, which substantially departed from the evidence proffered in the Prosecution's case-in-chief, alleged the Accused's personal involvement in multiple attacks in Ruhanga from 14 through 17 April 1994, rather than a single attack at Ruhanga church on 10 April 1994, as alleged in the Indictment.
- 161. On the basis of the evidence presented, the Chamber finds that an attack against Tutsi refugees occurred at Ruhanga church on 10 April 1994. However, the Chamber does not find any evidence proving that the Accused worked in close cooperation with Bisengimana to organize or execute this massacre. Moreover, the Prosecutor failed to prove that the Accused was present during the massacre at Ruhanga church. The Chamber, therefore, finds that paragraph 3.10 of the Indictment has not been proven beyond a reasonable doubt.

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### The Prosecutor

- v. Laurent Semanza, Case No. ICTR-97-20-T 47 B. Paragraphs 3.11 and 3.18 of the Indictment
- 162. The Chamber will consider the allegations relevant to paragraphs 3.11 and 3.18 of the Indictment together because the alleged incident of torture and murder (paragraph 3.18) occurred during the events at Musha church (paragraph 3.11).
- 163. Paragraph 3.11 of the Indictment reads: Between 9 and 13 April 1994, Laurent SEMANZA worked in close cooperation with the Bourgrnestre of Gikoro, Paul BISENGIMANA, to organize and execute the massacres at the Musha church, Gikoro commune, where several hundred people had taken refuge to escape the killings in their sector. On or about 13 April 1994, Laurent SEMANZA led the attack on the refugees at the Musha church and personally participated in the killings.
- 164. Paragraph 3.18 of the Indictment reads : On or about 13 April 1994, in Musha Sector, Gikoro Commune, Laurent SEMANZA and Paul BISENGIMANA interrogated a Tutsi man, Victim C, in order to obtain information about the military operations of the Inkotanyi, or RPF. During the time the interrogation was taking place, the RPF was advancing toward Gikoro and Bicumbi communes. Laurent SEMANZA and Paul BISENGIMANA each cut off one of Victim

C's arms while they were interrogating him. Victim C died as the result of these injuries. Laurent SEMANZA intended the acts described in this paragraph to be part of the non-international armed conflict against the RPF as stated in paragraphs 3.4.2 and 3.4.3 supra.

# 1. Allegations

165. Prosecution Witness VA testified that she sought refuge at Musha church from 7 to 13 April 1994.<sup>258</sup> The witness explained that there were refugees in all six buildings of the church complex.<sup>9</sup>
166. Witness VA testified that she saw the Accused, whom she identified in court,<sup>260</sup> as well as Bisengimana, Rugambarara, Rwabukumba, and Rwakayigamba come to the church between 11:00 a.m. and 12:00 noon on 9 April 1994.<sup>261</sup> The 258 T. 7 March 2001 pp. 52, 104. <sup>259</sup> T. 7 March 2001
- p. 57. <sup>260</sup> T. 7 March 2001
- p. 92. <sup>261</sup> T. 7 March 2001 pp. 57-58, 105.

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### The Prosecutor

- v. Laurent Semanza, Case No. ICTR-97-20-T 48 witness stated that the Accused led this group. <sup>262</sup> The witness was confident in her recognition of the Accused because she vividly recalled seeing the Accused in 1992 leading an MRND rally where the participants arrested Tutsis and dragged them through the mud.<sup>263</sup> According to the witness, the Accused and those who came to the church with him held a meeting with the priest and some of the refugees. <sup>264</sup> Witness VA testified that after the meeting, she heard the Accused tell Bisengimana that the church had to be burned down to kill the refugees inside. <sup>265</sup> Witness VA testified that Bisengimana expressed his reluctance to burn down the church, and instead proposed starving the refugees to death. <sup>266</sup> The witness noted that the Interahamwe then guarded the refugees on 11 and 12 April 1994 to prevent their escape. <sup>267</sup> <sup>167</sup>. Witness VA testified that on 13 April 1994 at 5:00 a.m., the Interahamwe, who had spent the night outside the church, opened fire on the Tutsi refugees in the church. <sup>268</sup> The witness stated that she could see the assailants through the window of the church.<sup>269</sup> She explained that the Interahamwe continued firing until 10:00 a.m., but were not able to open the church, so they went to Bicumbi for the Accused. <sup>270</sup>
168. Witness VA testified that the Accused and several Interahamwe armed with traditional weapons arrived after 10:00 a.m. in a Toyota belonging to Bicumbi commune, and were followed by three vehicles transporting policemen and soldiers armed with guns and grenades. <sup>271</sup> The witness later clarified that she saw three vehicles in total: a Toyota vehicle that belonged to Bicumbi commune, in which the Accused came; a vehicle from the Gikoro commune driven by Manda, which transported petrol and Interahamwe; and a Toyota driven by Rugambarara, with soldiers and policemen. <sup>272</sup> <sup>262</sup> T. 7 March 2001

- p. 58. 263 T. 7 March 2001 pp. 97, 98. 264 T. 7 March 2001
- p. 60. 265 T. 7 March 2001 pp. 60, 118-119. 266 T. 7 March 2001
- p. 61. 167 T. 7 March 2001 pp. 69, 70. 26s T. 7 March 2001 pp. 72, 73; T. 8 March 2001 pp. 18, 19. 169 T. 8 March 2001
- p. 18. 2v0 T. 7 March 2001 pp. 72, 73; T. 8 March 2001
- p. 19. 271 T. 7 March 2001 pp. 73, 74, 75, 124; T. 8 March 2001
- p. 20. 272 Y. 8 March 2001
- p. 19.

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### The Prosecutor

- v. Laurent Semanza, Case No. ICTR-97-20-T 49
- 169. Witness VA testified that the Interahamwe, policemen, and thirty to forty soldiers attacked the church with gunfire and grenades, injuring her and others inside.<sup>273</sup> The witness stated that the Accused led the attack against the church. <sup>274</sup> Witness VA further testified that Manda and Twagerayezi climbed on the roof of the church and threw petrol on it, burning a young man on the lower part of his body. <sup>275</sup> Witness VA stated that the soldiers and Interahamwe fired a rocket-propelled grenade that broke a hole in the wall, and that the Interahamwe entered the church and opened its door.<sup>276</sup> The witness stated that the Accused, Bisengimana, and Rugambarara then entered, and the Accused asked the refugees in the church to identify Rusanganwa, a Tutsi teacher and "an important personality" in Gikoro commune.<sup>2v7</sup> Witness VA testified that Rusanganwa came out of his hiding place because he had no place to go. <sup>278</sup>
- 170. According to Witness VA, Rusanganwa was told to stand at the entrance of the church, and the Accused asked him when the "Inkotanyi" were going to arrive. <sup>279</sup> Rusanganwa responded: "I am not God, I know neither the day nor the time. "<sup>28°</sup> Witness VA testified that the Accused then took a machete from Hatageka, an Interahamwe accompanying him, and cut one of Rusanganwa's legs and an arm. <sup>281</sup> Bisengimana then took the machete and cut Rusanganwa's other limbs.<sup>282</sup> The <sup>273</sup>T. 7 March 2001 pp. 75, 84; T. 8 March 2001 pp. 17-20, 23, 31, 43, 56-57. <sup>274</sup>T. 7 March 2001 pp. 81-82. <sup>275</sup>T. 7 March 2001 pp. 75-76. <sup>276</sup>T. 7 March 2001

- p. 76. 277T. 7 March 2001 pp. 76, 80'81. The English transcripts refer to Rusanganwa in this colloquy as Lusanganwa. After reviewing the Kinyarwanda to French translation, the witness's original statement in French, and unchallenged references to this individual as Rusanganwa by other witnesses, the Chamber notes that the spelling of this individual's name as Lusanganwa in this portion of the English transcript is a non-material translation or transcription error. 278 T. 7 March 2001
- p. 77. 279T. 7 March 2001
- p. 77. 280T. 7 March 2001
- p. 77. 28tT. 7 March 2001 pp. 77, 78, 79. The Chamber notes that in the English transcript, the Prosecutor refers to the Accused "cutting off" Rusanganwa's limbs. According to that transcript, the witness used "to cut off" after initially using the more general verb "to cut". In contrast, the French transcript generally uses the general verb "couper" and only once uses the more specific verb "amputer". In order to clarify any discrepancy, the Chamber has reviewed the audio recording of the proceedings. The recording clearly indicates that both the Kinyarwanda interpreter and the witness speaking in Kinyarwanda consistently used the infinitive verb "gutema", which is consistent with the general verb "to cut" in English or "couper" in French. 282 T. 7 March 2001
- p. 79.

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### The Prosecutor

- v. Laurent Semanza, Case No. ICTR-97-20-T 50 Interahamwe put Rusanganwa in a vehicle where they were throwing other dead bodies. 283 Witness VA never saw Rusanganwa alive again. 284 171. The Defence pointed out during cross-examination that Witness VA had told investigators that the Accused and Bisengimana came to the church on 10 April 1994 to ask about Rusanganwa. 2s5 Witness VA responded that she had been confused about the date, and clarified that she did not see them on 10 April 1994. 286 The Defence also observed that the witness statement notes that the Accused cut only Rusanganwa's arms. 287 The witness explained that she told the investigators that Rusanganwa's legs were also cut and that the omission of this from the written statement was a mistake or a misunderstanding on the part of the investigators. 28s
172. Witness VA stated that after attacking Rusanganwa the Accused ordered children to leave the church. 289 The witness explained that, outside the church, Hum children were separated from Tutsi children, and the Tutsi children were then killed by gunfire and grenades. 29° 173. The witness testified that she saw "everything" because she was covered with dead bodies. 291 The witness explained that when the assailants came to load the dead bodies in vehicles, they noticed that she was not yet dead; they struck her head with a hammer and undressed her. 292 Later, they threw her in a pit full of dead bodies, from which she

subsequently escaped. 293 174. Prosecution Witness VM, a Hutu, testified that on 7 April 1994, he took refuge in Musha church when the killings started in Bicumbi. 294 The witness noted that other Hutus also sought refuge in the church. 295 Witness VM testified that the day after his 283T. 7 March 2001 pp. 80-81. 284T. 7 March 2001 pp. 80-81. 285T. 8 March 2001

p. 11. 286T. 8 March 2001 pp. 11, 12. 287T. 8 March 2001

p. 45. 288T. 8 March 2001 pp. 48-49. 289Z. 7 March 2001 pp. 81-82. 290T. 7 March 2001

p. 82. 291T. 7 March 2001

p. 85. 292Z. 7 March 2001

p. 85. 293T. 7 March 2001

p. 85. 294T. 6 March 2001 pp. 80, 81. 295T. 6 March 2001

p. 83.

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- v. Laurent Semanza, Case No. ICTR-97-20-T 51 arrival at the church, the Accused, whom he identified in court, along with Bisengimana, Rugambarara, and members of the police came to the church.<sup>296</sup> The witness was confident that he saw the Accused at Musha church because it was "impossible" not to know the Accused, who during his tenure as the bourgrnestre, had been introduced to all the school children in the commune.<sup>297</sup> Witness VM testified that the Accused appeared to be the leader of this group because he was giving instructions. <sup>298</sup> Witness VM testified that the Accused was taking notes, which the witness believed were the names of particular refugees being sought. <sup>299</sup> 175. Witness VM testified that four to six days after he took refuge at the church, several vehicles arrived in the morning full of Interahamwe, soldiers, and policemen. <sup>3°°</sup> Through the openings in the walls of the church, the witness saw the Accused transporting the Interahamwe in his brown car, which he had seen the Accused use on other occasions. <sup>3°1</sup> The witness later clarified that the Interahamwe did not come in the Accused's vehicle, but rather followed in several vehicles. <sup>3°2</sup> Witness VM testified that armed soldiers also followed the Accused. <sup>3°3</sup> Witness VM stated that among the attackers he could identify two Interahamwe named Mugabo and Manda.<sup>3°4</sup> Witness VM stated that he also saw Bisengimana. <sup>3°5</sup> Witness VM testified that the Accused led the attack. <sup>3°6</sup> He explained that he knew the Accused as a bourgmestre and that he witnessed the Accused giving instructions, including to shoot people. <sup>3°7</sup>
- 176. Witness VM testified that the Accused, Interahamwe, police, and soldiers went into the church compound and asked the refugees to open the door to the church. <sup>3°8</sup> The refugees refused to open the door. <sup>3°9</sup> The witness stated that the <sup>296</sup>T. 6 March 2001 pp. 88-90, 101. <sup>297</sup>T. 7 March 2001 pp. 46-47. <sup>298</sup>T. 6 March 2001

- p. 91. 299T. 6 March 2001
- p. 90. 300T. 6 March 2001 pp. 92, 137-138. 301T. 6 March 2001
- p. 134. 302T. 6 March 2001
- p. 137. 303T. 6 March 2001
- p. 138. 304T. 6 March 2001
- p. 98. 305T. 6 March 2001
- p. 99. 306T. 6 March 2001
- p. 92. 307T. 6 March 2001 pp. 99, 144. 308T. 6 March 2001 pp. 92-93. 309T. 6 March 2001
- p. 93.

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- v. Laurent Semanza, Case No. ICTR-97-20-T 52 attackers then fired bullets and grenades into the church through an opening they had made in the wall before they shot at the door and entered. 31° 177. Witness VM explained that after entering the church, the attackers threatened to shoot anyone who would not leave. 311 Witness VM indicated that he and others went outside, but noted that some people stayed in the church. 312 Witness VM stated that after he left the church, he heard shouting inside the church as well as explosions and gunfire. 313 The witness testified that he was not certain if the Accused was one of the attackers who entered the church because the church was very large and because he was made to go outside. 314 178. Witness VM testified that outside the Accused ordered the Hutus to identify themselves from amongst the refugees and stated that nothing would happen to them. 315 Witness VM stated that he identified himself as a Hutu and that a soldier then questioned him. 316 Witness VM stated that the refugees claiming to be Hum were lined up, and that the Accused directed the attackers to kill the Tutsi refugees. 3~7 Witness VM stated that the Accused then also directed the killing of those refugees whom he recognised as Tutsis in the group of the Hutus. 318 On the Accused's directions, the soldiers and Interahamwe killed the Tutsi refugees with machetes and guns. 319 The witness stated that many people were killed during the attack. 32° The witness testified that he did not witness the Accused shoot or cut anyone. 321 179. After being read his prior statement, Prosecution Witness VD recalled that he saw the Accused and Bisengimana on 13 April 1994 between 7:30 and 8:00 a.m. at the Musha sector office with people from various cellules of Musha sector. 322 The witness testified that the Accused, whom he identified in court, and Bisengimana had 310T. 6 March 2001 pp. 93, 142. 311T. 6 March 2001
- p. 93. 312T. 6 March 2001

- p. 93. 313T. 6 March 2001
- p. 97. 314T. 6 March 2001
- p. 144. 315T. 6 March 2001
- p. 93. 316T. 6 March 2001
- p. 93. 317T. 6 March 2001 pp. 94-95. 318T. 6 March 2001
- p. 95. 319T. 6 March 2001 pp. 95-96; T. 7 March 2001 pp. 15, 46. 320T. 7 March 2001
- p. 18. 321T. 6 March 2001 pp. 144-145. 322T. 14 March 2001 pp. 46-49.

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- v. Laurent Semanza, Case No. ICTR-97-20-T 53 been driving around Musha sector in a white Hilux looking for the people to whom they had given weapons in order to go to Musha church.<sup>323</sup> Witness VD also testified that later an individual named Micoyabgagabo, who had participated in the attack at Musha church, told the witness in a bar that the attack against the Tutsis was successful because of the Interahamwe brought by the Accused. <sup>324</sup>
- 180. Prosecution Witness VV stated that she saw the Accused, Bisengimana, and Rugambage around 10:00 a.m. at some point in April 1994 in front of a house where she was hiding in Nzige sector. <sup>325</sup> Witness VV testified that she saw the Accused and Bisengimana in a grey sedan-style vehicle. <sup>326</sup> The witness testified that Major Rugambage arrived to meet them with soldiers. <sup>327</sup> From the uniforms they were wearing, Witness VV also recognised three soldiers of the Presidential Guard who had come in Major Rugambage's vehicle. <sup>328</sup> Witness VV explained that while the men were talking, many people gathered around them and she heard the Accused address the crowd about killing and raping Tutsis. <sup>329</sup> Witness VV testified that after speaking, the Accused, Bisengimana, and Rugambage went to Musha church, where the witness could see smoke and hear the sound of explosions. <sup>33° 181.</sup> The Prosecutor's investigator Pierre Duclos testified that when visiting Musha church in 1997, he observed holes in the doors and the roof where the metal was torn by projectiles fired into the church from the outside and a mark that he was told was dried blood. <sup>331</sup>
- 182. The Accused denied that he was at Musha church between 7 and 13 April 1994. <sup>332</sup> He indicated that it would have been impossible for him to be there and that he was either at his home in Gahengeri or had left the region. <sup>333</sup> 323T. 14 March 2001 pp. 17, 48, 49. 324T. 14 March 2001 pp. 11, 12. 325T. 29 March 2001 pp. 7, 14, 19, 53-54. 326T. 29 March 2001 pp. 16, 20-21. 327T. 29 March 2001
- p. 21. 328T. 29 March 2001
- p. 18. 329T. 29 March 2001 pp. 8-9. See also sec. IV.F hereof. 330T. 29 March 2001

- p. 9. 331T. 16 October 2000 pp. 78, 79. 332T. 18 February 2002
- p. 130; T. 28 February 2002 pp. 74-77. 333T. 18 February 2002
- p. 130; T. 28 February 2002 pp. 74-77. See also sec. III.G.2-6 hereof.

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- v. Laurent Semanza, Case No. ICTR-97-20-T 54
183. Defence Witness BZ, a corporal in the gendarmerie, stated that he was on leave in Gikoro during the events in Musha between 10 and 14 April 1994. 334 Witness BZ testified that a young man called Rugamba had shot at a night patrol and then fled to Musha church. 335 According to the witness, members of the night patrol went to the church where they found many people, including Gikoro's RPF leaders. 336 The witness explained that the night patrol went to ask for assistance from the gendarmes, who were posted at the commune office, and from the soldiers who had come from fighting the Inkotanyi in Byumba. 337
184. Witness BZ explained that he was at the commune office when the first gendarmes returned from Musha church. 338 The witness stated that one section of the soldiers and gendarmes had gone to the church, and the refugees threw a grenade at them. 339 Witness BZ testified that the soldiers and gendarmes returned to the commune office to get reinforcements and that he went to Musha church with this second group. 340
185. Witness BZ stated that the commune had approximately eleven gendarmes, and the soldiers from Byumba numbered approximately forty or fifty. 341 Witness BZ noted that the soldiers and gendarmes came on foot, and that the only vehicle he saw at the church belonged to the sisters. 342 The witness also stated that he did not see civilian authorities outside the church. 343 He recalled seeing Interahamwe, including their president, Jean Claude Mukwiye, outside the church. 344 186. Witness BZ stated that when the gendarmes and soldiers reached the church they asked the people inside to open the door, but the refugees refused. 345 According to the witness, Muteyinkingi, an ex-soldier who was affiliated with the RPF, threw a grenade from inside the church, and then the gendarmes and soldiers threw grenades 334T. 2 October 2001 pp. 13, 43, 55. 335T. 2 October 2001 pp. 12, 29. 336T. 2 October 2001 pp. 12-14. 337T. 2 October 2001 pp. 15-16. 338T. 2 October 2001
- p. 46. 339T. 2 October 2001
- p. 46. 340T. 2 October 2001 pp. 46-47. 341W. 2 October 2001
- p. 27. 342T. 2 October 2001
- p. 26. 343T. 2 October 2001
- p. 22. 344T. 2 October 2001

p. 22.

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### The Prosecutor

- v. Laurent Semanza, Case No. ICTR-97-20-T 55 and fired heavy weapons to open the door.<sup>346</sup> The witness noted that wounded people came out of the church and mixed with the soldiers. 347 The witness stated that the soldiers were scared because the Inkotanyi were in the area, and so they fired and killed many of the refugees. 348
187. According to Witness BZ, after forcing the door open, the gendarmes instructed the soldiers to take from among the refugees those who had fired at the gendarmes and soldiers or who possessed grenades. 349 The witness stated that the soldiers told the gendarmes to leave them alone to do the "work" because they were more familiar with the Inkotanyi. 350 Witness BZ explained that the "work" was "to shoot these people, since [the soldiers] were saying that they were Inkotanyis." 351
188. Witness BZ agreed that a massacre occurred at Musha church and that Tutsi civilians were killed. 352 The witness later added that there were both Tutsi and Hutu victims. 353 Witness BZ stated that he did not witness anyone sever a refugee's limbs. 354 The witness denied being a participant in the attack on Musha church, noting that he was not part of the Rwamagana gendarmerie squad. 355 According to the witness, after the attack, he went to inform the Gikoro Bourgmestre Bisengimana, who was sick at home, about what had happened. 356 The witness testified that he did not see the Accused during the events. 357
189. Defence Witness MBZ indicated that her basis of knowledge concerning the events at Musha church derived primarily from what she "heard people talking about". 358 She testified that she saw refugees going towards Musha church from the north and that she thought they were escaping the intense combat with the RPF taking 345 T. 2 October 2001
- p. 15. 346 T. 2 October 2001 pp. 12-13, 15. 347 T. 2 October 2001
- p. 15. 348 T. 2 October 2001
- p. 15. 349 T. 2 October 2001
- p. 17. 350 T. 2 October 2001
- p. 17. 351 T. 2 October 2001
- p. 17. 352 T. 2 October 2001 pp. 79-80. 353 T. 2 October 2001
- p. 92. 354 T. 2 October 2001
- p. 26. ss5 T. 2 October 2001 pp. 56, 58. 356 T. 2 October 2001 pp. 24, 25. 357 T. 2 October 2001 pp. 8-9. 358 T. 3 October 2001
- p. 12.

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- v. Laurent Semanza, Case No. ICTR-97-20-T 56 place there. 359 Witness MBZ testified, without specifying the day, that some people among the refugees had weapons and that the police went to the church to disarm them. 36° Witness MBZ stated that the refugees opened fire on the police, who then called security agents. 36~ The witness testified that the security agents opened the church doors and tried to disarm the refugees, resulting in a fight with wounded people and fatalities. 362 While the witness testified that she did not know the ethnicity of the refugees, she opined that the victims at Musha church were both Hutus and Tutsis. 363 The witness noted that she did not hear that the Accused was at the church during the attack; she had heard that no authorities were there. 364
190. Defence Witness BP testified that he was about eighty meters from Musha church when he witnessed military personnel and civilians at the church massacre refugees who appeared to be from "all ethnic groups". 365 The witness also stated that the civilians were not armed and did not kill anyone. 366 Witness BP stated that during the attack he did not see the Accused, whom he identified in court, 367 or any vehicles at the church. 368 191. Defence Witness TDB testified that he heard gunshots and saw explosions at Musha church around 10:00 or 11:00 a.m. on 13 April 1994, which lasted about two hours. 369 According to the witness, he then tried to go to Musha church to see what was happening, but gendarmes stopped him about twenty meters away from there. 37° He explained that he saw gendarmes, policemen, people in "combat" gear, and about 100 dead bodies, including those of two gendarmes. 3vI Witness TDB testified that he did not see any Interahamwe nearby, but admitted that he had told investigators that 359T. 3 October 2001 pp. 12-15. 360T. 3 October 2001
- p. 13. 361To 3 October 2001
- p. 13. 362T. 3 October 2001 pp. 13, 14. 363To 3 October 2001 pp. 14, 15. 364T. 3 October 2001
- p. 16. 365T. 3 October 2001 pp. 110, 111, 112, 130. 366To 3 October 2001
- p. 111. 367T. 3 October 2001
- p. 105. 36sT. 3 October 2001 pp. 112, 117. 369T. 4 October 2001
- p. 58. 370T. 4 October 2001
- p. 58. 371T. 4 October 2001 pp. 58, 59, 63.

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- v. Laurent Semanza, Case No. ICTR-97-20-T 57 Interahamwe from Kabuga attacked the refugees at the church because that is what other people were saying. 372

192. Defence Witness MTP stated that about one week after the death of the president, she left her workplace when she heard grenade explosions, but stopped at the church on her way home to see what was happening. 3v3 Witness MTP testified that police officers had gone to Musha church to verify whether the refugees in the church were armed and that the refugees threw a grenade at them. 374 The witness stated that the police left and then returned on foot with civilians from Gikoro and soldiers from the Mutara war front. 3v5 Witness MTP clarified that she was not present during the initial attack, but arrived only after the police were reinforced. 376 The witness testified that she saw the refugees start shooting and throwing grenades, and the soldiers returned fire. 377 Once the fighting started, she fled. 378 The witness did not know how many people died, but saw two dead soldiers and two dead police officers before she fled from the church. 379 Witness MTP testified that she did not see the Accused, Bisengimana, and Rugambarara, whom she knew, at the church. 38° She noted that a Tutsi named Mukwiye, who was the head of the Interahamwe in Gikoro commune, was the only important person whom she saw there. 381
193. Defence Expert Witness Ndengejeho stated that he had adequate knowledge of the events at Musha church, but was uncomfortable testifying about them because he was not there. 382 Ndengejeho testified that Rusanganwa was an MDR member and a school head master in Gikoro. 383 Ndengejeho noted that he was not familiar with how Rusanganwa disappeared, but stated that according to his knowledge, the Accused was not in Musha at that time, so he could not have assaulted Rusanganwa. 384 Moreover, Ndengejeho stated that the Accused could not possibly have travelled from 372 T. 373 T. 374T. 24 October 2001
- p. 18. 375T. 24 October 2001 pp. 18, 28. 376T. 24 October 2001
- p. 23; T. 25 October 2001
- p. 25. 377Y. 24 October 2001 pp. 18-19. 378T. 24 October 2001
- p. 23; T. 25 October 2001
- p. 25. 379T. 24 October 2001
- p. 20. 380T. 24 October 2001 pp. 23, 24. 381T. 24 October 2001 pp. 23, 24. 382Y. 30 January 2002
- p. 130. 383T. 30 January 2002 pp. 107, 108. 4 October 2001 pp. 86-87, 89-90. 24 October 2001 pp. 24, 41; T. 25 October 2001 pp. 11-12, 23.

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- v. Laurent Semanza, Case No. ICTR-97-20-T 58 Gahengeri in Bicumbi to Gikoro after 7 April 1994 because the RPF had captured Gikoro commune in the evening of 6 April 1994. 385 Ndengejeho also opined that the Accused most likely could not be linked to the events in Gikoro commune because it was a separate commune from Bicumbi. 386

## 2. Findings

- a. Massacre at Musha Church 194. The testimonies reveal that a large number of civilians sought refuge at Musha church beginning on 7 April 1994 and that the refugees were massacred at the church on 13 April 1994.
195. The Chamber notes that Witnesses VA and VM provided eye witness accounts of the Accused's participation in the massacre at Musha church. Both witnesses gave similar and largely consistent accounts of how the attack unfolded. After careful consideration, the Chamber finds that both witnesses are credible and accepts their detailed and reliable accounts. The Chamber is mindful of minor differences between their accounts, but is satisfied that these are not material and are explained by the passage of time, the chaos of an armed attack, and the witnesses' differing vantage points during the assault. 196. Based on the accounts provided by Witnesses VA and VM, it emerges that the Accused, Paul Bisengimana, and others went to Musha church on 8 or 9 April 1994 in order to assess the situation shortly after the refugees began arriving there. At that time, the Accused expressed an intention to kill the refugees. The Accused, Bisengimana, and others then returned to the church with Interahamwe, soldiers, and gendarmes on 13 April 1994 around midmorning. These assailants proceeded to attack the refugees in the church with gunfire and grenades. After gaining access to the church, the attackers ordered the refugees to leave the church, and many complied. At some point after these refugees left the church, the Accused ordered the Hutu refugees to separate from the Tutsi refugees. The Tutsis were then executed on 384T. 30 January 2002 pp. 107-110. 385T. 30 January 2002 pp. 110-113. 386T. 30 January 2002 pp. 80, 81.

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- v. Laurent Semanza, Case No. ICTR-97-20-T 59 directions from the Accused, which Witness VM saw from close range. While the Tutsi refugees outside the church were being separated and executed, the assailants continued to attack those remaining in the church.
197. The testimonies of Prosecution Witnesses VD, VV, and Duclos provide further corroboration to many aspects of VA's and VM's first-hand accounts. Witness VD saw the Accused and Bisengimana gathering local Interahamwe in Musha sector on the morning of the attack on 13 April 1994. Witness VV saw the Accused in the company of Bisengimana, Interahamwe, and soldiers head toward Musha church from where she saw smoke and heard explosions. Duclos testified that he observed tears in the metal door and the roof of the church indicating that bullets had been fired into the church from outside. The Chamber finds these aspects of the testimonies of Witnesses VD, VV, and Duclos to be credible and reliable, and accepts them. 198. The principal points of contention, which emerge from the accounts provided by the Accused and Defence Witnesses BZ, MBZ, BP, TDB, and MTP, are whether the Accused or Interahamwe under his direction participated in the attack and whether

armed refugees or RPF infiltrators provoked the attack.

199. The Chamber does not find Witness BZ to be credible and thus cannot accept his account of the provocation for the attack or of who was present at Musha church. The Chamber recalls that Witness BZ indicated that he did not know any other witness who came to the Tribunal to testify on behalf of the Defence in this case. 387 However, Witness MBZ, who was the very next witness to testify, stated that she was married to Witness BZ and that both witnesses were aware that the other was testifying in this case. 388 The Chamber further does not find it plausible that as a gendarme, the witness would remain on leave in the chaos of April 1994 and then accompany other gendarmes and soldiers to Musha church without assisting them in the attack.
200. The Chamber recalls that the Witness MBZ specified that her information concerning the attack at Musha church was based on what she "heard people talking about". The Chamber highlights that Witness MBZ stated that she never discussed the 387 T. 2 October 2001

p. 105.

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### The Prosecutor

- v. Laurent Semanza, Case No. ICTR-97-20-T 60 events at Musha church with her husband, Witness BZ, 389 even though he testified one day earlier and claimed to be an eye-witness. 39° The Chamber cannot rely on her testimony that some of the refugees were armed or that the Accused was not present, insofar as the basis of her account is vague and of questionable credibility. 201. The Chamber recalls that Witness BP observed only part of the massacre at Musha church and that this was from a distance of eighty metres. The Chamber does not accept the witness's

### conclusion

that the Accused was not present during the attack because the witness did not indicate that he could have identified individual attackers from such a distance and because he did not witness the entire event.

202. The Chamber accepts Witness TDB's testimony that he heard gunfire and grenade explosions for about two hours on the morning of 13 April 1994, noting its consistency with the first hand accounts provided by Witnesses VA and VM. The Chamber cannot accept as reliable, however, the speculation that Interahamwe did not participate in the attack when by the witness's own admission he arrived at the scene after the attack had ended.
203. Witness MTP gave detailed testimony about the origins of the attack on the Musha church. The Chamber recalls that the witness admitted that she was not present at the beginning of the attack and that she did not state the basis of her knowledge. Thus, the Chamber does not find her account of how the attack began reliable. The witness also stated that during the

period when she was at the church, she claimed to see the refugees fire on the soldiers, who then returned the fire. The Chamber notes that the witness, who was with a "huge crowd", 391 was only briefly at the church. Thus, her testimony about the nature of the alleged exchange of fire or as to whether particular individuals were present during the attack is not reliable.

204. The Chamber has also carefully considered the Accused's alibi, discussed above in Chapter III, in the context of all the evidence submitted concerning the events at Musha church. In particular, the Chamber recalls that the Accused claimed 388T. 3 October 2001

p. 37. 389T. 3 October 2001

p. 71. 390W. 3 October 2001

p. 71. 391T. 24 October 2001

p. 20.

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- v. Laurent Semanza, Case No. ICTR-97-20-T 61 to be in Gitarama town on 13 April 1994 when the massacre occurred, which was confirmed only by the testimony of Defence Witness PFM, whose testimony, in the opinion of the Chamber, is biased by her close personal relationship with the Accused. The Chamber further emphasises that even if the Accused had gone at some point to Gitarama, as his evidence indicates, the testimony of Defence Witness TDB, who travelled from Gikoro to Ruhango, Gitarama on 13 April 1994, confirms that the Accused could have travelled between the two places at that time.
205. The Chamber notes that the Accused's alibi does not call into question the reliable and credible identification of the Accused at Musha church around midday on 8 or 9 April 1994. The Chamber recalls that the Accused, who claimed to be at his home on 8 April 1994, was not actually seen there from early morning on 7 April 1994 until 4:00 p.m. on 8 April 1994. The reliable and credible sighting of the Accused at Musha church is not impeached by the simple belief of Defence Witnesses KNU and PFM that the Accused never left his home on 8 April 1994. The Chamber also recalls that the Accused claimed to be at the commune office in Nzige until noon on 9 April 1994 when he allegedly left for Ruhango, Gitarama, arriving nearly twelve hours later. The Accused's alibi on 9 April 1994 likewise does not preclude his presence at Musha church on 9 April 1994, as the evidence suggests only that he remained at the commune office until around noon.
206. The Chamber therefore finds beyond a reasonable doubt that Tutsi civilians were killed at Musha church by soldiers, gendarmes, and Interahamwe militiamen on 13 April 1994, as alleged in paragraph 3.11 of the Indictment. Upon considering all relevant evidence, including the alibi, the Chamber finds beyond a reasonable doubt that the Accused

participated in this attack by gathering Interahamwe to take part in the attack and by directing the assailants to kill Tutsi refugees, as alleged in paragraph 3.11 of the Indictment. 207. The Chamber further finds that the Prosecutor did not introduce sufficient evidence to prove that the Accused worked in close cooperation with Bisengimana to organize the massacre at Musha church.

208. The Chamber also does not find that there is any reliable evidence on the record to demonstrate that there were armed refugees or RPF infiltrators in Musha

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- v. Laurent Semanza, Case No. ICTR-97-20-T 62 church or that they provoked the attack at Musha church and engaged in armed resistance.

b. Torture and Murder of Victim C at Musha Church

209. The Chamber notes that Victim C is Rusanganwa and that his torture and murder, alleged in paragraph 3.18 of the Indictment, occurred during the events at Musha church on 13 April 1994. 210. As explained above, the Chamber has found that the Accused participated in the massacre at Musha church on 13 April 1994. The question at this point is whether the Prosecution proved beyond a reasonable doubt that the Accused tortured and killed Rusanganwa during the course of this massacre.
211. The Chamber recalls that Prosecution Witness VA was the sole witness to testify about this event. The witness first stated that the Accused cut Rusanganwa's arms and Bisengimana cut his legs. The Prosecutor later asked whether the Accused cut one or both arms. The witness answered that the Accused cut a leg and an arm. In cross-examination, the Defence pointed out that the witness's written statement mentions only that Rusanganwa's arms were cut. The Chamber recalls that the witness attributed this omission to a misunderstanding by the investigators who took her statement and to whom, the witness testified, she told that Rusanganwa's legs were also cut.
212. The Chamber is satisfied that the apparent confusion or contradiction in Witness VA's account is not material and is explained by the trauma of the event, the manner in which her testimony was elicited, and an apparent misunderstanding between the witness and the investigators. Her testimony concerning this event was otherwise detailed and vivid, and the Chamber accepts that the witness heard the Accused question Rusanganwa about the RPF advance and then saw the Accused strike him with a machete.
213. Therefore, the Chamber finds beyond a reasonable doubt that the Accused intentionally inflicted serious injuries on Rusanganwa after questioning him at Musha church and that Rusanganwa died as a result of those injuries.

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- v. Laurent Semanza, Case No. ICTR-97-20-T C. Paragraph 3.12 of the Indictment 63 214.

Paragraph 3.12 of the Indictment reads: Between 7 and 20 April 1994, Laurent SEMANZA organized and executed the massacres at Mwulire Hill, Bicumbi Commune, where several thousand people had taken refuge to escape the killings. On or about 16 and 18 April 1994, Laurent SEMANZA directed the attacks on the refugees at Mwulire Hill and personally participated in the killings.

## 1. Allegations

215. Prosecution Witness VN testified that on 7 April 1994 he began to feel insecure in Nzige sector and that he sought refuge on Mwulire Hill. 392 The witness stated that on 8 April 1994 there were more than five hundred people seeking refuge there, the vast majority of whom were Tutsi, and that they were attacked. 393 The fighting started at about 2 p.m. and ended at around 4:30 p.m. with no casualties on either side. 394 Witness VN testified that there were more than 100 assailants led by 395 Francois Rwabugibo, a policeman from Bicumbi commune. 216. The witness testified that the attacks continued on 9 April 1994, and that by 10 April 1994 there were more than 5,000 refugees gathered at Mwulire Hill, all of whom were civilians. 396 The witness stated that the attacks lasted through 18 April 1994. 397 The witness indicated that the attackers were armed with guns and grenades, as well as traditional weapons, while some of the refugees had traditional weapons, including spears, arrows, sticks, and stones. 398 Six members of his family died during the attacks on Mwulire Hill. 399 217. Witness VN testified that the Accused came to Mwulire Hill on 18 April 1994, the day when the assailants carried out a large-scale attack on the refugees. 400 392 T. 393 T. 394 T. 395 T. 396 T. 397 T. 398 T. 399 T. 400 T. 9 November 2000 pp. 69-70. 9 November 2000 pp. 71-72; T. 14 November 2000 pp. 17-18. 14 November 2000 pp. 26, 27. 9 November 2000

p. 72; T. 14 November 2000

p. 24. 9 November 2000 pp. 75, 101, 106. 9 November 2000

p. 101. 9 November 2000 pp. 102, 104; T. 14 November 2000

p. 103. 9 November 2000

p. 107. 9 November 2000 pp. 102, 104.

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- v. Laurent Semanza, Case No. ICTR-97-20-T 64 According to the witness, the Accused brought Interahamwe and soldiers and their equipment in a red Toyota pick-up truck belonging to the APEGA school.<sup>401</sup> The witness stated that the Interahamwe and soldiers whom the

Accused brought joined other assailants in the attack on the refugees. 4°2 The witness testified that after bringing the Interahamwe and soldiers, the Accused stayed near his vehicle. 4°3 The witness did not see the Accused participate in the fighting. 4°4 The refugees tried to defend themselves, but were vanquished on 18 April 1994 because the attackers had brought "relatively heavy arms" and soldiers to back them up. 4°5 The witness testified that on 19 and 20 April 1994, RPF soldiers came and took away the wounded. 4°6 Witness VN stated that on 18 April 1994 the RPF was not in Bicumbi yet, but that they were in Gahin and Rukara, and also at Kayonze market in Kayonze commune. 407 218. Prosecution Witness VP, a Tutsi who identified the Accused in court, testified that he sought refuge on Mwulire Hill from the afternoon of 13 April 1994. 4°8 When he arrived on Mwulire Hill, he found that over 5,000 people, mostly Tutsis, were taking refuge there and that their numbers kept increasing, so that by 18 April 1994 there were about 10,000 refugees. 4°9 The witness testified that from 15 through 17 April 1994 there were daily attacks on the refugees, which the refugees tried to ward off with stones. 41° The witness recognised several of the attackers including people who, according to him, had received arms from the Accused and Rugambarara. 411 219. Witness VP testified that on 18 April 1994 the assailants mounted a major attack and defeated the refugees on Mwulire Hill. 412 On 18 April 1994, the witness stated, the Accused came to the hill before midday. 4~3 According to the witness, the Accused was in a military uniform and was carrying a firearm. 414 The witness T.9 November 2000 pp. 104-106; T. 14 November 2000 pp. 60, 61. T. 9 November 2000 pp. 105, 106. T.9 November 2000

- p. 105; T. 14 November 2000 pp. 61-62. 401 402 403 4o4T. 14 November 2000
- p. 61. 4o5T. 9 November 2000
- p. 104. 406T. 9 November 2000
- p. 107; T. 14 November 2000
- p. 62. 4o7T. 9 November 2000 pp. 108, 112. 4o8T. 4 December 2000 pp. 35, 36, 59. 4o9T. 4 December 2000 pp. 62, 63, 64; T. 5 December 2000
- p. 93. 410T. 4 December 2000 pp. 63-64; T. 5 December 2000 pp. 84-85. 4uT. 4 December 2000 pp. 66-67, 71-72. 4~2T. 4 December 2000 pp. 68, 83. 413T. 4 December 2000
- p. 68. 414Y. 4 December 2000
- p. 69.

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### The Prosecutor

- v. Laurent Semanza, Case No. ICTR-97-20-T 65 specified that the Accused, accompanied by commune officials, soldiers, and Interahamwe, was on the west side of Mwulire sector, while other assailants were on the other side, and that thus the refugees were surrounded. 415 The

witness testified that the Accused used his firearm during the attack to shoot at refugees who were on a football field near the sector office.<sup>416</sup> The witness stated that many of the refugees died on the football field before noon. <sup>417</sup> 220. Witness VP stated that when the assailants ran out of ammunition, around 1 p.m., the attacks ceased until about 2.30 p.m. when the assailants, including the Accused, returned. <sup>418</sup> According to the witness, the assailants then attacked the survivors of the earlier attack. <sup>419</sup> The refugees tried to defend themselves, in particular the women and children, and their livestock, but were defeated, the witness stated. <sup>420</sup> The attack continued until about 5 p.m. and the assailants killed many people so that "the whole hill was full of corpses." <sup>421</sup> The witness testified that his oldest child was killed during this attack, as was his brother-in-law and other relatives, and that one of his children is disabled as a result of the attack. <sup>422</sup> 221. The Accused denied that he participated in the attacks at Mwulire or that he was present in Mwulire on the dates "contained in the Indictment." <sup>423</sup> He specifically denied that he was in Mwulire on 8, 9, 11, 12, and 13 April 1994. <sup>424</sup> The Accused added that he learned from refugees that on 18 April 1994 Mwulire was controlled by the RPF. <sup>425</sup>

222. Defence Witness Nyetera testified, without indicating the basis of his knowledge, that the RPF controlled Mwulire from the beginning of April 1994 and that from "the very first days of April ... even before the 6th of April" the RPF had <sup>415</sup>T. 4 December 2000

p. 69. <sup>416</sup>T. 4 December 2000 pp. 69-70; T. 5 December 2000

p. 99. <sup>417</sup>T. 4 December 2000

p. 70. <sup>418</sup>T. 4 December 2000

p. 70. <sup>419</sup>T. 4 December 2000

p. 70. <sup>420</sup>T. 4 December 2000 pp. 70-71. <sup>421</sup>T. 4 December 2000

p. 71. <sup>422</sup>T. 4 December 2000 pp. 72-73. <sup>423</sup>T. 27 February 2002

p. 111. See also sec. III.G.2-6 hereof. <sup>424</sup>T. 18 February 2002

p. 125; T. 28 February 2002 pp. 76, 77, 78. <sup>425</sup>T. 18 February 2002

p. 132.

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### The Prosecutor

v. Laurent Semanza, Case No. ICTR-97-20-T <sup>66</sup> "people" there.<sup>426</sup> Witness Nyetera acknowledged that he knew that the Mwulire Hill massacre took place in April 1994, but could not recall the specific date. <sup>427</sup> 223. Defence Expert Witness Ndengejeho testified that he learned that in Mwulire there had been a conflict between Hutus and Tutsis due to infiltrators. <sup>42a</sup>

## 2. Findings

224. Based on the testimonies of Prosecution Witnesses VN and VP, and Defence Witness Nyetera and Defence Expert Witness Ndengejeho, the Chamber finds that in April 1994 there were attacks on mostly Tutsi, civilian refugees on Mwulire Hill. From the record of testimonies of Witnesses VN and VP it emerges that in April 1994 mostly Tutsi refugees sought safety on Mwulire Hill so that by 10 April 1994 there were more than 5,000 of them at that location, and by 18 April 1994 there were up to 10,000. From 8 April 1994 the refugees came under daily attacks. On 18 April 1994, the refugees on Mwulire Hill were attacked and vanquished by the assailants including Interahamwe, soldiers, commune officials, and the Accused. In particular, Witnesses VN and VP testified about the deaths of their relatives resulting from this attack, and Witness VP stated that the assailants killed so many people that the whole hill was full of corpses.
225. Witness VP gave evidence that during the attack on 18 April 1994, the Accused, who was armed and accompanied by commune officials, soldiers, and Interahamwe, shot at refugees who were on a football field near the sector office and that many of these refugees died. Witness VN testified that on that date, the Accused brought Interahamwe and soldiers and their "equipment" to Mwulire Hill. The Chamber understands "equipment" to mean implements that were used to kill and injure the victims. While Witness VN testified that he saw the Interahamwe and the soldiers whom the Accused brought join other assailants in the attack on refugees, he testified that the Accused stayed near his vehicle and that he did not see the Accused take part in the fighting. 426T. 1 t February 2002 pp. 58-59. 427T. 11 February 2002
- p. 59. 428T. 30 January 2002 pp. 133-134.

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### The Prosecutor

- v. Laurent Semanza, Case No. ICTR-97-20-T 67
226. The Chamber finds the evidence given by Witnesses VN and VP to be credible and reliable. In the view of the Chamber, the statement of Witness VN that he did not see the Accused take part in the attack is not inconsistent with VP's testimony that he saw the Accused participate in the attack by shooting at the refugees. The Chamber recalls that the attack took place throughout the day and that it involved many people. Witness VN did not indicate at which time or for how long he observed the Accused at Mwulire Hill on 18 April 1994, and he did not specify the location at which he saw the Accused on that day.
227. The Chamber has also carefully considered the Accused's alibi, discussed above in Chapter III. In particular, the Chamber recalls that the Accused claimed that on 18 April 1994 he was travelling in Gitarama prefecture, from Ruhango to Gitarama town, an account which was supported by Defence Witness PFM, who, in the opinion of the Chamber, is biased by her

personal relationship with the Accused, and by Defence Witness CYS, who also had a close relationship with the Accused. 228. Upon considering the entire evidence on the record including the alibi, the Chamber finds beyond a reasonable doubt, based primarily on the eye-witness account of Witness VP, that the Accused participated in the killings of Tutsi refugees on Mwulire Hill on 18 April 1994. The Chamber finds, however, that there is no evidence on the record that the Accused organized, executed, or directed the attacks.

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### The Prosecutor

- v. Laurent Semanza, Case No. ICTR-97-20-T D. Paragraph 3.13 of the Indictment 68 229. Paragraph 3.13 of the Indictment reads: On or about 12 April 1994, Laurent SEMANZA organized and executed the massacre at Mabare mosque, Bicumbi Commune, where several hundred people had taken refuge to escape the killings. On or about 12 April 1994, Laurent SEMANZA directed the attacks on refugees at the Mabare mosque and personally participated in the killings.
- 1. Allegations 230. Prosecution Witness VAK, a Tutsi, testified that on 11 April 1994, he sought refuge at the Mabare mosque, which he identified in court from a photograph marked as Exhibit P5, 14(A).<sup>429</sup> According to the witness, on the morning of 12 April 1994 at approximately 10:00 a.m., Interahamwe, Bicumbi commune police, and the Accused, whom he identified in court, attacked the Tutsi refugees in the mosque with guns and grenades. <sup>430</sup> The witness stated that the Accused, who appeared to be in overall command of the attack, carried a small shotgun and wore a long overcoat. <sup>431</sup> The witness noted, however, that he did not see the Accused shoot at any of the refugees. <sup>432</sup> Witness VAK explained that the attack continued until 4:00 p.m and that around 300 people were killed. <sup>433</sup> According to the witness, after the killings the Accused addressed the Interahamwe and told them: "We came to assist you, and I believe that those who have not been killed would not be able to resist you. Go and find them and exterminate them." <sup>434</sup> 231. The Accused denied participating in the killing of refugees at Mabare mosque and confirmed that he was not at Mabare mosque on 12 April 1994. <sup>435</sup>
- 232. Defence Witness MDB testified that during April 1994 she was staying with a family member in Mabare sector who lived in the vicinity of Mabare mosque. <sup>436</sup> 429T. 15 March 2001 pp. 91, 117, 118. 430T. 15 March 2001 pp. 91-92, 103-104. 431T. 15 March 2001 pp. 92, 93. 432Y. 15 March 2001
- p. 119. 433T. 15 March 2001
- p. 92. 434T. 15 March 2001
- p. 92. 435T. 27 February 2002
- p. 114; T. 28 February 2002

p. 78. See also sec. III.G.2-6 hereof.

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### The Prosecutor

- v. Laurent Semanza, Case No. ICTR-97-20-T 69 Witness MDB explained that beginning on 7 April 1994, "purport[ed]" refugees from various places began to gather at Mabare mosque. 437 The witness testified that the refugees were both Hutu and Tutsi and estimated their number at around 500.438 The witness stated that these people were armed with arrows and spears, and that they stole at night from the local residents, creating insecurity. 439 According to the witness, the local population therefore contacted the security forces, in particular the gendarmes, who went to the mosque to disperse the people there. 44° The witness testified that she saw uniformed gendarmes pass by her house on their way to the mosque. 441 233. Witness MDB stated that she was not present at the mosque during the attack, but learned about what had transpired there from her relatives who went to the mosque to see who was causing the insecurity. 442 The witness testified that when the refugees saw the gendarmes, the refugees began attacking them, using arrows and firearms. 443 According to the witness, the gendarmes, acting in self-defence, shot at the refugees. 444 Witness MDB testified that the civilian population did not "intervene" on the side of the gendarmes, but that they followed the gendarmes and were "very near" to them. 445 The witness, who had earlier identified the Accused in court, testified that she did not see the Accused at the mosque and that nobody told her that he was there. 446 234. Witness MDB testified that "many" refugees died during the attack and that she did not know of any gendarme who lost his life there. 447 Subsequently, however, the witness stated that "not many" of the refugees died because when some died, the others fled. 448 436T. 26 November 2001 pp. 35, 37. 437T. 26 November 2001 pp. 12, 13. 438T. 26 November 2001 pp. 14, 16. 439T. 26 November 2001 pp. 13, 35. 440T. 26 November 2001
- p. 13. 441T. 26 November 2001 pp. 14, 15, 36, 37. 442T. 26 November 2001 pp. 17, 36. 443T. 26 November 2001
- p. 16. 444T. 26 November 2001
- p. 16. 445T. 26 November 2001 pp. 17, 19. 446T. 26 November 2001 pp. 10-11, 19. 447T. 26 November 2001 pp. 16-17. 448T. 26 November 2001
- p. 16.

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### The Prosecutor

- v. Laurent Semanza, Case No. ICTR-97-20-T 70

235. Defence Witness Nyetera testified that he heard about the Mabare mosque events, but that he did not hear of the involvement of the Accused in them.<sup>449</sup> The witness stated that "people were informed that there was an armed band made up of Moslems and that there were weapons in that place and this is what happened. The gangs met and confronted each other, some of them had fire weapons, bows and arrows and so on and so forth." <sup>450</sup>
236. Defence Witness CBN stated that, based on information she gathered from policemen, Tutsis sought refuge in Mabare from all other sectors of Bicumbi. <sup>451</sup> According to the witness, other Tutsis joined the refugees in order to make the sector a Tutsi area. <sup>452</sup> The witness stated that the Hutu population felt threatened and tried to defend itself against this invasion, particularly because some of the Tutsis were armed and attacked the population. <sup>453</sup> This resulted in a large fight.<sup>454</sup> However, the witness explained, no one came from outside the commune to kill the Tutsis. <sup>455</sup> The witness stated that the Accused could not have taken part in the attack because he had left Bicumbi on 9 April 1994. <sup>456</sup> 237. Defence Expert Witness Ndengejeho testified that he heard and read that the persons responsible for the massacre came from outside the commune and that there were about 1,500 people in prison on account of the massacre at the mosque. <sup>457</sup>
2. Findings 238. Prosecution Witness VAK provided first-hand, detailed testimony about the events at Mabare mosque on 12 April 1994, which the Chamber finds to be credible and reliable.
239. The Chamber recalls that Defence Witness MDB's account of the events is based primarily on her personal observation of gendarmes on their way to the mosque <sup>449</sup>T. 11 February 2002 pp2 87, 88. <sup>450</sup>T. 11 February 2002
- p. 88. <sup>451</sup>Exhibit D 21, Statement of Witness CBN,
- p. 5. <sup>452</sup>Exhibit D 21, Statement of Witness CBN, pp. 5-6. <sup>453</sup>Exhibit D 21, Statement of Witness CBN,
- p. 6. <sup>454</sup>Exhibit D 21, Statement of Witness CBN,
- p. 6. <sup>455</sup>Exhibit D 21, Statement of Witness CBN,
- p. 6. <sup>456</sup>Exhibit D 21, Statement of Witness CBN,
- p. 6. <sup>457</sup>T. 30 January 2002
- p. 141.

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### The Prosecutor

- v. Laurent Semanza, Case No. ICTR-97-20-T 71 and on the recollections her relatives who were at the mosque during the attack shared with her. The Chamber accepts her account that government security forces and members of the civilian population went to Mabare mosque

and that gendarmes killed a number of the refugees there. The Chamber, however, does not find her account reliable concerning whether the refugees were armed or whether they provoked the attack, or whether the Accused was present, because she did not see the attack. 240. The Chamber recalls that Defence Witness CBN's account of what occurred at Mabare mosque derives solely from information she gathered from unidentified policemen. There is no indication whether her sources had any first-hand knowledge of what had transpired during the attack or shared with her everything that had occurred. The Chamber also notes that the statement that the Accused did not participate in the massacre is based solely on the Accused's statement to the witness at the commune office in Nzige on 9 April 1994 that he was fleeing. The Chamber, therefore, does not find CBN's account reliable.

241. The Chamber does not find Defence Witness Nyetera's account of a clash between "gangs" to be credible or reliable because he provided no basis for this assertion, which conflicts with the first-hand account of Prosecution Witness VAK and with that of Defence Witness MDB who was nearby.
242. The Chamber notes that Defence Expert Witness Ndengejeho's account lacks sufficient detail to be reliable, particularly where it is also based solely on what he read and heard from unidentified sources.
243. The Chamber has also carefully considered the Accused's alibi, discussed above in Chapter III, in the context of all the evidence submitted in respect of the events at Mabare mosque. In particular, the Chamber recalls that the Accused claimed to be in Gitarama prefecture on 12 April 1994. This claim was supported by Defence Witness PFM, who, in the opinion of the Chamber, is biased by her close personal relationship with the Accused, and Defence Witness SAM, an acquaintance and a frequent visitor to the Accused's home, who allegedly saw the Accused in Ruhango market around 9:00 a.m. on 12 April 1994. 244. After considering all relevant evidence, including the alibi, the Chamber finds beyond a reasonable doubt, based primarily on the account of Prosecution Witness

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### The Prosecutor

- v. Laurent Semanza, Case No. ICTR-97-20-T 72 VAK, that the Accused was armed and present on 12 April 1994 during the attack on Mabare mosque and that the attack resulted in the death of around 300 Tutsi refugees. The Chamber finds, however, that there is insufficient evidence on the record to show beyond a reasonable doubt that the Accused organized, executed, or directed the said killings. The Chamber is mindful of Witness VAK's testimony that it appeared to him that the Accused was in overall command of the attack. However, the witness did not explain the basis for this view in any detail, and the Chamber did not find any evidence on the record to confirm that the Accused directed the attack on Mabare mosque.

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## The Prosecutor

- v. Laurent Semanza, Case No. ICTR-97-20-T 73 E. Paragraph 3.14 of the Indictment 245. Paragraph 3.14 of the Indictment reads: The massacres referred to in paragraphs 3.8 through 3.13, above, included killing and causing serious bodily and mental harm, including rape and other forms of sexual violence, to members of the Tutsi ethnic group. Laurent SEMANZA intended these massacres to be part of the non-international armed conflict against the RPF because he believed the Tutsi refugees to be enemies of the Government and/or accomplices of the RPF as stated in paragraphs 3.4.2 and 3.4.3 supra.
- 246. The evidence concerning the alleged violence at massacre sites has already been considered by the Chamber in its factual findings in relation to Paragraphs 3.10, 3.11, 3.12, and 3.13 of the Indictment. 458
- 1. Findings
  - a. Killings
  - 247. The Chamber has already found that a substantial number of members of the Tutsi ethnic group was killed at Ruhanga, Musha church, Mwulire Hill, and Mabare mosque.
  - b. Serious Bodily or Mental Harm
  - 248. The Chamber finds beyond a reasonable doubt that Witness VF and other Tutsi victims suffered bums and other forms of serious bodily harm during the attack on Ruhanga church compound on 10 April 1994. However, the Chamber has already found that the Prosecutor failed to prove beyond a reasonable doubt that the Accused participated in or was present during this attack. 249. The Chamber has also heard evidence that other people, including Witness VA and the child of Witness VP, were injured during the massacres at Musha church and Mwulire Hill. Defence Witness BZ mentioned wounded persons mixing with soldiers 458 The Chamber has already adjudicated on paragraphs 3.8 and 3.9 of the Indictment. See supra, para. 61.

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## The Prosecutor

- v. Laurent Semanza, Case No. ICTR-97-20-T 74 at Musha church and Witness VN testified that the RPF soldiers took the wounded from Mwulire Hill. However, the Prosecutor failed to lead evidence about the nature or extent of these injuries, and thus the Chamber is unable to conclude whether these injuries amount to serious bodily or mental harm. Witness VA also testified that Manda and Twagerayezi burned a young man on the lower part of his body when they climbed on the roof of Musha church. However, the witness did not specify whether this man was a refugee or an attacker and did not mention his ethnicity. No witnesses testified about any bodily or mental harm inflicted during the attack at Mabare

mosque. The Chamber therefore finds that the Prosecutor has failed to prove beyond a reasonable doubt that the massacres at Musha church, Mwulire Hill, or Mabare mosque included the causing of serious bodily or mental harm to members of the Tutsi ethnic group. Although it is likely that many victims at these sites suffered a variety of injuries, particularly given the weapons and methods used by the attackers, the Prosecutor did not present sufficient evidence to enable the Chamber to make a specific finding about the allegations of causing serious bodily or mental harm during the massacres. The Chamber finds, therefore, that the Prosecution has not proven these allegations beyond a reasonable doubt.

c. Rapes and Other Forms of Sexual Violence

250. The Prosecution did not lead any evidence about rapes or other forms of sexual violence during the Mwulire Hill, Musha church, or Mabare mosque massacres. Prosecution Witness VAO was the only witness to testify about rapes during the Ruhanga massacre. The Chamber recalls that she was not an eye-witness to the alleged rapes, about which she learned from a woman whom she met at a refugee camp. The Chamber finds, therefore, that the Prosecution did not prove these allegations beyond a reasonable doubt.
251. The Chamber notes that various assailants raped several Tutsi females, including Prosecution Witnesses VR, VAW, VAV, and VAO, at various locations in Bicumbi and Gikoro communes during April 1994. None of these women, however, was raped during the massacres referred to in paragraphs 3.8 through 3.13 of the Indictment as alleged in paragraph 3.14. These crimes appear to fall within the broad

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### The Prosecutor

- v. Laurent Semanza, Case No. ICTR-97-20-T 75 language of paragraphs 3.15 and 3.16 of the Indictment. However, the Chamber decided to disregard those paragraphs because they are impermissibly vague. 459 459 See *supra* paras. 51, 52, 54, 61.

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### The Prosecutor

- v. Laurent Semanza, Case No. ICTR-97-20-T F. Paragraph 3.17 of the Indictment 76 252. Paragraph 3.17 of the Indictment reads: Between April 7 and April 30 1994, Laurent SEMANZA spoke to a small group of men in Gikoro Commune. He told them that they had killed Tutsi women but that they must also rape them before killing them. In response to Semanza's words the same men immediately went to where two Tutsi women, Victim A and Victim B, had taken refuge. One of the men raped Victim A and two men raped and murdered Victim B. Laurent SEMANZA intended the acts described in this paragraph to be part of the non-international armed conflict against the RPF as stated in subparagraphs

3.4.2. and 3.4.3 supra.

# 1. Allegations

253. Prosecution Witness VV, a Tutsi woman, stated that on the morning of the attack at Musha church in April 1994 at approximately 10:00 a.m., she overheard a discussion between the Accused, Rugambage, Bisengimana, three members of the Presidential Guard, and a crowd of others from Bicumbi and Gikoro. 46° She stated that the Accused asked the crowd how the work of killing Tutsis was progressing, to which they responded that they were busy doing their work.461 The witness testified that she then heard the Accused say: "Are you sure you're not killing Tutsi women and girls before sleeping with them ....[y]ou should do that and even if they have some illness, you should do it with sticks. "462 The witness explained that the Accused used the Kinyarwanda word kurongora, which means "to marry" and also "to make love". 463
254. Witness VV testified that three of the men who heard the Accused's instructions came to the house where she and her cousin were hiding. 464 She explained that one of the attackers stayed inside the house with the witness, while the two other men took her cousin outside. 465 The witness testified that the man told her that they 460T. 29 March 2001 pp. 7-8, 14, 16-18. 461T. 29 March 2001 pp. 8-9. 462T. 29 March 2001 pp. 9, 33-35. 463T. 29 March 2001 p. 10. 464T. 29 March 2001 pp. 10, 12. 465T. 29 March 2001 p. 10.

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### The Prosecutor

- v. Laurent Semanza, Case No. ICTR-97-20-T 77 ~ had permission to rape them.466 She stated that the man removed her clothes and had non-consensual sexual intercourse with her and told her that he would kill her if she resisted. 467 The witness explained that she could not see what the other two attackers were doing to her cousin, but heard her cousin scream that she preferred that the attackers kill her.468 According to the witness, when she left the house, she found that her cousin had been killed and buried. 469
255. The Accused denied any knowledge of rapes in Bicumbi commune, explaining that "[i]n Rwandan tradition or culture, rape has never existed. "47° Other Defence witnesses made similar broad assertions, stating either that rape is unknown in Rwanda 471 or that they did not see or hear of any rapes in 1994. 472 256. The Accused denied that he was in the area during the relevant period. 473 The Accused also specifically denied that he ordered Interahamwe to do as they pleased with Tutsi women, including raping them, and noted that he was accused of being in multiple places at the same time on that date. 474
2. Findings 257. The Chamber notes that Witness VV is referred to in the Indictment as Victim A, and that her cousin is Victim B.

258. The Chamber has carefully reviewed and considered the transcript of the evidence of Witness VV, which was given by deposition pursuant to Rule
71. The Chamber finds her consistent and detailed evidence to be credible and reliable. Although the witness did not specify a certain date in April 1994, the Chamber notes that she testified that the event was contemporaneous with the attack at Musha church. 466T. 29 March 2001 pp. 11, 12. 467T. 29 March 2001 pp. 11, 42-43. 468T. 29 March 2001
- p. 11. 469T. 29 March 2001
- p. 11. 470T. 20 February 2002
- p. 42. 471Witness BP, T. 4 October 2001 pp. 16, 18; Witness ZC, T. 6 November 2001 pp. 56-57. 472See Witness KM, T. 9 October 2001
- p. 3; Witness MV, T. 22 October 2001
- p. 137; Witness BP, T. 3 October 2001
- p. 121; T. 4 October 2001
- p. 15; Witness MDB, T. 26 November 2001 pp. 23, 40. 473 T. 20 February 2002
- p. 65. 474 T. 20 February 2002
- p. 65; T. 27 February 2002 pp. 116-117.

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### The Prosecutor

- v. Laurent Semanza, Case No. ICTR-97-20-T 78 Therefore, the Chamber finds that the attack on Witness VV occurred on or about 13 April 1994.
259. The Chamber finds that the unsubstantiated claims of Defence witnesses that no rapes occurred in their localities or in Rwanda are not credible or reliable. The Chamber also notes that there is no reliable or credible evidence that places the Accused at another place during the meeting. 260. The Chamber has also carefully considered the Accused's alibi in relation to these events, discussed above in Chapter III. In particular, the Chamber recalls that the Accused claimed to be in Gitarama town on 13 April 1994 which was supported by Defence Witness PFM, whose testimony, in the Chamber's opinion, is biased by her close personal relationship with the Accused. 261. Upon considering all relevant evidence, including the alibi, the Chamber finds based on the testimony of Prosecution Witness VV that the Prosecutor proved beyond a reasonable doubt that on 13 April 1994 at approximately 10:00 a.m. the Accused directed a group of people to rape Tutsi women before killing them. The Chamber also finds beyond a reasonable doubt that Victim A was raped by one of the men in the group and that her cousin, Victim B, was taken outside and killed by two other men from the group.

262. Witness VV did not observe what happened to her cousin after she was taken outside, but testified that she heard Victim B screaming that she would prefer to be killed. On the basis of this evidence, the Chamber is not able to conclude beyond a reasonable doubt that Victim B was also raped and/or tortured before she was killed.

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### The Prosecutor

- v. Laurent Semanza, Case No. ICTR-97-20-T G. Paragraph 3.19 of the Indictment 79 263. Paragraph 3.19 of the Indictment reads: On or about 8 April 1994, Laurent SEMANZA met Juvenal RUGAMBARARA and a group of Interahamwe in front of a particular house in Bicumbi Commune. Laurent SEMANZA told the Interahamwe to search for and kill the members of a particular Tutsi family. Immediately thereafter, in Laurent SEMANZA's presence, Juvenal RUGAMBARARA also told the Interahamwe to locate and kill the same Tutsi family. A short time later the Interahamwe searched a field near the house and found and killed four members of the family; Victim D, Victim E, Victim F and Victim G, and also a neighbor, Victim H, and her baby, Victim J.
1. Allegations 264. Prosecution Witness VAM, a Tutsi, testified that on 8 April 1994 at around 9 a.m. she saw the Accused, who arrived in a car alone, and Rugambarara, who came in a vehicle with Interahamwe, stop in front of the house of one of her sons.<sup>475</sup> The house was located on the road, near the witness's house.<sup>476</sup> The witness heard the Accused say that the witness's family was not yet killed and that no Tutsi should survive, that the Tutsi should be sought out and killed. <sup>477</sup> 265. Witness VAM testified that afterwards a certain Denis from Gahengeri arrived and asked the Accused and Rugambarara for weapons to go and "work" in Mwulire because the Tutsis there were defending themselves. <sup>478</sup> The witness observed all of this from about ten meters away, from a spot behind her son's house where she was hiding in a sorghum field.<sup>479</sup> The witness stated that Denis said that one person from her family was among the Tutsis who were defending themselves in Mwulire. <sup>48°</sup> According to the witness, the Accused, referring to her children, told the Interahamwe who were there: "You have to look for them and kill them. And this young man who is here in Mwulire, you have to find him. And I will give 300,000 francs to anybody <sup>475</sup>T. 13 March 2001 pp. 31, 32, 96, 100. <sup>476</sup>T. 13 March 2001
- p. 98. <sup>477</sup>Z. 13 March 2001 pp. 31-32. <sup>478</sup>Z. 13 March 2001 pp. 32, 101, 102. <sup>479</sup>T. 13 March 2001
- p. 102. <sup>480</sup>T. 13 March 2001
- p. 32.

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### The Prosecutor

- v. Laurent Semanza, Case No. ICTR-97-20-T 80 who brings his dead body to me.”<sup>481</sup> The witness stated that the Accused put this bounty on one of her sons.<sup>482</sup> After giving the order, the Accused left and the Interahamwe started to look for the witness’s family. <sup>483</sup> 266. Witness VAM testified that from her hiding spot in the sorghum field she saw an Interahamwe called Rutegesha, one of the people told by the Accused to kill her children, shoot at her son’s home.<sup>484</sup> She later clarified that the person who shot at the house was Antoine Rutikanga. <sup>485</sup> The witness stated that no one was in the house, however, because they were hiding in the sorghum field. <sup>486</sup> After the shots, the witness stayed in the sorghum field because in her view there was no other place of refuge to which to run. <sup>487</sup>
267. The witness testified that later that day, at 12:30 p.m., she saw the Interahamwe kill six people. <sup>488</sup> The Interahamwe found four of her children who were hiding in the sorghum field, and beat them with clubs and machetes, killing them. <sup>489</sup> The Interahamwe also killed a neighbour and her child. <sup>490</sup> When the assailants found them, the witness testified, that they said: "Now, we have to kill you because the Tutsis must die" and killed them on the spot. <sup>491</sup> The witness stated that the assailants knew her children. <sup>492</sup> The Interahamwe included Rutagakwa, Antoine Rutikanga, and Manigura. <sup>493</sup>
268. Defence Witness CBM1 testified that he knew some of the members of Witness VAM’s family. <sup>494</sup> The witness testified that he knew that Witness VAM’s son’s house was located "very near" the road to Gahengeri. <sup>495</sup> The witness stated that he could not say whether there was a sorghum field in front of the house because he asl T. 13 March 2001
- p. 33. <sup>482</sup> T. 13 March 2001 pp. 34, 104. <sup>483</sup> T. 13 March 2001
- p. 37. <sup>484</sup> T. 13 March 2001
- p. 34. <sup>485</sup> T. 13 March 2001
- p. 42. <sup>486</sup> T. 13 March 2001 pp. 35-36. <sup>487</sup> T. 13 March 2001 pp. 102-103. <sup>488</sup> T. 13 March 2001 pp. 36-37. <sup>489</sup> T. 13 March 2001 pp. 37-38, 44-47. <sup>490</sup> T. 13 March 2001
- p. 37. <sup>491</sup> T. 13 March 2001
- p. 39. <sup>492</sup> T. 13 March 2001
- p. 40. <sup>493</sup> T. 13 March 2001 pp. 41-42. <sup>494</sup> T. 29 October 2001
- p. 60. <sup>495</sup> T. 29 October 2001
- p. 59.

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The Prosecutor

- v. Laurent Semanza, Case No. ICTR-97-20-T 81 did not know the exact location of the residence. 496 Witness CBM1 testified that he did not witness, nor did he hear, that members of Witness VAM's family were killed in a sorghum field close to the said house. 497

## 2. Findings

269. The Chamber finds that Prosecution Witness VAM, who provided a detailed first-hand account, is credible and that her testimony is reliable. The Chamber does not consider as material the fact that the witness first said that it was Rutegesha who shot at her son's home and later stated that it was Rutikanga who did so. The Chamber accepts her account of the events set out above. The Chamber is bolstered in this finding by the fact that VAM observed the events herself at a short distance. The testimony of Witness CBM1 did not refute the evidence given by Witness VAM. Rather, the testimony of CBM1 corroborates the testimony of Witness VAM to the extent that it confirms certain names she mentioned.
270. The Chamber has also carefully considered the Accused's alibi, discussed above in Chapter III, in the context of all the evidence submitted concerning these murders. In particular, the Chamber recalls that the Accused claimed to be at his home on 8 April 1994, which was supported by Defence Witnesses KNU and PFM, whose accounts, in the Chamber's opinion, are unreliable as well as biased by their close personal relationship with the Accused. The Chamber also recalls that the Accused was not actually seen at his home from early morning on 7 April 1994 until 4:00 p.m. on 8 April 1994, and that his alleged presence there is corroborated only by the beliefs of Witnesses KNU and PFM.
271. Upon a review of all the evidence, including the alibi, the Chamber finds beyond a reasonable doubt, based on the evidence of Prosecution Witness VAM, that on 8 April 1994 in the morning, the Accused met Rugambarara and a group of Interahamwe in front of a certain house in Bicumbi commune. The Accused told the Interahamwe that a certain Tutsi family had not yet been killed, that no Tutsi should survive, and that the Tutsis should be sought out and killed. Later the same day, the 496 T. 29 October 2001

p. 59. 497 T. 29 October 2001

p. 61.

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### The Prosecutor

- v. Laurent Semanza, Case No. ICTR-97-20-T 82 Interahamwe searched a field near the house of the family mentioned by the Accused, found four members of that family, and killed them. At the same time, the Interahamwe also killed two neighbours of the family. 272. The Chamber, therefore, finds that to this extent the allegations contained in paragraph 3.19 of the Indictment have been proven beyond a reasonable doubt.

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## The Prosecutor

- v. Laurent Semanza, Case No. ICTR-97-20-T H. General Allegations
- 1. Paragraphs 3.1, 3.2, and 3.3 of the Indictment 273. Paragraphs 3.1, 3.2, and 3.3 of the Indictment read as follows: 3.1 Unless specifically stated herein, the violations of International Humanitarian Law referred to in this indictment took place in Rwanda between the 1 st of April and 31 st of July 1994. 3.2 During the events referred to in this indictment, Tutsis, Hums and Twas were identified as ethnic or racial groups. 3.3 During the events referred to in this indictment, there were in Rwanda widespread or systematic attacks directed against a civilian population on political, ethnic or racial grounds.
- a. Findings 274. As the Chamber has found in the sections on the various factual allegations, all proven

**facts**

giving rise to the violations alleged under the Statute in this case took place in Rwanda in 1994.

275. With respect to paragraph 3.2 of the Indictment, the Chamber recalls that it took judicial notice of the following fact: "Between 6 April 1994 and 17 July 1994, citizens native to Rwanda were severally identified according to the following ethnic classifications: Tutsi, Hutu and Twa."498 The Chamber therefore finds that during the events referred to in the Indictment, Tutsi, Hutu, and Twa were identified as ethnic groups.

- 276. The Chamber also took judicial notice relevant to paragraph 3.3 of the Indictment: The following state of affairs existed in Rwanda between 6 April 1994 to 17 July 1994. There were throughout Rwanda widespread or systematic attacks against a 498 Prosecutor
- v. Semanza, Case No. ICTR-97-20-I, Decision on the Prosecutor's Motion for Judicial Notice and Presumption of Facts Pursuant to Rules 94 and 54, TC, 3 November 2000, para. 48. See Annex II, Part A, para. 1.

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## The Prosecutor

- v. Laurent Semanza, Case No. ICTR-97-20-T 84 civilian population based on Tutsi ethnic identification. During the attacks, some Rwandan citizens killed or caused serious bodily or mental harm to persons perceived to be Tutsi. As a result of the attacks, there was a large number of deaths of persons of Tutsi ethnic identity. 499 277. The Chamber therefore finds that between 6 April 1994 and 17 July 1994 there were in Rwanda widespread or systematic attacks against a civilian population based on Tutsi ethnic identification.

2. Paragraph 3.4 of the Indictment 278. Paragraphs 3.4 and 3.4.1 of the Indictment read as follows: 3.4 After the Rwandan Patriotic Front (RPF) attack of October 1990, the Rwandan Government policy was characterized by the identification of the Tutsis as the enemies to be defeated. 3.4.1 This policy defined the main enemy as Tutsis from inside or outside the country, who wanted power, who did not recognize the achievement of the revolution of 1959, and who was [sic] seeking armed confrontation. The secondary enemy was defined as those who provided any kind of assistance to the main enemy. This latter category was considered as accomplices of RPF. 279. In support of these allegations, the Prosecution relies mainly on references by various experts and observers to speeches of certain government and party officials, and to the general content of radio broadcasts, as well as certain public and private statements of the Accused. 5° From these sources it is possible to ascertain that the Tutsi were generally identified with the RPF. However, the evidence adduced by the Prosecution is general in nature and is insufficient for the Chamber to make findings about the substance of official Rwandan government policy. 280. Paragraph 3.4.2 of the Indictment reads: 3.4.2 During the events referred to in this indictment, there was a non-international armed conflict in the territory of Rwanda between the Government of Rwanda and the Rwandan Patriotic Front (RPF). The victims referred to in this indictment were Tutsi civilians in Bicumbi and Gikoro communes. These were persons who were protected under Article 3 common to the Geneva 499 Prosecutor
- v. Semanza, Case No. ICTR-97-20-I, Decision on the Prosecutor's Motion for Judicial Notice and Presumption of Facts Pursuant to Rules 94 and 54, TC, 3 November 2000, para.
48. See Annex II, Part A, para. 2. 500 Prosecution Closing Brief, filed 12 June 2002, ["Prosecution Closing Brief"] para. 34.

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### The Prosecutor

- v. Laurent Semanza, Case No. ICTR-97-20-T Conventions of 1949 and under Additional Protocol II thereto, and who were not taking active part in the conflict. 85
281. The Chamber took judicial notice of the fact that "[b]etween 1 January 1994 and 17 July 1994 in Rwanda there was an armed conflict not of an international character." 5°1 The Chamber has no doubt as to the nature of the conflict. Therefore, the Chamber finds in respect of the first part of paragraph 3.4.2 that, during the events referred to in the Indictment, there was a non-international armed conflict on the territory of Rwanda between the Government of Rwanda and the RPF.
282. The Chamber notes the allegation in paragraph 3.4.2 that the victims were Tutsi civilians in Bicumbi and Gikoro communes who were protected under Common Article 3 and Additional Protocol II. The Chamber will consider this allegation in its findings, where relevant. 283. Paragraph 3.4.3 reads: 3.4.3 Laurent SEMANZA intended the attacks on these victims to be part of the non-international armed conflict because he believed that Tutsi

civilians were enemies of the Government and/or accomplices of the RPF and that destroying them would contribute to the implementation of the Government policy against the enemies and the defeat of the RPF. 284. The Chamber will consider the intentions and motives of the Accused in the findings made in connection with the specific counts in the Indictment.

3. Paragraph 3.5 of the Indictment 285. Paragraph 3.5 of the Indictment reads: At the time of the events referred to in this indictment, the MRND (Mouvement R~publicain National pour le D~veloppement et la D~mocratie) was one of the political parties in Rwanda. The members of the youth wing of the MRND were called, Interahamwe. The majority of them went on to become paramilitary militiamen. During the events referred to in this indictment the term Interahamwe came to be applied to civilians, regardless of their political or organizational affiliation, who attacked the Tutsi civilian population. sol Prosecutor
- v. Semanza, Case No. ICTR-97-20-I, Decision on the Prosecutor's Motion for Judicial Notice and Presumption of Facts Pursuant to Rules 94 and 54, TC, 3 November 2000, para.
48. See Annex II, Part A, para. 3.

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### The Prosecutor

- v. Laurent Semanza, Case No. ICTR-97-20-T 86
- a. Allegations
286. Prosecution Expert Witness Guichaoua referred to the creation of the Interahamwe "youth movement" and stated that it increased the influence and operational resources of the MRND. 5°2
287. Defence Expert Witness Ndengejeho testified that some massacres committed between April 1994 and July 1994 were reportedly committed by the Interahamwe. 5°3 Ndengejeho explained that up to 6 April 1994 the Interahamwe were the youth wing of the MRND party, but that after that date "Interahamwe came to mean the extreme youth of the various parties, as well as foreign elements." 5°4
288. The Accused testified that the Interahamwe were the youth wing of the MRND party and that their role was to sensitise the population to the ideals of the MRND party and also to recruit members for that party. 5°5
289. Testimonies of other Defence witnesses support the proposition that the Interahamwe were the youth wing of the MRND party. 5°6
- b. Findings 290. Upon consideration of the evidence on the record, the Chamber finds that the MRND was one of the political parties during the relevant times referred to in the Indictment and that a group named Interahamwe was the youth wing of that party. The

record bears scant evidence, however, that the majority of Interahamwe went on to become paramilitary militiamen. Accordingly, the Chamber shall reserve its findings on this particular generalised allegation and shall rule upon it only to the extent that it may relate to specific elements of the specific counts of the Indictment. 291. The Chamber also reserves its findings as to the general allegation that the term Interahamwe came to be applied to civilians, regardless of their political or organizational affiliation, who attacked the Tutsi civilian population. Notwithstanding 502 See Exhibit P 14.I-9

p. 38. 503T. 5 February 2002

p. 145. 50aT. 5 February 2002 pp. 148, 149. 5o5T. 13 February 2002

p. 102.

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### The Prosecutor

- v. Laurent Semanza, Case No. ICTR-97-20-T 87 Professor Ndengejeho's opinion testimony that after 6 April 1994 the term Interahamwe came to be applied to all "extreme youth of the various parties, as well as foreign elements", the Chamber believes that a finding as to the membership of particular units of the Interahamwe must be made, if necessary, within the specific context of the counts of the Indictment.
- 4. Paragraph 3.6 of the Indictment 292. Paragraph 3.6 of the Indictment reads: Laurent SEMANZA was Bourgrnestre of BICUMBI commune for over twenty years. At the time of the events referred to in this indictment, the accused was a member of the Central Committee of the MRND. Furthermore, he was nominated as an MRND Representative to the National Assembly of the broad-based transitional government, which was to be established pursuant to the Arusha Accords. Consequently, he was a very influential person in his community, both in Bicumbi commune and in neighbouring GIKORO commune, and had de facto and/or de jure authority and control over militiamen, in particular Interahamwe, and other persons, including members of the Rwandan Armed Forces (FAR), communal police and other government agents. He used his influence and authority as an agent of the government to advance its war effort against the RPF.
- a. Allegations
- 293. The evidence shows that the Accused served as bourgmestre of Bicumbi commune for more than twenty years ending in 1993, when he was replaced by Rugambarara. 5°7 The Accused and Prosecution Witnesses VN and VC testified that the Accused was then appointed to serve in the parliament. 5°8 294. Several Prosecution witnesses noted the Accused's wealth, lengthy leadership role in the commune, and his apparent and perceived connections with President Habyarimana and other government officials, and stated that although the Accused was no longer the bourgmestre he remained influential and appeared to be in control 506 See, e.g., Witness SDN1, T. 30 October 2001

- p. 14; Witness ZC, T. 6 November 2001
- p. 53; Witness KM, T. 9 October 2001
- p. 11; Witness SAM, T. 8 October 2001
- p. 70. s07 Witness VN, T. 8 November 2000 pp. 144, 145; Witness VP, T. 4 December 2000
- p. 38; Witness Nyetera, T. 7 February 2002 pp. 99, 101; Witness BZ, T. 1 October 2001 pp. 106, 107, 108; Testimony of the Accused, T. 13 February 2002
- p. 102; T. 27 February 2002
- p. 11; Witness PFM, T. 13 November 2001
- p. 24. so8 Testimony of the Accused, T. 27 February 2002
- p. 17; Witness VN, T. 8 November 2000
- p. 146; T. 13 November 2000 pp. 13, 23; Witness VC, T. 7 November 2000 pp. 108-109, 110.

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### The Prosecutor

- v. Laurent Semanza, Case No. ICTR-97-20-T 88 of the commune. 5°9 Prosecution Witnesses VC and VAO noted that many believed that the Accused was still the bourgrnestre in April 1994. 51°
- 295. Prosecution Expert Witness Guichaoua chronicled the Accused's career from bookkeeper to the "Great Bourgrnestre" and alluded to the Accused's various political and personal connections with important personalities, including President Habyarimana. 5ll 296. Guichaoua stated that, based on his research, the Accused became chairman of the MRND party in Kigali-Rural after April 1992, a role usually held by the prefect. 5~z Because there was no prefect at the time, Guichaoua agreed with the proposition that this role allowed the Accused a say in the administration of the prefecture. 513 Guichaoua further explained that as the MRND party chair in the prefecture, the Accused was an ex officio member of the MRND National Committee. 514 Guichauoa noted that, as of 1992, the MRND Central Committee no longer existed, and that, after party restructuring, the National Committee was created. 515 Witness VN also testified that the Accused was the MRND party chairman for Kigali-Rural prefecture and that he played a role in founding several minor, MRND-affiliated political parties with neighbouring bourgmestres. 516
- 297. Guichaoua agreed with the Prosecutor's propositions that
  - (i) the Accused's leadership role was evident in Gikoro and Bicumbi; (ii) the Accused in April 1994 was in a position to lead killers in attacks against Tutsis as well as Hutus who were opposed to the killings of Tutsis and that the Accused's

## orders

had to be executed; (iii) the Accused "could" have had a role in the administration of the civil defence program by virtue of his role in the MRND; (iv) the Accused was recognised as influential person because he was retained as a member of parliament in the 509 Witness VP, T. 4 December 2000 pp. 38, 92; Witness VC, T. 7 November 2000 pp. 107, 109, 110- 111, 114; Witness VAP, T. 6 December 2000 pp. 129-130, 132; T. 7 December 2000

p. 36; Witness VAO, T. 20 March 2001 pp. 46-47; Witness VJ, T. 6 November 2000 pp. 56-57, 93-94; Witness VN, T. 8 November 2000 pp. 150-151, 153, 154-157; T. 13 November 2000

p. 51; Witness Duclos, T. 17 October 2000

p. 24. 5~0 Witness VAO, T. 20 March 2001 pp. 46-47, 30-31; Witness VC, T. 7 November 2000 pp. 110-111. 511Exhibit P 14. 5~2T. 23 April 2001

p. 158; T. 25 April 2001 pp. 25-27. 5~3T. 23 April 2001 pp. 158, 161; T. 24 April 2001 pp. 73-74. 514T. 25 April 2001 pp. 25-26. 515T. 25 April 2001

p. 25.

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### The Prosecutor

v. Laurent Semanza, Case No. ICTR-97-20-T transitional assembly; and (v) the Accused was considered a wealthy man. 517 Guichaoua explained that because of his wealth, the Accused was in a position to fund political activities and party militants.518

298. Guichaoua explained that the direct power to requisition gendarmes was within the province of the prefectural security committee, composed of the prefect, who was its chair, a representative of the ministry of justice, the prosecutor, and the commander of a military camp. 519 Guichaoua was not aware whether the Accused was a member of such a committee. 52°

299. The Accused denied that he remained politically active or that he held an MRND leadership position, and noted that he had no influence or authority over those responsible for the genocide. 521 Other Defence witnesses, including BZ, Nyetera, PFM who lived with the Accused, and JAM who was part of the president's household, testified that during the relevant events in 1994, the Accused was no longer politically active and was not particularly rich, influential, or well- connected. 522

300. Defence Expert Witness Ndengejeho, who was an MDR and government official, acknowledged that the Accused, as bourgmestre, had a high degree of status and popularity. 523 He testified, however, that there was general consensus that the Accused should be removed as bourgrnestre because his commune was "becoming his own private backyard". 524

301. Ndengejeho explained that when he was in Bicumbi commune after Rugambarara became the bourgrnestre, he paid official visits to him and not to the 516 T. 8 November 2000 pp. 146, 147-148. st7 T. 23 April 2001 pp. 139-142, 153-154, 166-167; T. 24 April 2001 pp. 30-34. 518 T. 24 April 2001 pp. 34-36, 39-40. 519 T. 25 April 2001 pp. 11-12. 520 T. 25 April 2001
- p. 12. 5zt Testimony of the Accused, T. 19 February 2002 p. 34; T. 27 February 2002 pp. 17-18; T. 28 February 2002
- p. 115. 522 Witness BZ, T. 1 October 2001 pp. 108, 109, 110; Witness Nyetera, T. 7 February 2002
- p. 116; T. 11 February 2002 pp. 12-14; T. 12 February 2002 pp. 182-183; Witness JAM, T. 28 November 2001 pp. 10, 11, 36, 44-46; Witness PFM, T. 13 November 2001 pp. 28-29. 523 T. 31 January 2002 pp. 57-58. 524 T. 29 January 2002 pp. 120-121.

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### The Prosecutor

- v. Laurent Semanza, Case No. ICTR,97-20-T 90 Accused. 525 Ndengejeho stated that after being replaced by Rugambarara, the Accused withdrew from politics, and though he was invited, he did not even attend the prefecture councils. 526 However, Ndengejeho noted that the Accused remained a member of the MRND national committee, but stated that this committee had only an advisory role. 527 302. Ndengejeho explained that after leaving his post as bourgmestre, the Accused became a businessman and invested in a national transportation company. 52s He agreed that the Accused was rich and had productive land, but stated that having money did not give an individual the power to influence people and events. 529 Other Defence witnesses also noted the Accused's wealth and property holdings. 53°
- b. Findings 303. Based on the uncontested evidence, including the testimony of the Accused, the Chamber finds that the Accused was bourgmestre of Bicumbi commune for more than twenty years until 1993, and that he was subsequently appointed to serve in the parliament that was to be established pursuant to the Arusha Accords.
304. The Chamber finds that the Accused was widely viewed as an important and influential personality in his locality, based, in particular, on his lengthy and successful tenure as bourgrnestre, his appointment to parliament, his wealth, his perceived connections to the president, and the consistently held views of the witnesses. The Chamber also accepts that the Accused, at the very least, was acquainted with the president and some government officials. However, the Chamber finds that the Prosecutor failed to prove the extent, nature, and effect of any possible personal or political connection beyond a reasonable doubt.

305. While the Chamber notes that some members of the community believed that the Accused remained the bourgmestre of Bicumbi commune during the events alleged in the Indictment, insufficient proof exists on the record to establish that the 525T. 29 January 2002 pp. 123, 139. 526T. 29 January 2002 pp. 134-135. 527T. 29 January 2002 p. 132; T. 30 January 2002
- p. 52. 528Y. 29 January 2002 pp. 134-135. 529T. 30 January 2002 pp. 52, 60.

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### The Prosecutor

- v. Laurent Semanza, Case No. ICTR-97-20-T 91 Accused actually continued to exercise any of the official functions of the post directly or by influencing Rugambarara. 306. The Prosecutor also did not prove beyond a reasonable doubt that the Accused held a leadership role in the MRND during the events covered by the Indictment, in particular in April 1994. The Chamber recalls that Guichaoua acknowledged the difficulty in proving that someone was an MRND official, and that his proof came from a rare, undated Ministry of Interior document. 531 Moreover, Witness VN could not remember when the Accused held the position of MRND party chief in Kigali- Rural, and Ndengejeho never specified exactly when the Accused served on the National Committee. In any event, even if this had been established, the Prosecutor failed to submit sufficient evidence to demonstrate the scope of the authority that a member of the MRND National Committee or a prefecture party chair might possess, or the nature and extent of the Accused's active participation in the party.
307. The Chamber will address in its legal findings whether the Accused had effective control over militiamen, in particular Interahamwe, and other persons, including members of the Rwandan Armed Forces ("FAR"), commune police and other government agents, as well as, if necessary, whether he used his influence and authority as an agent of the government to advance its war effort against the RPF. 530 Witness CYM3, T. 5 November 2001 pp. 18, 19; Witness PFM, T. 13 November 2001
- p. 67. 531 T. 25 April 2001 pp. 27-29.

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### The Prosecutor

- v. Laurent Semanza, Case No. ICTR-97-20-T 92 V. THE LAW A. Genocide
308. Count 1 of the Indictment charges the Accused with committing genocide. Count 2 charges the Accused with direct and public incitement to commit genocide. Count 3 charges him with complicity to commit genocide. Direct and public incitement to commit genocide and complicity in genocide are discussed in the Individual Criminal Responsibility section below. 309. Article 2(2) of the Statute provides: Genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious

group, as such: (a) Killing members of the group;

- (b) Causing serious bodily or mental harm to members of the group; (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; (d) Imposing measures intended to prevent births within the group; (e) Forcibly transferring children of the group to another group. 532

310. The Indictment charges the Accused with genocide by killing and causing serious bodily or mental harm, including rapes and other forms of sexual violence, against members of the Tutsi ethnical or racial group. The Chamber will discuss only those elements that are applicable to determining liability for the crime of genocide in this case. 532 The definition of genocide in the Statute of the Tribunal is identical to the definitions of genocide in the Convention on the Prevention and Punishment of the Crime of Genocide, 18 December 1948, art. II, 78 U.N.T.S. 277 ["Genocide Convention"], and the Statute of the International Criminal Court, 17 July 1998, art. 6, UN Doc. A/Conf.183/9 ["ICC Statute"].

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### The Prosecutor

v. Laurent Semanza, Case No. ICTR-97-20-T

1. Mens Rea 93 311. In order to find an accused guilty of the crime of genocide it must be proved that he possessed the requisite mens rea of the genocidal acts listed in Article 2 of the Statute. Accordingly, it must be demonstrated that the alleged perpetrator committed any of the enumerated acts with the intent to destroy, in whole or in part, a group, as such, that is defined by one of the protected categories, nationality, race, ethnicity or religion. 533 312. The determination of mens rea in the case of genocide requires the following: firstly, it must be established that a person, who killed or caused serious bodily or mental harm to another person, did so on the basis of the victim's membership in a protected group; secondly, it must be established that the perpetrator's intent was to destroy that group as such in whole or in part. 313. A perpetrator's mens rea may be inferred from his actions. While noting the inherent difficulty of finding an accused's genocidal intent in the absence of a confession or other admissions, the Akayesu

## Judgement

presents various factors that a Chamber may examine to infer the accused's mental state: [I]t is possible to deduce the genocidal intent inherent in a particular act charged from the general context of the perpetration of other culpable acts systematically directed against that same group, whether these acts were committed by the same offender or by others. Other factors, such as the scale of atrocities committed, their general nature, in a region or a country, or furthermore, the fact of deliberately and systematically targeting victims on account of their membership of a particular group, while excluding the members of other groups, can enable the Chamber to infer the genocidal intent of a particular act. 534

314. The Chamber adopts the methods enumerated in Akayesu for assessing the specific genocidal intent of an accused. 533 Statute, art. 2(2). See Ntakirutimana, Judgement, TC, para. 784; Bagilishema, Judgement, TC, paras. 60-61; Musema, Judgement, TC, para. 164; Rutaganda, Judgement, TC, para. 49; Kayishema and Ruzindana, Judgement, TC, para. 91; Akayesu, Judgement, TC, para. 517. 534 Akayesu, Judgement, TC, para. 523. See also Bagilishema, Judgement, TC, paras. 62-63; Musema, Judgement, TC, paras. 166-167; Rutaganda, Judgement, TC, paras. 61-63; Kayishema and Ruzindana, Judgement, TC, para. 93; Jelusic, Judgement, TC, para. 73.

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### The Prosecutor

- v. Laurent Semanza, Case No. ICTR-97-20-T
- a. "To Destroy" 94 315. Article 2 of the Statute indicates that the perpetrator must be shown to have committed the enumerated prohibited acts with the intent to "destroy" a group. The drafters of the Genocide Convention, from which the Tribunal's Statute borrows the definition of genocide verbatim, unequivocally chose to restrict the meaning of "destroy" to encompass only acts that amount to physical or biological genocide. 535
- b. "In Whole or in Part"
316. Although there is no numeric threshold of victims necessary to establish genocide, the Prosecutor must prove beyond a reasonable doubt that the perpetrator acted with the intent to destroy the group as such, in whole or in part. 536 The intention to destroy must be, at least, to destroy a substantial part of the group. 537
- c. Protected Groups 317. The Statute of the Tribunal does not provide any insight into whether the group that is the target of an accused's genocidal intent is to be determined by objective or subjective criteria or by some hybrid formulation. The various Trial Chambers of this Tribunal have found that the determination of whether a group comes within the sphere of protection created by Article 2 of the Statute ought to be assessed on a case-by-case basis by reference to the objective particulars of a given social or historical context, and by the subjective perceptions of the perpetrators. 538 The Chamber finds that the determination of a protected group is to be made on a case-by-case basis, consulting both objective and subjective criteria. 535 Report of the International Law Commission on the Work of its Forty-Eighth Session 6 May - 26 July 1996, UN GAOR International Law Commission, 51st Sess., Supp. No. 10, p. 90, UN Doc. A/51/10 (1996) ("As clearly shown by the preparatory work for the Convention, the destruction question is the material destruction of a group either by physical or by biological means, not the destruction of the national, linguistic, religious, cultural or other identity of a particular group."). 536 Bagilishema, Judgement, TC, para. 58; Musema, Judgement, TC, para. 165; Rutaganda, Judgement, TC, para. 60; Kayishema and Ruzindana, Judgement, TC, paras. 95, 96, 98; Akayesu, Judgement, TC, para. 521. 537 Bagilishema, Judgement, TC, para. 64. 538 See, e.g., Bagilishema, Judgement, TC, para. 65;

Musema, Judgement, TC, paras. 161-163; Rutaganda, Judgement, TC, paras. 56-58; Kayishema and Ruzindana, Judgement, TC, para. 98; Akayesu, Judgement, TC, para. 702. See also Jelisie, Judgement, TC, paras. 69-72 (using a subjective approach to determine definition of a group while holding that the intent of the drafters of the Genocide convention was that groups were to be defined objectively).

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### The Prosecutor

- v. Laurent Semanza, Case No. ICTR-97-20-T 95
- 2. Actus Reus 318. Article 2(2) of the Statute lists the conduct that constitutes the actus reus of the crime of genocide.
  - a. Killing Members of the Group 319. In order to be held criminally liable for genocide by killing members of a group, in addition to showing that an accused possessed an intent to destroy the group as such, in whole or in part, the Prosecutor must show the following elements: (1) the perpetrator intentionally killed one or more members of the group, without the necessity of premeditation; 539 and (2) such victim or victims belonged to the targeted ethnical, racial, national, or religious group. 54°
  - b. Serious Bodily or Mental Harm 320. The term "serious bodily harm" is not defined in the Statute. Nevertheless, the Chamber finds that the Statute seeks to punish serious acts of physical violence, including sexual violence, falling short of killing. In the Kayishema and Ruzindana Judgement, the Tribunal ruled that serious bodily harm is "harm that seriously injures the health, causes disfigurement or causes any serious injury to the external, internal organs or senses". 54~ Moreover, the Tribunal has ruled that "serious harm" need not be an injury that is permanent or irremediable. 54z 539 Bagilishema, Judgement, TC, paras. 55, 57-58; Musema, Judgement, TC, para. 155; Rutaganda, Judgement, TC, paras. 49, 50; Kayishema and Ruzindana, Judgement, TC, para. 103; Akayesu, Judgement, TC, para. 501. See also Kayishema and Ruzindana, Judgement, AC, para. 151. 540 Bagilishema, Judgement, TC, para. 55; Musema, Judgement, TC, paras. 154-155; Rutaganda, Judgement, TC, para. 60; Kayishema and Ruzindana, Judgement, TC, para. 99; Akayesu, Judgement, TC, para. 499. 541 Kayishema and Ruzindana, Judgement, TC, para. 109. But see Report of the International Law Commission on the Work of its Forty-Eighth Session 6 May - 26 July 1996, UN GAOR International Law Commission, 51st Sess., Supp. No. 10, p. 91, UN Doc. A/51/10 (1996) ("The bodily harm or mental harm inflicted on members of a group must be of such a serious nature as to threaten its destruction in whole or in part."). 542 Bagilishema, Judgement, TC, para. 59; Musema, Judgement, TC, para. 156; Rutaganda, Judgement, TC, para. 51; Kayishema and Ruzindana, Judgement, TC, para. 108; Akayesu, Judgement, TC, para. 502.

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## The Prosecutor

- v. Laurent Semanza, Case No. ICTR-97-20-T 96 321. Similarly, the term "serious mental harm" is not defined in the Statute. This Tribunal has held "serious mental harm" to mean more than minor or temporary impairment of mental faculties. 543
- 322. The Chamber adopts the foregoing standards pronounced in Akayesu and Kayishema and Ruzindana as to the determination of serious bodily or mental harm. In addition, the Chamber finds that serious mental harm need not be permanent or irremediable.
- 323. In addition to showing that an accused possessed an intent to destroy a protected group, in whole or in part, as such, the following elements must be proved in order to show that the accused committed the crime of genocide by causing serious bodily or mental harm to members of the group:
  - (1) the perpetrator intentionally caused serious bodily or mental harm to one or more members of the group; 544 and (2) such person or persons belonged to the targeted national, ethnical, racial, or religious group. 545 543 Kayishema and Ruzindana, Judgement, TC, para. 110. 544 Bagilishema, Judgement, TC, paras. 55, 59; Musema, Judgement, TC, paras. 154, 156; Rutaganda, Judgement, TC, paras. 49, 51; Kayishema and Ruzindana, Judgement, TC, paras. 100, 108-110, 112- 113. 545 Bagilishema, Judgement, TC, para. 55; Musema, Judgement, TC, para. 154; Rutaganda, Judgement, TC, para. 60; Akayesu, Judgement, TC, paras. 502, 712, 721.

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## The Prosecutor

- v. Laurent Semanza, Case No. ICTR-97-20-T 97 B. Crimes Against Humanity 324. Counts 4, 5, 6, 8, 10, 11, 12, and 14 of the Indictment charge the Accused with crimes against humanity.
- 325. Pursuant to Article 3 of the Statute: The International Tribunal for Rwanda shall have the power to prosecute persons responsible for the following crimes when committed as part of a widespread or systematic attack against any civilian population on national, political, ethnic, racial or religious grounds: (a) Murder; (b) Extermination; (c) Enslavement; (d) Deportation; (e) Imprisonment; (f) Torture; (g) Rape; (h) Persecutions on political, racial and religious grounds; (i) Other inhumane acts.
- 1. The Relationship Between the Enumerated Acts and the General Elements

326. A crime against humanity must have been committed as part of a widespread or systematic attack against any civilian population on discriminatory grounds. Although the act need not be committed at the same time and place as the attack or share all of the features of the attack, it must, by its characteristics, aims, nature, or consequence objectively form part of the discriminatory attack.

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### The Prosecutor

- v. Laurent Semanza, Case No. ICTR-97-20-T
- 2. The Attack 98 327. An "attack" is generally defined as an unlawful act, event, or series of events of the kind listed in Article 3(a) through (i) of Statute.<sup>546</sup> An "attack" does not necessarily require the use of armed force, it could also involve other forms of inhumane mistreatment of the civilian population. <sup>547</sup>
- a. The Attack Must be Widespread or Systematic 328. This Tribunal has consistently held that, in line with customary international law, the requirements of "widespread" and "systematic" should be read disjunctively in accordance with the English version of the Statute, rather than cumulatively in accordance with the French text: as The Chamber observes that this jurisprudence does not fully articulate the basis of such a custom. However, the Chamber notes that a Trial Chamber of the International Tribunal for the Former Yugoslavia ("ICTY") reviewed the limited practice on this issue in the Tadic

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and concluded that widespread or systematic was an element of crimes against humanity in customary international law.<sup>549</sup> The Chamber does not see any reason to depart from the uniform practice of the two Tribunals. 329. "Widespread" refers to the large scale of the attack. 55° "Systematic" describes the organized nature of the attack. 551 The Appeals Chamber of the ICTY recently clarified that the existence of a policy or plan may be evidentially relevant, in that it may be useful in establishing that the attack was directed against a civilian population <sup>546</sup> Musema, Judgement, TC, para. 205; Rutaganda, Judgement, TC, para. 70; Kayishema and Ruzindana, Judgement, TC, para. 122; Akayesu, Judgement, TC, para. 581. <sup>547</sup> Musema, Judgement, TC, para. 205; Rutaganda, Judgement, TC, para. 70; Akayesu, Judgement, TC, para. 581. <sup>548</sup> NtaMrutimana, Judgement, TC, para. 804; Bagilishema, Judgement, TC, para. 77; Musema, Judgement, TC, paras. 202-203; Rutaganda, Judgement, TC, para. 68; Kayishema and Ruzindana, Judgement, TC, para. 123, footnote 26; Akayesu, Judgement, TC, para. 579. <sup>549</sup> Tadic, Judgement, TC, paras. 646-648. See also Kunarac, Judgement, AC, para. 93; Tadic, Judgement, AC, para. 248; Krnojelac, Judgement, TC, para. 55; Krstic, Judgement, TC, para. 480; Kordic and Cerkez, Judgement, TC, para. 178; Blaskic, Judgement, TC, para. 202; Kupreskic, Judgement, TC, para. 544; Jelusic, Judgement, TC, para. 53. <sup>550</sup> Akayesu, Judgement, TC, para.

580. See also Ntala'rutimana, Judgement, TC, para. 804; Bagilishema, Judgement, TC, para. 77; Musema, Judgement, TC, para. 204; Rutaganda, Judgement, TC, para. 69. 55~ Ntakirutimana, Judgement, TC, para. 804; Musema, Judgement, TC, para. 204; Rutaganda, Judgement, TC, para. 69; Kayishema and Ruzindana, Judgement, TC, para. 123; Akayesu, Judgement, TC, para. 580.

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### The Prosecutor

- v. Laurent Semanza, Case No. ICTR-97-20-T 99 and that it was widespread or systematic, but that the existence of such a plan is not a separate legal element of the crime. 552
- b. The Attack Must be Directed Against any Civilian Population 330. A civilian population must be the primary object of the attack. 553 A population remains civilian in nature even if there are individuals within it who are not civilians and even if the members of the population at one time bore arms, so long as the population is "predominantly civilian". 554 The term "population" does not require that crimes against humanity be directed against the entire population of a geographic territory or area. 555 The victim(s) of the enumerated act need not necessarily share geographic or other defining features with the civilian population that forms the primary target of the underlying attack, but such characteristics may be used to demonstrate that the enumerated act forms part of the attack.
- c. The Attack Must be Committed on Discriminatory Grounds 331. Article 3 of the Statute requires that the attack against the civilian population be committed "on national, political, ethnical, racial or religious grounds". Acts committed against persons outside the discriminatory categories may nevertheless form part of the attack where the act against the outsider supports or furthers or is intended to support or further the attack on the group discriminated against on one of the enumerated grounds. 556
- 3. The Mental Element for Crimes Against Humanity
- 332. The accused must have acted with knowledge of the broader context of the attack and knowledge that his act formed part of the attack on the civilian 55z Kunarac, Judgement, AC, para. 98. 553 Bagilishema, Judgement, TC, para. 79; Musema, Judgement, TC, para. 207; Rutaganda, Judgement, TC, para. 72; Kayishema and Ruzindana, Judgement, TC, paras. 127, 128; Akayesu, Judgement, TC, para. 582. 554 Bagilishema, Judgement, TC, para. 79; Rutaganda, Judgement, TC, para. 72; Kayishema and Ruzindana, Judgement, TC, para. 128; Akayesu, Judgement, TC, para. 582. 555 Bagilishema, Judgement, TC, para. 80; Kunarac, Judgement, AC, para. 90. 556 Musema, Judgement, TC, para. 209; Rutaganda, Judgement, TC, para. 74.

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### The Prosecutor

- v. Laurent Semanza, Case No. ICTR-97-20-T 100 population: 57 However, the accused need not necessarily share the purpose or goals behind the broader attack. There is no requirement that the enumerated acts other than persecution be committed with discriminatory intent. 558

#### 4. The Enumerated Acts

- 333. The Accused is charged with committing crimes against humanity of murder, extermination, torture, rape, and persecution. The Chamber will therefore limit its discussion to these offences.
  - a. Murder 334. The English version of Article 3(a) of the Statute refers to "murder", which a broad legal term encompassing premeditated, intentional, and certain types of reckless homicide. 559 The French version of Article 3(a) of the Statute refers only the premeditated form of murder: "assassinat". 56°
- 335. In Akayesu, Rutaganda, and Musema, the Trial Chambers concluded that the reference to the broader term "murder" in the English text of Article 3 was more consistent with customary international law, but did not fully articulate the evidence 557 Ntakirutimana, Judgement, TC, para. 803; Bagilishema, Judgement, TC, para. 94; Musema, Judgement, TC, para. 206; Kayishema and Ruzindana, Judgement, TC, para. 134. 55s Akayesu, Judgement, AC, para. 467. 559 See, e.g., BLACK'S LAW DICTIONARY
  - p. 1019 (6th ed. 1990); United States MODEL PENAL CODE 210.2 ("...criminal homicide constitutes murder when:
    - (a) it is committed purposely or knowingly;
    - (b) it is committed recklessly under circumstances manifesting extreme indifference to the value human life."); Canada CRIMINAL CODE R.S.C. 1985, Ch. C-46
  - s. 229 ("Culpable homicide is murder (a) where the person who causes the death of a human being
    - (i) means to cause his death, or (ii) to cause him bodily harm that he knows is likely to cause his death, and is reckless whether death ensues or not."); New South Wales CRIMES ACT (1900)
  - s. 18 ("(a) Murder shall be taken to have committed where the act of the accused, or thing by him or her omitted to be done, causing the death charged, was done or omitted with reckless indifference to human life, or with intent to kill or inflict grievous bodily harm upon some person, or done in an attempt to commit, or during or immediately after the commission, by the accused, or some accomplice with him or her, of a crime punishable by imprisonment for life or for 25 years."). 560 See, e.g., France NOUVEAU CODE PENAL, art. 221-3 (Le meurtre commis avec prrmrditation constitue un assassinat) ; Rwanda CODE PENAL, art. 312 (Le meurtre commis avec prrmrditation ou guet-apens est qualifi6 assassinat); CODE PENAL DE BURKINA FASO 1996, art. 318 (L'homicide commis

volontairement est qualifié meurtre. Tout meurtre commis avec préméditation ou guet-apens est qualifié assassinat.); NOUVEAU CODE PENAL DU SENEGAL, art. 281 (Tout meurtre commis avec préméditation ou guet-apens est qualifié assassinat.); Belgium CODE PENAL, art. 394 (Le meurtre commis avec préméditation est qualifié assassinat.); CODE PENAL DE HAÏTI, art. 241 (Tout meurtre commis avec préméditation ou guet-apens est qualifié assassinat.).

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### The Prosecutor

- v. Laurent Semanza, Case No. ICTR-97-20-T 101 for the existence of this custom. 561 In contrast, the Trial Chambers in Bagilishema and Kayishema and Ruzindana adopted the higher standard of premeditation because it is more consistent with a bilingual interpretation of the Statute and because, where there is any doubt, matters of interpretation should be decided in favour of the Accused. 562 Faced with this divergence, the Chamber has undertaken a review of this issue. 336. When interpreting a term in the Statute, the Chamber begins with its ordinary meaning. 563 Where a difference in meaning exists between the two equally authoritative versions of the Statute, the Chamber applies the well-established principle of interpretation embodied in Article 33(4) of the Vienna Convention on the Law of Treaties, which directs that when interpreting a bilingual or multilingual instrument the meaning which best reconciles the equally authoritative texts shall be adopted. 564
- 337. The Chamber notes that assassinat is a specific form of murder requiring premeditation, and thus is more precise than the English reference to "murder". The Chamber finds that it is possible to harmonise the meaning of the two texts by requiring premeditation. This result is in accord with the general principles that 56t Musema, Judgement, TC, para. 214; Rutaganda, Judgement, TC, para. 79; Akayesu, Judgement, TC, para. 588. 56z Bagilishema, Judgement, TC, paras. 84-85; Kayishema and Ruzindana, Judgement, TC, paras. 138- 139. See also Ntakirutimana, Judgement, TC, footnote 1151, para. 808 (citing to Bagilishema and Akayesu for the "requisite intent"). 563 See generally Vienna Convention on the Law of Treaties, 23 May 1969, 1155 U.N.T.S. 331, art. 31(1) ["Vienna Convention"]; Akayesu, Judgement, AC, para. 478; Prosecutor
- v. Bagosora, Case No. ICTR-98-37-A, Decision on the Admissibility of the Prosecutor's Appeal from the Decision of a Confirming Judge Dismissing an Indictment Against Theoneste Bagosora and 28 Others, AC, 8 June 1998, paras. 28-29; Kayishema and Ruzindana, Judgement, TC, para. 139; Aleksovski, Judgement, AC, para. 98; Jelusic, Judgement, AC, para. 35; Tadic, Judgement, AC, para. 282. 564 See generally Vienna Convention, art. 33(4) ("Except where a particular text prevails in accordance with paragraph 1, when a comparison of the authentic texts discloses a difference of meaning which the application of articles 31 and 32 does not remove, the meaning which best reconciles the texts, having regard to the object and purpose of the treaty, shall be adopted."). Blaskic, Judgement, TC, para. 326 (applying

Vienna Convention, art. 33(4)); Kayishema and Ruzindana, Judgement, TC, para. 139 (considering the two versions of the Statute together to ascertain the meaning). The Chamber notes that this interpretive rule is also applied in bilingual domestic systems. See, e.g., Hong Kong Interpretation and General Clauses Ordinance Cap. 1 Section 10B (3) ("Where a comparison of the authentic texts an Ordinance discloses a difference of meaning which the rules of statutory interpretation ordinarily applicable do not resolve, the meaning which best reconciles the texts, having regard to the object and purposes of the Ordinance, shall be adopted."); R. v. Proulx, [2000] 1 S.C.R. 61 (Canada), para. 95 ("In conformity with a long-standing principle of interpretation, to resolve the conflict between the two official versions, we have to look for the meaning common to both.").

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### The Prosecutor

- v. Laurent Semanza, Case No. ICTR-97-20-T 102 criminal statutes should be strictly construed and that any ambiguity should be interpreted in favour of the accused. 565 338. A contextual

### analysis

of the Statute further supports this conclusion, because both the English and French versions of the Statute employ terms in Article 3(a) that denote a higher level of intention than is required for the crimes in Article 2(2)(a). their ordinary meaning, the English term murder (crime against humanity) has higher intent than killing (genocide), just as the French term assassinat (crime against humanity) requires a higher intention than meurtre (genocide). In Article 4(a) the "murder" is paired with "meurtre", again suggesting that on the basis of the French text, murder as a crime against humanity requires a higher mental element.

- 339. For these reasons, the Chamber considers that it is premeditated murder (assassinat) that constitutes a crime against humanity in Article 3(a) of the Statute. Premeditation requires that, at a minimum, the accused held a deliberate plan to kill prior to the act causing death, rather than forming the intention simultaneously with the act. The prior intention need not be held for very long; a cool moment of reflection is sufficient. The Chamber observes that the requirement that the accused must have known that his acts formed part of a wider attack on the civilian population generally suggests that the murder was pre-planned. The Chamber emphasises that the accused need not have premeditated the murder of a particular individual; for crimes against humanity it is sufficient that the accused had a premeditated intention to murder civilians as part of the widespread or systematic attack on discriminatory grounds.
- b. Extermination 340. Extermination may be differentiated from murder in that it is directed against a population rather than individuals. The material element of extermination is killing that constitutes or is part of a mass killing of members of a civilian population. The ~ , 565 This is consistent with the Tribunal's approach to the difference in meaning between

"killing" and "meurtre" in Article 2(2)(a) of the Statute. Kayishema and Ruzindana, Judgement, AC, para. 151; Bagilishema, Judgement, TC, para. 57; Musema, Judgement, TC, para. 155; Rutaganda, Judgement, TC, para. 50; Kayishema and Ruzindana, Judgement, TC, para. 103; Akayesu, Judgement, TC, para. 501.

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### The Prosecutor

- v. Laurent Semanza, Case No. ICTR-97-20-T 103 scale of the killing required for extermination must be substantial. Responsibility for a single or a limited number of killings is insufficient. 566
- 341. This Tribunal has held that extermination may encompass intentional, reckless, or grossly negligent killing: 67 The ICTY approach, in contrast, has been to equate the mental elements of murder (not premeditated) and extermination. 568 Neither the ICTR or ICTY Appeals Chamber has yet addressed this inconsistency. This Trial Chamber is of the view that, in the absence of express authority in the Statute or in customary international law, international criminal liability should be ascribed only on the basis of intentional conduct. 569 Accordingly, the Chamber finds that the mental element for extermination is the intent to perpetrate or participate in a mass killing.
- c. Torture 342. In Akayesu, the Trial Chamber relied on the definition of torture found in the United Nations Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment. 57° The ICTY Appeals Chamber has since explained that while the definition contained in the Convention Against Torture is reflective of customary international law in relation to the obligations of states, it is not identical to the definition of torture as a crime against humanity. 5v~ In particular, the ICTY Appeals Chamber has confirmed that, outside the framework of the Convention Against Torture, the "public official" requirement is not a requirement under customary international law in relation to individual criminal responsibility for torture as a crime against humanity: v2 343. Therefore, the Chamber concludes that torture as a crime against humanity is the intentional infliction of severe physical or mental pain or suffering for prohibited 566 Ntakirutimana, Judgement, TC, paras. 813-814; Vasiljevic, TC, paras. 227, 232. 56v Bagilishema, Judgement, TC, para. 89; Kayishema and Ruzindana, Judgement, TC, para. 144. 568 See, e.g., Krstic, Judgement, TC, para. 495. 569 The Chamber notes that the perpetrator's intention may be inferred from his conduct or the surrounding circumstances. 57o Akayesu, Judgement, TC, paras. 593-595. See UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, UN Doc. A/RES/39/46 (1984), 1465 U.N.T.S. ["Convention Against Torture"]. 571 Kunarac, Judgement, AC, paras. 146-148. 57z Kunarac, Judgement, AC, para. 148.

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### The Prosecutor

- v. Laurent Semanza, Case No. ICTR-97-20-T 104 purposes including: obtaining information or a confession; punishing, intimidating or coercing the victim or a third person; or discriminating against the victim or a third person. 573 There is no requirement that the conduct be perpetrated solely for one of the prohibited aims. 574

d. Rape

344. The Akayesu

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enunciated a broad definition of rape which included any physical invasion of a sexual nature in coercive circumstance and which was not limited to forcible sexual intercourse. 575 The Appeals Chamber of the ICTY, in contrast, affirmed a narrower interpretation defining the material element of rape as a crime against humanity as the non-consensual penetration, however slight, of the vagina or anus of the victim by the penis of the perpetrator or by any other object used by the perpetrator, or of the mouth of the victim by the penis of the perpetrator. 576 Consent for this purpose must be given voluntarily and freely and is assessed within the context of the surrounding circumstances. 577 345. While this mechanical style of defining rape was originally rejected by this Tribunal, the Chamber finds the comparative

## analysis

in Kunarac to be persuasive and thus will adopt the definition of rape approved by the ICTY Appeals Chamber. In doing so, the Chamber recognises that other acts of sexual violence that do not satisfy this narrow definition may be prosecuted as other crimes against humanity within the jurisdiction of this Tribunal such as torture, persecution, enslavement, or other inhumane acts. 346. The mental element for rape as a crime against humanity is the intention to effect the prohibited sexual penetration with the knowledge that it occurs without the consent of the victim. 578 573 Kvočka, Judgement, TC, para. 140; Furundzija, Judgement, TC, para. 162; CelebicL Judgement, TC, para. 470. 574 CelebicL Judgement, TC, para. 470. See also Kunarac, Judgement, TC, para. 486. 575 Akayesu, Judgement, TC, para. 598. See also Musema, Judgement, TC, para. 226. 576 Kunarac, Judgement, AC, paras. 127-128. 577 Kunarac, Judgement, AC, paras. 127, 128, 130. 578 Kunarac, Judgement, AC, paras. 127-128.

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### The Prosecutor

- v. Laurent Semanza, Case No. ICTR-97-20-T
- e. Persecution 105 347. In Kupreskic, a Trial Chamber of the ICTY summarised the material element of persecution as "the gross or blatant denial, on discriminatory grounds, of a fundamental right, laid down in international customary or treaty law, reaching the same level of gravity as the other acts prohibited in Article 5." 579 This definition was adopted and applied by an ICTR Trial Chamber in Ruggiu. 58° 348. Persecution may take diverse forms

and does not necessarily require a physical act.<sup>581</sup> Article 7(2)(g) of the ICC Statute explains that "[p]ersecution' means intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity".<sup>582</sup> The ICC Elements of Crimes states, similarly, that the relevant part of the material element of persecution is:

1. The perpetrator severely deprived, contrary to international law, one or more persons of fundamental rights.
  2. The perpetrator targeted such person or persons by reason of the identity of a group or collectivity or targeted the group or collectivity as such. 583 349. Acts of persecution must be evaluated in context, by looking at their overall cumulative effects. 584 In accordance with customary international law, persecution may include acts enumerated under other sub-headings of crimes against humanity, such as murder or deportation, when they are committed on discriminatory grounds. 585 Persecution may also involve a variety of other discriminatory acts, not enumerated elsewhere in the Statute, involving serious deprivations of human rights. 586
350. The act of persecution must have been committed on political, racial, or religious grounds. Unlike the other enumerated crimes against humanity, persecution 579Kupresla'c, Judgement, TC, para. 621. See also Kordic and Cerkez, Judgement, TC, para. 195. 580Ruggiu, Judgement, TC, para. 21. 58~Kupresla'c, Judgement, TC, para. 568; Tadic, Judgement, TC, para. 707. 582ICC Statute, art. 7(2)(g). 583Report, First Session 3-10 September 2002, Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court (ICC-ASP/1/3 and Corr.1), Part II B, art. 7(1)(h)(1) and (2) (footnote 584 Krstic, Judgement, TC, para. 535; Kordic and Cerkez, Judgement, TC, para. 199; Kupresla'c, Judgement, TC, para. 622. 585 Kupreskic, Judgement, TC, paras. 607, 615. 586 Kordic and Cerkez, Judgement, TC, para. 194; Kupreskic, Judgement, TC, para. 615.

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### The Prosecutor

- v. Laurent Semanza, Case No. ICTR-97-20-T 106 requires a discriminatory intent. 587 This Chamber observes that the enumerated grounds of discrimination for persecution in Article 3(h) of the Statute do not include national or ethnic grounds, which are included in the list of discriminatory grounds for the attack contained in the chapeau of Article 3. 587 Akayesu, Judgement, AC, paras. 464, 468.

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### The Prosecutor

- v. Laurent Semanza, Case No. ICTR-97-20-T 107 C. Violations of Article 3 Common to the Geneva Conventions and of Additional Protocol II Thereto (Article 4 of the Statute)

351. Counts 7, 9, and 13 of the Indictment charge the Accused with serious violations of Article 3 common to the Geneva Conventions of 12 August 1949 for the Protection of War Victims and of Additional Protocol II thereto of 8 June 1977.
352. Pursuant to Article 4 of the Statute of the Tribunal, the Tribunal has the power to prosecute persons who "committed or ordered to be committed" serious violations of Common Article 3 and of Additional Protocol II. According to Article 4 of the Statute, such violations include, but are not limited to:
- (a) Violence to life, health and physical or mental well-being of persons, particular murder as well as cruel treatment such as torture, mutilation or any form of corporal punishment;
  - (b) Collective punishments;
  - (c) Taking of hostages; (d) Acts of terrorism;
  - (e) Outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault; (f) Pillage;
  - (g) The passing of sentences and the carrying out of executions without previous

## judgement

pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilised peoples; (h) Threats to commit any of the foregoing acts.

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### The Prosecutor

v. Laurent Semanza, Case No. ICTR-97-20-T 108

1. Article 4 of the Statute and the Principle of Nullum Crimen Sine Lege

353. This Tribunal has already determined that Common Article 3 and Additional Protocol II were applicable in Rwanda in 1994 as a matter of convention and custom. 588 Rwanda became a party to the Geneva Conventions of 1949 on 5 May 1964 through succession 589 and, through ratification, to the Additional Protocol II thereto on 19 November 1984.590 Moreover, the Article 4 offences named in the Indictment constituted crimes under the laws of Rwanda in 1994.591 The Chamber therefore finds that Common Article 3 and Additional Protocol II were in force in Rwanda in 1994 and that the application of Article 4 of the Statute to the situation in Rwanda during the Tribunal's temporal jurisdiction would not violate the nullum crimen sine lege principle.

2. The Nature of the Conflict

354. Common Article 3 and Additional Protocol II are expressly applicable to conflicts of a non-international character. The Chamber, therefore, must answer whether the conflict in Rwanda in 1994 was of such a character as to fall within the scope of application of these provisions and, consequently, within the ambit of Article 4 of the Statute of the Tribunal.
355. Common Article 3 prescribes: "In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, ... [certain] provisions .... " Therefore, Common Article 3 is applicable to any non-international armed conflict within the territory of a state party. In general, non-international armed conflicts referred to in Common Article 3 are conflicts with armed forces on either side engaged in hostilities that are, according to the International Committee of the 588 Bagilishema, Judgement, TC, para. 98; Musema, Judgement, TC, para. 242; Rutaganda, Judgement, TC, para. 90; Kayishema and Ruzindana, Judgement, TC, paras. 156-157, Akayesu, Judgement, TC, ~8ara. 617. 9 The Geneva Conventions of 1949 entered into force for Rwanda with a retroactive effect as from 1 July 1962, the date of Rwanda's independence. See [www.icrc.org/ihl.nsf](http://www.icrc.org/ihl.nsf). 590 See [www.icrc.org/ihl.nsf](http://www.icrc.org/ihl.nsf). 591 See, e.g., Kayishema and Ruzindana, Judgement, TC, para. 157; Akayesu, Judgement, TC, para. 617.

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- v. Laurent Semanza, Case No. ICTR-97-20-T 109 Red Cross ("ICRC"), "in many respects similar to an international war, but take place within the confines of a single country. "592
356. Additional Protocol II, by its own terms, develops and supplements Common Article 3 "without modifying its existing conditions of application". 593 Its Article 1, however, expands on Common Article 3 in as much as it sets out that Additional Protocol II covers non-international armed conflicts "which take place in the territory of a High Contracting Party between its armed forces and dissident armed forces or other organized armed groups which, under responsible command, exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations and to implement this Protocol. "594
357. Classification of a conflict as one to which Common Article 3 and/or Additional Protocol II applies depends on an analysis of the objective factors set out in the respective provisions. 595
3. Ratione Personae: Perpetrators 358. Article 4 of the Statute provides that the Tribunal "shall have the power to prosecute persons committing or ordering to be committed serious violations of [Common Article 3 and Additional Protocol II]." The Appeals Chamber of this Tribunal recently pointed out that "Article 4 makes no mention of a possible delimitation of classes of persons likely to be prosecuted under this provisionY 96 359. Common Article 3 and Additional Protocol II similarly do not specify classes of potential perpetrators, rather

they indicate who is bound by the obligations imposed thereby. In the case of Common Article 3, that is "each Party to the conflict". 597 The 592 INTERNATIONAL COMMITTEE OF THE RED CROSS, THE GENEVA CONVENTIONS OF 12 AUGUST 1949 COMMENTARY: IV GENEVA CONVENTION RELATIVE TO THE PROTECTION OF CIVILIAN PERSONS IN TIME OF WAR p. 36 (1958) ["GENEVA CONVENTIONS COMMENTARY"]. 593 See Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), art. 1 ["Additional Protocol II"]. 594 Additional Protocol II, art. 1. 595 See, e.g., Bagilishema, Judgement, TC, para. 101; INTERNATIONAL COMMITTEE OF THE RED CROSS, COMMENTARY ON THE ADDITIONAL PROTOCOLS OF 8 JUNE 1977 TO THE GENEVA CONVENTIONS OF 12 AUGUST 1949 p. 1351 (1987) ["ADDITIONAL PROTOCOL II COMMENTARY"]. 596 Akayesu, Judgement, AC, para. 435. 597 See Common Article 3.

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### The Prosecutor

- v. Laurent Semanza, Case No. ICTR-97-20-T 110 ICRC Commentary on Additional Protocol II simply says that the field of application *ratione personae* includes "those who must, within the meaning of the Protocol, conform to certain rules of conduct with respect to the adversary and the civilian population."<sup>598</sup> 360. Indeed, further clarification in respect of the class of potential perpetrators is not necessary in view of the core purpose of Common Article 3 and Additional Protocol II: the protection of victims. 599 In the view of the ICTR Appeals Chamber, the protections of Common Article 3 imply effective punishment of perpetrators, whoever they may be.<sup>600</sup> In its Judgement in the Akayesu case, the Appeals Chamber held that the Trial Chamber erred on a point of law when it restricted the application of Common Article 3 to a certain category of perpetrators. <sup>601</sup> Specifically, the category of persons in question in the Trial Chamber's

## Judgement

consisted of members of the armed forces "under the military command of either of the belligerent parties, [and] ... individuals who were legitimately mandated and expected, as public officials or agents or persons otherwise holding public authority or *de facto* representing the Government, to support or fulfil the war efforts." <sup>602</sup> 361. The ICTR Appeals Chamber rejected the notion of a requisite link between the perpetrator and one of the parties to the conflict: "... such a special relationship is not a condition precedent to the application of Common Article 3 and, hence, of Article 4 of the Statute." <sup>603</sup> The Appeals Chamber expounded its reasoning as follows: The Appeals Chamber is of the view that the minimum protection provided for victims under common Article 3 implies necessarily effective punishment on persons who violate it. Now, such punishment must be applicable to everyone without discrimination, as required by the principles governing individual criminal responsibility as laid down by the Nuremberg Tribunal in particular. The Appeals Chamber is therefore of the opinion that international humanitarian

law would be lessened and called into question if it were to be admitted that certain persons be exonerated from individual criminal responsibility for a 598ADDITIONAL PROTOCOL II COMMENTARY

- p. 1359. 599See Akayesu, Judgement, AC, para. 442. 600See Akayesu, Judgement, AC, para. 443. 601Akayesu, Judgement, AC, paras. 444-445. 60zSee Akayesu, Judgement, AC, para. 444; Akayesu, Judgement, TC, para. 631. 603See Akayesu, Judgement, AC, para. 444.

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- v. Laurent Semanza, Case No. ICTR-97-20-T violation of common Article 3 under the pretext that they did not belong to a specific category. 6°4 111 362. In view of the foregoing, criminal responsibility for acts covered by Article 4 of the Statute does not depend on any particular classification of the alleged perpetrator.
4. Ratione Personae: Victims 363. Common Article 3 extends its protection to "[p]ersons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause". 6°5 The ICRC Commentary explains this provision as follows: ... Article 3 has an extremely wide field of application and covers members of the armed forces as well as persons who do not take part in the hostilities. In this instance, however, the Article naturally applies first and foremost to civilians-- that is to people who do not bear arms. 6°6 364. Additional Protocol II applies to "all persons affected by an armed conflict". 6°7 The ICRC Commentary includes in this category "persons who do not, or no longer take part in hostilities". 6°8 Article 4(1) of Additional Protocol II further specifies that its guarantees extend to "[a]ll persons who do not take a direct part or who have ceased to take part in hostilities". 6°9 365. In essence, both Common Article 3 and Additional Protocol II protect persons not taking an active part in the hostilities. 61° The ICTY Appeals Chamber emphasised that Common Article 3 covers "any individual not taking part in the hostilities". 611 This is also the position taken by this Tribunal. 612 6o4 Akayesu, Judgement, AC, para. 443. 605 Common Article 3. 606 GENEVA CONVENTIONS COMMENTARY p. 40 (emphasis added). 607Additional Protocol II, art. 2(1). 608ADDITIONAL PROTOCOL II COMMENTARY
- p. 1359. 609Additional Protocol II, art. 4(1). 61oSee Akayesu, Judgement, TC, para. 629. 611Celebici, Judgement, AC, para. 420 (emphasis in original). 612See Bagilishema, Judgement, TC, paras. 103-104; Musema, Judgement, TC, para. 280; Rutaganda, Judgement, TC, para. 101; Kayishema and Ruzindana, Judgement, TC, para. 179; Akayesu, Judgement, TC, para.

629. See also L.C. GREEN, THE CONTEMPORARY LAW OF ARMED CONFLICT

- p. 231 (2d ed.

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366. The question to be answered simply is whether, at the time of the alleged offence, the alleged victim was directly taking part in the hostilities. 613 If the answer is negative, the alleged victim was a person protected by Common Article 3 and Additional Protocol II. 614 To take a direct part in hostilities means, for the purposes of these provisions, to engage in acts of war that strike at personnel or equipment of the enemy armed forces. 615

5. Ratione Loci

367. Once the conditions for applicability of Common Article 3 and Additional Protocol II are satisfied, their scope extends throughout the territory of the state where the hostilities are taking place without limitation to the "war front" or to the "narrow geographical context of the actual theatre of combat operations". 6~6

6. The Nexus Between the Alleged Violation and the Armed Conflict 368. For an offence to fall within the scope of Article 4 of the Statute of the Tribunal, the Chamber must find that there existed a nexus between the alleged breach of Common Article 3 or Additional Protocol II and the underlying armed conflict. 617 This requirement is best understood upon appreciation of the purpose of Common Article 3 and Additional Protocol II. The purpose of the said provisions is the protection of people as victims of internal armed conflicts, 6~8 not the protection of 2000) ("In a non-international conflict civilians are protected by [Common] Article 3 ... which ... a~3Plies to civilians as well as those hors de combat."). See Bagilishema, Judgement, TC, para. 104; Musema, Judgement, TC, para. 279; Rutaganda, Judgement, TC, para. 100; Kayishema and Ruzindana, Judgement, TC, para. 179; Akayesu, Judgement, TC, para. 629. See also Tadic, Judgement, TC, para. 615. 614 See Tadic, Judgement, TC, para. 615. 615 Bagilishema, Judgement, TC, para. 104; Musema, Judgement, TC, para. 279; Rutaganda, Judgement, TC, para.

100. See also ADDITIONAL PROTOCOL II COMMENTARY

p. 1453. 616 See Bagilishema, Judgement, TC, para. 101; Musema, Judgement, TC, paras. 283-284; Rutaganda, Judgement, TC, paras. 102-103; Kayishema and Ruzindana, Judgement, TC, paras. 182-183; Akayesu, Judgement, TC, paras. 635-636. See also Prosecutor

v. Tadic, Case No. IT-94-1-AR72, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, AC, 2 October 1995, para. 69; ADDITIONAL PROTOCOL II COMMENTARY pp. 1359-1360. 617 See Bagilishema, Judgement, TC, para. 105; Musema, Judgement, TC, para. 259; Rutaganda, Judgement, TC, para. 104; Kayishema and Ruzindana, Judgement, TC, para. 185; Akayesu, Judgement, TC, para. 643. This is also the position taken by the ICTY. See, e.g., Tadic, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, AC, para. 70. 618 See Kayishema and Ruzindana, Judgement, TC, para. 189.

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## The Prosecutor

- v. Laurent Semanza, Case No. ICTR-97-20-T 113 people against crimes unrelated to the conflict, however reprehensible such crimes may be. 369. Whether the requisite nexus existed at the time of the alleged offence is a matter for determination on the evidence presented. It has been the position of this Tribunal and of the ICTY that the nexus requirement is met if the alleged offence is "closely related to the hostilities" or is "committed in conjunction with" them. 619
- 7. Serious Violation 370. Article 4 of the Statute grants the Tribunal jurisdiction over serious violations of Common Article 3 and Additional Protocol II. This Tribunal has stated that a serious violation within the meaning of Article 4 is a breach of a rule protecting important values with grave consequences for the victim.<sup>620</sup> On this basis, the Tribunal has determined that the acts enumerated in Article 4 of the Statute constitute serious violations of Common Article 3 and Additional Protocol II, entailing individual criminal responsibility. 621 This Trial Chamber concurs with this position.
- 371. Consequently, should the Prosecutor prove that any of the acts set out in Article 4 of the Statute occurred, the Chamber will consider such act to constitute a serious violation within the meaning of Article 4.
- 8. Specific Violations 372. The Indictment charges the Accused with causing violence to life, health and physical or mental well-being of persons, including murder and torture, and causing 6t9 See Bagilishema, Judgement, TC, para. 105; Musema, Judgement, TC, para. 260; Rutaganda, Judgement, TC, para. 104; Kayishema and Ruzindana, Judgement, TC, para. 186; Akayesu, Judgement, TC, para. 643 (...[I]t has not been proved beyond reasonable doubt that the acts ... were committed in conjunction with the armed conflict."). This is also the position taken by the ICTY. See, e.g., Kunarac, Judgement, AC, para. 58; Tadic, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, AC, para. 70 ("It is sufficient that the alleged crimes were closely related to the hostilities occurring in other parts of the territories controlled by the parties to the conflict."). 620 See Bagilishema, Judgement, TC, para. 102; Musema, Judgement, TC, para. 286; Rutaganda, Judgement, TC, para. 106; Kayishema and Ruzindana, Judgement, TC, para. 184; Akayesu, Judgement, TC, para. 616. This position is based on a decision of the ICTY Appeals Chamber where the Tribunal stated that "the violation must be serious, that is to say, it must constitute a breach of a rule protecting important values, and the breach must involve grave consequences for the victim." Tadic, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, AC, para. 94. 621 See Musema, Judgement, TC, para. 288; Rutaganda, Judgement, TC, para. 106; Kayishema and Ruzindana, Judgement, TC, para. 184; Akayesu, Judgement, TC, para. 616.

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- v. Laurent Semanza, Case No. ICTR-97-20-T 114 outrages upon personal dignity of women, including rape and sexual assault, acts covered by Article 4(a) and (e) of the Statute, respectively. In light of its factual findings, the Chamber will limit its discussion of the specific violations to murder and torture. 373. Murder under Article 4 refers to the intentional killing of another which need not be accompanied by a showing of premeditation. The Chamber reaches this

**conclusion**

having considered the use of the term "meurtre" as opposed to "assassinat" in the French version of the Statute. 622

374. Torture under Article 4 has the same essential elements as those set forth for torture as a crime against humanity. 623 622 See supra paras. 334-339. 623 Kunarac, Judgement, TC, paras. 465, 497, aff'd Kunarac, Judgement, AC, paras. 144, 156. For the elements of torture see supra paras. 342-343. !

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- v. Laurent Semanza, Case No. ICTR-97-20-T D. Individual Criminal Responsibility 375. The Indictment charges the Accused with criminal responsibility under Article 6(1) and Article 6(3) of the Statute for genocide, crimes against humanity, and serious violations of Common Article 3 and Additional Protocol II. In addition, the Indictment charges the Accused with criminal responsibility for the crime of genocide under Article 2(3) of the Statute.
- 1. Responsibility Under Article 6(1) of the Statute
- 376. Article 6(1) addresses criminal responsibility for unlawful conduct of accused and is applicable to all three crimes. 624 Article 6(1) provides as follows: A person who planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of a crime referred to in Articles 2 to 4 of the present Statute, shall be individually responsible for the crime. 377. Article 6(1) reflects the principle that criminal liability is not incurred solely by individuals who physically commit a crime, but also extends to those who participate in and contribute to a crime in other ways, following principles of accomplice liability. 625 378. Pursuant to Article 6(1), a crime within the Tribunal's jurisdiction must have been completed before an individual's participation in that crime will give rise to criminal responsibility. 626 Article 6(1) does not criminalize inchoate offences, which 624 The Chamber finds that all forms of criminal participation and responsibility under Article 6 are applicable to violations of Article 4 of the Statute even though that provision states that the Tribunal shall have the power to prosecute persons

"committing or ordering to be committed" serious violations of Common Article 3 and Additional Protocol II. This language in Article 4 can be explained by its verbatim incorporation from Common Article 3 of the four Geneva Conventions. Article 6(1) and Article 6(3) both expressly apply to Articles 2 through 4 and reflect that an individual is criminally responsible if he plans, instigates, orders, commits, aids and abets, or as a superior fails to prevent or punish the violations of international criminal law codified in the Statute. Article 1 also states that the Tribunal has the power to prosecute persons criminally responsible for the violations in accordance with the provisions of the Statute. Thus, in light of Articles 1 and 6, the Tribunal has the authority to prosecute all forms of criminal responsibility for violations of Article 4. 625 Kayishema and Ruzindana, Judgement, AC, para. 185. See also Musema, Judgement, TC, para. 114; Rutaganda, Judgement, TC, para. 33; Kayishema and Ruzindana, Judgement, TC, paras. 196-197; Akayesu, Judgement, TC, para. 473. 626 Kayishema and Ruzindana, Judgement, AC, paras. 186, 187; Musema, Judgement, TC, paras. 115- 116; Rutaganda, Judgement, TC, paras. 34, 35, 43; Akayesu, Judgement, TC, paras. 473, 482.

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- v. Laurent Semanza, Case No. ICTR-97-20-T 116 are punishable only for the crime of genocide pursuant to Article 2(3)(b), (c), and (d). 627 379. To satisfy Article 6(1), an individual's participation must have substantially contributed to, or have had a substantial effect on, the completion of a crime. 628
- a. Forms of Participation
  - (i) Planning
    - 380. "Planning" envisions one or more persons formulating a method of design or action, procedure, or arrangement for the accomplishment of a particular crime. 629 The level of participation in the planning must be substantial such as actually formulating the criminal plan or endorsing a plan proposed by another. 630 (ii) Instigating 381. "Instigating" refers to urging, encouraging, or prompting another person to commit a crime. 631 Instigation need not be direct and public. 632 Proof is required of a causal connection between the instigation and the commission of the crime. 633 (iii) Ordering 382. "Ordering" refers to a situation where an individual has a position of authority and uses that authority to order- and thus compel
      - another individual, who is subject to that authority, to commit a crime. 634 Criminal responsibility for ordering the commission of a crime under the Statute implies the existence of a superior- 635 Musema, Judgement, TC, para. 115; Rutaganda, Judgement, TC, para. 34; Akayesu, Judgement, TC, para. 473. 628 Kayishema and Ruzindana, Judgement, AC, paras. 186, 198; Ntakirutimana, Judgement, TC, para. 787; Bagilishema, Judgement, TC, paras. 30, 33; Musema, Judgement, TC, para. 126; Rutaganda, Judgement, TC, para. 43;

Kayishema and Ruzindana, Judgement, TC, paras. 199, 207; Akayesu, Judgement, TC, para. 477. 629 BLACK'S LAW DICTIONARY

- p. 1150 (6a\* ed. 1990) (defining "plan"); Rutaganda, Judgement, TC, 6P3aora. 37. Bagilishema, Judgement, TC, para. 30. 631 Bagilishema, Judgement, TC, para. 30; Akayesu, Judgement, TC, para. 482. 632 Akayesu, Judgement, AC, paras. 478-482. 633 Bagilishema, Judgement, TC, para. 30. 634 Bagilishema, Judgement, TC, para. 30; Rutaganda, Judgement, TC, para. 39; Akayesu, Judgement, TC, para. 483.

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### The Prosecutor

- v. Laurent Semanza, Case No. ICTR-97-20-T 117 subordinate relationship between the individual who gives the order and the one who executes it. 635 (iv) Committing 383. "Committing" refers to the direct personal or physical participation of an accused in the actual acts which constitute the material elements of a crime under the Statute. 636
- (v) Aiding and Abetting in the Planning, Preparation, or Execution 384. The terms "aiding" and "abetting" refer to distinct legal concepts. 637 The term "aiding" means assisting or helping another to commit a crime, and the term "abetting" means encouraging, advising, or instigating the commission of a crime. 638 However, the terms "aiding" and "abetting" are frequently employed together as a single broad legal concept, 639 as is the case in this Tribunal. 385. In the Tribunal's jurisprudence, "aiding and abetting" refers to all acts of assistance that lend encouragement or support to the commission of a crime.<sup>64°</sup> This encouragement or support may consist of physical acts, verbal statements, or, in some cases, mere presence as an "approving spectator". 641 Except in the case of the "approving spectator," the assistance may be provided before or during the 635 Bagilishema, Judgement, TC, para. 30; Rutaganda, Judgement, TC, para. 39; Akayesu, Judgement, TC, para. 483. 636 Kayishema and Ruzindana, Judgement, AC, para. 187; Tadic, Judgement, AC, para. 188. 637 See Akayesu, Judgement, TC, para.

484. See generally MEWETT & MANNING ON CRIMINAL LAW p. 272 (3raed. 1994); BLACK'S LAW DICTIONARY

p. 69 (7th ed. 1999) (defining "aid and abet"), quoting Wharton's Criminal Law § 29 (15th ed. 1993). See, e.g., The Criminal Code, R.S.C. 1985, ch. C-46, § 21(b),(c) (Canada) (treating aiding and abetting separately). 638 See Ntakirutimana, Judgement, TC, para. 787; Akayesu, Judgement, TC, para. 484; SMITH & HOGAN, CRIMINAL LAW p. 144 (10th ed. 2002) (quoting Oxford English Dictionary); MEWETT MANNING ON CRIMINAL LAW p. 272 (3raed. 1994); BLACK'S LAW DICTIONARY

p. 69 (7th ed. 1999) defining "aid and abet"), quoting Wharton's Criminal Law § 29 (15th ed. 1993). 39 MEWETT & MANNING ON CRIMINAL LAW p. 272 ed. 1994) (noting that aiding and abetting are "almost universally used conjunctively"). 640 Kayishema and Ruzindana,

Judgement, AC, para. 186; Ntakirutimana, Judgement, TC, para. 787; Bagilishema, Judgement, TC, paras. 33, 36; Musema, Judgement, TC, paras. 125-126; Kayishema and Ruzindana, Judgement, TC, paras. 200-202; cf Akayesu, Judgement, TC, para. 484. 641 Kayishema and Ruzindana, Judgement, AC, paras. 201-202; Kayishema and Ruzindana, Judgement, TC, para. 198; Aleksovski, Judgement, TC, para. 63.

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### The Prosecutor

- v. Laurent Semanza, Case No. ICTR-97-20-T 118 commission of the crime, and an accused need not necessarily be present at the time of the criminal act. 642
- 386. Criminal responsibility as an "approving spectator" does require actual presence during the commission of the crime or at least presence in the immediate vicinity of the scene of the crime, which is perceived by the actual perpetrator as approval of his conduct.<sup>643</sup> The authority of an individual is frequently a strong indication that the principal perpetrators will perceive his presence as an act of encouragement. <sup>644</sup> Responsibility, however, is not automatic, and the nature of the accused's presence must be considered against the background of the factual circumstances .<sup>645</sup>
- b. Mens Rea 387. An individual who "commits" a crime as a principal perpetrator must possess the requisite mens rea for the underlying crime. <sup>646</sup> 388. In cases involving a form of accomplice liability, the mens rea requirement will be satisfied where an individual acts intentionally and with the awareness that he is influencing or assisting the principal perpetrator to commit the crime.<sup>647</sup> The accused need not necessarily share the mens rea of the principal perpetrator; the accused must be aware, however, of the essential elements of the principal's crime including the mens rea. <sup>648</sup> 642 Bagilishema, Judgement, TC, para. 33; Rutaganda, Judgement, TC, para. 43; Kayishema and Ruzindana, Judgement, TC, para. 200; Akayesu, Judgement, TC, para. 484. Physical presence during the commission of the crime was traditionally the distinguishing factor between aiding and abetting, which required presence, and other forms of complicity such as counselling and procuring. See generally ANDREW ASHWORTH, PRINCIPLES OF CRIMINAL LAW p. 429 (3rd ed. 1999). <sup>643</sup> Bagilishema, Judgement, TC, para. 36; Aleksovsla', Judgement, TC paras. 64-65. <sup>644</sup> Aleksovski, Judgement, TC, para. 65. <sup>645</sup> Kvočka, Judgement, TC, para. 257; Aleksovski, Judgement, TC, paras. 64-65. See, e.g., Akayesu, Judgement, TC, para. 693 (authority and prior words of encouragement); Tadic, Judgement, TC, para. 690 (presence and previous active role in similar acts by the same group). <sup>646</sup> Kayishema and Ruzindana, Judgement, AC, para. 187. <sup>647</sup> Kayishema and Ruzindana, Judgement, AC, para. 186; Bagilishema, Judgement, TC, para. 32; Kayishema and Ruzindana, Judgement, TC, para. 201. <sup>648</sup> Kayishema and Ruzindana, Judgement, TC, para. 205. See also Aleksovsla', Judgement, AC, para. 162; Vasiljevic, Judgement, TC, para. 71; Krnojelac, Judgement, TC, paras. 75, 90; Kvočka, Judgement, TC, paras. 255, 262; Kunarac, Judgement, TC, para. 392; Furundzija, Judgement, TC, para. 249. But see Ntakirutimana, Judgement, TC, para. 787 (stating that

aiding and abetting under Article 6(1) required proof that an accused possessed the mens rea of the underlying crime, for

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### The Prosecutor

- v. Laurent Semanza, Case No. ICTR-97-20-T 119 389. In the case of the "approving spectator", the individual must know that his presence would be seen by the perpetrator of the crime as encouragement or support. 649 The requisite mens rea may be established from the circumstances including prior like behaviour, failure to punish, or verbal encouragement. 65°
- 2. Responsibility Under Article 2(3) of the Statute 390. Article 2(3) lists the forms of criminal responsibility that are applicable to the crime of genocide under the Statute, namely genocide, conspiracy to commit genocide, direct and public incitement to commit genocide, attempt to commit genocide, and complicity in genocide.
- 391. The Chamber notes that an overlap exists between "genocide" in Article 2(3)(a) and "committing" in Article 6(1), and between "complicity" in Article 2(3)(e) and forms of accomplice liability in Article 6(1 ).651 This redundancy can be explained by the drafters' verbatim incorporation into the Statute of Article III of the Genocide Convention. 65z 392. The Prosecutor charged the Accused with committing genocide, as discussed in section V.A. hereof, as well as with direct and public incitement to commit genocide and with complicity in genocide. The Chamber will limit its present discussion to complicity in light of its decision to disregard for vagueness the paragraphs supporting the direct and public incitement count. 653 example, the specific intent of genocide); Akayesu, TC, paras. 485, 547. The Chamber notes that these cases do not provide any justification for treating the mens rea requirement for aiding and abetting under Article 6(1) differently than that for complicity in genocide, which does not require proof of the mens rea of the underlying crime. 649 Bagilishema, Judgement, TC, para. 36. 650Bagilishema, Judgement, TC, para. 36. 651Krstic, Judgement, TC, para. 640. 65zKrstic, Judgement, TC, para. 640. This overlap was notably eliminated in the ICC Statute where all forms of criminal responsibility, even those uniquely applicable to genocide, are listed in Article 25. See ICC Statute, art. 25. 653 See supra para. 61.

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- 393. Having taken into consideration the general meaning of complicity in the common and civil law, as well as the domestic law of Rwanda, prior jurisprudence has defined the term complicity as aiding and abetting, instigating, and procuring. 654

394. In the view of the Chamber, there is no material distinction between complicity in Article 2(3)(e) of the Statute and the broad definition accorded to aiding and abetting in Article 6(1).<sup>655</sup> The Chamber further notes that the mens rea requirement for complicity to commit genocide in Article 2(3)(e) <sup>656</sup> mirrors that for aiding and abetting and the other forms of accomplice liability in Article 6(1).<sup>657</sup> 395. Therefore, complicity to commit genocide in Article 2(3)(e) refers to all of assistance or encouragement that have substantially contributed to, or have had a substantial effect on, the completion of the crime of genocide. The accused must have acted intentionally and with the awareness that he was contributing to the crime of genocide, including all its material elements.
396. In this case, Count 1 charges the Accused with criminal responsibility for committing genocide on the basis of Articles 6(1) and 6(3) of the Statute. This count seeks to hold the Accused responsible as a principal perpetrator, an accomplice, and a superior. If Count 1 is understood to encompass a charge of accomplice liability, Count 3 of the Indictment would be superfluous, as it charges the identical underlying criminal conduct as complicity to commit genocide under Article 2(3)(e). <sup>654</sup> Bagilishema, Judgement, TC, paras. 69-70; Musema, Judgement, TC, paras. 177, 179; Akayesu, Judgement, TC, paras. 533, 535, 537. Reference to the Rwandan Penal Code is relevant in determining whether the principle of *nullum crimen sine lege* has been violated. However, the Chamber finds no compelling reason for explicitly defining a legal term in its Statute, which is drawn verbatim from an international instrument, by reference to a particular national code. <sup>655</sup> Akayesu, Judgement, TC, para. 546 (noting that "aiding and abetting" in Article 6(1) "are similar the material elements of complicity"). See also Krstic, Judgement, TC, para. 640; Report of the Ad Hoc Committee on Genocide 5 April to 10 May 1948, UN GAOR, Economic and Social Council, 7th Sess., Supp. No. 6, Doc. E 794 (26 May 1948),
- p. 8 ("The United States representative stated that, in agreeing to the inclusion of 'complicity' in this Article, he understood it to refer to accessoryship before and after the fact and to aiding and abetting in the commission of crimes enumerated in this Article"). <sup>656</sup> See Bagilishema, Judgement, TC, para. 71; Musema, Judgement, TC, paras. 180-181; Akayesu, Judgement, TC, para. 545. <sup>657</sup> Kayishema and Ruzindana, Judgement, AC, para. 186; Bagilishema, Judgement, TC, para. 32; Kayishema and Ruzindana, Judgement, TC, paras. 201, 205. See also Aleksovski, Judgement, AC, para. 162; Vasiljevic, Judgement, TC, para. 71; Krnojelac, Judgement, TC, paras. 75, 90; Kvočka, Judgement, TC, paras. 255, 262; Kunarac, Judgement, TC, para. 392; Furundžija, Judgement, TC, para. 249.

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- v. Laurent Semanza, Case No, ICTR-97-20-T 121 397. Where a count does not specify a particular form of criminal participation under Article 6(1), the Chamber may consider the charge under the appropriate form within the limits of the Indictment and fair notice. <sup>658</sup> The Chamber is mindful that the commission of a crime and complicity in that crime are

alternative charges. 659 Where a count seemingly charges both direct and accomplice liability under Article 6(1) and another count specifically alleges complicity for the identical criminal acts, the Chamber will narrow the scope of the broader count so as to eliminate any overlap. 398. Therefore, the Chamber finds that the reference to Article 6(1) in Count 1 the Indictment refers only to direct criminal participation by "committing" and that all other forms of accomplice liability should be properly considered under Count 3, which charges complicity to commit genocide for the identical underlying criminal conduct.

3. Responsibility Under Article 6(3) of the Statute 399. Article 6(3) of the Statute concerns the criminal responsibility of a superior for failure to prevent or punish the criminal acts of his subordinates and is broadly applicable to all three crimes. Article 6(3) provides as follows: The fact that any of the acts referred to in Articles 2 to 4 of the present Statute was committed by a subordinate does not relieve his or her superior of criminal responsibility if he or she knew or had reason to know that the subordinate was about to commit such acts or had done so and the superior failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof. 400. Under Article 6(3), a civilian or military superior, with or without official status, may be held criminally responsible for crimes committed by subordinates under his effective control. 66° The following three elements must be satisfied to establish this form of criminal responsibility:
  - (a) the existence of a superior- subordinate relationship;
  - (b) the superior's knowledge or reason to know that the criminal act was about to be or had been committed; and (c) the superior's failure 658 Kunarac, Judgement, TC, para. 388. 659 Bagilishema, Judgement, TC, para. 67; Musema Judgement, TC, para. 175; Akayesu, Judgement, TC, para. 532. 660 . . Bagilishema, Motifs de l'Arrêt, AC, paras. 50, 51; Kayishema and Ruzindana, Judgement, AC, para. 294; Musema, Judgement, TC, para. 148. See also Celebici, Judgement, AC, paras. 192-196.

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### The Prosecutor

- v. Laurent Semanza, Case No. ICTR-97-20-T 122 take necessary and reasonable measures to prevent the criminal act or punish the perpetrator. 661
- a. Superior-Subordinate Relationship 401. A superior-subordinate relationship requires a formal or informal hierarchical relationship where a superior is senior to a subordinate. 662 The relationship is not limited to a strict military command style structure. 663 402. The superior must possess the power or authority, either de jure or de facto, to prevent or punish an offence committed by his subordinates. 664 The Trial Chamber must be satisfied that the superior had effective control over the subordinates at the time the offence was committed. 665 Effective control means the material ability to prevent the commission of the offence or to punish the principal offenders. 666 This requirement is not satisfied by a simple showing of an accused individual's general influence. 667

- b. Mens Rea: Knowing or Having Reason to Know 403. The imposition of criminal responsibility under Article 6(3) requires proof that the superior knew or had reason to know that his subordinates were committing or had committed a crime within the jurisdiction of the Tribunal. 668 404. Criminal liability based on superior responsibility will not attach on the basis of strict liability simply because an individual is in a chain of command with authority 661 Bagilishema, Judgement, TC, para. 38; Celebici, Judgement, AC, paras. 189-198, 225-226, 238-239, 256, 263. See also Kunarac, Judgement, TC, para. 395. 662 Celebici, Judgement, AC, para. 303 ("The Appeals Chamber understands the necessity to prove that the perpetrator was the 'subordinate' of the accused, not to import a requirement of direct or formal subordination but to mean the relevant accused is, by virtue of his or her position, senior in some sort of formal or informal hierarchy to the perpetrator."). 663 Bagilishema, Motifs de l'Arrêt, AC, para. 56 (rejecting the notion that there must be a "de jure-like" relationship). 664 Bagilishema, Motifs de l'Arrêt, AC, para. 50; Kayishema and Ruzindana, Judgement, AC, para. 294; Celebici, Judgement, AC, para. 192. 665 Bagilishema, Motifs de l'Arrêt, AC, para. 50; Kayishema and Ruzindana, Judgement, AC, para. 294; Celebici, Judgement, AC, para. 266. 666 Bagilishema, Motifs de l'Arrêt, AC, para. 50; Celebici, Judgement, AC, para. 266. 667 Celebici, Judgement, AC, paras. 266, 303. 668 Bagilishema, Judgement, TC, para. 45; Kayishema and Ruzindana, Judgement, TC, para. 225.

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- v. Laurent Semanza, Case No. ICTR-97-20-T 123 over a given geographic area. 669 While the individual's position in the command hierarchy is considered a significant indicator that the superior knew or had reason to know about the actions of his subordinates, knowledge will not be presumed from the status alone. 67° 405. A superior will be found to possess or will be imputed with the requisite mens rea sufficient to incur criminal responsibility where:
- (i) the superior had actual knowledge, established through direct or circumstantial evidence, that his subordinates were about to commit, were committing, or had committed, a crime under the Statute; 671 or (ii) the superior possessed information providing notice of the risk of such offences by indicating the need for additional investigation in order to ascertain whether such offences were about to be committed, were being committed, or had been committed, by subordinates. 672
- c. Failing to Prevent or Punish 406. A superior incurs criminal responsibility only for failing to take "necessary and reasonable measures" to prevent or punish crimes under the Statute committed by subordinates. These measures have been described as those that are within a superior's "material possibility" even if the superior lacks the "formal legal competence" to take such measures. 673 The degree of the superior's effective control guides the assessment of whether the individual took reasonable measures to prevent, stop, or punish a subordinate's crimes. 674 669 Bagilishema, Judgement, TC, paras. 44-45; Akayesu, Judgement, TC, para. 489 ("[I]t is certainly proper to ensure that there has been malicious

intent, or, at least, ensure that negligence was so serious as to be tantamount to acquiescence or even malicious intent."). 670 Bagilishema, Judgement, TC, para. 45. 671 Bagilishema, Judgement, TC, para. 46; Celebici, Judgement, TC, paras. 384-386. 672 Bagilishema, Motifs de l'Arrêt, AC, para. 28; Celebici, Judgement, AC, paras. 239, 241. See also Bagilishema, Judgement, TC, para. 46, citing Celebici, Judgement, TC, paras. 390-393; Kayishema and Ruzindana, Judgement, TC, para. 228. The Appeals Chamber in Celebici explained that the information must simply be in "the possession of" the superior, and that "it is not required that he actually acquainted himself with the information." Celebici, Judgement, AC, para. 239. Moreover, the information may be of a general nature such as the violent nature of a subordinate. *Id.*, para. 238. The information may also be written or oral and need not be a particular format or a formal report. *Id.* 673 Kayishema and Ruzindana, Judgement, AC, para. 302, citing Celebici, Judgement, TC, para. 395. 674 Bagilishema, Judgement, TC, para. 48; Kayishema and Ruzindana, Judgement, TC, para. 228.

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### The Prosecutor

- v. Laurent Semanza, Case No. ICTR-97-20-T 124 407. The obligation to prevent or punish is not a set of alternative options. 675 If a superior is aware of the impending or on-going commission of a crime, necessary and reasonable measures must be taken to stop or prevent it. 676 A superior with such knowledge and the material ability to prevent the commission of the crime does not discharge his responsibility by opting simply to punish his subordinates in the aftermath. 677 675 Bagilishema, Judgement, TC, para. 49. 676 Bagilishema, Judgement, TC, para. 49. 677 Bagilishema, Judgement, TC, para. 49.

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### The Prosecutor

- v. Laurent Semanza, Case No. ICTR-97-20-T E. Cumulative Charges and Convictions 125
- 1. Cumulative Charges
- 408. The Defence asserted that the Accused was improperly cumulatively charged for conduct arising out of a single incident. 678 The propriety of cumulative charges was confirmed by the Appeals Chamber in Musema. 679
- 2. Cumulative Convictions 409. In Musema, the Appeals Chamber also held that multiple criminal convictions under different statutory provisions, but based on the same conduct, are permissible if each statutory provision involved has a materially distinct element not contained in the other. 68° The Appeals Chamber explained that an element is materially distinct from another if it requires proof of a fact not required by the other. 681 678 Defence Closing Brief pp. 19-21, 73, 74. 679 Musema, Judgement, AC, para. 369, quoting Celebici, Judgement, AC, para. 400 ("Cumulative charging is to be allowed in light of the fact that,

prior to the presentation of all of the evidence, it is not possible to determine to a certainty which of the charges brought against an accused will be proven."). See also Bagilishema, Judgement, TC, paras. 108-109. 680 Musema, Judgement, AC, paras. 361,

363. In formulating this approach, the Appeals Chamber adopted the test and reasoning announced by the ICTY Appeals Chamber in Celebici. See Musema, Judgement, AC, para. 363 ("The Appeals Chamber confirms that this is the test to be applied with respect to multiple convictions arising under ICTR Statute. The Appeals Chamber further endorses the approach of the Celebici Appeal Judgement, with regard to the elements of the offences to be taken into consideration in the application of this test. ") (citing Celebici, Judgement, AC, paras. 412-413). 681 Musema, Judgement, AC, para. 365.

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### The Prosecutor

- v. Laurent Semanza, Case No. ICTR-97-20-T VI. LEGAL FINDINGS 126 A. Criminal Responsibility
410. The Indictment charges the Accused with criminal responsibility based on Articles 2(3), 6(1), and 6(3) of the Statute. The Chamber will determine whether Accused bears criminal responsibility as a superior under Article 6(3) or for ordering under Article 6(1) in this section. The Chamber will assess the Accused's criminal responsibility pursuant to Articles 2(3) and 6(1), except for ordering, in its subsequent legal findings. 411. The Indictment alleges that the Accused had de jure and/or de facto authority over militiamen, in particular Interahamwe, and other persons, including members of the Rwandan Armed Forces, commune police, and other government agents. 682 Based on his alleged authority, the Prosecutor asserts that the Accused is criminally responsible for the crimes committed at Ruhanga church, Musha church, Mabare mosque, and Mwulire Hill as well as the crimes committed against Victims A through H and J. 412. The Prosecutor posited that the Accused had de jure authority in April 1994 because he was appointed to parliament, allegedly served as MRND Chair for Kigali- Rural, and allegedly formed several political parties. 683 The Chamber recalls that the Prosecutor did not establish that the Accused served as an MRND Chair during the relevant events and that she submitted no evidence that the Accused held a de jure 682 The Prosecutor has also advanced a novel theory that the Accused must be held criminally responsible as a superior of the Interahamwe based on the "de son tort principle". Prosecution Closing Brief paras. 122-124. The Prosecutor explains that "if in the absence of lawful warrant or authority a meddlesome stranger elects to intermeddle in matters of no concern to him, he will be forbidden from escaping responsibility for any wrongs that resulted from his involvement in the transaction in question by simply claiming to have no authority." Id. para. 122. The Prosecutor notes that "this principle follows from the theory of intermeddling and is grounded in plain common sense." Id. The Chamber notes that the sole legal support that the Prosecutor has advanced in support of her theory is an allusion to the law of succession and a citation to Black's Law Dictionary, which discusses this concept in

the context of civil liability for a person who acts as an executor of a will without lawful authority. The Chamber finds that the Prosecutor has advanced no relevant authority to justify the application of her unusual theory based curiously on intermeddling in the execution of a will to impose international criminal responsibility on a superior for the acts of his subordinates. Such a theory would run counter to the essential requirement of effective control. 683 Prosecution Closing Brief para. 112.

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### The Prosecutor

- v. Laurent Semanza, Case No. ICTR-97-20-T 127 leadership role in any other party. The Chamber did find that the Accused was appointed to the transitional parliament. However, the Prosecutor did not establish the scope and nature of a parliamentarian's authority at that time or demonstrate that this position gave the Accused de jure authority over militiamen and other persons. The Prosecutor, therefore, did not establish that the Accused exercised any de jure authority over the perpetrators of the crimes committed in Bicumbi and Gikoro communes. 413. The Prosecutor also asserted that the Accused exercised de facto authority over the principal perpetrators of the crimes committed in Bicumbi and Gikoro based on his influence in the community as illustrated, for example, by: (i) his more than twenty years of service as bourgmestre ending in 1993; (ii) the support and good will he enjoyed from the majority of the community based on his prior good works; (iii) his "promotion" to serve in parliament for the Kigali-Rural prefecture; (iv) his continued public presence alongside the new bourgmestre, Rugambarara, and many people's belief that he was still the bourgmestre;
  - (v) his alleged role as chairman the MRND party in Kigali-Rural; (vi) his alleged close connections to President Habyarimana and other high government officials; and (vii) his wealth. 684 From its factual findings the Chamber recalls that the Accused was widely viewed as an important and influential personality. However, the Chamber also recalls that the Prosecutor failed to prove the extent, nature, and effect of any personal or political connections.
414. The Prosecutor also submitted that in a number of instances the Accused appeared to be "commanding" or "coordinating" principal perpetrators, thus demonstrating his effective control over them. 685 In particular, Prosecution Witnesses VAK, VA, and VM stated that the Accused led the massacres at Mabare mosque and 684 Prosecution Closing Brief paras. 113-114. 685 Prosecution Closing Brief paras. 115-116.

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### The Prosecutor

- v. Laurent Semanza, Case No. ICTR-97-20-T 128 Musha church. 686 In addition, there were various instances where the Accused appeared to have given

## orders

or permission to kill or rape Tutsis. 687 415. The Chamber emphasises that the Prosecutor's theory, which is similar to the approach taken and rejected in *Musema*, 688 fails to take full account of the correct legal standard. A superior-subordinate relationship is established by showing a formal or informal hierarchical relationship involving an accused's effective control over the direct perpetrators. A simple showing of an accused's general influence in the community is insufficient to establish a superior-subordinate relationship. 689

416. The assertions of Witnesses VA, VM, and VAK that the Accused commanded the attacks are only bare conclusions which lack adequate detail to reliably substantiate that the Accused possessed effective control. Moreover, the Chamber notes that witnesses who are outside of or unfamiliar with an alleged formal or informal hierarchy do not necessarily provide the best indication of an individual's actual superior authority. 69° Other than general evidence of the Accused's influence, there is no credible or reliable evidence detailing the specific nature of the superior-subordinate relationship between the Accused and any of the known perpetrators, including those to whom he gave instructions or encouragement to rape and kill. Absent this type of evidence, there is no concrete indication that the Accused had actual authority over the principal perpetrators. 417. The Chamber finds that the evidence of the Accused's influence in this case does not sufficiently demonstrate that he was a superior in some formal or informal 686 Prosecution Closing Brief para. 115; Testimony of VAK, T. 15 March 2001 pp. 92-93 (Mabare mosque); Testimony of VA, T. 7 March 2001 pp. 57-58, 105 (Musha church); Testimony of VM, T. March 2001 pp. 90, 91, 99, 144 (Musha church). 687 Testimony of VV, T. 29 March 2001 pp. 8-9; Testimony of VAM, T. 13 March 2001 pp. 31-32, 96, 99, 100; Testimony of VAK, T. 15 March 2001 p. 92; Testimony of VAV, T. 20 March 2001 p. 28; Testimony of VP, T. 4 December 2000
- p. 93. 688 As in this case, several Prosecution witnesses in *Musema* testified that the Accused, a tea factory director, "was perceived as a figure of authority and considerable influence in the region," was "very well respected' in the locality", "occupied an important position in Rwanda", "was considered to have the same powers as a *Préfet*" and was seen sitting with officials at political meetings. *Musema*, Judgement, TC, para.
868. Based on the evidence, the Trial Chamber in *Musema* found that the Accused was "a figure of authority and someone who wielded considerable power in the region", but nonetheless found that the evidence was not sufficient to show that the Accused exercised *de jure* or *de facto* authority over the population of his prefecture. *Musema*, Judgement, TC, para. 881. 689 Bagilishema, *Motifs de l'Arrêt*, AC, para. 50; Celebici, Judgement, AC, paras. 266, 303; Kvočka, Judgement, TC, paras. 439, 440; *Musema*, Judgement, TC, para. 881.

- v. Laurent Semanza, Case No. ICTR-97-20-T 129 hierarchy with effective control over the known perpetrators. Additionally, the Prosecutor presented insufficient evidence to establish beyond a reasonable doubt that the Accused had the material ability to prevent the crimes in Bicumbi or Gikoro or to punish the known perpetrators. 418. As the Prosecutor did not establish the existence of a superior-subordinate relationship, it is unnecessary to consider whether the Accused knew or had reason to know about the criminal acts of the principal perpetrators or whether he failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators. 419. The Chamber therefore finds that the Accused cannot be held responsible for the crimes charged in the Indictment under Article 6(3) of the Statute or for ordering under Article 6(1). 690 See, e.g., Kvočka, Judgement, TC, paras. 431-440.

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### The Prosecutor

- v. Laurent Semanza, Case No. ICTR-97-20-T B. Genocide and Complicity to Commit Genocide 130
- 420. Count 1 of the Indictment charges: By his acts referred to in paragraphs 3.7 to 3.16 above, Laurent SEMANZA is responsible for killing and the causing of serious bodily or mental harm to members of the Tutsi population with the intent to destroy, in whole or in part, an ethnic or racial group, as such and has thereby committed GENOCIDE, stipulated in Article 2(3)(a) of the Statute of the Tribunal as a crime, attributed him by virtue of Articles 6(1) and 6(3), and punishable in reference to Articles 22 and 23 of the same Statute.
- 421. Count 3 of the Indictment charges: By his acts in relation to the events described in paragraphs 3.7 to 3.16 above, Laurent SEMANZA is an accomplice to the killing and causing of serious bodily or mental harm to members of the Tutsi population and has thereby committed COMPLICITY TO COMMIT GENOCIDE stipulated in Article 2(3) of the Statute of the Tribunal as a crime, attributed to him by virtue Article 6(1) and punishable in reference to Articles 22 and 23 of the same Statute.
- 1. Genocide in Bicumbi and Gikoro Communes
- 422. The Chamber took judicial notice of the fact that: "Between 6 April 1994 and 17 July 1994, citizens native to Rwanda were severally identified according to the following ethnic classifications: Tutsi, Hutu and Ywa".<sup>691</sup> Accordingly, it has been established for the purposes of this case that the Tutsi in Rwanda were an "ethnic" group.
- 423. The Chamber also took judicial notice that [t]he following state of affairs existed in Rwanda between 6 April 1994 to 17 July 1994. There were throughout Rwanda widespread or systematic attacks against a civilian population based on Tutsi ethnic identification. During the attacks, some Rwandan citizens killed or caused serious bodily or mental harm to 691 Prosecutor

- v. Semanza, Case No. ICTR-97-20-I, Decision on Prosecutor's Motion for Judicial Notice and Presumptions of Facts Pursuant to Rules 94 and 54, TC, 3 November 2000, Annex A, para.
- 1. See Annex II, Part A, para. 1.

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### The Prosecutor

- v. Laurent Semanza, Case No. ICTR-97-20-T 131 persons perceived to be Tutsi. As a result of the attacks, there were a large number of deaths of persons of Tutsi ethnic identity. "692 424. Based on the factual findings concerning the killings that took place at the four sites in Bicumbi and Gikoro communes enumerated in the Indictment, namely, Ruhanga church, Musha church, Mwulire Hill, and Mabare mosque, the Chamber holds that the situation demonstrates that soldiers, Interahamwe, and other principal authors of the killings were engaged in furthering the general campaign to kill persons identified as Tutsi that was prevalent throughout Rwanda at that time. Moreover, because the killings that occurred at the four sites named in this Indictment were systematically directed against Tutsi civilians, the Chamber infers that the principal perpetrators acted with the intent to destroy the Tutsi ethnical group, as such. Therefore, the Chamber finds that genocide was committed in Bicumbi and Gikoro communes.
- 2. Musha Church 425. In its factual timings regarding paragraph 3.11 of the Indictment, the Chamber has found that before the killings, on 8 or 9 April 1994, the Accused, along with Bisengimana and others, went to Musha church to assess the situation. Following his assessment, the Accused was overheard telling Bisengimana that the church had to be burned to kill the refugees inside. The Chamber has found that soldiers, gendarmes, and Interahamwe killed a large number of Tutsi civilian refugees at Musha church on 13 April 1994. On that date, the Accused gathered additional Interahamwe for the attack on Musha church. The attackers showered the church and the substantial number of Tutsi refugees who had gathered there with gunfire and grenades. The attackers fired a rocket-propelled grenade at the wall of the church so that they could enter and continue the killings and assault upon the Tutsi refugees. 426. The Chamber finds that the Accused provided substantial assistance to the principal perpetrators of the genocide by gathering Interahamwe for the attack on Musha church and by directing the attackers to kill the Tutsi refugees at the church. 692 Semanza, Decision on Prosecutor's Motion for Judicial Notice and Presumptions of

## Facts

Pursuant to Rules 94 and 54, Annex A, para.

- 2. See Annex II, Part A, para. 2.

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427. The Accused's intent is evident from the context in which he committed his acts that provided substantial assistance to the principal perpetrators. The specific acts of the Accused must be viewed in the context of the then existing state of attacks that took place against civilian persons identified as Tutsi at various sites in Bicumbi and Gikoro communes. The Chamber has found that the Accused was present at various sites, including Musha church, Mwulire Hill, and Mabare mosque in April 1994, where a substantial number of Tutsi civilians was systematically massacred on account of their identification as Tutsi. 693 The Accused, having been present at these massacre sites, knew that the principal perpetrators of the killings were killing Tutsi based on their ethnical identification. This knowledge provides evidence of the Accused's intent for complicity to commit genocide.
428. The Chamber also finds that the Accused acted with the knowledge of the intent of the primary perpetrators who killed Tutsi at the following sites: Musha church, Mwulire Hill, and Mabare mosque. Accordingly, the Chamber finds that the Accused's actions at those sites were executed with the intent to aid and abet the principal perpetrators of the killings at those sites.
429. In addition to having knowledge of the genocidal intent of the principal perpetrators at the various massacre sites in Bicumbi and Gikoro communes, the Chamber finds that the Accused possessed an independent intent to destroy the Tutsi ethnical group, as such. The trial record provides clear and unequivocal evidence of the Accused's genocidal intent at the time of the massacres at Musha church. The Chamber has inferred the Accused's specific intent to aid and abet in the commission of genocide from his actions and from his words. On 8 or 9 April 1994, the Accused told Bisengimana that the church had to be burned to kill the predominantly Tutsi refugees inside. In addition, the Accused's specific intent to destroy the Tutsi group, as such, is reflected by the fact that he instructed soldiers to separate Hutu from Tutsi, who were then killed by gunfire and grenades. Moreover, the Chamber infers the Accused's genocidal intent from the statement he made to the principal attackers after they had completed the killings at Mabare mosque on 12 April 1994: "We came to 693 See Semanza, Decision on Prosecutor's Motion for Judicial Notice and Presumptions of Facts Pursuant to Rules 94 and 54, Annex A, para.

2. See Annex II, Part A, para. 2. ! ,/

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## The Prosecutor

- v. Laurent Semanza, Case No. ICTR-97-20-T 133 assist you, and I believe that those who have not been killed would not be able to resist you. Go and find them and exterminate them." 430. The Chamber finds that in gathering Interahamwe for the attack on refugees at Musha church, the Accused provided substantial assistance, and thereby aided and abetted the principal perpetrators in committing the acts of genocide that occurred there. In addition, it was immediately after the direction of the Accused that the attackers killed the Tutsi refugees after they had been separated from the Hutus. By reason of the foregoing acts, coupled with his specific intent, the Chamber finds that the Accused aided and abetted in the massacres at Musha church, as described above.
3. Mwulire Hill 431. In its factual findings regarding paragraph 3.12 of the Indictment, the Chamber has found that the Accused "participated" in the killings at Mwulire Hill on 18 April 1994 by arriving armed and bringing along with him soldiers, Interahamwe, and their "equipment" to the site, and by firing his weapon into a crowd of predominantly Tutsi refugees at the football field located near the sector office. Although the Chamber has found that the Accused fired his weapon into the crowd of refugees, the Prosecutor failed to provide proof beyond a reasonable doubt about any serious bodily or mental harm or killing that may have resulted from the Accused's firing into the crowd. However, the Chamber finds that the Accused again provided substantial assistance to the principal attackers by bringing soldiers and Interahamwe and their "equipment" to Mwulire Hill. Moreover, the Chamber finds that the Accused was still operating with the same specific intent, within the same context, and with the knowledge that his acts contributed substantial assistance to the principal perpetrators of the attacks that predicated his participation in killings that took place at Musha church on 13 April 1994.
432. Moreover, by bringing the Interahamwe and their "equipment" to the site where a large-scale massacre of Tutsi refugees was already under way, the Accused provided substantial assistance to the genocidal enterprise undertaken by the assailants who were killing Tutsi at Mwulire Hill. The Accused provided additional Interahamwe and their equipment, the very instruments that assured the commission of the genocidal massacre that was unfolding on Mwulire Hill.

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433. For such forms of participation, together with his genocidal intent, the Chamber finds the Accused to be criminally responsible for complicity in genocide for aiding and abetting the principal perpetrators who killed members of the Tutsi ethnic group at Mwulire Hill.

4. Mabare Mosque 434. The Chamber has also found with respect to paragraph 3.13 of the Indictment that the Prosecutor proved beyond a reasonable doubt that the Accused was armed and present on 12 April 1994 during the killings of Tutsi refugees at Mabare mosque. The Chamber finds that the Accused incurs no criminal liability with respect to the killings and injuries that occurred at Mabare mosque. The Accused's presence alone at the time of the killings at Mabare mosque does not give rise to criminal liability.
  5. Conclusion With Respect to Count 1 and Count 3
435. In conclusion, the Chamber finds that the Accused aided and abetted the principal perpetrators who killed Tutsi because of their ethnic identification as such. The Chamber has found that the Accused:
- (1) gathered Interahamwe to assist in the killings that took place at Musha church on 13 April 1994;
  - (2) participated in the separation of Tutsi from Hutu refugees at Musha church on 13 April 1994 and directed the killing of the Tutsi refugees; and (3) participated in the killings Mwulire Hill on 18 April 1994 by bringing soldiers and Interahamwe to assist in the killings. For such forms of participation, coupled with his genocidal intent, and applying the previously pronounced legal standards and factual findings, the Chamber finds the Accused guilty~ beyond a reasonable doubt, of complicity in genocide, as charged in Count 3 of the Indictment. 436. The Chamber finds that the nature of the participation of the Accused is most accurately described as that of an accomplice rather than a principal perpetrator. Because Counts 1 and 3 of the Indictment arise out of the same factual allegations, the Chamber holds that the Accused may be criminally liable only as an accomplice and not as a principal perpetrator, as charged in Count 1 of the Indictment. Therefore, the Chamber finds the Accused guilty on Count 3 and not guilty on Count 1.

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### The Prosecutor

- v. Laurent Semanza, Case No. ICTR-97-20-T C. Direct and Public Incitement to Commit Genocide 135 437. In Count 2 of the Indictment the Prosecutor charged the Accused as follows: By his acts in relation to the events described in paragraphs 3.7 and 3.8 above, Laurent SEMANZA did directly and publicly incite to kill and cause serious bodily or mental injury to members of the Tutsi population with the intent to destroy, in whole or in part, an ethnic group as such, and has thereby committed DIRECT AND PUBLIC INCITEMENT TO COMMIT GENOCIDE stipulated in Article 2(3) of the Statute of the Tribunal as a crime, attributed him by virtue of Article 6(1) and punishable in reference to Articles 22 and 23 the same Statute. 438. Because the Chamber has found that the allegations in paragraphs 3.7 and 3.8 of the Indictment are too vague to maintain a criminal charge, they are disregarded, and no criminal liability may attach on account of such allegations. Moreover, were the Chamber to consider the factual allegations contained in paragraphs 3.7 and 3.8 of the

Indictment, the Chamber would nevertheless find that the evidence is insufficient to sustain the allegations. Therefore, the Chamber finds the Accused not guilty on Count 2.

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### The Prosecutor

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#### 1. General Elements

439. The Accused is charged with the following crimes against humanity: murder (Counts 4, 12, and 14), rape (Counts 8 and 10), torture (Count 11), persecution (Count 6), and extermination (Count 5). 440. As explained in the legal section above, the Prosecution is required to prove that all crimes against humanity are committed as part of a widespread or systematic attack on a civilian population on the enumerated discriminatory grounds. 441. The Chamber took judicial notice of the fact that there was a widespread or systematic attack in Rwanda: The following state of affairs existed in Rwanda between 6 April 1994 to 17 July 1994 [sic]. There were throughout Rwanda widespread or systematic attacks against a civilian population based on Tutsi ethnic identification. During the attacks, some Rwandan citizens killed or caused serious bodily or mental harm to persons perceived to be Tutsi. As a result of the attacks, there was a large number of deaths of persons of Tutsi ethnic identity. 694 442. The Chamber is now in a position to make a more specific legal finding. In light of the judicially noticed facts, the factual findings made in relation to the internal armed conflict in Rwanda,<sup>695</sup> and the evidence of massacres of civilians between 6 April 1994 and 31 July 1994,<sup>696</sup> the Chamber finds that there were massive, frequent, large scale attacks against civilian Tutsis in Bicumbi and Gikoro communes. These attacks were carried out by groups of attackers and were directed against large numbers of victims on the basis of their Tutsi ethnicity. The Chamber thus finds beyond a reasonable doubt that at all relevant times there was a widespread attack on the Tutsi civilian population of Bicumbi and Gikoro communes on ethnic grounds. Having found that the attack was widespread, the Chamber need not consider whether it was also systematic. 694 Semanza, Decision on Prosecutor's Motion for Judicial Notice and Presumptions of Facts Pursuant to Rules 94 and 54, Annex A, para.

2. See Annex II, Part A, para. 2. 695 See supra para. 281. 696 See chapter IV hereof.

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### The Prosecutor

v. Laurent Semanza, Case No. ICTR-97-20-T 137 443. The Defence argued that the Prosecutor must also prove that the crimes against humanity were committed to advance a war effort in an internal armed conflict because such allegations are contained in the Indictment. 697 The Chamber sees no merit in this argument because there is no legal requirement in the Statute that crimes against humanity be committed in connection with an armed conflict.

2. Count 4: Murder 444. Count 4 of the Indictment charges: By his acts in relation to the events described in paragraphs 3.7 to 3.16 above, Laurent SEMANZA is responsible for the MURDER of civilians as part of a widespread or systematic attack against a civilian population on political, ethnic or racial grounds, and has thereby committed a CRIME AGAINST HUMANITY stipulated in Article 3(a) of the Statute of the Tribunal as a crime, attributed him by virtue of Articles 6(1) and 6(3), and punishable in reference to Articles 23 and 24 of the same Statute. 445. In light of its factual and legal findings, the Chamber will not consider the allegations in paragraphs 3.7, 3.8, 3.9, 3.10, 3.15, and 3.16.<sup>698</sup> The Chamber has made factual findings in relation to paragraphs 3.11 through 3.14 about the Accused's participation in massacres at Musha church, Mabare mosque, and Mwulire Hill.
- a. Musha Church (paragraph 3.11)
446. After considering the evidence adduced in support of paragraph 3.11, the Chamber has found that on 13 April 1994, the Accused gathered Interahamwe to participate in the massacre of Tutsi refugees at Musha church and that he directed the assailants to separate the Tutsi refugees from the Hutu refugees and to kill only the Tutsis. 447. The Chamber finds that the perpetrators at Musha church murdered the refugees. The Chamber further finds that these murders were premeditated, in particular because the attackers who arrived with the Accused brought their weapons and because the attackers listened to the Accused's directions to kill the Tutsi refugees. In light of the various attacks on Tutsis in the Bicumbi and Gikoro region during the 697 Defence Closing Brief
- p. 116.

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### The Prosecutor

- v. Laurent Semanza, Case No. ICTR-97-20-T 138 month of April 1994, the Chamber finds that this attack formed part of the widespread attack and that the attackers at Musha church were aware that their actions in murdering Tutsi refugees formed part of the widespread attack. Therefore, the Chamber finds that the principal perpetrators committed murder as a crime against humanity. 448. The Chamber also finds that the Accused's act of gathering Interahamwe to the church substantially supported the principal perpetrators in their acts of premeditated murder. Shortly after the refugees began to gather at the church, the Accused visited the site and expressed an intention to kill the refugees. The Chamber thus finds that in gathering the Interahamwe for the massacre at the church, the Accused acted intentionally and with the awareness that he was assisting the principal perpetrators to commit the crimes of murder at Musha church as part of the widespread attack on the civilian population in the region on ethnic grounds. The Chamber finds that the Accused was aware of what would occur when he gathered Interahamwe for the massacre at the church because the previous day he had been at Mabare mosque where Interahamwe had participated in the murders of refugees. 449. The Chamber also finds that the Accused

encouraged and supported the murder of the refugees by ordering the separation of Tutsi from Hutu refugees, by assisting in identifying Tutsi refugees to be murdered, and by directing Interahamwe and soldiers to kill them. The Chamber finds that these acts substantially contributed to the premeditated murder of the refugees because the assailants executed the Accused's instructions shortly after he gave them. The Accused's personal involvement in the identification of Tutsi refugees and his direction to kill them reflects that he acted intentionally and with the awareness that he was assisting the principal perpetrators to commit murder as a crime against humanity. 450. The Chamber therefore concludes beyond a reasonable doubt that the Accused aided and abetted the principal perpetrators in committing premeditated murder of the Tutsi refugees at Musha church and is therefore criminally responsible for a crime against humanity. 698 See *supra* paras. 50, 51, 52, 54, 61.

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### The Prosecutor

- v. Laurent Semanza, Case No. ICTR-97-20-T 139
- b. Mwulire Hill (paragraph 3.12) 451. In its factual findings concerning paragraph 3.12, the Chamber has found that the Accused brought Interahamwe and soldiers and their "equipment" to the massacre of the refugees at Mwulire Hill on 18 April 1994 and that he shot at the refugees gathered there. 452. The Chamber finds that on 18 April 1994, the principal perpetrators murdered a large number of civilian refugees on Mwulire Hill. The Chamber is further satisfied that the principal perpetrators acted with premeditation, as evidenced by the daily attacks mounted against the refugees from 8 April 1994 until the final assault on 18 April 1994. On the basis of the totality of the evidence, demonstrating a series of attacks against Tutsi civilians throughout the Bicumbi and Gikoro communes during the month of April 1994, the Chamber also finds that the principal perpetrators acted with the knowledge that, by murdering large numbers of Tutsi civilians, their actions formed part of the widespread attack on the civilian population on discriminatory grounds. The Chamber thus finds that the principal perpetrators committed murder as a crime against humanity at Mwulire Hill. 453. The Chamber finds that the Accused's acts of bringing Interahamwe, soldiers, and their weapons to the massacre provided substantial support to the principal perpetrators who were murdering the Tutsis civilians at Mwulire hill. It is significant that the refugees were finally vanquished on 18 April 1994 after the Accused brought Interahamwe and armed soldiers to participate in a massive assault on them. The Chamber finds that in bringing the Interahamwe and soldiers to participate in the attack, the Accused acted intentionally and with the awareness that he was assisting the principal perpetrators to commit the crimes. The Accused's earlier presence at Mabare mosque and his participation in the Musha church massacre demonstrate that he was aware that bringing Interahamwe, soldiers, and weapons to the massacre would assist in the murders and that he knew that these murders formed part of a widespread attack on the civilian Tutsi

population.

454. The Chamber has also found that the Accused fired a gun into the crowd of refugees. On the available evidence, the Chamber is not convinced that the Accused personally murdered any refugee. Nevertheless, this act strongly supports the

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The Prosecutor

- v. Laurent Semanza, Case No. ICTR-97-20-T 140

### conclusion

that the Accused was intentionally acting to assist the principal perpetrators in murdering the refugees and that he did so with full knowledge of the consequences of his actions. 455. The Chamber therefore finds beyond a reasonable doubt that the Accused aided and abetted the premeditated murder of Tutsi civilians at Mwulire Hill on 18 April 1994, and that he is therefore criminally responsible for a crime against humanity.

- c. Mabare Mosque (paragraph 3.13) 456. In relation to paragraph 3.13, the Chamber has found that the Accused, armed with a small shotgun, was present during the killing of refugees at Mabare mosque on 12 April 1994. After the massacre, the Accused then told the Interahamwe that "we came to assist you". 457. The Chamber notes that the Prosecutor failed to prove that the Accused used his firearm, or that he actually assisted the attackers in any other manner such as transporting weapons or reinforcements. The Chamber is not satisfied that the Accused's statement uttered after the attack provides sufficient evidence of his criminal participation in the massacres. The Chamber recalls that assistance only gives rise to criminal liability under the Statute if it is substantial. Therefore in the absence of specific evidence as to the exact nature of the assistance that the Accused purported to give, the Chamber has no basis on which to find that it was substantial. The Prosecutor adduced no evidence capable of demonstrating that the Accused's influence and presence at the massacre site during the attack had a substantial effect on the massacre. 458. After the killings, the Accused stated that "I believe that those who have not been killed would not be able to resist you. Go and find them and exterminate them". However, there was no evidence that any further killings took place as a result of the Accused's direction. 459. Therefore, the Chamber cannot ascribe criminal responsibility to the Accused for crimes against humanity in relation to the crimes that occurred at Mabare mosque.

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- d. Conclusion: Count 4

460. The Chamber therefore finds beyond a reasonable doubt that the Accused aided and abetted the principal perpetrators of the murders at Musha church and at Mwulire Hill. However, for the reasons explained below, a conviction will not be entered on Count 4 because it is an included offence in Count 5 (extermination as crime against humanity).

### 3. Count 5: Extermination

461. Count 5 charges: By his acts in relation to the events described in paragraphs 3.7 to 3.16 above, Laurent SEMANZA is responsible for the EXTERMINATION of civilians as part of a widespread or systematic attack against a civilian population on political, ethnic or racial grounds, and has thereby committed a CRIME AGAINST HUMANITY stipulated in Article 3(b) of the Statute of the Tribunal as a crime, attributed to him by virtue of Articles 6(1) and 6(3), and punishable reference to Articles 22 and 23 of the same Statute. 462. In light of its factual and legal findings, the Chamber will not consider the allegations in paragraphs 3.7, 3.8, 3.9, 3.10, 3.15, and 3.16.<sup>699</sup> The Chamber has made factual and legal findings in relation to paragraphs 3.11 through 3.14 about the Accused's participation in massacres at Musha church, Mabare mosque, and Mwulire Hill. The Chamber notes, however, that the Accused was not proved to have made a substantial contribution to the killings at Mabare mosque.

463. The material element of extermination is the mass killing of a substantial number of civilians. In foregoing legal findings, the Chamber has found that the Accused aided and abetted the principal perpetrators of the murders of civilians at Musha church and Mwulire Hill. The Chamber is not, however, in a position to make a specific finding of the number of deaths at either the Musha church or the Mwulire Hill massacres. The Chamber recalls that a substantial number of refugees were killed at Musha church. One witness recalled seeing around 100 bodies at this site. The Chamber also recalls that on 18 April 1994 there were up to 10,000 refugees at Mwulire Hill and that after the attack the hill was full of corpses. On the basis of the <sup>699</sup> See *supra* paras. 50, 51, 52, 54, 61.

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### The Prosecutor

v. Laurent Semanza, Case No. ICTR-97-20-T 142 reliable and credible evidence of these two massacres, the Chamber is satisfied that the element of mass killing has been proven beyond a reasonable doubt. The Chamber finds that the scale of killings at these two massacres is sufficient to be termed extermination. The Chamber therefore finds that the principal perpetrators committed extermination as a crime against humanity. 464. The Chamber has found that the Accused intentionally aided and abetted the principal perpetrators at Musha church and Mwulire Hill with the knowledge that he was assisting them to commit murder as a crime against humanity. On the same evidence, and in light of the scale of these events, the Chamber is further satisfied that the Accused also acted to assist the principals to commit extermination as a crime against humanity with the necessary knowledge and awareness. Having regard to the totality of the evidence, and in

particular the Accused's attendance at various massacre sites and his personal statements, the Chamber is convinced beyond a reasonable doubt that the Accused acted intentionally to assist the principal perpetrators to commit extermination as a crime against humanity. 465. Accordingly, the Chamber finds that the Accused is individually criminally responsible for aiding and abetting extermination as a crime against humanity. However, for the reasons expressed in his separate opinion, Judge Dolenc considers that it would be impermissible to convict on Count 5 because of the apparent ideal concurrence of the crime charged therein with the crime of complicity in genocide charged in Count

3. The Chamber, by a majority, finds the Accused guilty on Count 5.

4. Count 6." Persecution

466. Count 6 charges: By his acts in relation to the events described in paragraphs 3.7 to 3.16 above, Laurent SEMANZA is responsible for the PERSECUTION of civilians on political, racial or religious grounds as part of a widespread or systematic attack against a civilian population on political, ethnic or racial grounds, and has thereby committed a CRIME AGAINST HUMANITY stipulated in Article 3(h) of the Statute of the Tribunal as a crime, attributed to him by virtue of Articles 6(1) and 6(3), and punishable in reference to Articles 22 and 23 of the Statute.

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### The Prosecutor

v. Laurent Semanza, Case No. ICTR-97-20-T 143 467. In support of the charge of persecution, the Prosecutor has relied on paragraphs 3.7 to 3.16, which allege that the Accused participated in killing, causing serious bodily and mental harm, and raping civilians. The Indictment specifies, at paragraph 3.14, that the massacres targeted the Tutsi ethnic group. 468. In its factual findings, the Chamber has found that the Accused participated in killing civilians, mainly of Tutsi ethnicity, at Musha church and Mwulire Hill, but did not find that the Accused participated in any rapes at these sites. In light of its factual and legal findings, the Chamber will not address the allegations in paragraphs 3.7, 3.8, 3.9, 3.10, 3.15, and 3.16. 700 469. The material element of persecution is the severe deprivation of fundamental rights on discriminatory grounds. The Chamber considers that it is obvious that killing is a severe violation of the fundamental right to life, 7°~ which could form the material element of persecution if the killings are perpetrated on discriminatory grounds. 470. The Indictment charges that the Accused committed persecution on political, racial, or religious grounds. The Chamber notes that the Prosecution Closing Brief did not advance any argument that the persecution was committed on racial or religious grounds and that, moreover, there was no evidence to support such grounds. 7°2 The Closing Brief does, however, advance the new argument that the persecution was ethnically based. Since this ground was not alleged in the Indictment, and is not a ground of persecution enumerated in the Statute, the Chamber will not take it into consideration.

471. The Prosecutor has submitted that the persecutory acts were committed on political grounds against moderate Hutus and others sympathetic to the Tutsi. 7°3 However, the Prosecutor failed to demonstrate that this is a "political" group. The Chamber further observes that there is nothing in the concise statement of the facts that suggests that any killings were committed on political grounds. After reviewing 7°° See supra paras. 50, 51, 52, 54, 61. 70~ Universal Declaration of Human Rights, G.A. Res. 217A (III), UN Doc A/810, p. 71 (1948), art. International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI), 21 UN GAOR Supp. (No. 16), p. 49, UN Doc. A/6316 (1966), 993 U.N.T.S. 3, art. 7oz Prosecution Closing Brief paras. 73-78. 703 Prosecution Closing Brief paras. 77-78.

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### The Prosecutor

- v. Laurent Semanza, Case No. ICTR-97-20-T 144 the evidence, noting in particular the separation of Tutsis from Hutus at Musha church and the public and private statements of the Accused, the Chamber concludes that the primary target of the killings was the Tutsi ethnic group. There is insufficient evidence on the record to explain the reasons for the deaths of Hutus during these attacks. This finding is, moreover, consistent with the Prosecutor's own characterization of the killings and the Chamber's legal findings concerning the counts of genocide.
472. Therefore, the Chamber finds that the Prosecutor failed to prove that the Accused is criminally responsible for persecution as a crime against humanity.
5. Count 8: Rape
473. Count 8 charges: By his acts in relation to the events described in paragraphs 3.15 and 3.16 above, Laurent SEMANZA is responsible for the RAPE of civilians as part of a widespread or systematic attack against a civilian population on political, ethnic or racial grounds, and has thereby committed a CRIME AGAINST HUMANITY stipulated in Article 3(g) of the Statute of the Tribunal as a crime, attributed him by virtue of Articles 6(1) and 6(3), and punishable in reference to Articles and 23 of the same Statute.
474. In light of the Chamber's finding that paragraphs 3.15 and 3.16 provide insufficient notice to the Accused, the Chamber finds the Accused not guilty on Count
8. Moreover, the Prosecutor has not satisfied the Chamber that the Accused is responsible for any rapes, other than the rape of Victim A charged in Count 10.
6. Count 10: Rape

475. Count 10 charges: By his acts in relation to the events described in paragraph 3.17 above, Laurent SEMANZA is responsible for the RAPE of Victim A and Victim B as part of a widespread or systematic attack against a civilian population on political, ethnic or racial grounds, and has thereby committed CRIMES AGAINST HUMANITY stipulated in Article 3(g) of the Statute of the Tribunal as a crime, attributed him by virtue of Articles 6(1) and 6(3), and punishable in reference to Articles and 23 of the same Statute.

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### The Prosecutor

- v. Laurent Semanza, Case No. ICTR-97-20-T 145 476. The Chamber has found, in relation to paragraph 3.17 of the Indictment, that the Accused, in the presence of commune and military authorities, addressed a crowd and asked them how their work of killing the Tutsis was progressing and then encouraged them to rape Tutsi women before killing them. Immediately thereafter, one of the men from the crowd had non-consensual sexual intercourse with Victim A, who was hiding in a nearby home. The Chamber has found that Victim B was killed by two other men from this crowd, but has had insufficient evidence to draw any conclusions about whether she had also been raped.
477. The Chamber finds beyond a reasonable doubt that Victim A was raped by one of the assailants who heard the Accused encouraging the crowd to rape Tutsi women. In light of the generalized instructions about raping and killing Tutsis, the ethnic group targeted by the widespread attack, and the fact that the assailant arrived at Victim A's hiding place with two others who then killed Victim B, the Chamber finds that this rape was part of the widespread attack against the civilian Tutsi population and that the assailant was so aware. The Chamber therefore finds that the principal perpetrator committed rape as a crime against humanity. 478. Having regard, inter alia, to the influence of the Accused and to the fact that the rape of Victim A occurred directly after the Accused instructed the group to rape, the Chamber finds that the Accused's encouragement constituted instigation because it was causally connected and substantially contributed to the actions of the principal perpetrator. The assailant's statement that he had been given permission to rape Victim A is evidence of a clear link between the Accused's statement and the crime. The Chamber also finds that the Accused made his statement intentionally with the awareness that he was influencing the perpetrator to commit the crime. 479. The Chamber finds beyond a reasonable doubt that the Accused instigated the rape of Victim A as a crime against humanity. Therefore, the Chamber finds the Accused guilty on Count 10. Z Count 11: Torture

480. Count 11 charges:

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### The Prosecutor

- v. Laurent Semanza, Case No. ICTR-97-20-T 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 as part of a widespread or systematic attack against a civilian population on political, ethnic or racial grounds, and has thereby committed CRIMES AGAINST HUMANITY stipulated in Article 3(f) of the Statute of the Tribunal as a crime, attributed to him by virtue of Articles 6(1) and 6(3) punishable in reference to Articles 22 and 23 of the same Statute. 146
- a. Victims A and B 481. The Chamber has found, in relation to paragraph 3.17 of the Indictment, that the Accused, in the presence of commune and military authorities, encouraged a crowd to rape Tutsi women before killing them. The Chamber has found that Victim A was raped immediately thereafter by one of the men from this crowd. The Chamber has found that Victim B was killed by two other men from this crowd, but has had insufficient evidence to draw any conclusions about whether she had also been raped or tortured.
482. Noting, in particular, the extreme level of fear occasioned by the circumstances surrounding the event and the nature of the rape of Victim A, the Chamber finds that the perpetrator inflicted severe mental suffering sufficient to form the material element of torture. It is therefore unnecessary to determine whether this rape also inflicted severe physical pain or suffering, for which the Prosecutor only adduced evidence of the fact that non-consensual intercourse occurred. 483. The Chamber finds that the rape was committed on the basis of discrimination, targeting Victim A because she was a Tutsi woman. The Chamber recalls that severe suffering inflicted for the purposes of discrimination constitutes torture and, therefore, finds that the principal perpetrator tortured Victim A by raping her for a discriminatory purpose. 484. The Chamber also finds that the torture formed part of the widespread attack on the civilian population since the victim was raped because she was a Tutsi, the ethnicity targeted by the attack. The Chamber finds that the perpetrator was aware of the larger context of his actions, since he acknowledged that he was acting on the encouragement of the Accused to rape women as part of their broader work of killing Tutsis and he knew that others from the crowd were similarly targeting Tutsis for rape

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### The Prosecutor

- v. Laurent Semanza, Case No. ICTR-97-20-T 147 and murder. The Chamber therefore finds that the principal perpetrator committed torture as a crime against humanity.
485. The Chamber finds that by encouraging a crowd to rape women because of their ethnicity, the Accused was encouraging the crowd to inflict severe physical or mental pain or suffering for discriminatory purposes. Therefore, he was instigating not only rape, but rape for a discriminatory purpose, which legally constitutes torture. The Chamber finds that his words

were causally connected to and substantially contributed to the torture of Victim A because immediately after the Accused made his remarks to the crowd, the assailant went to a nearby home and tortured Victim A by raping her because she was a Tutsi woman. The Chamber notes that the Accused's general influence in the community and the fact that his statements were made in the presence of commune and military authorities gave his instigation greater force and legitimacy. The Chamber finds that the Accused acted intentionally and with the awareness that he was influencing others to commit rape for a discriminatory purpose as part of a widespread attack on the civilian population on ethnic grounds. Therefore, the Chamber finds that the Accused is criminally responsible for instigating torture as a crime against humanity.

- b. Victim C (Rusanganwa) 486. The Chamber found, in relation to paragraph 3.18 of the Indictment, that on 13 April 1994, the Accused, in the presence of Bourgrnestre Bisengimana, intentionally inflicted serious injuries on Victim C, Rusanganwa, during questioning. The Accused asked Rusanganwa when the Inkotanyi were going to arrive, and the victim responded that he did not know. The Accused then inflicted injuries upon Rusanganwa with a machete, resulting in his death. On this basis, the Chamber finds that the physical and mental pain and suffering were severe. The Chamber also finds that the Accused acted with the aim of obtaining information from the victim. The intentional nature of the Accused's conduct is demonstrated by his search for Rusanganwa in the crowd and the nature of his question concerning the RPF advance.
- 487. The Accused's torture of Rusanganwa occurred during the attack at Musha church, where a large number of Tutsis were killed and which has already been determined to have been part of the widespread attack. The Chamber finds that the

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### The Prosecutor

- v. Laurent Semanza, Case No. ICTR-97-20-T 148 torture of Rusanganwa to obtain information about the RPF advance similarly formed part of the widespread attack and that the Accused had such knowledge. Therefore, the Chamber finds that the Accused committed torture as a crime against humanity.
- c. Conclusion Count 11
- 488. On the basis of the foregoing, the Chamber finds that the Accused is individually criminally responsible for torture as a crime against humanity as a principal perpetrator in relation to Victim C and for instigating the torture of Victim A. The Chamber therefore finds the Accused guilty on Count 11.
- 8. Count 12: Murder

489. Count 12 charges: 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 B and Victim C as part of a widespread or systematic attack against a civilian population on political, ethnic or racial grounds, and has thereby committed CRIMES AGAINST HUMANITY stipulated in Article 3(a) of the Statute of the Tribunal as a crime, attributed to him by virtue of Articles 6(1) and 6(3), and punishable reference to Articles 22 and 23 of the same Statute.

a. Victim B

490. In the factual and legal findings in relation to paragraph 3.17 of the Indictment, the Chamber has found that the Accused instigated a crowd to kill Tutsi women after raping them. Immediately after the Accused's address, two men from the crowd killed Victim B, who was hiding in a nearby house.

491. The Chamber finds that the principal perpetrators acted with premeditated intention in purposefully seeking out a Tutsi female victim pursuant to the Accused's instruction and then killing her. From the generalized nature of the Accused's instructions and the principal's knowledge that one of their co-attackers was committing crimes against another female Tutsi victim at the same place, the Chamber finds that the principals knew that these acts formed part of the widespread attack on the Tutsi civilian population. Therefore, the Chamber finds that the principal perpetrators committed murder as a crime against humanity by killing Victim B.

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492. The Chamber finds that the Accused's instruction constituted instigation because his words were causally connected to and substantially contributed to the killing of Victim B. In reaching this

### conclusion

the Chamber has noted, inter alia, that the principal perpetrators were present during the Accused's statement and that they immediately attacked female Tutsi victims as specified by the Accused. The Chamber finds that the Accused made his statement with the awareness and intention that his words would influence the crowd to commit murder as a crime against humanity. The Chamber therefore finds that the Accused is criminally responsible for instigating the principal perpetrators to commit murder as a crime against humanity.

b. Victim C (Rusanganwa) 493. The Chamber also recalls its factual findings in relation to paragraph 3.18, in which it has concluded that the Accused intentionally inflicted serious injuries on Rusanganwa, resulting in his death. The Accused looked for Rusanganwa and found him within a large crowd of people, demonstrating the premeditated nature of his

conduct. The Chamber finds that by repeatedly striking Rusanganwa with a machete, even after the completion of the questioning, the Accused was acting with a premeditated intent to kill. The Chamber has already found that these actions formed part of the widespread discriminatory attack on the civilian Tutsi population and that the Accused had such knowledge. Therefore, the Chamber finds that the Accused is criminally responsible for the murder of Rusanganwa as a crime against humanity.

- c. Conclusion Count 12 494. Therefore, the Chamber finds beyond a reasonable doubt that the Accused is criminally responsible for murder as a crime against humanity for instigating the murder of Victim B and for personally committing the murder of Rusanganwa. The Chamber accordingly finds the Accused guilty on Count 12.
- 9. Count 14: Murder
- 495. Count 14 charges: By his acts in relation to the events described in paragraph 3.19 above, Laurent SEMANZA is responsible for the MURDER of Victim D, Victim E, Victim F, Victim G, Victim H and Victim J as part of a widespread or systematic attack

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- v. Laurent Semanza, Case No. ICTR-97-20-T 150 against a civilian population on political, ethnic or racial grounds, and has thereby committed CRIMES AGAINST HUMANITY stipulated in Article 3(a) of the Statute of the Tribunal as a crime, attributed to him by virtue of Articles 6(1) and 6(3), and punishable in reference to Articles 2(2) and 2(3) of Statute.
- 496. The Chamber has found that the Accused told a group of Interahamwe that a particular Tutsi family had not yet been killed and that no Tutsi should survive. Shortly thereafter, the Interahamwe searched for, located, and killed four members of the said family and two neighbours.
- 497. The Chamber finds that the principal perpetrators followed the Accused's instructions and intentionally searched for the family, four members of which they then killed along with two neighbours. The Chamber therefore finds that these killings were intentional and premeditated. The Chamber finds that these murders formed part of the widespread attack, and that the principal perpetrators were so aware, since the subjects were clearly targeted because of their Tutsi ethnicity and because one member of the family was alleged to have been among the Tutsis who were defending themselves at Mwulire Hill. The Chamber, therefore, finds that the principal perpetrators committed murder as a crime against humanity.
- 498. The Chamber is convinced that the Accused's statements were causally connected to and contributed substantially to the commission of the murders of both the family and their neighbours who were hiding in the same field. The Prosecutor established that at least one of the killers, Antoine Rutikanga, was present when the Accused made the statement. A few

hours after the Accused gave his instructions, the principal perpetrators searched for the family named by the Accused, killing four of its members and two neighbours. The Chamber finds that the Accused made his statements with the awareness and intent that his words would influence the principal perpetrators to commit murder as a crime against humanity.

499. The Chamber accordingly finds that the Accused is individually criminally responsible for instigating the murders of Victims D, E, F, G, H, and J as a crime against humanity and is therefore guilty on Count 14.

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### The Prosecutor

- v. Laurent Semanza, Case No. ICTR-97-20-T 151 10. Intra-Article 3 Cumulative Convictions
  - a. Cumulative Convictions of Murder and Extermination by Killing 500. The Accused has been found individually criminally responsible for murder and extermination as crimes against humanity in respect of the same factual circumstances, namely the massacres at Musha church and Mwulire Hill. Applying the test set out in *Musema*, the Chamber finds that murder and extermination as crimes against humanity each require proof of an element that is not required for the other crime. Murder as a crime against humanity as defined by the Statute has the element of premeditation, which is not required for killings which form extermination. Extermination, on the other hand, has an element of mass killing, which is not required for murder. Thus, the two crimes are legally distinct.
501. Cumulative convictions based on the same facts are permissible when the crimes have distinct elements, as they serve to describe the full culpability of the Accused and to provide a complete picture of his criminal conduct.<sup>704</sup> However, the Chamber takes note of the recent instruction of the ICTY Appeals Chamber that the distinct elements test for permissible cumulative convictions should not be applied mechanically or blindly. The ICTY Appeals Chamber has urged that care is needed in applying the elements test so as to avoid prejudice to the accused.<sup>705</sup> 502. The single distinguishing element of murder as a crime against humanity in the Statute is the requirement that it be committed with premeditation. Faced with an ambiguity between the English and French versions of the Statute, the Chamber adopted the higher mental element of premeditation, *inter alia*, because it was more consistent with a bilingual interpretation of the Statute and because it was apparently more favourable to the Accused.<sup>706</sup> The Chamber observes, however, that in this case the net result of the application of this higher mental element is that the Accused now faces cumulative convictions for murder and extermination. <sup>704</sup> *Kunarac*, Judgement, AC, para. 169. <sup>705</sup> *Kunarac*, Judgement, AC, paras. 168-174. <sup>706</sup> But see *Musema*, Judgement, TC, para. 214; *Rutaganda*, Judgement, TC, para. 79, *Akayesu*, Judgement, TC, para. 588; *Vasiljevic*,

## Judgement

TC, para. 205; Kvočka, TC, para. 132; Krstić, Judgement, TC, para. 485; Kordić, Judgement, TC, para. 235; Blaskić, Judgement, TC, para. 216; Jelisić, Judgement, TC, para. 51.

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503. The Chamber observes, moreover, that the elements of murder and extermination by means of direct killing are not substantially different. Premeditation, which requires planning, preparation, or at least a cool moment of reflection, <sup>7°7</sup> is not legally required for extermination by killing. However, it is difficult to imagine how a person could intend to perpetrate a mass killing of members of a civilian population with knowledge that this formed part of a wider attack on discriminatory grounds, without a level of intent very closely approaching or identical to premeditation. In practical terms, the same

### facts

are used to prove the mental element of murder as are used to prove the mental element for extermination by killing. It therefore cannot be said that the elements of each of the crimes are materially distinct. <sup>7°8</sup> 504. In this case, where the murder and extermination are based on identical

### facts

of premeditated killings and on the same mode of participation, convicting for both counts would not provide a better or more complete description of the entire criminal culpability of the Accused. 505. The Chamber thus considers that, in the circumstances of this case, the crimes against humanity of murder and extermination constitute the same core offence and that murder is best understood to be an included offence in the crime of extermination committed by killing. Two convictions on the basis of ideal concurrence of crimes are not justified in these circumstances. The Chamber will, therefore, not enter a conviction for murder as a crime against humanity charged in Count 4.

b. Cumulative Convictions of Rape and Torture by Rape 506. The Accused has been found to have instigated both rape and torture as crimes against humanity on the basis of the same facts. Applying the Musema test, the Chamber has carefully considered the elements of crimes against humanity of rape and torture. The ICTY Appeals Chamber in Kunarac concluded that convictions for both crimes on the basis of the same

**facts**

are permissible because rape and torture each contain one materially distinct element not contained in the other; rape requires sexual penetration, while torture requires that harm be inflicted for a prohibited purpose. 707 Kayishema and Ruzindana, Judgement, TC, para. 139. 708 Kayishema and Ruzindana, Judgement, TC, para. 633.

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- v. Laurent Semanza, Case No. ICTR-97-20-T 153 purpose. 709 Therefore, both convictions will be entered in order to give a complete picture of the Accused's criminal conduct.
  - c. Cumulative Convictions of Murder and Torture
507. The Accused has been found criminally responsible for both torture and murder in relation to Rusanganwa. Applying the Musema test, it is clear that torture and murder as crimes against humanity have distinct elements. Torture is the infliction of severe pain and suffering for a prohibited purpose, while murder is the premeditated killing of the victim. When acts of torture lead to the killing of the victim, the culpable torturous conduct remains of such great independent importance that it must be reflected in the cumulative conviction on both crimes. In the circumstances of this case, where Rusanganwa died as a result of the torture, both convictions must stand in order to properly describe the totality of the Accused's culpable conduct.
- d. Cumulative Convictions of Murder
508. The Chamber observes that the Prosecutor employed an inconsistent methodology, charging the Accused with three separate, yet overlapping, counts of murder as a crime against humanity. The Chamber considers that, as a starting point, one count should ordinarily represent a single crime. The nature of international crimes dictates that one crime may encompass a continuing or repeated pattern of actions that are logically connected by factors including time, place, victims, co-perpetrators, method, position of authority, mode of participation, motives, or intention, and which thereby form part of the same transaction.
509. In making the legal finding for Count 5, the Chamber has found that the Accused incurred criminal responsibility for aiding and abetting extermination in relation to the killings of a large number of refugees at Musha church. The Accused has also been found responsible in Count 12 for personally committing the murder of Victim C during the extermination at Musha church. The Chamber finds that although both of these crimes are based on the events at Musha church on 13 April 1994, they 709 Kunarac, Judgement, AC, para. 179.

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- v. Laurent Semanza, Case No. ICTR-97-20-T 154 are actually premised on different subsets of facts. The Accused's responsibility for extermination was based on aiding and abetting the principal perpetrators in the massacre at Musha church. Responsibility for the murder of Victim C was based on the Accused's personal participation in seeking out, torturing, and killing Rusanganwa at the same site during the extermination. 510. In this instance, the Chamber is of the view that both convictions may stand in order to describe the totality of the Accused's culpable behavior at Musha church.

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- v. Laurent Semanza, Case No. ICTR-97-20-T E. Article 3 Common to the Geneva Conventions and Additional Protocol II Thereto
511. Counts 7, 9, and 13 charge the Accused with serious violations of Common Article 3 and Additional Protocol II under Article 4 of the Statute.
512. At the threshold, the Prosecutor must prove the following three elements beyond a reasonable doubt:
- (1) that a non-international armed conflict existed on the territory of the concerned state;
  - (2) that the victims were not taking part in the hostilities at the time of the alleged violation; and (3) that a nexus existed between the Accused's alleged crimes and the non-international armed conflict. If these three elements are proved, the Chamber will then assess whether a specific violation of Common Article 3 or Additional Protocol II occurred. 513. In light of its findings, the Chamber will assess only Counts 7, 9, and 13 in the context of the alleged violations occurring at Musha church (paragraph 3.11), Mwulire Hill (paragraph 3.12), and Mabare mosque (paragraph 3.13), as well as alleged violations committed against Rusanganwa (paragraph 3.18) and Victims and B (paragraph 3.17).
1. Existence of a Non-International Armed Conflict 514. Based on its findings with respect to paragraph 3.4.2 of the Indictment, the Chamber finds beyond a reasonable doubt that during the relevant period, an armed conflict of a non-international character existed on the territory of Rwanda. 71°
2. Victims
515. The Chamber recalls that Rusanganwa, Victims A and B, and the victims at Musha church, Mwulire Hill, and Mabare mosque were not taking part in the hostilities at the time of the alleged offences. In reaching this conclusion, the Chamber has fully considered the suggestions of the Defence that armed RPF infiltrators 710 See Prosecutor

- v. Semanza, Case No. 97-20-1, Decision on the Prosecutor's Motion for Judicial Notice and Presumptions of Facts Pursuant to Rules 94 and 54, TC, 3 November 2000, para. 48, Annex A, para.
- 3. See Annex II, Part A, para. 3.

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- v. Laurent Semanza, Case No. ICTR-97-20-T 156 provoked the attacks or were involved in the fighting. This contention is not supported, however, by any credible or reliable evidence. Moreover, the Chamber emphasises that the possible presence of combatants within groups of refugees does not deprive those who are non-combatants of their protected status.
- 3. Nexus to the Non-International Armed Conflict 516. A majority of the Chamber finds that the relevant crimes charged against the Accused in Counts 7, 9, and 13 were closely related to the hostilities; Judge Ostrovsky dissents from the finding of nexus discussed herein for the reasons set out in his separate opinion. In Counts 7, 9, and 13, the Prosecutor averred that the Accused committed the alleged crimes "in the course of a non-international armed conflict". The Chamber understands this phrase as meaning that the alleged crimes had a nexus to the armed conflict. 517. A nexus exists between the alleged offence and the non-international armed conflict when the alleged offence is closely related to the hostilities. In determining whether the requisite close relation exists, the Chamber agrees with the following observation of the ICTY Appeals Chamber in Kunarac: [T]he existence of armed conflict must, at a minimum, have played a substantial part in the perpetrator's ability to commit [the offence], his decision to commit it, the manner in which it was committed or the purpose for which it was committed. Hence, if it can be established ... that the perpetrator acted in furtherance of or under the guise of the armed conflict, it would be sufficient to conclude that his acts were closely related to the armed conflict. 711
- 518. In the Chamber's opinion, the ongoing armed conflict between the Rwandan government forces and the RPF, which was identified with the Tutsi ethnic minority in Rwanda, both created the situation and provided a pretext for the extensive killings and other abuses of Tutsi civilians. The Chamber recalls that in this case the killings began in Gikoro and Bicumbi communes, shortly after the death of President Habyarimana, when the active hostilities resumed between the RPF and government forces. Civilians displaced by the armed conflict, as well as those fearing the increasing violence in their localities, who were mostly Tutsi, sought refuge at sites 711 Kunarac, Judgement, AC, para. 58.

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### The Prosecutor

- v. Laurent Semanza, Case No. ICTR-97-20-T 157 such as Mabare mosque, Musha church, and Mwulire Hill, or went into hiding, such as Victims A and B. 519. In the Chamber's opinion, certain civilian and military authorities, as well as other important personalities, exploited the armed conflict to kill and mistreat Tutsis in Bicumbi and Gikoro. Rwandan government soldiers and gendarmes played an active role in the attacks against the concentrated refugee populations at Musha church, Mabare mosque, and Mwulire Hill. The participation of armed soldiers and gendarmes in the massacres substantially influenced the manner in which the killings were executed. The evidence reflects that these attacks generally involved a number of armed soldiers, gendarmes, Interahamwe militiamen, and commune authorities. The involvement of military officials and personnel in the killings of local Tutsi civilians tied these killings to the broader conflict.
520. The Accused participated in these operations by gathering or bringing Interahamwe militiamen and soldiers to the attacks. He also worked in tandem with the soldiers and Interahamwe to identify and kill Tutsi civilian refugees. The Chamber also recalls that with soldiers and high ranking military and commune officials at his side, the Accused asked a crowd how their work of killing the Tutsis was progressing and encouraged them to rape Tutsi women before killing them. 521. The armed conflict also substantially motivated the attacks perpetrated against Tutsi civilians in Bicumbi and Gikoro. During the massacre at Musha church, the Chamber recalls, the Accused specifically sought out Rusanganwa, who was a prominent Tutsi, and questioned him about the RPF advance. When Rusanganwa did not provide any information, the Accused struck him with a machete contributing to his death. Moreover, as the RPF army advanced toward Bicumbi and Gikoro, the killings of Tutsi civilians in these two communes intensified. This is illustrated in particular by the Mwulire Hill massacre, where the refugees had successfully defended themselves between 8 and 18 April 1994 from daily attacks. The Chamber recalls, however, that on 18 April 1994, as the RPF army neared the commune, the Accused brought Interahamwe and armed soldiers to Mwulire Hill to participate in a massive assault, which decisively defeated the refugees' resistance and resulted in the massacre of most of the civilians there.

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### The Prosecutor

- v. Laurent Semanza, Case No.~ ICTR-97-20-T 158
522. The Accused's participation in the military operations conducted against civilian refugees and, in particular, his attempt to elicit information concerning the advance of the enemy army reveal that his conduct was closely related to the hostilities. The Chamber therefore has no doubt that a nexus existed between the Accused's alleged offences and the armed conflict in Rwanda.

4. Specific Violations of Common Article 3 and Additional Protocol II a. Count 7: Violence to life, health and physical or mental well-being of persons, in particular, murder, as well as cruel treatment such as torture, mutilation or any form of corporal punishment 523. Count 7 of the Indictment charges: By his acts in relation to the events described in paragraphs 3.4 (subparagraphs 3.4.1 to 3.4.3), 3.6 and 3.9 to 3.16 in particular, Laurent SEMANZA is responsible for causing violence to life, health and physical or mental well-being of persons, in the course of a non-international armed conflict, in particular murder as well as cruel treatment such as rape, torture, mutilations or any form of corporal punishment, and has thereby committed SERIOUS VIOLATIONS OF ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS of 12 August 1949, for the PROTECTION OF WAR VICTIMS, particularly paragraph (1)(a), and of ADDITIONAL PROTOCOL II thereto of 8 June 1977, particularly Article 4(2)(a), stipulated in Article 4(a) of the Statute of the Tribunal as attributed to him by virtue of Articles 6(1) and 6(3), and punishable in reference to Articles 22 and 23 of the same Statute.
524. The Accused is charged with serious violations of Common Article 3 and Additional Protocol II in relation to his acts at Musha church (paragraph 3.11), Mwulire Hill (paragraph 3.12), and Mabare mosque (paragraph 3.13).
- (i) Musha Church (paragraph 3.11) 525. The Accused gathered and brought Interahamwe to participate in the killings of hundreds of Tutsi refugees at Musha church and instructed Interahamwe and soldiers to separate the Tutsi refugees from the Hutu refugees and to kill the Tutsis.
526. The actus reus of "murder" requires that the perpetrator engage in the intentional killing of civilians. The Chamber finds beyond a reasonable doubt that the perpetrators at Musha church engaged in the intentional killing of civilians as

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### The Prosecutor

- v. Laurent Semanza, Case No. ICTR-97-20-T 159 evidenced by the killing of the Tutsi civilians on the Accused's directions after their separation from the Hutu refugees.
527. The Chamber finds that the Accused's acts of gathering Interahamwe to participate in the massacre provided substantial support to the killing of civilians at Musha church because the assailants brought by the Accused engaged in the killings. The Chamber also finds that in gathering the Interahamwe for the massacre at the church, the Accused acted intentionally and with the awareness that he was assisting the principal perpetrator to commit the crimes. The Chamber finds that the Accused was aware of what would occur when he gathered the Interahamwe because the previous day he had been at Mabare mosque where Interahamwe had participated in the killings. In addition, before going to Musha church, he urged people in a crowd to rape and kill Tutsi women.

528. The Chamber also finds that the Accused encouraged and supported the murder of civilians when he instructed soldiers to separate Tutsi from Hutu refugees, assisted in identifying Tutsi refugees to be murdered, and then directed the Interahamwe and soldiers to kill the refugees. The Chamber finds that these acts substantially contributed to the murder of these civilian refugees because the assailants executed the directions shortly after the Accused gave them, and the Accused personally pointed out specific civilian Tutsi refugees who were then killed. The Chamber also finds that the Accused's personal and integral involvement in the identification of Tutsis and his directions given to the assailants reflect that he acted intentionally and with the awareness that he was assisting the principal perpetrators to commit the crime. (ii) Mwulire Hill (paragraph 3.12)
529. The Accused brought Interahamwe and soldiers to the decisive attack on the Tutsi civilians at Mwulire Hill on 18 April 1994 and shot into a crowd of refugees. 530. The Chamber finds beyond a reasonable doubt that the perpetrators at Mwulire Hill engaged in the intentional killing of Tutsi civilian refugees. 531. The Chamber finds that the Accused's acts of bringing Interahamwe, soldiers, and their "equipment" to the massacre provided substantial support to the murder of

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- v. Laurent Semanza, Case No. ICTR-97-20-T 160 Tutsi civilians because these assailants engaged in the killings which only occurred on a large scale during this attack. The Chamber also finds that in bringing the Interahamwe and soldiers to the attack, the Accused acted intentionally and with the awareness he was assisting the principal perpetrators in committing the crimes. The Accused's earlier presence at Mabare mosque and his participation in the Musha church massacre demonstrate that he was aware that bringing Interahamwe, soldiers, and their "equipment" to Mwulire Hill would assist in the killings.
532. The Chamber also found that the Accused fired his weapon into a crowd of refugees. On the available evidence, the Chamber is not convinced that the Accused thereby personally killed or injured any refugee. However, this act further reflects that the Accused acted intentionally to assist the principal perpetrators in murdering the refugees and that he did so with full knowledge of the consequences of his actions. (iii) Mabare Mosque (paragraph 3.13)
533. The Accused was armed and present during the massacre at Mabare mosque and afterwards told the attackers that "we came to assist" and urged the attackers to seek out and exterminate those who had not been killed.
534. The Prosecutor did not prove that the Accused used his firearm or actually assisted the attackers, for example, by bringing weapons or reinforcements. The Chamber is not satisfied that the Accused's statement, "we came to assist you", uttered after the attack, provides sufficient evidence of his criminal participation in the massacre. The Chamber

recalls that assistance only gives rise to criminal liability under the Statute where it is substantial. Therefore, in the absence of specific evidence as to the exact nature of the assistance the Accused purported to give, the Chamber has no basis for determining that it was substantial. Moreover, the Prosecutor provided no evidence that would definitively indicate that the Accused's mere presence or his statements at the end of the massacre had a substantial effect on the execution of the massacre or any further killings. (iv) Conclusion: Count

535. The Chamber finds beyond a reasonable doubt that the Accused aided and abetted in the intentional murders committed at Musha church and Mwulire Hill. The

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v. Laurent Semanza, Case No. ICTR-97-20-T 161 majority, Judge Ostrovsky dissenting for

### reasons

set out in his separate opinion, finds that these acts constitute violations of Article 4(a) of the Statute. 536. Judge Williams is of the view that based on the law and the facts a conviction should be entered on this Count for the reasons stated herein. However, for the

### reasons

expressed in his separate opinion, Judge Dolenc considers that it would be impermissible to convict on Count 7 because of the apparent ideal concurrence of the crime charged therein with the crime of complicity in genocide charged in Count 3. Therefore, by a majority, no conviction will be entered for Count 7. b, Count 9: Outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault 537. Count 9 of the Indictment charges: By his acts in relation to the events described in paragraphs 3.4 (subparagraphs 3.4.1 to 3.4.3), 3.6, 3.14, 3.15 and 3.16, Laurent SEMANZA is responsible for causing outrages upon personal dignity of women, including humiliating and degrading treatment, rape, sexual abuse and other forms of indecent assault, in the course of a non-international armed conflict, and has thereby committed SERIOUS VIOLATIONS OF ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS of 12 AUGUST 1949 for the PROTECTION OF WAR VICTIMS particularly paragraph (1)(c), and of ADDITIONAL PROTOCOL thereto of 8 June 1977, particularly Article 4(2)(e), stipulated in Article 4(e) the Statute of the Tribunal as a crime, attributed to him by virtue of Articles 6(1) and 6(3), and punishable in reference to Articles 22 and 23 of the same Statute.

538. The Accused is charged with serious violations of Common Article 3 and Additional Protocol II for his conduct in relation to acts of rape and sexual violence allegedly occurring at Musha church (paragraph 3.11), Mwulire Hill (paragraph 3.12), and Mabare mosque (paragraph 3.13). 539. The Chamber recalls that the Prosecutor failed to introduce any evidence of the occurrence of rape or other forms of sexual violence at these sites. Therefore, the Chamber finds the Accused not guilty on Count 9.

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### The Prosecutor

- v. Laurent Semanza, Case No. ICTR-97-20-T 162 Co Count 13: Violence to life, health and physical or mental well-being of persons, in particular murder as well as cruel treatment such as torture, mutilation or any form of corporal punishment 540. Count 13 of the Indictment charges: By his acts in relation to the events described in paragraphs 3.4 (subparagraphs 3.4..1 to 3.4.3), 3.6, 3.17 and 3.18 above Laurent SEMANZA is responsible for causing violence to the life, health and physical or mental well-being of Victim A, Victim B and Victim C in the course of a non-international armed conflict, including murder as well as cruel treatment; to wit rape, torture and mutilations, and has thereby committed SERIOUS VIOLATIONS OF ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS of 12 August 1949 for the PROTECTION OF WAR VICTIMS, particularly paragraph
- (1) (a), and ADDITIONAL PROTOCOL II thereto of 8 June 1977, particularly Article 4(2)(a), stipulated in Article 4(a) of the Statute of the Tribunal as a attributed to him by virtue of Articles 6(1) and 6(3), and punishable in reference to Articles 22 and 23 of the same Statute.
- 541. The Accused is charged with serious violations of Common Article 3 and Additional Protocol II for his acts in relation to the alleged violations committed against Victims A and B (paragraph 3.17) and Rusanganwa (paragraph 3.18).
- (i) Victims A and B (paragraph 3.17) 542. The Accused, in the presence of commune and military authorities, addressed a crowd and asked them how their work of killing the Tutsis was progressing, and then encouraged them to rape Tutsi women before killing them. Three men from this crowd came to the nearby house where Victims A and B were hiding. One of these assailants had non-consensual sexual intercourse with Victim A. Two others took Victim B outside where she was killed.
- 543. The actus reus of rape is non-consensual sexual penetration. The Chamber finds that Victim A was raped by one of the assailants who heard the Accused encourage the crowd. 544. The actus reus of torture involves the intentional infliction of severe mental or physical pain for the purpose of obtaining information or a confession; or punishing, intimidating or coercing the victim or a third person; or discriminating, on any ground, against the victim or a third person. The Chamber also notes that an act of rape may constitute torture if committed for a prohibited purpose.

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- v. Laurent Semanza, Case No. ICTR-97-20-T 163 545. The Chamber finds that the rape of Victim A constitutes torture because the assailant raped her because she was a Tutsi, which is a discriminatory purpose. In particular, the Chamber notes that the perpetrator acted intentionally and with this prohibited purpose because he acknowledged the Accused's discriminatory instructions to rape Tutsi women as part of their broader work of killing Tutsis. 546. Prosecution Witness VV heard Victim B scream that she preferred that the two attackers who took her outside kill her and that, when the witness left the house after the assailants had left, she found Victim B dead. There is insufficient evidence to establish whether Victim B was raped or tortured. The Chamber finds, however, that Victim B was intentionally murdered by the two men.
- 547. The Chamber finds that the Accused's encouragement to the crowd to rape Tutsi women as part of their work of killing Tutsis had a substantial effect on the rape and torture of Victim A and the murder of Victim B. The assailants, who perpetrated the acts, heard the Accused speak and immediately afterwards committed the acts. The admission by Victim A's assailant, who heard the Accused speak, that he had authorisation to rape her indicates that he was acting on Accused's directions to rape Tutsi women. The Chamber also notes that the Accused's general influence in the community and the fact that he made the statement in the presence of commune and military authorities gave his encouragement greater force and seeming legitimacy.
- 548. The Chamber also finds that in encouraging the crowd, the Accused acted intentionally and with the awareness that he was contributing to the commission of the crimes by the principal perpetrators. The Accused's discussion with the crowd about their progress of killing Tutsis reflects that he was aware that this crowd would engage in criminal acts. (ii) Rusanganwa (paragraph 3.18)
- 549. During the Musha church massacre, the Accused and Bisengimana, the bourgmestre of Gikoro, specifically sought out Rusanganwa and questioned him about the RPF advance. When Rusanganwa did not provide any information, the Accused repeatedly struck him with a machete. The Chamber finds that by these acts, the Accused tortured Rusanganwa by inflicting serious physical pain with the aim of obtaining information about the RPF advance. The intentional nature of the Accused's

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## The Prosecutor

- v. Laurent Semanza, Case No. ICTR-97-20-T 164 conduct is demonstrated by his seeking out Rusanganwa for questioning and using the machete for inflicting serious injury shortly after Rusanganwa's negative response to the question.

550. The Chamber also finds that the Accused intentionally contributed to the killing of Rusanganwa. In the Chamber's opinion, the Accused's infliction of blows with a machete reflects that he intended to kill Rusanganwa. (iii) Conclusion: Count 551. The Chamber finds beyond a reasonable doubt that the Accused instigated the rape and torture of Victim A and the murder of Victim B and that the Accused committed torture and intentional murder of Rusanganwa. The majority, Judge Ostrovsky dissenting for

### reasons

set out in his separate opinion, finds that these acts constitute violations of Article 4(a) of the Statute. 552. Judge Williams is of the view that based on the law and the facts a conviction should be entered on this Count for the reasons stated herein. However, for the

### reasons

expressed in his separate opinion, Judge Dolenc considers that it would be impermissible to convict on Count 13 because of the apparent ideal concurrence of the crime charged therein with rape, torture, and murder as crimes against humanity charged in Counts 10, 11, and 12. Therefore, by a majority, no conviction will be entered for Count 13.

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- v. Laurent Semanza, Case No. ICTR-97-20-T 165 VII. THE VERDICT 553. For the reasons set out in this Judgement, having considered all the evidence and arguments, the Trial Chamber finds in respect of the Accused as follows. Unanimously: Count 1: NOT GUILTY of Genocide Count 2: NOT GUILTY of Direct and Public Incitement to Commit Genocide Count 3: GUILTY of Complicity in Genocide Count 4: NOT GUILTY of Crimes Against Humanity (Murder) Count 6: NOT GUILTY of Crimes Against Humanity (Persecution) Count 8: NOT GUILTY of Crimes Against Humanity (Rape) Count 9: NOT GUILTY of Serious Violations of Article 3 Common to the Geneva Conventions and of Additional Protocol II (Article 4(e) of Statute) Count 10: GUILTY of Crimes Against Humanity (Rape) Count 11: GUILTY of Crimes Against Humanity (Torture) Count 12: GUILTY of Crimes Against Humanity (Murder) Count 14: GUILTY of Crimes Against Humanity (Murder) By a majority: Count 5: GUILTY of Crimes Against Humanity (Extermination) (Judge Dolenc dissenting) Count 7: NOT GUILTY of Serious Violations of Article 3 Common to the Geneva Conventions and of Additional Protocol II (Article 4(a) of the- Statute) (Judge Williams dissenting)

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- v. Laurent Semanza, Case No. ICTR-97-20-T 166 Count 13: NOT GUILTY of Serious Violations of Article 3 Common to the Geneva Conventions and of Additional Protocol II (Article 4(a) of Statute) (Judge Williams dissenting)

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### The Prosecutor

- v. Laurent Semanza, Case No. ICTR-97-20-T VIII. SENTENCING
554. Having found the Accused guilty, the Chamber now turns to the question of sentencing. The appropriate sentence serves to further the goals of retribution, deterrence, stigmatization, rehabilitation, protection of society, and national reconciliation. Pursuant to Articles 22 and 23 of the Statute and Rule 101 of the Rules, the Chamber will take into account the gravity of the offences and the individual circumstances of the Accused, as well as any other aggravating or mitigating circumstances, and the general practice regarding prison sentences in the courts of Rwanda. The Chamber will also give credit to the Accused for the period he was detained in custody pending trial. Pursuant to the decision of the Appeals Chamber, the Trial Chamber will reduce the sentence for the violation of the Accused's rights during pre-trial detention. 712 A. Gravity of the Offences 555. The penalty must, first and foremost, be commensurate with the gravity of the offence, vx3 All of the crimes in the Statute are crimes of an extremely serious nature, rising to the level of international prohibition. Thus, in assessing the gravity of the offence, the Chamber ought to go beyond the abstract gravity of the crime to take into account the particular circumstances of the case, as well as the form and degree of the participation of the Accused in the crime.
556. The Chamber has found the Accused guilty of participating in genocide and extermination, murder, rape, and torture as crimes against humanity. These are, by definition, crimes of the most serious gravity, which affect the very foundations of society and shock the conscience of humanity. Through his participation in these crimes, the Accused contributed to the harming and killing of many civilian Tutsi. 557. With the exception of his personal participation in the torture and murder of Rusanganwa, the Accused was not a principal perpetrator of the other crimes for 712 Semanza
- v. Prosecutor, Case No. ICTR-97-20-A, Decision, AC, 31 May 2000. 713 Statute, art. 23(2). Musema, Judgement, AC, para. 382; Akayesu, Judgement, AC, para. 413; Kambanda, Judgement, AC, para. 125; Kupreskic, Judgement, AC, para. 442; Celebici, Judgement, AC, para. 731; Aleksovsla', Judgement, AC, para. 182.

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- v. Laurent Semanza, Case No. ICTR-97-20-T 168 which he has been found guilty, nor was he found to be in a position of hierarchical authority. The Accused has been convicted of complicity in genocide, of aiding and abetting extermination as a crime against humanity, and of instigating the murder of seven people and the rape and torture of one victim. The Accused's acts of complicity, aiding and abetting, and instigating are crimes of indirect participation.
558. The Prosecutor submitted that the Accused should be sentenced to life imprisonment. 7~4 The Prosecutor argued that the murder of a single person is sufficient to warrant the imposition of the maximum sentence and stressed that she could have brought hundreds of counts against the Accused, one for each person killed in the massacres. 715 The Prosecutor urged that anything less than a life sentence would diminish the value of the lives of the victims and will attract cynicism towards international criminal tribunals. 716 559. Considering the totality of the evidence, the Chamber is not convinced that a life sentence is necessary to reflect the gravity of the crimes of which the Accused has been found guilty. The penalty of life imprisonment, the highest penalty available at this Tribunal, should be reserved for the most serious offenders, v17 The principle of gradation in sentencing requires the Chamber to differentiate criminal conduct on the basis of its gravity. 718 Having regard to the nature of the offences, and the role and the degree of participation of the Accused, the Chamber does not consider that the criminal acts of the Accused deserve the highest sentence.
1. Sentencing Ranges 560. The Chamber has also taken into consideration the sentencing practice in the Rwandan courts, as evidenced by the penalties for similar crimes prescribed in the Rwandan Penal Code and the Organic Law, 719 as well as the sentencing practices of 714 Prosecution Closing Brief paras. 156-157. 71s Prosecution Closing Brief paras. 159-160; T. 17 June 2002 pp. 173-174. 716 Prosecution Closing Brief paras. 142-144. 717 Article 77 of the ICC Statute provides for a fixed term sentence not exceeding thirty years and for life imprisonment only when justified by the extreme gravity of the crime and the circumstances of the Accused. 718 Musema, Judgement, AC, paras. 381-382; Ntakirutimana, Judgement, TC, para. 884. 719 Loi Organique n° 08/96 du 30/08/96 Sur L'organisation des poursuites des infractions constitutives du crime de g6nocide ou de crimes contre l'humanit6, commises a partir du 1er Octobre 1990, Journal Officiel n° 17 du 1/9/1996 (Rwanda).

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### The Prosecutor

- v. Laurent Semanza, Case No. ICTR-97-20-T 169 this Tribunal and of the ICTY. In doing so, the Chamber has not lost sight of its overarching obligation to tailor the sentence to the gravity of the crime and to the individual circumstances of the offender. 72°

561. The Rwandan Penal Code provides for fixed term sentences of up to a maximum of twenty years' imprisonment or, exceptionally, up to thirty years' imprisonment in cases of concurrent offences. 72~ The most serious crimes, such as murder, may be punished by life imprisonment or death.722 Rape is generally punishable by a sentence of five to ten years, which may be doubled for certain prescribed aggravating elements such as the young age of the victim, the position of authority of the accused, or the severity of the physical harm. 723 The Code specifically provides that accomplices may be subject to the same penalties as the principal authors of the crime.724 The Rwandan Organic Law indicates that, even for genocide and crimes against humanity, the ordinary Penal Code sentences shall apply with certain modifications, which include heightened penalties of death and life imprisonment, respectively, for Categories 1 and 2 perpetrators. 725
562. The Chamber has also examined the sentencing practice of this Tribunal and of the ICTY. The Chamber notes that the practice of awarding a single sentence for the totality of an accused's conduct makes it difficult to determine the range of sentences for each specific crime. Notwithstanding this difficulty, it is possible to ascertain general ranges of sentences which may provide useful guidance to the Chamber in determining the appropriate sentence in this case. 563. Principal perpetrators convicted of either genocide or extermination as a crime against humanity, or both, have been punished with sentences ranging from fifteen 720 Celebici, Judgement, AC, paras. 717, 719 ("[T]he Appeals Chamber notes that as a general principle such comparison is often of limited assistance. While it does not disagree with a contention that it is to be expected that two accused convicted of similar crimes in similar circumstances should not in practice receive very different sentences, often the differences are more significant than the similarities, and the mitigating and aggravating factors dictate different results. They are therefore not reliable as the sole basis for sentencing an individual."). vzt C. P6n. arts. 35, 93 (Rwanda). 722See, e.g., C. P6n. arts. 311-317 (Rwanda). 723C. P6n. arts. 360, 361 (Rwanda). 7z4C. P6n. art. 89 (Rwanda). 725Loi Organique n° 08/96 du 30/08/96 Sur L'organisation des poursuites des infractions constitutives du crime de g6nocide ou de crimes contre l'humanit6, commises a partir du 1er Octobre 1990, Journal Officiel n° 17 du 1/9/1996, art. 14 (Rwanda).

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### The Prosecutor

- v. Laurent Semanza, Case No. ICTR-97-20-T 170 years' imprisonment 726 to life imprisonment. 727 Secondary or indirect forms of participation have generally resulted a lower sentence. For example, Georges Ruggiu received a twelve year sentence for incitement to commit genocide after a plea of guilty, 728 and Elizaphan Ntakirutimana received a ten year sentence for aiding and abetting genocide, with a special emphasis on his advanced age. 729 564. In the jurisprudence of the two Tribunals, rape as a crime against humanity has resulted in specific sentences between twelve years 73° and fifteen years. 731 Torture as a crime against humanity has been punished with specific sentences between five years 732

and twelve years. 733 Murder as a crime against humanity has been punished by specific fixed term sentences ranging from twelve years 734 to twenty years. 735 In other cases, convictions for these crimes have formed part of a single sentence of a fixed term or of life imprisonment for the totality of the conduct of the Accused. B. Aggravating Factors

565. The Prosecutor alleged several aggravating factors for the Chamber to consider in determining the appropriate sentence. 736 The Chamber notes, however, that only those matters that have been proved beyond a reasonable doubt may be considered in aggravation of the sentence. 737 7z6 Serushago, Sentence, TC,
- p. 15. 727 Musema, Judgement, TC, para. 1008; Rutaganda, Judgement, TC, para. 473; Kayishema and Ruzindana, Sentence, TC, para. 27; Akayesu, Sentence, TC, p. 13; Kambanda, Judgement, TC, p. 28. 728 Ruggiu, Judgement, TC,
- p. 19. 729 Ntakirutimana, Judgement, TC, paras. 898, 906, 921. 730 Kunarac, Judgement, TC, para. 882. 731 Akayesu, Sentence, TC,
- p. 13. 73z Simic, Sentencing Judgement, TC, para. 122. 733 Kunarac, Judgement, TC, para. 882. 734 Kupreskic, Judgement, AC, para. 439 (Jospovic was originally sentenced at trial to fifteen years for persecution, murder, and inhumane acts as crimes against humanity. On appeal, this sentence was reduced to twelve years.). 735 Tadic,

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in Sentencing Appeals, AC, para. 58 (Sentence for murder as a crime against humanity reduced from twenty-five years to twenty years on appeal.). 736 Prosecution Closing Brief para. 156. 737 Ntakirutimana, Judgement, TC, para. 893; Celebici, Judgement, AC, para. 763.

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### The Prosecutor

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#### 1. Criminal Acts Not Alleged in the Indictment

566. The Prosecutor submitted that the Chamber should consider allegations of criminal activity by the Accused, which were not charged in the Indictment, as aggravating factors in sentencing. 738 The Prosecutor argued that the following allegations should be considered:
- (i) the Accused personally killed a Tutsi woman gruesome circumstances at Muymbu health centre; (ii) the Accused had captives crawl on their knees to be beheaded by a machete-wielding executioner at Muymbu health centre; (iii) the Accused drove a vehicle over the bodies of wounded people; (iv) the Accused ordered "his" Interahamwe to shoot Tutsis who were seeking refuge at his home; and

- (v) the Accused threatened to have a victim's nose cut off during interrogation. 567. The ICTY Appeals Chamber has allowed that allegations of criminal activity not specifically pleaded in the indictment may be considered as aggravating factors when the accused has received sufficient notice, when the Prosecution makes a specific request for a factual finding in relation to the additional crimes, and when these allegations have been proven beyond a reasonable doubt. 739 568. The evidence of the Accused's criminal activity advanced by the Prosecutor in aggravation of the Accused's sentence, but not included in the Indictment, was led during the testimony of Prosecution Witnesses VAQ, 740 VM, 741 and VI. 742 No objections that these allegations were outside the scope of the Indictment were raised by the Defence at the time when this evidence was led. The Defence cross-examined these witnesses about the allegations, 743 which the Accused refuted during his testimony, 744 and to which the Defence referred in its Closing Brief. 745 Therefore, it is clear that the Accused had notice of the substance of the allegations. The Prosecution 738 Prosecution Closing Brief para. 156. 739 Celebici, Judgement, AC, para. 763. 740 T. 14 March 2001 pp. 76-85. 741 T. 6 March 2001
- p. 100; T. 7 March 2001 p. 19. 742 T. 15 November 2000 pp. 64-67. 743 T. 15 November 2000 pp. 86-87; T. 7 March 2001
- p. 19; T. 14 March 2001 pp. 93, 102, 106, 110- 112; T. 15 March 2001 pp. 4-12, 23-37. 744 T. 18 February 2002 pp. 70, 124-125; T. 28 February 2002 p. 98; T. 27 February 2002 pp. 114-115. 745 Defence Closing Brief pp. 91-93.

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### The Prosecutor

- v. Laurent Semanza, Case No. ICTR-97-20-T 172 Closing Brief specifically requests the Chamber to consider the allegations as aggravating factors. 746 569. However, the Chamber is not satisfied that the Accused was put on notice that additional crimes within the jurisdiction of the Tribunal, but not charged in the Indictment, could be considered as aggravating factors in relation to his eventual sentence. No such indication was made by the Prosecutor prior to her Closing Brief. It is a matter of fundamental importance that the Defence ought to be able to focus its attention on the crimes contained within the Indictment. Ordinarily, crimes not charged in the Indictment are not relevant to the proceedings. 570. It would circumvent the proper course of justice to rely on allegations of further uncharged criminality to increase the sentence of the Accused. Where the Prosecutor has reliable evidence of criminal activity falling within the jurisdiction of the Tribunal, then she may choose to include those matters in the indictment against an accused. Where such matters arise only during the trial, the Prosecutor may request to have the indictment amended to include the new allegations. Having failed to include these crimes in the Indictment, the Prosecutor should not be permitted to achieve a similar effect by having them considered as aggravating factors. 747 In these circumstances, the Chamber will not place any reliance on criminal acts outside the scope of the Indictment and on

which it has not made any factual findings.

2. The Number of Deaths 571. The Prosecutor also submitted that the number of victims is an aggravating factor. 748 Since the number of victims is an element of extermination as a crime against humanity, the Chamber already considered it in assessing the gravity of the offence of extermination and cannot also consider it as an aggravating factor in 746 Prosecution Closing Brief para. 156. 747 Kunarac, Judgement, TC, para. 850 ("Either the Prosecutor should charge such conduct as an offence, or, where it is not directly related to another charged offence, she should desist from citing such conduct as an aggravating factor. The Trial Chamber understands that the multiplicity of humanitarian law violations committed during an armed conflict as part of a common criminal scheme often cannot be succinctly captured in an indictment. Considerations of fairness to the accused and judicial economy, however, outweigh the wish to have each and every crime committed during a war brought to light and adjudged in whatever way - that is something which this International Tribunal simply cannot do."). 748 Prosecution Closing Brief para. 156.

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### The Prosecutor

- v. Laurent Semanza, Case No. ICTR-97-20-T 173 sentencing for extermination, v49 However, the number of victims may be an aggravating factor in relation to genocide, a crime with no numeric minimum of victims. The Chamber, therefore, considers the number of victims killed as a result of the Accused's conduct at Musha church and Mwulire Hill as an aggravating factor in determining the appropriate sentence for complicity in genocide.
3. The Conduct of the Defence
572. The Prosecutor also urged the Chamber to consider that the "defence was conducted in a rather abusive fashion, in a manner that exacerbated the situation to the point that such would constitute aggravating circumstances." 75° In particular, the Prosecutor alleged that Defence Expert Witness Ndengejeho perpetuated dangerous stereotypes by testifying that Tutsi culture was based on lying. 751 The Chamber does not consider that either this testimony or the allegedly abusive conduct of the Defence is an aggravating factor in this case.
4. Influence of the Accused
573. The Chamber has, on its own initiative, also considered the influence and relative importance of the Accused in his commune as an aggravating factor. The Accused was a prominent and influential person in Bicumbi commune in 1994. Though he no longer held the post of bourgmestre, the Accused had been appointed to serve in the parliament that was to be established pursuant to the Arusha Accords, and he was still widely regarded in his locality as an influential person. 752 The Chamber was not satisfied that the Accused held any hierarchical position of superior responsibility over persons in his community.

Nevertheless, the Accused's prominence and influence made it more likely that others would follow his negative example. 753 The Chamber thus considers this to be an aggravating factor. 749 Ntakirutimana, Judgement, TC, para. 893; Vasiljevic, Judgement, TC, paras. 277-278; Simic, Sentencing Judgement, TC, para. 62; Todorovic, Sentencing Judgement, TC, para. 57. 750 T. 17 June 2002 pp. 170-171. 751T. 17 June 2002 pp. 170-171. 752See supra paras. 303, 304. 753Simic, Sentencing Judgment, TC, para. 67; Kunarac, Judgement, TC, para. 863.

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### The Prosecutor

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574. The Defence submitted that a number of factors relating to the personal circumstances of the Accused and the violation of the Accused's rights should mitigate his sentence. 754 Mitigating factors must be proved on a balance of probabilities. 755
575. The Defence argued that the Accused's detention caused grave, though unspecified, prejudice to his family, whom the Accused greatly missed. 756 The Defence further submitted that the Accused was also a victim in the events of 1994, having lost his property and two of his daughters. 757 In the circumstances of this case, the Chamber does not consider these arguments as mitigating factors relevant to sentencing. 576. The Defence also submitted that the detention of the Accused has affected his health. 758 The Chamber has reviewed the statements of Dr. Belai, the Medical Officer of the Tribunal, dated 4 December 2000<sup>759</sup> and 6 December 2000,<sup>760</sup> and his confidential medical report filed on 6 December 2000, which revealed no serious health consideration and which found the Accused sufficiently healthy to stand trial. In these circumstances, the Chamber finds that the health condition of the Accused does not bear on sentencing.
577. The Defence submitted that the twenty years of development efforts by the Accused should be considered in deciding on the appropriate sentence. 761 The Chamber has noted the evidence from both Prosecution and Defence witnesses that the Accused was a successful bourgmestre in Bicumbi over a twenty year period. The Chamber heard that the Accused brought prosperity and development to his region. 754 Defence Closing Brief pp. 166-167. 755 Ntala'rutimana, Judgment, TC, para. 893; Vasiljevic, Judgement, TC, para. 272; Sikirica, Sentencing Judgement, TC, para. 110, Simic, Sentencing Judgment, TC, para. 40; Kunarac, Judgment, TC, para. 857. 756 Defence Closing Briefp. 166. 757Defence Closing Briefp. 167. 758Defence Closing Brief
- p. 166. 759T. 4 December 2000 pp. 27-29. 760T. 6 December 2000 pp. 39-41, 44. 761Defence Closing Briefp. 166.

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### The Prosecutor

- v. Laurent Semanza, Case No. ICTR-97-20-T 175 The Chamber thus considers the prior character and accomplishments of the Accused in mitigation of his sentence.
578. The Accused also submitted that his low level of command should be considered in mitigation. 762 The Chamber has already considered the role of the Accused in assessing the gravity of the offence. In this case, where the Accused has not been convicted of any crime based on superior responsibility, there is no reason to consider his level of command within an hierarchy. Such an argument is relevant when considering convictions for ordering, pursuant to Article 6(1), or for superior responsibility, pursuant to Article 6(3).
1. Reduction of Sentence for Violation of Rights
579. The Appeals Chamber found that prior to his surrender to the Tribunal the Accused suffered a violation of his right to be informed promptly of the nature of the charges against him when he was detained in custody for approximately eighteen days before being informed of the nature of the charges brought against him by the Prosecutor. 763 On a second occasion, the Accused was detained for a further period of eighteen days, before being informed of the nature of the charges, but the Appeals Chamber found this second violation to be less serious since he had already been informed in substance of the nature of the charges during his first period of detention. 764 The Appeals Chamber also found a violation of his right to challenge the lawfulness of his detention, when his writ of habeas corpus was not heard by the Chamber. 765 The Appeals Chamber, however, found that the Accused's counsel had not acted with the necessary diligence in bringing the matter before the Chamber and that, since the desired results were achieved shortly thereafter, the Accused suffered no material prejudice from the failure to address the motion. 766 Therefore, the Appeals Chamber held: [T]hat for the violation of his rights, the Appellant is entitled to a remedy which shall be given when

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is rendered by the Trial Chamber, as follows: 762 Defence Closing Brief

- p. 167. 763 Semanza
- v. Prosecutor, Case No. ICTR-97-20-A, Decision, AC, 31 May 2000, para. 87. 764 Semanza, Decision, AC, 31 May 2000, para. 90. 765 Semanza, Decision, AC, 31 May 2000, para. 114. 766 Semanza, Decision, AC, 31 May 2000, paras. 121, 124.

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### The Prosecutor

- v. Laurent Semanza, Case No. ICTR-97-20-T (a) If he is found not guilty, the Appellant shall be entitled to financial compensation; 176 (b) If he is found guilty, the Appellant's sentence shall be reduced to take into account the Violation of his rights, pursuant to Article 23 of the Statute. 767 580. The Chamber has fully considered the nature of these violations. The total

period of the violation of the Accused's right to be promptly informed of the charges lasted approximately thirty-six days, while the violation of his right to challenge his detention was found not to cause material prejudice. Considering the importance of these fundamental rights, the Chamber finds that it is appropriate to reduce the Accused's sentence by a period of six months. 581. In its Closing Brief, the Defence raised further violations of the Accused's rights. The Defence proposed that the failure of the Tribunal to provide written translation of all documents into Kinyarwanda for the Accused during trial violated his right to defend himself in a language that he understands. 768 The Chamber considers this argument to be unconvincing. The language rights of the Accused are set out in Article 20(4)(a), (b), and (f) of the Statute and Rule 3(B) and Rules. In this case, the Accused, who has an understanding of French, 769 was provided with the free assistance of a Kinyarwanda interpreter for the entire trial proceeding, including his testimony. Many of the important documents were read onto the record and translated into Kinyarwanda for the benefit of the Accused. The Registry is responsible for facilitating, in consultation with the Defence, the timely translation of documents into Kinyarwanda, and the Defence has not made any showing that the Registry has failed to translate any particular document for which a request had been made. Moreover, pursuant to the request of the Defence, the Registry hired a private contractor to provide additional translation services for the Accused. This contractor was arrested by the Tanzanian authorities, 77° and the Defence asserts that this 767 Semanza, Decision, AC, 31 May 2000,

- p. 34. 768 Defence Closing Briefp. 167. 769 See, e.g., T. 16 February 1998
- p. 19 ("Today I can speak in French, I can express myself in French, but later on I prefer to use my native tongue, my mother tongue, which is Kinyarwanda... Yes, I wish to speak in French today."); T. 23 September 1999
- p. 18; T. 18 June 1999 pp. 6-11; T. 25 April 2001 p. 167; T. 7 July 2000
- p. 7 ("He is not really very, very proficient in French, but even if they were translated into the French language, that would be okay."). 770 T. 22 November 2001
- p. 3.

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- v. Laurent Semanza, Case No. ICTR-97-20-T 177 discouraged other potential translators from working for the Defence. The Chamber does not see any merit in this unsupported assertion. The Defence has not made any specific argument that the failure to translate any particular document prejudiced the Accused's fight to defend himself. Thus, the Chamber finds that there has been no breach of the Accused's language rights which would warrant compensation at sentencing. 582. The Defence also submits that the Accused's fight to be tried without undue delay has been violated by the long delays in proceedings and the

frequent sanctioning of the Defence by the Trial Chamber. 7v1 As evidence of the delay caused by the Prosecution, the Defence argues that the Prosecutor amended the Indictment three times and that the Prosecutor brought rebuttal witnesses. In the context of this case, the Chamber does not consider either of these arguments to be persuasive. The Rules provide for the amendment of indictments, and the Prosecutor did so in this case with the leave of the Chamber under the Rules.<sup>772</sup> Moreover, it was the failure of the Defence to provide the alibi notice, as required by Rule 67, that precipitated the Chamber's decision to grant leave for the Prosecution rebuttal in respect of the alibi.<sup>773</sup> In considering the totality of the time spent by the Accused in pre-conviction custody, the Chamber finds that the period between transfer and conviction is indeed regrettable. However, having considered this total period within the context of the complexity of the case, the number of other defendants before the Tribunal, the limited resources of the Tribunal, and the delays occasioned by the Defence, the Chamber does not find that there has been a violation of the Accused's right to be tried without undue delay.

## 2. Credit for Time Served

583. The Accused was originally arrested in Cameroon on 26 March 1996, pursuant to an international arrest warrant issued by the Office of the Public Prosecutor of 7v1Defence Closing Briefp. 167. <sup>772</sup>See supra para. 6. <sup>773</sup>Prosecutor

v. Semanza, Case No. ICTR-97-20-T, Decision on the Prosecutor's Motion for Leave to Call Rebuttal Evidence and the Prosecutor's Supplementary Motion for Leave to Call Rebuttal Evidence, TC, 27 March 2002.

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v. Laurent Semanza, Case No. ICTR-97-20-T 178 Rwanda. Since that time, the Accused has been detained in custody, first in Cameroon, and then at the United Nations Detention Facility in Arusha. 584. Pursuant to Rule 101(D), the Accused is entitled to credit for the period during which he was detained in custody pending surrender and trial. The Chamber considers that this period also covers the periods during which the Accused was detained solely on the basis of the Rwandan warrant of arrest, because this warrant was based on the same allegations that form the subject matter of this trial. <sup>774</sup> In such circumstances, fairness requires that account be taken of the total period the Accused spent in custody. Therefore, as of 15 May 2003, the Accused is entitled to credit for time served of seven years, one month, and nineteen days. D. Conclusion

1. Genocide and Extermination (Counts 3 and 5) 585. For the reasons explained in the foregoing analysis, the Chamber finds that the appropriate sentence for the Accused for complicity in genocide (Count

3) and for aiding and abetting extermination as a crime against humanity (Count

- 5) is two terms of fifteen years' imprisonment. Since these crimes are based on identical sets of facts, the massacres at Musha church and Mwulire Hill, the sentences for these two counts will run concurrently.
2. Rape, Torture, Murder (Counts 10, 11, 12, and 14)
586. The Accused has been convicted of rape (Count 10), torture (Count 11), murder (Count 12) as crimes against humanity on the basis of two distinct factual events. The rape conviction is premised on the Accused's instigation of a crowd to rape Tutsi women before killing them. This is the same factual foundation as part of the torture count and part of the murder count. The counts of torture and murder also encompass the Accused's personal participation in the torture and murder of Rusanganwa. Since these three counts are based on connected events, the Chamber considers that the sentences for these counts should run concurrently. 774 Tadic, Judgement in Sentencing Appeals, AC, para. 38.

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### The Prosecutor

- v. Laurent Semanza, Case No. ICTR-97-20-T 179 587. The Accused has also been convicted of a separate count of murder as a crime against humanity (Count 14) in relation to his instigation of a group of Interahamwe resulting in six deaths. This event was also part of the same widespread attack as the other crimes against humanity and is similar in nature to the instigation portion of Count 12. Because of the close relationship between the instigation and the substance of Count 12, the Chamber also considers that the sentence for Count 14 should be served concurrently with Counts 10, 11, and 12. 588. The sentences for Counts 10, 11, 12, and 14 shall be: Count 10: instigating rape as a crime against humanity
- seven years' imprisonment Count 11" instigating torture by rape and personally committing torture as a crime against humanity- ten years' imprisonment Count 12: instigating one murder and personally committing one murder- ten years' imprisonment Count 14: instigating murder of six persons
  - eight years' imprisonment
589. The concurrent sentences for Counts 10, 11, 12, and 14 shall be served consecutively to the concurrent sentences for Counts 3 and 5.
3. Conclusion 590. Therefore, the total sentence shall be twenty-five years' imprisonment. This sentence will be reduced by six months to compensate the Accused for the violations of his rights. The Accused's final sentence is twenty-four years and six months imprisonment.

591. Credit for time served has been calculated as seven years, one month, and nineteen days. Therefore, as of 15 May 2003, there will remain seventeen years, four months, and eleven days in the Accused's sentence.
592. In accordance with Rules 102(A) and 103, the Accused shall remain in the custody of the Tribunal pending transfer to the State where he will serve his sentence.

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593. Judge Ostrovsky and Judge Dolenc append their separate opinions to this

## Judgement.

594. Done in English and French, the English text being authoritative. Arusha, 15 May 2003.  
Presiding Judge Judge (Seal of the Tribunal)

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