

RWANDA / JUDGMENT

Ignace Bagilishema v. The Prosecutor

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ICTRq-b -I/~/-~ 16 j~¢¢2 0o3,,... ~ m~rnationaClr iminsTlr ibunaflo r Rwanda TribunaPl6 nalI nternationpaolu rl e Rwanda ENGLISH Ori~nalF:r ench APPEALS CHAMBER Before: JudgeC laudeJ orda,P residing Judge MohamedS hahabuddeen .JudgeD avidH unt Judge.FaustPoooc ar Judge TheodorM oron tCTR Appeals Chamber Registry: Adama Dieng 3udgemenotf : 3 July2 002 THE PROSECUTOR (Appellant) ,~ ~ . V. IGNACE BAGILISIHEMA (Respondent) CaseN o. ICTR-95-IA-A JUDGEMENT (REASONS) e Prosecu3~L.r: CarlaD elP onte -- N. II I ItI .IR_t.lm I - NormanF arrell Intern~tion~l CHmlnai Tribunal for Rwanda Trlbm~al.p e~ml |ntcrnat|ort.alp our io Rwanda SonjaB oelaert-Suornincn MathiaMsa rcussen CF.R'fII"II.:IT)R IJF COPV Of? THE ORIG|NA[0S EEN BY ME COPIE CER'[I F'] El~ CONFORME A IJORTGINAk PAR NOUS --- ~o -. ~.~.~ Counseflo rt he..Defence: FrangoiRso ux MaroufDai abira

I.I NTRODU.C.T.I.O.N.

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OC~.O.S. 5..... C. STANDARDO F REVIEWO R AN

ia~PPEALA GAINSTA CQUITTA.L.'~.*"I."=.I~=.H"'"* 'd'.¢~.' vl.v ~'.mv.~'."==".¢ .86."**~.,

~... ~ .5..... 7 II. INADMISSIR]~LITOYF THE PROSECUTION'SA PPEAL... !~, FileT GROUND OF

APPEAL: M~LE~ATIONS OF ERRORS/~I~G TOA RTIC6L(E3 O)F T HES

TATU.T.E. 13 1,W hethtehre T riaClh ambceorn sidetrhee"d

h adr easotnok nowt"e st. 13 2.W hethethr eT riaClh ambecro mmittaende rroirn f

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heT riaClh ambteorc onsideerf acatuot hor.i.t.y. 30 IV, SECOND GROUND OF APPEAL:

ALLEGATIONS OF ERRORS RELATING TO THE ADMISSION OF WRITTEN CONFESSIONS OF

WITNESSES AA, Z ANYD.

33 v. THIRD GROUND OF APPEAL: ALLEGATIONS OF ERRORS IN THE ASSESSMENT OF

EVIDENCE CONCERNING THE '¢rRAFIPRO" ROADBLOCK AND THE GATWARO STADIUM

38 A.G ENEREARLR OR.S. 38 I.W

he~etrh eT riaClh ambearp plieadn i ncorresctta ndairnda sssessitnhge evidenoc~te h ep

resenocfte h eA ccusaetdG atwaSrtoa di.u.m. 38 2.W hethethr eT riaClh ambeerr

reidn i tsu seo fa ndr elianocnep riowrr /tten state.m.e.n.t.s.

42 3.W hethtehre T riaClh ambeerrr ebdy f indiWnigt nensost c redib.l.e.

'Z. 4.3..... B, "SPECIFIC" ERT,ORS CONCERNING THE TRIAL CHAMBER'S ASSESSMENT OF THE EVIDENCE IN RELATION TO THE PURPOSE OF THE TRAFIPRO ROADBLOCK, THE MURDm~O F J~rDrrRA ND Ttm PRBSENCOEF ~ ACCUSED A T THE GATWARO STAD.I.U..M. 44 1.T heT riaClh ambera'sss essmeonftt her elevaenvti denrceel atitnugt hep urpose oft hTer afirporaod b.l.o.c.k. 45 2.T heT riaClh amberr'esl ianucpeo np riosrt atemen(tsst ateanemnatdset o Prosecutiinovne stigataonrdcs o nfessiosntaalt emetnotR sw andaanu thoriti.e.s4)7 3.A ssessmeonftt hee videnrceel atitnugt hep resenocfet heA ccuseadtt heG atwaro Stadoinu1 m3 1,4 a nld8 A prli9l9 .4. 51 (a)P resenocfte h eA ccusaetdt heG atwaSrtoa diounm1 3A prill9 9.4. (b)P resenocfte h eA ccusaetdt heG atwaSrtoa diounm1 4A prill9 9.4. 5.1..... 53 (c)P resenocfte h eA ccusaetdt heC ratwaSrtoa diounm1 8A prill9 9.4. 54 VLD ISPOS.I.T.I.O.N. 57 ANNEAX:A PPEAPLR SO CEED.I.N.G.S. I

1.S ummoa:rf~ya crtesl attiofn igl ionnga sp pe.a.l. i 2.M otiofnisl ,:a'spd a rotf t hea ppeaplrso ceed.i.n.g.s. . (a)I nadmissiobfit lhiePt ryo secutAipopneB'~rs i ef.ii?~?~??????.~iiiiiiiiii?~?~????~.~ii~iiiiiii CoT)r anslaantedix otne nosfid oena dl.i.n.e.s. iv (e)M otionfso rr evie.w. v (d)M otio.m.f .o.rd. i.s.c.l.o.s.ou.fre. ev. i.d.e.n.ac.ne.df . o.rw. i.m.e.sp.sr. o.t.e.c.tm.ie.oa.ns. u.r.e.s.. vii e)M otiofnrso uguhntdR eurl 1e1 o5f t hReu le.s. 3.T hAep peJnudd ge.m.e.n.t. v.i.i.i..... viii ANNEX B: GLOSSARY ~at'mt w ,*tl w w e'm'qlm'autlaoa,m,a atI~ ,id ,,Wp, Wme,,, O in, ,mmn tmRlt nmpu' Iv'q~0PP@ ~PqDOOIIL,4L~bwmm~,lL,U1,~,,' ~U WPVG~ OLqILLI 4t,0~ m, ma,0WX~pww A, FZ"LtN~o.FS' rnPwA.R TIES 04 B. RER~R~RNECLEASTI TNOG T HEr NSTANCTA SE. X C. CITECDA SB.S. XII D. OTH.REERF EP,..E.N.C.E.S. XIII

1. TheA ppva2Csh ambeorf theI nternatioCnrailm inaTlr ibunaflo rt heP rosecutioofn PersonsR csponsiMfco r Genocidaen d OtherS eriousV iolationosf International HumanitariaLna w Committeidn the Territoroyf Rwandaa nd RwandanC itizens responsibfloer g enocidaen do thers uchv iolationcso mmitteidn thet erritoroyf neighbouriSntga tebse tweeIn Januarayn d3 1 Decembe1r9 94("the AppealCsh amber" and" theT ribunalr'e:s'p ectiveilsys)e izeodf ana ppeafli ledb yt heP rosecuti(o"nt he Appellanatg"a)i nstth;e J udgemernetn derbeyd THaiC hambeIr o ft heT ribun(a"lt heT rial Chambero"n)7 June2 001i n thec aseof T heP rosecutvo.r I gnacBea gilisheCmaas,e N o. ICTR-95-1A(-tTh e:" Judgement"). On 3 July: 2002,f ollowintgh eA ppealH earinogf 2 July2 002i n Arushat,h e AppealCsh amberre ndereidt sJ udgemenutn,a nimousdliys missitnhge A ppe~f iledb y the ProsecutioOnn. & ato ccasiotnh,e A ppealCsh ambeirn dicattehda tt her easonfso ri ts Judgemewnotu lbde ,m adea vailabtloet hep artieasss oona sp ossible. 3. Accordinglyt,h,eA ppe~sC hamber SETS OUT I~RE]EN THE REASONS FOR ITS JUDGEMENT. CaseN o.:I CTR-95.1A.A 13 Dec0mbr, 2002

(fi~)' dredr rorE:r roneofuissn dirnge latitnogW imcsZs. (B)" Specifeircr"o rs: (i)F b';te rrorE:r rorr elatintgo thea ssssmemnatd ~b y theT rialC hamber regarditnhge ~ vidcntceen d#rweidt hr egartdo T rafiprrroa dblock; (fi)S ~::onedr rorE:r roirn t hea ssssmoeft th ee videnrceel atitnog t hem urdeorf Judith,' ('tiiT)h irde rrorE:r rorr elatitnog t hea ssssmoeft e videnrceel atintgot h~ pre.~nocfe t heA ccuseadt thoG atwarSot adiuomn 13,1 4 and1 8 April1 994. Cas~N o.:I CTR-95-1A-A 13 Decembe2r0 02 ,:

C,,S tandarodf reviewf ora n a.nveIa afain~ate quitt~ 8~ The presenta ppeali s filedb y the Prosecutioang ainsta cquittably the Trial ChamberT.h ist yp~o f appeali s providefdo ru nderA rticl2e4 of theT ribunalS'tsa tute, whichs tatest hat~ ,e twop artiemsa yl odgea n appealo n ~oundso f an erroro f lawo r of fac 4 t.O n severaolc. casiontsh,e A ppealCsh ambehra sr eitcrattohde s tandartdos be applied in considerienrgr orso n a questioonf lawa nde rrorso f factr aisedi n an appeala gainst convictio5n H.owever,t,h eA ppealsC hambehra s neverh adt he opportunittoy definet he standardtso be applieidn considerianpgp ealbsy theP rosecutiaogna insatc quittala,n d deemsit necessartyo do so in thep resenmta tteri,n asmucahs theg reatepra rto f the Prosecutiognr'osu ndosf a ppearle latetso a llegatioofne sr rorosf f act. 9. Withr egardt o allegationosf errorso n a questioonf law,t he AppealsC hamber considertsh att hes umdardosf reviewa ret hes amef ort het wot ypeso f appealf:o llowing thee xamploef a p~rtya ppealinagg ainscto nvictioann, a ppealb y theP rosecutiaogna inst acquittawlh,i cha llegetsh att heT rialC hambecro mmitteadn erroro n a questioonf law, muste stablitsgha tt hee rroirn validattheesd ecision. 10. Withr egardt o errorso f facti n appealsa gainstc onvictiotnh,e AppealsC hamber appliest he standarodf the "unreasonableneosfs t"h e impugnefdi ndingT.h e Appeals Chambemru std eter~nweh ethetrh ef indinogf guiltb eyondr easonabldeo ubti s onew hich no reasonablter ibunaolf factc ouldh aver eachedi,t beingu nderstootdh att heA ppeals Chambeca no nlyo verturan decisioonf theT rialC hambewrh eret hea Begede rroro f fact * Articl2e4 of theS tatutper ovidaess f ollows: "1. The AppealsC hambers halth eara ppealsf romp ersonsc onvictibdy the TrialC hamberso r from the Prosecutioonn t hef ollowingr ounds: (a)A n erroro n a que:~tioofn l awi nvalidatitnhged ecision; (b)A n erroro f factw Mchh aso ccasionead m iscarriaogfe j ustice. 2. TheA ppealCsh ambemra ya ffirmrv versoer reviset hed ecisiontsa kenb y theT rialC hambers,("E mphasis added). Articl2e4 of theT ribu~dS'tsa tuties similatro Articl2e5 of theS tatutoef theI nternatioCnkailm inaTlr ibunal for theI ~oxm~Y ugoslavi(a" ICTY")I.t shouldb e notedt hati n hisR eportS /2570(4d evotetdo ICIT), Scretary-Oeneorfa tlh eU nitedN ationisn dicatetdh at" It]her ightto f appeals houldb e exer~isabolno two grc~ndsas:n erroro n a q~estioonf lawi nvalidatitnhged ecisioonr ,a n et'toorf factw hichh aso ccasionaed miscarriageoJ fU 'S t'i c~v'j. h e Prosecutosrh oulda lsob e entitletdo initiaaep pealp roceedinogns t hes ame ro, Unti"s, para.1 17(emI.~hasaldd ed). MusemaA ppealJ 'udgementp,a ras,1 5 Io 21; Kayishema/ RuzindaApapae alJ 'udgcmentp,a ra,3 20;A kayesu AppealJ udgemenpta,r as.1 74t o 179. Ca~ No.: ICTR-95-1A-A 13 December2 002

occasioan emdi scarriaofgj eu sticAen.a ppellawnhtoa llegeasne rroorf f actm ustt herefore showb otht hee rrotrh atw asc ommittaendd t hem iscarriaofgj eu sticree sultitnhge refrom: t 1. As theA ppealCsh ambersof botht heI CTRa ndt heI CTYh aver epeatedsltyr essed, an appeali s nota n oppommitfyo ra de novor eviewo f thec ase.T heA ppealCsh amber "wilnlo t/ ightldy~

istufribn dinogfsf actb y a TriaClh amber'.⁷ Becaus"e[t]htea sko f hearinags,s essainndgw eigb.tihnege videnpcree sentaettd r iails l efft ot heJ udgessi ttiinng a TriaClh ambe[r.,. .l]i lti so nlyw hent hee videnrceet ide onb yt heT riaClh ambecro uld notr easonabhlayv eb eena cceptbeyd artyr easonableer sotnh att heA ppealCsh ambecra n substituittes o wnf indinfgo rt hato f theT rialC hamb'~'.sT woj udgesb,o tha cting r9easonabclayn,c omet od ifferecnotn clusioonnt sh eb asiosf t hes amee vidence. 12.T heA ppeahC~h ambehra sa lsor epeatexetxlpyl aintehde r easonfso rt hisd eferentcoe thef actuafl i ndingosf theT rialC hamberAss. theI CTYA ppealCsh ambepu ti t in the upres'kAi pep eaJlu dgement: TheT rialC hambehra st hea dvantaogfe o bserviwnigt nessiens p otioann ds o is better positiontehda nt heA ppealCsh ambetro assestsh er eliabilitatnydc redibilioty t he evidencoA.c cordingilty ,i s primarifyloyr t heT rialC hambetro determiwnhee thear witnesiss c redibalned t od ecidweh ichw itnestse's timotnoyp mforw,i thounte cessarily articulateivnegrs yt e~o ft her easoniinnrg e achian dge cisioonnt hospeo intlso, 13.T hes ames t~mdarodf unreasonableannedst sh es amed eferentcoe factuafl i ndings of theT rialC hambearp plyw hent heP rosecutiaopnp ealag ainsatn a eqmttaTlh.u s,w hen considerainna gp peably t heP rosecutiaosnw ,h enc onsiderainna gp peably t hea ccusetdh,e AppealCsh ambewri llo nlyh oldt hata ne rroorf f actw asc ommittwehde ni td etermintehsa t nor easonatbrliee orf f actc oulhda vem adet hec hallengfemdd iug. 14.U nderA rtic2e4 (1)(bo)f theS tatutet,h eP rosecutioLni,k et hea ccused, demonstr"aatnee rroorf f actt hato ccasionae mdi scarrioafgj eu sticeF.o"r t hee rroto b e onet hato ccasionae mdi scarrioafg eju sticiet, musth aveb een" critictaolt hev erdict M~emaA ppeaJlu dgemenpta,n t,1 7;A kayesAup peaJlu dgemenpta,r a.1 78, 7 MuaemaA ppealJ udgeme.npta,~ ,1 8 (quotinFgu rund~ijAap lmalJ udgementp,a r~3 7);s e~a lsoT adid AP~ Judgement,t , p~.& 64; AlekovspkApi e al J' ~ u m d n c t,p ara.6 ~ ~ara,gem~ntp'a4r3a5s,~. a nd4 0;K upretkAi/#~ pea.IT udgeanepnatr,a s3,0 a nd3 2; (~elebAMPip eaJl' udgoment, See,e .g,T,a d/dAppJe'aujd gomcpnatr,a 6.4 . CaseN o.:I C~95I-A ,-A 13 Decembe2r0 02

reache'd'.11B ecausteh eP rosecutbieoanr tsh eb urdeant t riaolf p rovingth eg uiloft t he accusebde yonad reasonabdloeu btt,h es ignificanocfe a n erroro f facto ccasioniang miscarrioafgj eu sticies s omewhdaift ferefnotra Prosecutaipopne aalg ainsatc quitttahla n fora defencaep peaalg ainscto nvictioAnn. a ccusemdu sts howt hatt heT rialC hamber's factuaelr rorcsr eatae reasonabdloeu bta s to hisg uiltT.h eP rosecutifoanc esa more difficutlats kl.t m usts howt hatw,h ena ccounits t akeonf t hee rrorosf f actc ommittbeyd theT riaClh ambearl,l r easonadbolueb otf t hea ccusedg'usi lhta sb eene liminated. II.INADMISSIBILITY OF THE PROSECUTION'S APPEAL 15.T heR espondeanrtg uetsh att heA ppellantB'rsi efi s inadmissibbleec aus(e1)t he Prosecutdiiodnn otc omplwyi tht heP ractiDcier ectioonnnt heL engtohf B riefasn dM otions onA ppearli ghfr omt heb egininionfgt hea ppeaplr ocesasn,d (2)t hed ecisiroenn dered 30 Novembe2r0 0:bt y t heP re-heariJnugd gew asv iolatedG.e nerallsyp eakingt,h e Respondernetq uestt~h eA ppealCsh amber: [...t]o n ote(i)t hatt heP rosecuthiaosbn e eng rantseedv ereaxlt ensioofnt si met of ilei ts Briefn c omplianwciet ht h~P ractiDcier ectioofn1 3.8.0(1i;i)t hatn otwithstantdhieng variouesx tensiotnhsv,P rosecuthoarsn otr especttehdet ime-limgirtasn tvhdi m;a ndO ff) thath isB riefv iolatAerst icl2e0 (a)o f theS tatutaen,d ,c onsequenttol fyi,n da ndr ule thatt het hirdv c,r slono f tryP rosecutorA'psp ealB rivfo f 19 Decembe2r0 01i s

innadmissi,balned,a, c cordintgold yi smistsh en oticoef appeal, t 6.O n 13A ugus2t0 01,t heP residiJnugd geo ft heA ppealCsh ambesri g-netdh eP ractice DJ.rectioonnt heL engtohf B riefasn dM otionosn A ppea(lt he" PractiDcier ectionw"h)i,c h cameh ttof orcoen t hed ayi tw asn otifiteodt hep artiensa,m elly9 S eptemb2e0r0 1.1T3h e Prosecutifoinl eidt sA ppeaBlr iefo n 29O ctobe2r0 01i,n conformiwtiyt ht heg uidelines laidd ownb yt heP re-heariJnugd ge1.40 n 2 Novembe2r0 01t,h eP rosecutfiolne da motion in whichi t acknowledgedtghadt i tsA ppeaBlr iefe xceedetdh em aximunmu mbeorf p agess et ~o K~preYkAipdp eallu dgzrnepnatr,a 3.2 ;s e.~K unaraAcp peaJlu dgemenpta,r a4.0 . llKupre~iAdp pealJ udgement, u Re _ , para2.9 . spoaaesn Btr iefp,a ta5.4 . 13 Th,o* ~'raetiDcier ~tiwoans i ndeesde rvebdy t heR egistorny t hev ariouOsf ficeesl t he H z a , g i" a D ~a e n c d i i s n i A 'o r "n u M s o h t a i o) of n no 1 r 8 e S x e t p , " t e m . b e 0 r 0 ,I ando na llD efenc.C~o unseoln 1 8 and1 9 SePprio~smebce2ua It-loa rt The rendereodn 1 Octobe2rC 01 ~ . Isloonf t flllTeh,e P rO,t'ec v u . t x o g r naceB a.g.dlsheM Caa,s eN o.I CT O R 0 - _ 95-1A.A, CaseN o.:I CTR-95I-. A-A 13 Decembe2r0 02

forthi n theP racticDei rectio1n5, andr equestetdh eA ppealCsh ambetro admiti tsB riefas filedo n2 9O ctobe2r0 01a nd,i nt hea lternatitvoeg ,r anti ta n extensioofn s eve(n7)d ays filea new Brief.O n 30 Novembe2r0 01,t he Pre-hearinJgu dger uledo n the Motiona s follows: Whereaassa, t ~StlItth,eA ppellaBnrti'esif s n oti no rdearn,d w hereiatsi sn ecessfaorry theA ppellatnotc omplwyi tht her equiremeonfft hse P ractiDcier ectiwohne;r etahse intercosftj st tstircee q uitrhea tth eA ppellsahnotu Flidl ea" n ewb riewfi thai nr easonable time-limaintdw, h eretahse s even.deaxyt ensioofn i mer equestbeydt heA ppellatnot Rlea newb r,b fi sr easonable; [...G]r antht ~a lternarteiqvuee isnntt heP rosecutiMoont'isoa nn dO rdetrh eP rosecution tof ilea nA ppeHanBtr'ise tfh atc ompliweist ht hec riter~itaf ortihn t heP ractice Directwiioln: hsienv e(n7)d ayfsr otmh ed atoef t hiDse cision.ie i7, The Prosecutiofni leda secondv ersiono f itsa ppealb riefon n 7 Decembe2r0 01,i n conformitwyi tht he aforementionedDeedc isioonf the Pie-hearinJgu dge.O n 14 December 2001,t he DeputyR egistraorf the Tribunailn formetdh e Presidenatn d Judgeso f the AppealsC hambetrh att heA ppellant'Bsr ief,c ontaininmgo ret han4 0,000w ords,d id not confortmo theP racticDei rectionno rt o theP re-heariYnugd ge'Dse cisioonf 30 November 2001. 18. On 19 December2 001,t he Prosecutiofni leda motionr equestintgh e Pro-bearing /udget o acceptt he observationosf the Registrwyi thr espectt o the numero f words containiend theb rief,a nda cknowledgtehda tt hes aidb riefd idn otc onfortmo thec riteria seto ut in the PracutDei rectionI.t furtherre questetdh e AppealCsh ambetro ~.ntt he Prosecutiao fnu rtheerx tensioofnt imet o enabliet t o filea briefi n corfforntwiittyt h the PracticDei rectionw,h ichw as attachetdo the motion.I n its motion,t he Prosecution explainetdh ati t hadc oncentratoend r educintgh en umbero f pagesw ithoupta yinga ttention ~sI ns uppoorfti tsm otiothn,e P rosecuetxipolna itnhead"t I nt hee veaionfgW ednes3d1aO yc tob2a0r0 1t,h e Prosecutwiasin r ttbrmbcytd h eR egisttrhya tt heP rosecutiAopnp'saB lr iedfi dn otc onfowrimt hS ection l(a)o ft heP ractiDcier ectiionnt ,h ati te xceed1e0d0 p ageosr 3 0,00w0o rdsT.h eA ppeaSlesc tioinnT he Hagudei dn otr eceivae c opyo ft heP ractiDcier ectiboenf or[e. ..1] Novemb2e0r0 1a,t w hicdha tet he AppealSse ctiorne ceivae cdo pyf romt heO fficoef t heP rosecuitnoA rm sha.C"f , ' TrosecutiUorng'esn t Motiofno rA uthorisattoiE oxrcte etdh ep agel imitto t heP rosecutiAopnp'saB lr ieaft da lteraatRievqcu est /brE xtensioofnT ime"t,h eP rosecuvt,o1 rg nacBea gilish~Cmaas,eN o.I

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to the numero f words on each page, and that upon receivingt he observationso f the Registry,t
hadr exiuceidt s brieft o 29,867w ords. 19. On the same day, the Pre-hea~gJ udger enderedt he
followingD ecision: Consideritnhga tt heD ecisioofn 30 Novembe2r0 01d irectetdh eP
rosecutitoon f ilea n AppellanBtr'ise ifn c omplianwciet ht hea pplicabPlrea ctiDcier ection;
Whereatsh ea rgumentpsu t forthb y the Prosecutiionn supportof its motioni n themselvd,e.s~n
otc onstitsuttfef icijeunstt ificafitoirao nn© xtensioofn i me; Whereahso,w evetro, e rasurteh att
hep roceedianrgesn otu nduldye layeidt, i sn ecessary toa llotwh eA ppdlatnotf ileh hen owB rieafsa
a ttachteod h isM otion; Whereafsu rthermobrye f ailintgo tilea n AppollantB'rsi efi n
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At'firtmh at,a t thiss tageo f appeapl r oceedintgism,e a llottefdo rr esponsbey the Respondewnitl
lc ommencweh ent he Registrsye rvest heR espondeanntd h isC ounsel witht heF rencvhe rsioonnft
hen ewA ppellanBtr'ise f~.* 20. Before the Appeals Chamber, the Respondent submits that the
appropriate disciplinarmye asurei s a declaratioonf nullityo f the AppeUant'Bsr ief,w hich,a
ccordintgo ~he Respondentw,a s filedo ut of timei.s In supporto f his argumentt,h e
Respondenrte ferst o the Kayishema/RuzindaAnpap ealJ udgement,w hich states: [...p]r
oedurtfilm e-limmi'test ob e respectaendd[...a]r ei ndispenstaobt lhee p roper functionoi1n"tg h
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ompabnyia endy s howinogf g oodc ausew,i ll n otb e tolerated.t9 21. The Appeal:~; Chamber
rejects the Respondent's arguments. Considering the exceptionacl rcumstanceosf this case,t he
AppealsC hamberh oldst hat therei s no reason ~7" Decisi(o"nP rosecutiUor:gae'nsMt o tiofno re
xtensioofnt imet oM e itsa ppeabl r ieifn complianwciet ht he PracticDei rectioonn t hel engtohf
Briefasn dM otionosn Appeal"T)h,e P rosecutvo.r l gnacBea giLLvhema, CaseN o.I
CTR-95-1Ar.eAn,d ereoxnt 1 9 Decembe2r0 01,p . 3 (emphasaisd ed), 1~T (A)2, J tll2y0 02p,. 1 79.
11 CaseN o.:i CTI~95-1A.A 13 Decembe2r0 02

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ppealCsh ambecro nsideriendt ,h ej udgementth,a ti t hadf ailetto s ubstantitahtebe a siusp onw hiciht w ass eekinrge liefI.t sf ornamlo tiofno r extensioofnt imew asf inallsyu bmittoevde rt wom onthasf tetrh ed eadlihnaed e xpireTdh.e Prosecutailosno f:a iltetdoc omplwyi tht hen ewd eadlisneet b yt heP re-hearliundgg eT.h ere wast herefoar ree peatpeadt teronfn on-compliaanndac el acko fd iligenocnet hep arto ft he Prosecutiinot nh eK ayishema/RuzicnadsaeIn.na t hep resencta se,h owevetrh,e f ailurteo compliys o fa markeddliyf ferennatt uret;h eP rosecutdiiodnf zlei tsb rieifn c onformity witht heg uidelisneetsb yt heP re-hearJiundgg e. 22.F hrthermorteh,e P rosecutioanf,t era cceptintgh eo bservationfs t heR egistry regarditnhgen umbeorf w ordisn t heb rieafn da cknowledgtihnagtt heb rieifn q uestidoind notc omplwyi tht hec rittersiat o uti nt heP ractiDcier ectiotno,o kt hen ecessasrtye ptso curet hen on-compliawnicteht het extr eferretto a boveT.h eA ppealCsh ambecro nsiders thatt heP rosecuthiaosnt huss howpnr oooff d ispaticnhf ilinag n ewb rieifn compliance witht hec riteriinat heP ractiDcier ectioonnnt hes amed ayt hati tf iletth em otiofno r extensioofnt imeT.~ eP rosecuttihoenr efotroeo kt hen ecessasrtye ptso c orrecitt se rroars quicklays p ossibalnede i mmediatealfyt ert hep roblewma sb roughitto i tsn oticeI.n a ny caset,h eD efenchea sf ailetto e stablitsgha th ew asp rejudiicnea dn yw ay. 23. For theser ~asonst,h e AppealsC hamberd ismisseasl l of the Respondent's argumenotnst hei r~dmissibioflt ihteya ppeal. ~9 Kayishema/Ruz.iAnpdpaenaaJl u dgemenpta,r a.4 6(footnotOemsi tted). Ca~ No,; ICTR-95-1A-A 12 13 Dec.emb2e0r0 2

FIRST GROUND OF APPEAL: ALLEGATIONS OF ERRORS RELATING TO ARTICLE 6(3) OF THE STATUTE 24,I n itsR rstg rounodf a ppealt,h eP rosecutiaodnv anctehsr ees ubmissiroenlsa tintgo thea nalsysmsa deb y theT rialC hambeorf theR espondentr'ess ponsibilfiotuyn deodn Articl6e(3)o ft heS tatutaen dt o thef indingbsa sedt hereowni thr egartdo thec rimes committaetdt heT r,x fiprrroo adbloicnkM abanzc2ao° mmune: Firsts ubmissiotnh:eT rialC hambecro mmittaend e rrori n notr ulinogn the issuea s to whethetrh eR esponde"nhta dr easotno k now"t hatc rimehsa db een c2o1mmitbty~h iss ubordinaattet sh eT rafiprrrooa dblock; Secon~du bmissiotnh:eT rialC hambecro mmittaend e rrori n findintgh att he Respondednitd " noth aver easont o know"t hatc rimehsa db eenc ommittebdy hiss ubordinaattet hse s aidr oadblo2c2ka ;nd Thirds ubmissiotnh:e T rialC hambecro mmittaend erroro f lawh x itsl egal analysci)sf t hec onditionesq uirfeodr a persotno b ec onsideraesda superior w3ithi~nt em eaninogfA rticl6e(3)o ft heS tatute? 25.W ithr egardt o thef irsttt wos ubmissiontsh,e P rosecutiroenq uesttsh eA ppeals Chambetro quasht hea cquittoafl t heR espondeonntC ountis, 3 and6 oft heI ndictment andt o remitt hec)~set o a TrialC hamberO.n theb asiso f thet hirds ubmissiotnh,e Prosecutiroenq uesttsh isC hambetro notet hee rrorrsa iseadn dt o maket hen ecessary correctiinot nhsei ntereosftj2 sl4 lstiC\$. 1,W hethetrh eT riaClh ambecro nsidertehde" h_..rde ~sotno knowt"e st 26.T heA ppealCsh ambeerm phasizefsi,r sto f all,t hatt heP rosecutidoone sn otc ontest thea nalsywihsi c"ht heT riaClh ambemra deo ft hea pplicabllaew z,~b uto nlyc ontestthse 20A ppellBarnite'pfsa, r 2~.u4 . 21I BM.p,a ra2s..5a n2d, 3t9o 2 ,44. ~z2~I/ bbiipdpda.a_r,x,a 22a s....47 t 50o2 .,S9. ~ AppellBarnite'pfsa, r ~.2,..6~82.,. 6a9n 2d, 75T;(A2)J ,u l2y0 02p,. TriaJlu dgempeanrta 4s4.t o4 6i nclude. etscq, 13 CaseN o.:I CTR-95-1A-A 13D ecemb2e0r0 2

..... applicatiboynt he, saidC hambeorf thec riterisae to uti n Articl6e(3)o f theS tatuteT.h e Prosecutiosnu bmitst hatt he TrialC hamberc ommitmadn erroro f law in not scekingt o knoww hethetrh eA ccuse"dh adr easont o know"i n termso f Articl6e(3)o f theS tamt,o,r , in otherw ords,w h,-thehre possesseidn formatiwohni chp uth imo n noticeo f ther isko f crimesb eingc ommitmodr crimesw hichh aveb eenc ommitteadn d requirinhgi m to carry o2u~ta na dditionianlv estigatoirop nu nishhi ss ubordinagtueisl toyf s uchc rimes. 27.F or a properi nterpretatioofn t he "hadr easont o know"s tandardt,h e Prosecution relicso n them anneri n whicht hisi ssuew asa ddresseidn theC elebidA2ip7 pealJ udgement and proposeasn interpretatioofn t he concepto f "inqnlrnyo tice"(i.e.,a supefior's affirmatidvuet yt o inquirfeu rthetwrh enp uto nn otice)T.h eP rosecutidowne llast lengtohn theq uestioonf a pplyintgh ea boves tandartdo civiliasnu perioirns supporotf itsa rgument thatt hes aido bligatiaopnp lietso a lls uperiozr~s R,eferritnog p aragrap9h6s6 t o 989o ft he Triall udgemetnhLe .A ppellasnutb mittsh att heT rialC hambeorn lyt riedt o establisohn, t he basiso f direcotr ck-cumstanteivaild encteh,a tt heR espondehntad a ctualk nowledogfe the facts2.9 Accordintgo theP rosecuttihoenT ,r ialC hamber'fsi ndingisn paragrap9h8s8 a nd 989 of theJ udgemenrte vealt hatt he" hadr easont o know"s tandarwda sn ote xamine°d JIt furthesru bmittsh ati nsafaars t hes tandarodf criminanle gligenacse a ppliebdy theT rial Chambe3rJ differRse int hatu sedi n the CelebidAip peal/ udgementi,t is necessartyo determinweh ethetrh el egali ngredienrtesq uirefdo rc riminanle gligen3c2e coulda mountt o the" hadr easotno krtows"t andar3d3,i n accordanwciet ht heC elebidj3iu4 risprudence. 2~AppellBarnite'pfsa, r a2.. 40 2 2 7 8 T T (h A e) P , 2 r l o i s l e l 2 c y 0 u 0 t e 2 i o p , o n . ~ , n'~ 2 i ;A d p e * t p r h e s a l t " l t p s a h B n i r i t s i s e a p f n a , i r m a p 2 s o , . r 6 t t o q a 2 u n . e t l s 4 t . i o o n n w h i 0 i h t w o u l b d e a p p r o p r i f a o t r t e h i s A p p e a C l h s a m b t ~ o p r o n o u n n c o e t , o n l i y n v i e w o f t h i s c a s o e n a p p e a b l u , t a l s i o n v i e w o f t h e g u i d a n t c h e a t n e e d t s o b e g i v e t n o t h e T i l a C l h a m t m a r n s d t h e p a r t i i e n s o t h e c r a s e s T . h " e P r o s e c u i t s i r o e n f e r r h i e n r g e t o p a r a g r 2 a 4 p 0 h o f t h e L ~ e ~ e b A i p d p i a a J l u d g e m e C n f t , A . p p d l a m B ' r s i e f p , a r a s 2 . , 1 4 t o 2 . 3 8 S . e e a l s o T (A) , ~ / e b y 2 ~ 2 , p . 3 0 : ' q ' b P e r o s ~ c u t i s o u n b ' m s i s s i s o t n h a t t , h e c o n c e o p f t i n q u i n r o y t i c a e s , d e v e l o b p y e t d h e i d i A p p e a C l h s a m b a e p r p l i t e o s a l l s u p e r i u o n r d s e t r h e S t a t u r t o 0 g a ~ s o s f t h e i r f o r m a l o r l e g a l s t a t u s , 2 r ~ g a r d o l f e w s h s e t h t h e r e a y r e c i v i l o i r a m n i l i t i a . " ~ p p e l l a B n r t i ' e s p f a . r a 2 . . 4 0 T ; (A) 2 , J u l 2 y 0 0 2 p , . 4 1 . ~ A p p e ~ a B n r t i ' e s p f a , r s 2 . , 4 1 T > (, A) 2 , J u l 2 y 0 0 2 p , p . 4 1 - 6 9 . . ' ~ l i ~ s h o u l b d e n o t e t d h a t t h e E u g l i v s e h r s i o o f n t h e , l u d g e m u e s n e t t s h e t w o e x p r e s s " i g o r n o s s n s e g l i g e n c e " a n d " c r i m i n n a e l g l l g e n (e C e f T " r i a J l u d g e m e f n o L r e x a m p p l a e r a s 8 . 9 7 a n d 1 0 0 5) . 3 2 A p p d l a n B t r ' i s e f p , a r a 2 . . 4 2 T . h e P r o s e c u t i i s r o e n f e r r t i o n t g h e e l e m e n a t p s p l i b e y d t h e T r i a C l h a m b i e n r ~ a r a s 1 . 0 1 a 1 n d 1 0 1 2 o f ~ . h J e u d g e m e n t . A p p e l l a B n r t i ' e s p f a , r a 2 s , . 4 a 2 n d 2 . 4 3 , A c c o r d i t n o g t h e R e s p o n d e t n h t e A , p e l l a m n i t s i n t e r p r t e h t e ~ e d l e b i A d p i p e a l l u d g o m e (n R t e s p o n d e n t ' s B r i e f 1 , t a r a 1 . 2 2) " . F n e R e s p o n d s e u n b t m i t t h s a t t h e I C T Y A p p e a C l h s a m b d e e r a f l y h d d t h a t w h e r e i a t s i s n o t 1 4 C a s e N o . : I C T R - 9 5 - 1 A . A 1 3 D e c e m b e 2 r 0 0 2

28. Afterc onsiderintgh e Appellant'asr gumentst,h e AppealsC hamberh oMs,f or the reasonsse to utb elow,t hatt heT rialC harabcarc tualleyx aminetdh e" hadr easont o know" standardH.o wever,t,h e distinctiobne tweent he "knowledgea"n d "hadr easont o know" standardcso uldh aveb eene xpressemdo rec learlbyy theT rialC hamberT.h e" hadr easont o know"s tandartdo esn otr equirteh ata ctualk knowledgeei,~ re xpliciotr circumstantibael, establishNeodr.d oesi

tr equirteh att heC hambebre satisfitehda tt hea ccuseadc tuallkyn ew thatc rimesh adb eenc ommitteodr werea boutt o be committedI.t merelyr equiretsh att he Chamberb e satisfietdh att he accusehda d "someg enerali nformatiionn his possession, whichw ouldp uth imo nn otico,f,e 3p5 ossiblue lawfualc tsb yh iss ubordinates. 29. In paragrap8h9 6 of the]rudgementt,h e TrialC hambers et fortht he standarfd o r establishtihnegA ccusedm'esn sr eau nderA rticl6e(3)o ft heS tature: [...t]h ek nowleedlgceu ~onftu uperirooms ponsibwiillilbt eyf ulfilliefxt lh eA ccused actualklnye wo fo neo rm orec rimecso mmittoerad b outto b ee cumnititnec do nnection w~itt~ah r oadbloocrak l,t ernatwiavspe ultoy n n otiaened f ailteodi nqttfiurrvt her. TheT rialC hambefru rthecro nsider"e'dk nowledg[ea's]a n indispensabellee menotf [...J thel iabilitofy a superio[r. ..]"b,y holdintgh at" them entaell emenotf k nowled[gmeu stb e] demonstratebde yondr easonabldeo „37 ubt.O n theb asiso f thisd efinitiotnh,e T rialC hamber founda,f tere xaminitnhge d irecetv idencteh,a ti tw asn oti na positiotno establithsha tt he Accusedh adk nowledgoef the murderosf luiditha nd BigiHman3as. It thereforper oceeded to examinteh ec on~pto f"knowledgeoer" ,t heA ccused'mse nst ea underA rticl6e(3)o f the requirtshda tt hes uperia@c)tru alalcyq uaihnbtn sowlift ht hei nformat(iwohne thietrw asp rovidoerdm ade av~et oh im)t,h er ek~vainntf ormatoinolnyn eedtso b ei nt hel mssessoifot nh eS Ul~rio(rS.ea el soT (A), Jul2y0 02p,p .2 08-21F4u)r.t hermotrheoR, e,s pondceonnts idtehrastt h eP rosecuitsi" oant tempttoiu nsgv t hv Bagilishceamsaet os olvteh el egails suoef l iabilitofmy i litaorryc ivilisaun' " standasredt o uti nt he~ elebiAdpip eaJlu dgemeonutg hnto tt oa ppltyo c ilv~itltisoauran~sn r dsi uo(brRmse i sttpsho anttd he~nt's Briefp,a ras1.2 4a nd1 4.1T;(A)2, J ul2y0 02p,. 2 10)W.i thr espetcott heP ros@c~'utmiaoincn'o sn tention, believtehaa tt heT riaClh ambe"re xpliciatnldyh npHc{tlayp"p lietdh e' %~Ir easotno k nows"~ dard (Respond~BnrTi'esf p,a ras1.4 2a nd1 51)T.h eR espondpeonitn tosu tt hatt hef actt hatt heT riaClh amimr conclutdheadtt herwee ~.t-w op o~ibglr@c o posfm abordin(atth~ceso mmunpaoll i@a~n dp exsosntsa ffitnhge roadblocnkesc)e ssarliilmyi ttsh eo btigattiooa ns sestsh eR espondemaet~'t se ai nr espeocftt heu nlawful aotwsh icmha yh avbee ecno mmitbtyet dh esger oup(so ri ndividiunat lhse g roup)I bidp.a,r a1.4 5)a,n dt hat thet osfto rc riminnaelg [lp enecret comptahses" ~h arde astoonk nowc"o ncep(tl.b idp.a,t a1.5 6). ~5~ c'lebiAdpip eaJlud gemepnatt,.2 38. 36Erpan a.s.al.cs.l .cled. 3~T ria~lr udgempeantta,9. 6 7I.t f ollofwis' .otmh ipsa ragrtahpahta supe~o"rk'nso wl~Icgoev"e ttsh et wo ooStandnaarrdnso('1l,yt) oh Ree spon'dkenneotwr(' 2 t)h Reo spon"dheandt reastookn n ow TriaJlu dgemepnatr,a 9.7 5. 15 CaseN o.:I CTR-95-1A.A 13 Decembe2r0 02

Statuteo,n the basi,,o f the availablcei rcumstantieavli denceg,u idedb y the indicisae t down bay9 the Commissioonf Exportsi n its FinalR eport. 30. The Appeal,,;C hamberr ecallst hat the murderos f Juditha nd Bigirimanaar e the only criminal acts acknowledgedb y the Trial Chamber as having been perpetrated by subordinateso f the, Respondent.W ith regard to the murder of Bigirimana,t he Trial Chamberh eld in paragraph9 74 of the Judgementth at it was not convincedt hatt he Accused had been noHfiedo f the imminento ffenceb y Bigirimana'wsi fe.~ It also underscoretdh e factt hat" it [was]n ot possibl[e. ..]t o lookt o otherk nownf actsi n an effortt o determine whethert he Accusedw as at his officeo r at the bureauc ommunalo,r at any rate closeb

[illegible]

Prosecutioth'eso rtyh att heA ccuse"dw oulhda vef oundo uta boutt"h em urdeorf Judith latera
nd" uponl ~t:inign formeodf t hec rimes houlhda vei nitiatendi nvestigattioon identiafnyd p
unisthh ep erpetratoorfst "h ec rimeT.h eT rialC hambearl soh eldt hev iew that" thec laimt hat.J
udith'msu rdewra sp ublikcn owledigne M abanzcao mmun[el acked] sufficiefnotu ndat'i'o¢n4.F
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evidencteo showt hatt hek illingosf Juditahn d Bigirirnwaenraen otj usti solatoerde xceptioinnacli

dentsra,t hetrh ani llustratioofan s routinoef whicthh eA ccusecdo uldn otp lausibhlayv er emainuenda war~e I.n otherw ords, theT rialC hambedre cidetdh att hee videnpcuet f orwarbdy t heP rosecutdiiodnn otp rove beyondr easonabdloeu btt hatt heA ccusehda dr easont o knowt hatm urderhsa db een committatdt heT rafiprrooa dblock. 31.T heA ppealCsh ambecro nsidentrsh att heP rosecutiosnu'bsm issioanrse b asedo n a partiaaln alysiosf " theT rialJ udgemenTth.e A ppealCsh ambecro ncedetsh att heT rial Chambedri dn otc xplicitrleyf ert o the' Chadr easont o know"s tandardT.h eA ppeals Chambebre lievesh,o wevert,h ats implyb ecausteh eT rialC hambedri dn ote xplicitly declarteh att heA cctzsdidd n ot" havree asotno k nowd"o esn otm eant hatt heC hambedri d notr efetro t hes tandarAdn.a nalysoifst hel udgemesnhto wtsh att heT riaClh ambeirn deed soughtto k noww hethetrh eA ccusehda ds ufficieinntf ormatieonna blintgh eC hambetro findb eyonad r easonabdloeu btt hatt heA ccuse"dh adr easotno k now." 32.M oreoverw,i thr egardt o thec oncepotf "criminanle gligenceh"a llengbeyd t he Prosecuti4o6n t,heA ppealCsh ambeorb servetsh att heT rialC hambeird entificerdi minal TrialJ udgemenpta,r a,9 86(emphasaidsd ed). 4s TrialJ udgemenpta,r a.9 80/fni ne(emphasaidsd ed)I,n thoo riginwazls ioonf theT rialJ udgomennta,m ely theE r~isvhe rsionp,a ra.9 80m ade:" [.,,I]f them urderosf luditahr idB i~anwae rei nstancoefs a larger t~umbeorf victimosf tht~T rafiprrooa dblockh,ei nferentchea tt ileA ccusekdn ewa boutt heo ffencmoisg ht haveb eenp lausibBluot.t heries n oe videntcoes howt hatt het wok illinwgesr en otj usti solatoerde xceptional incidentrsa,t hetrh ani llustratioofn as r outinoef whicht heA ccusecdo uldn otp lausibhlayv er emained 4G TheP rosecutsiuobn~ tish deetdh at" iti s importatnot e xaminweh ethetrh el egalo lemcnotfst hos tandard whicht heT rialC hambt~arr ticulatfeodr c riminanle gligencecoeulda mountto the" hadr easotno know" standairnda ccordawnicteht h~.elebij4uir isprude(nAcpep.e"l lanBtr'ise fp,a ra2.. 41e ts eq.) 17 CascN o,:I CTR-95-1P,~-A 13 Decembe2r0 02

negligenacse a "thirbda siso fl iabili,t~y7.T hisf ormaw asq ualifiaesd a liabilityy o'm'i4sssiownh,i ctha ketsh ef ormo f" crimindaelr elictoifoa n p ublidcu ty. 33. The AppeaLsC hambsrw ishest o recalla nd to concurw ith the Celebidi jurisprude49nwhceer, ebay s uperiorr'ess ponsibiwliltlyb ea n issuoen lyi ft hes uperior, whilssto meg enerailn formatiwoans a vailabtloeh imw hichw ouldp uth imo n noticoef possibltem lawfa~c tsb y hiss ubordinatdeisd,n ott aket hen ecessaarnyd r easonable measurteosp revetnhte a ctso rt op unisthh ep erpetratthoerrse of. 34.T heS tatutdeo esn otp rovidfeo rc riminalli abiliottyh ert hanf ort hosef ormso f participatsitoant etdh ereine,x pressolry i mplicitllyn.p articulairt, w ouldb eb oth unnecessaanrdyu nfaitro h olda na ccuserde sponsiubnldee ar heado fr esponsibiwlhiitcyh hasn otc learlbye end efineidni nternaticorniamli nlaalw . 35.R eferencteos " negligenmc teh"e c ontexotf s uperiroers ponsibialrietyl yi kelyo l ead to confusioonf thoughta,s theI udgemenotf theT rialC hambeirn thep resencta se illustratTehsel. a wi mposeusp ona superiao rd utyt op revenctr imewsh ichhe k nowosr h as reasotno knoww erea boutt o be committeadn,d t o punischr imewsh ichh e knowso r has reasotno k nowh adb eenc ommittebdy, s ubordinaotveesrw homh e hase ffecticvoen troAl. militacroym mandeorr,a civilisaunp eriomra,y t herefobreeh eldr esponsiibflh ee f ailtso '~ TheT rialC hambesrl zaetdh ati t woul"da ddretshse steh reer oadblocIk~sl oown theb asiosf a lla vailable evidencceo ncernitnhge ire stablshmaennndo peratiaonnd d ~idew hethetrh eA ccuseids liablueen dero neo r tuorof t het htefao rmosf liabilit(yc,f".T riallu dgemenpta,r agra8p9h1)I.t c ontinuiend p ara8,9 7t hat thh'bda

siosf l iabiliitnyt hisc ontexits g rosne gh'geneLea.s"t lyt,h eT riaClh ambesrt ateJdn pare1.0 14/n finet hati t hadg iveni r~r easonfso rb eingu nablteo findt heA ccusegdu iltuyn derA rticl6e(1)a nd6 (3). Nevertheless liablien n egligenfcoert het wod eath[so fl udia~n dB igitimana]T.r"iCafJl u dgetu¢pna[r,e 1.0 15. a8 TriaJlu dgemenpta,r s.8 97.I t wast hush eldt hat",[hin[dh e]a,s bourgmestarne o ,b ligatitoo m ainta/n ordera nds ecuritiyn Mabanzcao mmunei,t wouldh aveb e.~na grossb reacohf thisd utyf orh imt o have establirhoeadd blocaknsdt henf ailepdr opertloys upervitshee iorp eratioantsa tim~w hent herwea sa high riskt hatT u~ic iviliawnosu ldb e tuurderirnA c onnectiwoint ht he."(emphasaisds ed)C.o nsequently, testinfo rn egiJgenaccec,o rditnog t heT rialC hambeorr,d inaprryi nciplofst hel awo f negligenacpep ltyo detezminw~h ethearn accusepde rsonw asi n breacohf a dutyo f cm:¢t oward~s or herv ietimT.h en ext questiiosnw hethetrh eb reaccha usetdh ed eatohf thev ictiamn d,i fs o,w hetheirt s houlbde c haracteriazsed sos eriouasst oe onstku,t ea crime.(T riaJlu dgemepnatr.a I.0 10)T.h eT riaClh ambesre tf ortthh es tandafrodr ~xaminithgi s" foromf ;tiabfliitnyp "a ra1 011o f theJ udgement C~eL°e .btAdpip eaJlu dg~tuepnatr,a s2.3" Ot o 239.T he~ elebiAidpip eaJlu dgemepnoti ntosu tt hatA rticl7e(3) of theI CTYS tatute,w,l h/cihs identictaol A rticl6e(3)o f theI CTRS tatute",i sc oncernweidt hs uperior iabliatryi sinfgr otuf ~aurteo a cti ns pitoef k nowledNeggel.e cotf a dutyt o acquirseu chk knowledge, howevedro,e sn otf eaturien thep rovisiaosn a separaotfef encAe .s upexiosrn ott herefolri~a bluen detrh e provisifoonr s uchf ailurbeust o nlyf orf allintgo t aken ecessaarnyd r easonabluee asurtGos p revenotr to punish,("~ elebiAdpip e~/ udgempeanrta.~2 26). 18 Ca~N o.:I CTR-95I- A-A 13 Decembe2r0 02

discharhgies d utieass a superioeri thebry d eliberatfealiyl intgo perfortmh emo r by c°ulpabolryw ilfuUdyi sregardtihnegm f 36.D ependionng t hen aturoef theb reacohf duty(whicmhu stb e a grossb reach)a,n d theg ravitoyf t hec onsequentcheesr eobfr,e achoefsd utieism posebdy t hel awso fw arm ay entaial d isciplinraartyh etrh ana criminlaila biliofay superiwohro i ss ubjetcotm ilitary disciplinTeh.el ineb etweetnh osfeo rmso f responsabilwhiityc hm aye ngagteh ec riminal responsibiofit thye s uperiuonrd eirn ternatiolnaawal n dt hosweh icmha yn otc anb edrawn h-1t hea bs~acotn lyw ithd ifficulatnyd,t heA ppealCsh ambedro esn otn ~dt oa ttemptdtoo so in thep resenJtu dgemenItt. i sb etterh,o wevert,h atT rialC hamberdso n otd escribe superiroers ponsibiilnti etrym osf n egligeanca el l. 37.T heT riaClh ambemru stb es atisfitehda tp,u rsuatnot A rticl6e(3)o ft heS tatutteh,e accuseedi the"rk new"o r "hadr easotno know",w hethesru cha stateo f knowledgies proveddi rectolryc ircumstantiTahlelA yp.p ealCsh ambeirs o ft heo piniotnh att het estf or criminanle gligenacse a dvancebdy theT rialC hambecra nnotb e thes amea s the" had reasotno k nowt"e s,i:n t ermosf A rticl6e(3)o ft heS tatuteIen.t heA ppealCsh amberv'ise w, theT riaClh ambesrh oulndo th avec onsidetrheids t hirfdo rmo fr esponsibilaiutdy,i, n t his sensei,t committaend e rroro f law.T heA ppealCsh ambecro nsiderhso,w evert,h att he errodro esn oti nva.tidtahteeJ udgemensti,n cea,s p ointeodu tb eforet,h eT riaClh amber esrabfishtehda tB agilishenmeai thekrn ewn orp ossessiendf orraatiwohni chw ouldh ave enablehdi mt o concludien, thec ircumstanacte tsh att ime,t hatt hem urderhsa db een committoerdw erea boutt ob ec ommittbeydh iss ubordinates. 38. Accordingtlhye,A ppealCsh ambedri smisstehse P roseeutiofni'rss tp arto ft his grounodfa ppeal,

triggered the duty for the Accused to inquire further and, following the inquiries, to prevent crimes from being committed or to punish the perpetrators thereof".⁵ The Prosecution also bases its argument on its earlier submissions relating to "as'u'pse6n" or "asf firmativdeu tyt o inquire further when put on notice to demonstrate that he same standard applied to the Respondent in this case. 41. The Appeals Chamber notes that the Appellant relies on certain general findings by the Trial Chamber relating to the background against which the killings of Judith and Bigirimanta took place in order to propose, on the basis of this election, various findings of fact that the Trial Chamber could, according to the Prosecution, have reached. In the Appeals Chamber's view, these findings should be placed back in their proper context and the

allegationrse latintgh eretos houldb e considereidn the lighto f the overallf indingosf fact made by the TrialC hamber. 42. The Celebic~A ppealJ udgementm akes it clear that "a showingt hat a superiorh ad some generali nformationi n his possessionw,h ich would put him on noticeo f possible unlawfula cts by h& subordinatewso uld be sufficientt o prove that he 'had reasont o 54T heP rosecutpioosni ~t hat" fft hes uperifoari ltso remaianp prisoeofd h iss ubordinatuensl'a wfcuoln duct andt hes uperihoard t hem eanst oo btaitnh ek nowledgbeu,td eliberartodfyf ainferdo mi nvestigatfiunrgt her, itm ayt mp resumtehda th eh ad1 1~or equirmeedn taell emednutr inhgi sf ~tilutroep revenrte,p orotr p unishC.f". AppellanBtr'ise fp,a ra2 12 55 ~he Prosecu " tistou ' nb J " ~ i " t~h att heR espondehntatd t hed utyt o invvstigaotre i nquirfeu rthebrc caust~h e evidux~ocne t her cc.ordde monstrattheadt t heR espondeknnte w:(I)a boutt hew idesprekaidl linogf Tutsi ei~antsh att ookp lacea llo verR wandai,n thet owno f Kibuyaen di n Mabm~.a(;2)aboutth ef actt hatt he perpetratoofr tsh esem assacrweasr e/,adl sog endarmepso,l icemeonr,d inaH~u tuc iviliaannsd i nhabitants of Irisc ommun(e3;) t hatT utsiwse ret arg~e(d4;) a boutth ef a~tt hatr oadblocwk~s' ~i nh~enfdayn g~otls Tarscii vilia(n5s);t hat* .heT rafiprrooa dblowcaksa ta strategliocc atio(n6;)f linatt l easotn eo ft hep ersons staffitnhge T rafiprroo,a dblowcaks,a ne x-soldiCefr.A, p pdlanBtr'ise fp,a ras2.. 62a nd2 ,63. TheP rosecutsiubnm itt~h att heR espondefnati leidn hisd utyt oi nve~tigfautr~t h(~I bid.p,a ta2,.. 64)a,n d offerss omes uggestioonnsh h owt heR espondecnotu ldh avem eth isd utyt o inquir(eI bid.p,a ra.2 .65), followiWhn,ig"c ht ~t. wouldh aveb eenc leart hats ~vorc~o urseosf actiowne reo pent o himi n or&a"t o comply . withh isd utya sa superitoor p reventth ec ommissioofcn r imeosr t o punisthh ep erpetrattohresr eof(/,"b /d., pax-2~, 6d). ~6Appellan,t B'rsi,e pfa,r as2...1t 4o 2 ,38T.h eP rosecution,. submitthsa tth ep recifsoer moarlt echnisctaalt oufsa ~ r.,tao ~ \$noswt anaarta,,o rm er roseeuti"otnh,e ~ies n o indicattihoantt h~d rafteorfs th~S tatutien tondteod l ayd ownd iffereannta ndarfdosr d iffereenatt egoroif~s uperior(sA.p"p e~anBtr'ise f, co~Rierda eb,yi nternatijounrails prudoenn tchee s ubjecTth.e pr po~sae.2c .u1t7i)Iho.ton s w,ue bvmeiarftt,ls~ i yntsthet ishsp e do issitticinacobntnbie eotnw eecni viliaannnd m ilitasrUyp erioirnsA rtic12e8 oi"t he Statutoef t heI nternatioCnr.i~m inCaolu r(t" ICC"w)h,i ciht qualifais~b einign novatiavnedd eviatifnrgo m ~7Appellant'lsaCWUBSrtii'enmff ao,rr yC ep~.When2,62thaeltloeOgifentfd he eIn ncdeisc2t.wm6oe7rnc,eto mmit(tIebdi.dp .a,r a2.. 2e9t s ~q.) 21 Cas~N o.:I CTR-95-1A-A 13 De~ombe2r0 02

know".SsT heA pp.~ alsC hambeern dorstehse f indinogf t heI CTYA ppealCsh ambeirn the ~elebiAdpip eaJlu dgemetnhta tt hei nformatdiooens n otn eedt o providsep ecifdiect ails aboutn lawfaucit ~.,c'o,m mittoerda boutto b ec ommittbeydh iss ubordinateWsi.t5hr9 e gard tot hea rgumenatcsl vancheyd theP rosecutiothn,eA ppealCsh amberh,o weverd,e emsi t necessatroy m akea distinctbieotnw eetnh ef actt hatt heA ccusehda di nformataiboonu tth e generasli tuatitohna tp revailiendR wandaat thet ime,a ndt hef actt hath eh adi n his possessigoenn erailn formatwihoinc phu th imo nn oticteh ath iss ubordinamtiegh tc ommit crimesW.i tht hisd istinctionn m ind,t heA ppea/Csh ambeird entifibeesl owt hem ain argumenatdsv ancebdy theA ppellatnots upportth ec ontentitohna tt heR esponde"nhta d masont o know"t hatc rimesh adb eenc ommitteodr werea boutt o be committeadt the Trafiprrooa dblock. TheA ccusekdn ewo f thed angerounsa tureo f theT rafiprroo adblock. Accordintgo theP rosecutiothn,e roadblocokp

erateldi kea ny other roadbloicnkR wandaOf Oint heb asiso ft heg enerafla ctuafl i ndinbgys the TrialC hamberre latintgo roadblocktsh,e P rosecutiaosns erttsh att he T Irafiprrroa dblowcaksu sedt oi dentiafnyd k illT utsisfl (2) TheP rosecuticohna llengtehse T rialC hamberf'isn dinign paragra9p3h7 o f the Judgementth atW itnessy gavea n accounto f the purposea nd functionoifnt gh er oadblotchka tw asd ifferefnrto mt hea ccounotf W itness Z. Aocordintgo theP rosecutio"nW,i tnesYs n everg avet hisa pparently cruci~edx planatiinoh ni so ralt estimoinnyc ourt.T" h eP rosecutsiubnm its thatt heT rialC hamber'pso into f departurseh ouldh aveb eent heo ral t~stimogniyv ebny Witnesys i nc ourta,n dt hatt hep ortioonf thew ritten statemenrte liedu ponb y the TrialC hambeirn paragra9h3 7 of the l6u~dgemesnhto ulhda veb eenp utt ot heW itnesisn c ourt. 5~ ~elebidAip peaJlu dgemenatr,e .2 3 59 . P gem hasisa d ~o¢ ~d ~ b', ffaip peaJlu dgemenDta,t a2 (38 ~ d~a) .J~m c~ csponaeandtm itttehda th e hadg ivenno specifiincs truction i~co peratci,o:n~ " theT rafiprrroa dbloc~k A.p pellanBtr'ise fp,a re2.. 54, paxa2.. 58. ~2AppellaBnrri'esf , 17 Se@tvmbe2r0 00a,~s 2 ~.;5.5...UaT shP ~ert oosseccuuttirioeeon,fn ze hr~stl o. p,a.r.~a.,9 T 3-0no .f.~ t h.e.T .r.i.a.l.3g ." uedae ~m t he.S tatementOtf ,Tadg~nltevagtc rtso t he: 3tate~conf1 7S ept~eIr9" ~'9' ',~p pe~sn l~r,l~'mo~ustt. h atp ate9.3 0o f the CaseN o.:I CTR-95.1A-A 22 13 Decembe2r0 02

TheR espondeknnte wt hatW itnesZs wasa n ex-soldiweirt ha criminal recor6d3. Withp articulraerf erentcoe t heK ahanC ommissiRoenp or~t ,the Pros,~utisounb mittsh att hisf acti s mosti mportanRt a.r guetdh at," the undisputeedv idencoen records howst hatt he Respondenkt n ewa bout WitnesZs' sp ast'.'6~L eavinags idet hise videncteh,e T rialC hambeurs ed ~+te ,i ~ upaen~stliacn guagei"n concluditnhga tt heA ccusehda dn otg ivena c6o6mpleptiec turoefa llt hosset affmtgh er oadblock. 43.W ithr egartdo thek illingosf Juditahn dB igirimantah,eA ppealCsh amberre calls then eedt o placet heR espondcntm'esn st eai n relatiotno the" hadr easotno know" standawridt hitnh ec ontexotf t hee videnacvea ilabtloet heT riaClh ambearn,d t om akea generaalp praisca,lf t heC hamberf'asc tuafli udinignst hisr egaridn ordetro e stablish whethetrh ea llegeerdr oresx ist. 44+A sr egardtsh eP roscutioan'l'se gatiornesl atitnugt hee rroneoauss essmeonftt he purposoef t heT rafiprrroo adblockh,e A ppealCsh ambehro ldst hatt heP rosecutihoans obviousnloyt d emonstrattheadtt heT rialC hambemra dea nu nreasonafbilned inagb outt he Icgi~maptucr posoef t her oadbloicnkq uesti~o7nI .ndeedt,h eP rosecutmieorne lrye fertso someo f theT rialC hamber'fsm dingwsi tha viewt o assertintgh att heC hamber's assessmeonftt hep urposoef t her oadblowcaks e rroneouWsi.t hr egartdo t heP roscution's argumencto ncerniWnigt nesYs, theA ppealCsh ambeorb servetsh att heT rialC hamber correctrleyp rodutcheedt ranscroifpW ti tnesYs' sw rittens tatemeanstw ella sh ist estimony durintgh et riasls,T her eferenmcaed et oW itnesYs's "statemenitn'p a"r agra9p3h7o ft he Defence~x hibi6t4 .T heP rosecutsiubnm ittsh att hisp ortioonf thew rittesnt atemeonftW itnesYs w asn ot specificaplultyt ot hew itnesisn c ourta,n dt hatt heC hamberp'osi nto fd epartusrheo ulhda veb eent heo ral tgstimgoinvyeb n t hi"s/ Vim, +,n,,~ 6' ~Y OiSn S ,J.A,p pella'sn tB r'iefp,a ras2.- 59a nd2 60;T (A)2, July2 002, ~,~4 9 S¢cm paracaAlpalr~ Jlsa Bnntc fp,a ra2.. 25T; (A)2, J al2y0 02,1), ~AppollaBnrri'epsfa ,r a2., 60T.h e~ osscurteifoentr ost heT ,7 J un2e0 00p,p .1 52t o1 54a,~ dt oD efoncv exhibNiot.1 00T.h eP rosecuatlisorone fetrost heT ,8 S un2¢0 00p,p .2 30t o2 45a ndp ,4 2a nd9 February 2000p,p .2 9a nd3 0. ~A ptmllaBnrri'espfa ,r a2., 60T.h eP roscurte/

foentro sp ara9s2.4 -9a2n5d7 54o ft heT riaYlu dgcment. Triallu dgempeanrta,9s 3:6a nd9 :38 6A .
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TrialJ udgementi6s9 a lsoa ccuratsei ncet heT rialC hambeirs implicitlyl udintgo Witness Y'sw
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power so far as a military superior's. It timbers submit that the Trim Chamber is construed in the principle the ~et'ebidAip pealJ udgement by subjecting a superior's responsibility to the exercise of his authority as a military-stylchea in of colnlan7d9. The Prosecution submits that here is no indication that he Trial Chamber used the test of effectiveness, 50. Under Article 6 (3), a commander superior is the one who possesses the power authority either de jure or a de facto or to prevent subordinate's measures to punish the commission of a crime by a subordinate after the crime is committed⁸. The power of authority to punish does not arise solely from de jure authority conferred through official appointment. Hence, "as long as a superior has effective control over subordinates, the extent to which he can prevent them from committing crimes or punish them after they commit them and the crimes, he would be held responsible for the commission of the crimes if he failed to exercise his authority to control."³ The effectiveness of the standard applies to all superior whether de facto or de jure, in the civilian, 51. Indeed, it emerges from international law that the doctrine of superior responsibility is not limited to military superiors, but also extends to civilian superiors. In the ~elebircia se, it was held that: 78A that he appears to have the Prosecution stated that "It is the Trial Chamber's finding that the person could not be considered to be a commander." TC(fA.), 2 July 2002, p. 52. wAppellants' brief, para. 2.73. The Prosecution's paras 2.5, 2.54 and 3.04 of the ~elebircia peal Judgment ~L *Apl ~lla Bnrti's findings, para. 2x. 73. The respondent, on the other hand, is not satisfied that the ~osect. ~bie of the Chamber's findings is a display of its authority to the ~rgtmxetnati sexbly the ~osect. ~bie of the Chamber's findings is a display of its authority to the ~udgome ~mla ~dte of context and a mis-~teti ~cto after the Trial Chamber's analysis. ~orditnog him, the Chamber's ~rc orrectly identified the ~aractorist traits of the ~nderpith ~r ~lations ~hoitpw ~tnh ~R espondeant and his ~pposes the ~ordinat ~ehsi, which would make it possible to find whether or not he was sufficiently in control to establish command responsibility. The ~e": ~oncsu ~mit ~sr the ~r at "contrary to the Prosecution's ~ntenti[o.n.]. It is

eT rial Chambredri dn otr efert o the' trapginogfs m'i litarcy mmanbdu ttet he' tr~piagosf' d e jurec ommandC.f". Re s~d entsI tBne`f,iJ np art.teulpaarr,a s1.7 4m ad1 75 n "CelebiAdpip eaJlu dgemenpta,r a.1 92:" [u]ndearr ticl7e(3),a commandoerr s uperioirs thust heo new ho possesstehsep oweorr t ktca uthoriitnye ithear d ej ureo ra def actfoo rmt op revenat s ubordinactrei'msoe r to punisthh ep erpetratooftr hse c rimaef tvtrh ec rimies c ommitted." SZ/b/ dp.i,n t1a9.3 . ~ 1bidp'a ra1~9 8. s,A /e ksovsIAaP lxm.II udgemenpta,r a.7 6 M fineT.h eI Cq'YA plmalCsh ambetro okt hev iew" thati t doesn ot mattewrh ethe[rt heA ccusewda]s a civilioarn m ilitasruyp erioirf, i tc anb e prove,t4h at[...]h e hadt he powertso p reveonrtt op unisihn t etraosf A rtic7l(e3)." 26 CaseN o,:I CTR-95.1A.A 13 Decembe2r0 02

[...t]h ed o¢~zionfcs uperiroers ponsibiexitteyn tdosc ivilisaunp erioornsl yt ot hee xtent thatt heyc xet¢ias ed egreof c ontroolv erd leisru bordinawtheisc ihs similatro thato f militarcy mmanderass, In thistr espectt,h eA ppealCsh ambenro test hatt heM usemTar ialJ udgemenwth,i cht ook intoc onsideralt~ieoR nw andasni tuatiopno,i nteodu tt hat" iti sa ppropritaota es sesosn a case-by-cbaassei st hep owero f authoriatcyt ualldye volvedn a n accusetdo determine whetheorr noth e possesstehde p owert o takea lln ecessaarnyd r easonabmleea suretso p'r'esv6entth ec ommissoifot nh ea llegecdr imeosr t op unisthh eipre rpetration. 52.H encet,h ee stablshmoefn cti viliasnu periorre sponsibilrietyu irepsr oofb eyond reasonabdloeu btth att hea ccuseedx erciseefdf ecticvoen troolv ehri ss ubordinatients h,e senset hath ee xercisae dd egreof c ontroolv ert hemw hichi s similatro t hed egreof comroolf m ilitacroy m mandeIrtsi .s n ots uggesttehda t" effectciovnet rowri'l in ecessarily bee xercisbeyda civilisaunp eriaonrd b ya militacroy m mandienrt hes amew ay,o rt hati t mayn ecessarbiel~ ys tablisihnet dh es amew ayi nr elatitoonb otha civilisaunp eriaonrd a militarcy mmander. 53,I n thei nstancta se,t heT rialC hamberre lieodn t heC elebiTdrii alJ udgemenwth,i ch wasa ffirmebdy t heI CTYA ppealCsh amberi,n h oldintgh at: [..]f ora ci~dlasnu periord'es~ -eof controtlo be "similtaor" t hato f a military commaaderri,t ec ontroolv ers ubordinamtues tb e "effectivea"n,dt hes uperiomru st havet he" 'materiaabli littyo" p revenatn dp unisahn yo ffenceFsu._ rthcrmttohtee ,x ercise of def actaou thorimtuy s tb ea ccompanbiye tdh e" thet rappinogfst hee xerciosfe d ejure authorityT"h.e p~sentC hamberc onkursT.h eC hamberi s of thev iewt hatt hese trappingosf authoritiyn cludef,o re xamplea,w arenesosf a chaino f commandt,h e phaslnso tm theo rigina¢l~,e lebiTdrii aJlu dgemepnatr,e 3.7 g,a ffirmoenda ppeailn t he~ ¢lebiAdpip eal Ju t, p a~t.1 .97_ /n.fineT,h.e I CTYA ppealCsh ar~cro nsideriend p ara.1 97o f the~ -elebiAdpip eal Juagememnatt [qnd eterminiqnuge stioonfs t esponsihii~tt iys necessatroy l ookt o effectievxee rcisoef poweorr c ontroaln dn ott o formatli tlesT.h isw ouledq uallayp pliy n t hec ontexotf criminracls ponsibiInky. _generatlh,ep oss_csscico~dn e jurep oweirn itselmfa yn ots ufficfeo rt hef indionfgc ommanrde sponsibiflity Jt doesn otm anii~eisnt e ffecticvoen troall,t houag hc ourtm ayp resumteh atp ossessioofn s uchp owerp rima faciree sultisn e ffecticvoen trouln lespsr ootfo t hec ontraairsyp roduceTdh,e A ppealCsh ambecro nsidetrhsa t thca bilittyo exercicsfe~ ecticvo¢n troils necessafroyr t hee stablshmoefn dte f actoc ommanodr superior r~ ty.a n.d_thau~sr ees, w itht heT riaClh ambethr att hea bsenocfef ormaalp pointmiesnr tt oft atatto a Immsut. vaol eonqIguc irv~aarllCet snott a~ ,~jo unrsesi tbaipllruiofstvo yirm,d ce ee pdrl tlarilcn~o SnoedfSi s tuipaoernresim roeerts .Mp uo~nisd'absri -ilgsi~ mtmiyest nphtla atdc eeAf dla.tc htsootu taghtheu s degreof c

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p~actiocfoi ssuinagn do beyinogr dersa,n dt hee xpectattihoanti nsubordinamtaiylo ena d tod iscipliancatriyo Int.i sb yl ~ester appintghsa tt hel awd istinguicsihveisl isaunp eriors f~romm erer abble-rousoerr ost hepre rs~osf influence, 54.T heT rialC hambearl sor eiterattehda ta civiliasnu periowri llh avee xercised effecticvoen troolv erh iso rh ers ubordinaitnet sh ec oncrectier cumstainfcb eost hd ef acto controaln dt het rappinogfsd e jurea uthoriatmyp resenatn ds imilatro t hosef ounidn a militmcyo ntex8ts.: ('heT rialC hambewre ntf urthetro p ointo utt hati tsa pproacwha s considtehre c haractoeft hed e jureo r dej ure-lirkeel ationsh(iipnFs r ench",q uasi-de jure"b)e tweetnh eA ccuseadn dh iss upposesdu bordinataensd,t hent o determiinfe t he Accuseda'usr hofi~(,w.h etherre alo r contrivewda)s c omparabtloe t hate xercisiend militacroyn text,89 55.T he AppealC~h ambehro ldst he viewt hatt he TrialC hamber'asp proactho the notioonf " effecticvoen troiln"r elatitoonc ivilisaunp eriwoars e rroneoiunsl aw,t ot he extentth ati ts uggesttehda tt hec ontroelx ercisebeyda civilisaunp erimours tb eo ft hes ame naturaes thate xercisebeyda militarcyo mmand9e°rA .s theA ppealCsh ambehra sa lready statedt,h isi sn ott hec aseI.t i ss ufficietnhta tf,o ro ner easoonr a nothetrh,e a ccused exercistehse r equir"edde greoef"c ontroolv erh iss ubordinatneasm,e lyt,h ato fe ft~ctive controHlo.w evars,c oncedbeydt heP rosecutio9n1, thise rrodri dn ota ffectth ev erdicats theA ppealCsh ambeirs satisfitehda tt heA ccuseddi dn otp ossestsh er equirmeedn st ea. TheA ppealCsh ambetrh erefocroen cludtehda tt hise rrord oesn otr endetrh ed ecision invalid. ~ TriaJlu dgemenpta,r e4.3 (foomotoemsi tted). TriaJlu dgemenpta,r e1.5 1,w hicrhe adass follow"s(: , ,a] c ivilisaunp eriwoirl lh avee xerciseefdf ective controolv erh iso r hers ~bordinaitnet sh ec oncrectier cumstainfcb eost hd ef actcoo ntroaln dt het rappinogfs de9j urea ytho.r itayr ep reseamn ds imiltaort tmsfeo unidn a militacroyn text(.e"m phasaidsd ed), TriaJl' udgerapeanrte 1.5 2,w hicrhe adass f ollow"s[:. ..f]o rt hec haractoefta civiliadne' jsu rea uthority ~0wheflrhearlo rc ontrivmeuds)tb ec omparatbolt eh ate xercisienad militacroyn text." CeiebidAip peall adgemeutp,a ras.1 96,1 97 and 256.T heI c'rYA ppealCsh ambecro nsideretdh at "C~omxaauad t'e,r mw hicdho esn ots eemt op resenptm rticu_cLoanrt roveirns iyn terp~tatnioornm,a lmleya ns powertsh ata ttactho a mih'tarsyu psaSowrh,i lstth Ct erm' controlw'h,i chh asa widerr etreatinmga,y encompapsosw erwsi eld~.bxylc ivililaena derIsn.t hisr e~pectth,o A ppealCsh ambedro esn otc onsidtehda tt he ntlei s controverstihaaltc ivilialne adermisa yi ncurr esponsibUiJnt rye latitoon a ctsc ommittbeyd t heir subordinaotreo st hepre rsonusn detrh ejexf fecticvoen tro~l,~ eeticvoen trohls sb eena ccepteidn,c ludiinng ~oo e jurisprud.eOnfc teh eT ribuna_la,sa standafrodr t hep urposoefts d eterminsiunpge riroers ponsibi[l.i.t.y] " : : moteosr mtte(dp)a re1.9,6)I.t f urthheerl dt hat' q'hceo nceopfte ffecticvoen't reovle ,r a subordiniante, thes ensoef a materiaabli littyop revenotr punis¢hd minaclo nduchto,w evetrh atc ontroilse xercis-e ids t he threshotlod b er eacheidn establishai snugp erior-suborrdeilnaaOtoen sfhoirpt hep urposoeft A rticl7e(3) th~

mSmt("footnote~omme(dp)a re.2 56). 9~ProseeuAtpilomnl lanBtr'ise fp,a ra2.. 75. 28 CaseN o.:I CTR-95-1A.A 13 Decembe2r0 02

56.T heA ppealCsh ambenro test hea mbiguiotfy t hee xpressiao cno ntrivdeed j ure-like authori(tiyNF rench",a utoriqtuda si-jduer efacti~c2ea n"d)a cknowledtgheasti ti sd ifficult tog rastph em eanintgh ereoIfn.t hec ontexotf p aragra1p5h2 o ft heJ udgementth,ec oncept seemst o formp arto ft her easoniunsge db yt heT rialC hambeirn examinitnhge d e jure authorietxye rcisbeydt heA ccusebdu,t i tc anb ei nterpreitned di fferewnaty sT.h eA ppeals Chamberre iterattehsa tt hec asel awo ft heI ntsmatioTnraiib unamlask esi tm andatotroy uset hee ffecticvoen trotle stf orb othd ej urea ndd ef actsou perioCrrse.a tiinngt ermediate levelosf a uthoriitsy u nnecessaanrnyi tw oulidm pairrh el egala nalysoifst hec riminal liabilitfy superiuonrd eArr tic6l(e3)o ft heS tatutaes,w ella sh eighttehne c onfusion identifytihnegr arioufso rmosf a uthoriatnyd i nstituteifnfe cticvoen troAll.t houtghhi s wordinigs i nappropriataheeA ,p pealCsh ambecro nsidetrhsa ti ti so fn oc onsequetnoct eh e Judgemengti,v etnh ati tw asn otu nreasonatbolc eo nclufdreo mt hee videnpcree senttehda t theA ccusewda sn otl iablun deArr ticl6e(3)o ft heS tatutfeo rt he~ ngsa tt heT rafipro roadblock. 57. Withr egardc o the Prosec'u u'osn a rgumentth att heT rialC hambemri sapprehended theC .elebjiu¢rii spru,,'btyer necqet tirai cnigv ilisaunp eritoore xercihsiesc ontrtohlr ouagh m9i3litary-stcyolmem andt,h eA ppealCsh ambedrr awsa ttentitoon i tsp revioude cisions andt o thoseo f theI CTYA ppealCsh ambe9r4. It emphasiztehsa tt hel ineo f reasoning 92 TriaJlu dgemepnatr,a 1.8 3. 93 Accedintgo which' Yederenc[v,s, ,]t o concepro~f subordinatihoine,r archayn dc hainosf command /,,lneneoAt b e establishiend t hes enseo f formaolr ganisatiosntarluc turses l onga s thef undamental requiremeonft a n effe~tipvoew ert o controth es ubordinatiionn t,h es enseo f preventionrg p unishing crimincaoln ducti,s sati~'~ieCd~, K"a yi,~hem.atRuzAipnpdsaan3lau dgczenntpa,r a2.9 8(footno5t2e0)T.h e ApI2~MCsh ambexrc ferretdo the(3elebiAdpip e~Y udgeme(npta ra2.5 4)w herei~tuh eI CTYA ppealCsh amber underscortehdi sp rinciplTeh.e A ppealCsh ambetrh usc onsidextehda t:" [t]hTer ialC hamberr'esf erencteos conceptosf subordinatihoine,r archaynd c hainosf commanmdu stb e readi n thisc ontextw,h ichm akesi t apparetnhta tt heyn eedu oth e establishientd h es enseo f forraaolr ganisatisotnraulc turses l onga s the ~damentarle quiremeonft a n effectivpeo wert o controth es ubordinatien, t hes enseo f preventionrg ~unishicnrgi mincaoln ducits,s atisfied." ~t wast hush eldt hatt her elationsbheitpw eean s uperiaonrd h iss upposseudb ordinamtaeysb eb oth" direct andi ndirectw"i,t ht he: provistoh ate ~f~tiveea nuomlu sta lwaybse establishFeudr,t hermor"et,h el aw relatitnogr ommanrdc sl:onsJbirleictoyg nisneosto nlyc ivilisaunp eriorwsh,om ayn oth ei n auys uchf ormal chaionf commanadn,d d e factaou thoritfyo,rw hichho formaalp pointmIesn rte quiredC,~,~ .elebiAdpip eal Judgemenpta,r as2.5 2a nd3 04.T heA pp~lCsh ambesrt atetdh ati t [,,]r egardtsh eT rimC hambears having rccognitsheedp ossibiloiftb yo thi ndireacstw ella sd irecrtv lationsshuibposr dinaatnidoa ng reetsh att hism ay be thee ase,w itht hep rovistoh ate ffecticvoen tromlu sta lwaybse establish[e.d. .](" (~lebiAdpip eal Judgemenpta,r a2.5 2)I.: f m'thecro nsidertehda ti tw as" [...s]a tisfitehda tt h,T riaClh ambewra sn oti nf act impositnhge r equiremoefns tu cha fonnalispcods itiionna formaclh aionf commanads, o pposetdo requiring thatt hemb ep rootfh atE ,eliwda sa superiionrt hes ensoef h avintgh em attalaabli littiop revenotrp unisthh e actso fp

ersonssu bordintaom h im. ("p ara3.0 4). CaseN o,:I CTR-95I-A -A 13 Decembe2r0 02

adoptebdy theT rialC hambewri thr egardt o gendarm9e~s andr eservis9t6s cana ctualllye ad one to thinkt hatt heC hambesro ughtt o determinte h eA ccused'pso sitioans parto f the "gendarmericeo mmando"r the "stricth ierarchicaslt ructuroef mih'tarpye rsonnel." Consideritnhga tt heA ccuseda,s a civiliaand ministratoifvfei cewro uldn oth aveb eena ble to operatien thiss tructurteh,e T rialC hambedre ducetdh ath e couldn oth avee xercisaendy de jurea uthorityw hatsoeveorv er gendarme9sv. However,t hesef indingdso noti n themselvecso nstit~.Latne e rror,c onsideritnhga tt he TrialC hamberm erelys oughtt o establiswhh ethetrh e Accusewdi eldedde jurea uthorityi,t thereforter iedt o determine whetheRrw andanl awc onferrepdo werso n a bourgmesttrhea tw erec omparablteo thoseo f militarcy o mmandeirns termso f controolv ers ubordinatetsh,u sp lacinhgi mi n a position silrtilatro thato f a militarcy o mmanderf,o r the purposeo f evaluatintgh e de jure responsibiloiftt hye b ourgmestar ec,i viliaand ministratoifvfei ceorv,e rm ilitapreyr sonnel. 58. Consequentltyh,e TrialC hamberd id not intendt o requirep roofo f the Accused's positioinn t hem ilitarcy o mmansdt ructutroee stablitshe e xistenocfe e ffecticvoen trolb,u t soughtto knoww h~theri,n thisc ase,i nl ightto ft hee videncper ovidebdy theP rosecutoirt, wasp ossiblteo conclutteh att heA ccuseedx ercisdeed jurep9 o8wers. ~_)__I.s suea st of ailurbey t heT rialC hambe.rt Qc onsidrede f actoa uthority 59. The Prosec:atiosnu bmitst hatt he TrialC hambere rredi n makingl ittleo r no allowanfcoer t hep ossibilitthya ta persocna nb e consideraesdu perioorn theb asiso f a de factoe xerciseo f powerso f commanda nd control9.9 For his part,t he Respondent emphasiztehsa tt heP rosecutidoind n ota dducea nye videncaet trialt o demonstratthee d e factoa uthoriteyx ercisebdy theA ccuseodv erc ertaigrp oupso f subordinateAsc.c ordintgo 9s TriaJl' udgempeanrta,!. 8 0. 9~ TriaJlu dgemepnatr,a s1.8 4a nd1 85. 97 TriaJlu dgemepnatr,a 1.8 0.T heC hambceorn siderfeodro, x amplt0h,a tt hed ej urer elationbsehtiwpe en gendarmaensdt heb ourgmeawtarsel imitySde.e a lsoT riaJlu dgcmpaatr,a 1,8 6w h~et heT riaClh araMr heltdh a"tf ilAec cusea.sdb ,o urgmesdtirdne o,t h avdee j uraeu thoroivtoyrr c s€rviisntM sa banczoam mune." 9sI nr lairse gartdh,oT riaClh ambpeori ntoeudt w,i txhc feretnoeg ee ndarme,tth,a tth eb ourllme,thtardet o approaocthh eorf ficiiafIh ~e n eedemdi litaarsys ista(nTcrei aJlu dgemepnatr,a1 .8 18)x ~dt hahte w oulhda ve hadt o refearn yp roblmtsh ate mergetdo thec ommandoeftt heg endarmerien Kibuyet own (Trial 3udgemepnatr,a 1.8 2). 99AppollBarmi'eSfp ,a ra2.. 74. 30 CaseN o.:I CTR-95-1A-A 13D ee~nba2r0 02

him,t heT riaClh am]:celre arlcyo nsiderbeodt hd ej urea ndd ef actpoo werosn t heb asiosf elveiedenacded ucebdy t heP rosecution. 60.T heT rialC hlmabesre to uti n paragrap3h9s, 4 3,1 51a nd1 53o f theJ udgemeintts approaicnhe xaminitrhtegi ssuoef t hee xistenocfed ef actaou thoriatsyp arto fi tso verall analysoifss uperiroers ponsibiiltii tnyd;i cattehda t" [t]heex istenocfte h es econedl emeonft subordinatniaomne,l dye f actcoo ntrowli,l lb ec onsideraesdn ,e cessaroyn,a case-by-case basisi,n t hec' o'u1r°s~oef t heC hambera'nsa lysoifst heP rosecutifoanc'tsu aall legations. TheT riaClh ambe~rt ootkh ev iewt hat" [a]c ivilisaunp eriwoirl lh avee xerciseefdf ective controolv erh iso rh ers ubordinaitnet sh ec oncrectier cumstancicfbe ost hd ef actaon dt he trappingosf de jurea uthoritayr ep resenatn ds imilatro thosef oundi n a military c1o°n2text". 61.T heA ppealCsh ambeirs oft hev iewt hat,w hent heT rialC hambecra met o

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IV. SECOND GROUND OF APPEAL: ALLEGATIONS OF ERRORS RELATING TO THE ADMISSION OF WRITTEN CONFESSIONS OF WITNESSES AA, Z AND Y 63. D. Urutgh et al., 1998, p. 100, stated that the Trial Chamber on 7 February 2000, 9 February 2000 and 10-11 February 2000 respectively in the course of their testimony, they each stated that they had made written confession to the Rwandan authorities which they recognized as participating in the genocide. At the end of the Prosecution case, and some time before the opening of the Defence case, the Defence filed a Motion on 20 April 2000 requesting the Trial Chamber to order the Prosecution to disclose the written confession pursuant to Rule 68 of the Rules. The Defence prayed the Trial Chamber to order the Prosecution to disclose the confession in accordance with its obligation to disclose its disposals of conduct in its investigation and, in particular, to obtain the documents it deemed

elevantt or the triaLt⁹ On 8 June 2000,t he TrialC hamberd ismissedt he motion Klcdby the
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(4)T hel ~.ctth att hew rittecno ~cssiownesr es ubsequenutsleydi na ssesitnhge credibiolfiW tiyt ns,s cYs, Z andA A. 65. The AppealsC hamberu nderstandtsh e thrustof the Prosecutiona'rs g umentto be a demonstratitohna tt hea bove-notperdo ceedinwgesr eu nfairc,o nsideritnhga tt heT rial Chambern everg aveW itnesseys, Z and AA the opportunittyo explaint hemselvesn the contradictiobnest weent heiro ralt estimonya nd theirc onfessionbse foreR wandan authorititels~,T heP rosecuticoonn tendtsh att hea dmissioofn thew rittecno nfessiownass instrumentianl t he assessmentth eT rialC hambemra deo f the testimonoyf WitnesseYs, Z and AA, who testifietdo the eventsw hicho cculteadt at the Gatwaros tadiuma nd at the Mabanzcao mmunaolf fice..llaT heP rosecutisounb mittsh at,f f theT rimC hambehra d heard thee xplanatioofn st heW itnessoens t hec ontradictioints w,o uldp robablhya vea rriveadt a differecnotn clusioInt. f urthesru bmittsh at,s incen eithetrh eP rosecutinoonr t heA ppeals Chambeirs in a positiotno determiwnhea tt hatc onclusiwoonu ldh aveb een,i t is necessary tlo1h 5olda fresthr ial. 66. The AppealsC hamberd ismissetsh e foregoinagr gumentsW.h ere,a s in the present case,t he Prosecutiiosn directebdy theT rialC hambetro obtainf urtherm aterialt,h e Prosecuticoann norte lyu ponR ule9 8,a s thatr ulec ontemplattehsa tt hep artyt o whicht he directiosn g ivewni lli tselfe ndetrh ef urthemra teriailn ,videucaes p arto f itsc ase.T he TrialC hambedro e,,h~o weverh,a vea cleapro we-r asp arto f itsd utyt oe nsurteh att het rial is properlcyo nducte-d t o directt heP rosecutitoon o btainm ateriawlh ichm ayb e relevant to thec

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duringth et riali,t : museti thebre e liciteidn e videncfer oma witnessor t endereidn e vidence iltls~elf. 6% In the presencta se,c ounself or the defencseh ouldh aveb eens toppebby the Trial Chambefrr omr eferrintgo thatm ateriadlu ringt hec ourseo f hisf inala ddreswsh eni t was nori ne videncTeh.e t endeorf thef urthemra teriaals a defenceex hibiwti thouhta vinggi ven thew itnessetsh eo pportunittoy d ealw ithi t in cross-examinawtaisoa n serioubsr eacho f thed utyo ff airnesosf thet riala,n di t ledt ot her ighotf theP rosecutitoonh avet het hree witnessreesc alletdo explaitnh eirp reviouisn consistsetnatt ements. 68. The Prosecutionc'osm plaincta n be rejectefdo r yet anotheerr easonA.t the appeal hearingt,h ej udgesa skedt he Prosecutwihoenth etrh e argumentasd vanceodn appealh ad beenp resentebde foret heT rialC hambera,n d,i n particulawrh,e thetrh e Prosecutihoand requestetdh eT rialC hambetro callb ackW itnesseYs, Z andA A so thatt heyc ouldg ivea n explanatifoorn the contradictioTnhse. Prosecutioand mittendo t havingd onet hisa nd concedetdh ati t shouldi ndeedh avea skedf ort hew itnessetso be broughtba ck1.17 As to why,u ndert hesec onditionst,h e Prosecutiowna s raisingt he issueo n appeal,t he ProsecutiAotnt ornehya dt hef ollowirnegp ly: Theo nlrye aslo nc ang ivyeo ui st heo nel statetdh,a wte s ubmit~h atth eries a problern witht h~j udgemenatn,d m aybep arto f thatp roblehma so ccurtb~e causteh e Prosecudtiidon no ta skf ort hew itnestsoeb se c allbeadc wkh etnh eD efendcied nd'oti t. Sow es ubmit'hta tth aits p otentfiaaill ubryet heP rosecutthoetn r,i aslh ounlodt p reventthatt heseea xorbse r ~ti/ieTdh.a ti st heo nlyt hinIg t hinIk canc oncedteoy our snu~bmissainodnI s c onceydoeu lre gaplo intass,I havceo nceded, 69. Thus,a t no timed id the Prose~0utiorne questt he TrialC hambert o callb ackt he Witnesseisn questioAnt. no timed idt heP rosecutiroani set hei ssueo f unfairp roceedings beforet he TrialC hambera,l thoughti appealeodn thisg round~.9 The AppealsC hamber considertsh ati f thisd id not happeni n the presentc ase,i t is probablbye causteh e n~PrasecUvt oSrl obodaMni lo,~cviIdT,- 02-\$4-AR7D3e.c2i,s ioonn A dmissibiloiftP yr osecution InvestigatEovri'dse nc3e0,S c ptemb2c0r0 2p,a ra2.4 : " Itw oulodef c ourstex ~q uitwer onfgo rt heT rial Chambeirnd, e temtitnhieni gs sueisnt het rialt,or efetro m ateriwahli cmha yb ea vailatboli et b utw hicihs noti ne viden[c.~.]." n~T (A)2, J uly2 002p,p ,I 16a nd1 17. tiIeb idpl.1, 2 0. ~9S eet heq uestipountsb yt hej udgaetsf ilaep l~thle arinpga,r ticulTa(rAl)y2, J uly2 002p,p .1 32t o1 37. TheR espondseunbtr atih~a tt heO fficoef t heP

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Prosecutwiasnh opintgo havet hec onfessiosntaalt emenotfs t hew itnessreesm ovefdr om ther
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rosecutionj'uss tificatiiosn unfound1e2d°.T he. AppealCsh ambecra nnoatc ceptth ea rgumentth
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cku,n detrh ep retext thatt heC hambeirt sdhfa da sketdh att hes tatemenoftst heW itnessbeesm
adea vailabllet. ist hes oler esponsibiolfi hteyp arttyh actl aimtso h aves ufferperde judiicnet ,h
ise aset,h e Prosecutitoonr ,e questth eT riaClh ambetro h avet heW itnessceasl lebda cka ndt oj
ustify sucha request. 71.I n conformiwtiyt ht hec ase-laowf theI nternatioTnraillb unaltsh,e f actt
hata n appelladnitr n otr aisea n objectiboenf orteh eT rialC hambemre ansi,n thea bseneoef
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Plx~Csh ambetrr iedt o understatnhde a ctuabla siso f thisg rounodf appealp,r vsemtebdy the
Prosecutdiuorni ntgh eh earinogna ppeaals f ollow's~:I ti s nots olelayn i ssuoef f airnetsost hep
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oldays a ni ssuoef f airneosrs prejudicteo, t heP rosecu~ocna'sse b,e causteh eu ltimadteet
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r elyo ni tf ort hatp urposien,m yr espectsfuublm issiioth',sn oto nlya ni ssuoef f ~'n~sist,' sa lso an
issuoef e nsuritnhge a ccurabcyt het rieorf factt hati s makintgh atf actuadle terminatTihoanti. s
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eY,o urH onottbru,t t hep oinbte ingi f youc ani maginteh eP ~os~ulifoani lingd,e arliyn thise ase,t
o askf ora r#c~heat~ogr replye ase,b ut subsequenittl fyi ndso utt hatt hew i~cscso nfessiosntaalt
emenwtes~ c ornlt et01c oea'eeadn dt he doubtt hatt heya rea bsolutenloytt rue"T A 2 Jul2 P Y toi
sn o m KambandAap .poaJlu dgemenpta,r a,, 2. 5~.)S ,e ea lys 0o0A 2k,ap ype.s1 Au3l 7~t po~e 1
J3u9d,gemenpta,r a.1 13.T hep rindploef waiverw asa lso' affirm,b~yd I CTYA ppealCsh ambei~n
~c ~c#lebidAip pe,,a,ll udgcane(npta ra.6 40), FurundYjAjpap eaJl' udgemo(npta ra1.7 4)a ndT
adidAppJe'auld geme(tpaatr a5.5), 37 CaseN o..I CTR-95~A..A 13 Decembe2r0 02

THIRD GROUND OF APPEAL: ALLEGATIONS OF ERRORS IN THE ASSESSMENT OF EVIDENCE
CONCERNING THE "TRAFIPRO" ROADBLOCK AND THE GATWARO STADIUM 72. As regardtsh
isg roundo f appeal,t heA ppealsC hambeurn derstandtsh att he Prosecutbieogna ub ya lletitnhga
tt heT riaClh ambecro mmittehdr egee neraelr rorisn its assessmeonftt hee videnccceo
ncernitnhge c rimecso mmittaetd t heT rafiprrroa dbloacnkd Gatwarsot adiuvm',2A ccoriditnogn

heP rosecutitohne,s eer ror"sa ffectth ea sssesmoeft th e evidencteh rougho,u,ti.2aT heP rosecutitohne na llegetdh att heT rialC hambecro m~tted thre"es pecifeinc""o rsi,nt hes ensteh att heya llr elatteo t hea sssesmoeft th resepe cific issueisn t heT riaYla dgemennta,m elyt,h ep urposoeft t heT rafiprrroa dbloctkh,em urdeorf Juditahn dt hep resencoef theA ccuseadt theG atwarSot adiumI.n lighto f thea bove- Mentioneerdr orst,h eP rosecutiporna yetdh eA ppealCsh ambetro reversteh eJ udgement withr espetcotC omlt1s t o6 oft hei ndictmaennndtt oo rdear newt rial. Ax,u Generale rrQrs 1.W hB_~~B_ .~ljCahla mbe~rp lieadn j ncorrecs_tta n,tianC~ ~e_ssitnhge _e videnocfe ~ep reser~ocfet heA ccuseadt GatwarSot adium 73.A s tow hethe't~hre A ccusewda sp resenatt theG atwarSot adiumt,h eT rialC hamber madet hef ollowignegn eraolb servations: Theq uesliwohn¢ the~r¢ A ccusewda sp resenatt t heS tadiuims critictaol a llt hec harges coveritnhge l :efioId3 t o 18 April19 94I.t followfsr omc asel awt hatm erep res¢nacte thes cenoef crimhleavle ntiss noti n itselifn criminat[i,n,g,]O.n eo bvourse asofno r ffdsi s thatp resencmea yh avet hep urposoeft preventiunhgv c ommissioofn g rimes. Nonetheleists"t, h eP roscutciaonne stablitshha tt heA ccusewda sa t theS tadj,duumr ing the¢ ritic~r iodi n quostioao,t here lementosf participatiino tnh e~ imvm ayb e presumabolJe:i mputablAe p.e .rsoinn authoritsyu,c ha s theA ccusedr,u nst her isko f truinigd en~ewdi tht hep ~rpetratoofrt sh ec rim~usn leshs~ is seent o be activealnyd demonstrabolpyp osintgh o crimesT.h gmfor¢t,h ~ Pro~cutimouns tl oads ufficient ~zzS eeI n,educttioot nh ep resenJtu dgeme(npta ra7.) , Thea llegeedr rorsa,s ~ t outb yt heA ppealCsh ambeirn the~ troductioo tnh isJ udgemeaa~rtc, follows(i i)~ Applicatioofn a wrongc riteriwai thr egartdo thea sssesmoeft e vidence reA~ntgo thep resencoef theA ccuseadt theO atwarSot adiudmu rintgh e1 redewdh ent he~ fuge.e~ ~. =_ . ,..~.,?~,~:~ ~vum a~ use o~ priorw rittens tatemeats;(ii~iL)_ ~:E ~on~us wrongr elatintgo Wim#s~s. 38 CaseN o.; ICTR-95dA.A 13 De~embc2r0 02

evidencteo convincteh e Chmberb eyondr easonabldeo ubtt hatt he Accusedw as presenattt heS tadiuamts omep oindtu rintgh er elevapnetr io~dz.5 Inv iewo ft hist,h eC hambewri llh avet ot reaat barea llegatoifop nr eaonwciot hc aution. Putd ifferental lya,c ko r"d etaiwli llr aisdeo ubtsT.h eC harabweirl lt hene xaminteh e testimonioife ost hewri tnesseosr, l ookt op riosrt atementtos c larifoyn t esta wimoss's allegatioInfs c.o rroboratiison no tf oundt hroughth isp rocesdso,u btws i llr emaiann d presencwei lln oth aveb oone stablshIetd i.s incumbeonnt t heP rosecutitoon a dduce sufficeenvti dentcoe c onvintchee C hambetrh att heA ccusewda sp resenatn d,f f so,t o demonstrhaitser oled urintgh ee vents.126 74. The Prosecutiomna inlys ubmitst hatt he TrialC hambere rredi n law in its assessmoeft th ee videncien,s of ara si tm adec orroboraoftit ohne t estimoonfyw itnesses a pro-condittoie osnt ablitsheg uilotf t heA ccuseodft hec rimecso mmittaetdt heG atwaro StadiumI.n o therw ordsw,h enevtehre T rialC hambedre termintehda tt herew asa lacko f detaiiln a testimoniyt, e xamintehde t estimonOifeo st hewri tnessaensd l ooketdo prior statemenitns o rdert"o clarifoyn testt hew itnessa'ls l egatioTnh.u s,a ccorditnugt he Prosecutiotnh,eT ~ialC hamberre lieodn thisp rocesosf seekincgo rroboratoifo tnh e allegefda ctsI.n t hisc onnectitohne,P rosecutsiuobnm ittsh atd ifferesntta tememnatdse b y thes amew itnesscsa nnobte u sedt oc orroboreaatceho rder.127 75.T heA ppeahC hambeorb servefsi rsto f allt hatt heT rialC hambewra s righti n proceediwnigt hc autiowni thr especttot heq uestioofnt hei dentificaotftit ohne A ccuseadt theS tadiumA.s the.A ppealCsh ambeorf theI CTYi

ndicateidn theK upre~rMAdp peal Judgemenat .T rimC hambemru stp roceewdi the xtremcea utiownh ena ssession gw imess" identifiaotfia onna ccusemda deu ndedri fficuclitr cumstances: In casebse fot't~h isT ribunaal T,r iaClh ambemru sta lwaysi,n t hei nteresotfs j ustice, proceewdi the xtremcea utiownh ena ssession gw itnessi'd entificatoifo tnh ea ccused madeu nderd .~ulcti rcumstancWehsi.l ea TrialC hambeirs noto bligetdo refert o everpyi eceo,J ."e videnocne t het riarle coridn its~ dgemenwth,e ra~ findinogfg uilits madeo n the basiso f identificateivoinde encgei venb y a witnessn derd ifficult circumstanctehse,T rialC hambemru str igorousilmyp lemenitt s dutyt o providae "reasonoepdi MonI"n, p ~ticulaar r,e asonoepdi niomnu stc arefulalryt iculatth~ef actors relieudp oni n suppooRf thei dentificatoifo tnh ea ccuseadn da dequataddyd resas~ ll~ significfaanctz orism lmctinnegg ativodnyt her eliabiloiftt yh ei dentifica~tviiodne ace. 76.A fters tatinign,p aragra5p3h2 o f theT rialJ udgementth,a a barea llegalioofn t he t6~ * presenocfe t heA ccusesdh"o ulbde t reate"dw itcha utioann"d t hat" al acko fd etaiwli ll izsT rialJ.u dgemepnatr,& 5 31 12~/bipda.r,a 5.3 2. c,7A pp~llanBtr'ise fp,a ra4.. 3t o4 .9,n otabplayr a4.. 7. 39 CaseN o,:I CTR-95-1A-A 13 Decembe2r0 02

r m + acd oubt9,5s t heT riaClh ambesre to uti tsg eneraalp proatcoha ssessionvgi denicnev iew oft hen eedt op roceewdi thc autioans i ndicataebdo vet:h eT riaClh ambefri rsti ndicated thati t" wille xaminteh et estimonioefs o therw imesseasn"d t hati t may" lookt o prior St a temen"tisin,o rdetro " clariofryt esta witnessa'ls l egationTsh"eT. r ialC hambetrh en wento n to sayat~h"f f" c orrobo-r a ~tiisno ont f ountdh roughh isp rocesdso,u btwsi llr emain andp resenwciel ln oth aveb eene stablishFeidn"a.l liyt,s tatetdh ati,n a nye vent",i ti s incumbeonnt t heP rosecutitoon a dduceu fficieenvti dencteo convintchee C hambetrh at t1h2e9A ccusewda sp resenatn d,i fs o,t od emonstrhaitser o led urintgh ee vents". 77.W hilec onsideritnhgee videncaed ducebde foriet ,t heT rialC hambeirn deead opted thea pproacdh e scribaebdo vew,i thr espectto thep resencoef theA ccuseodn 13 April 1994x,3°1 4A pri1l9 9T4M and1 8A pri1l9 94.132 1~ KupregkAMp peaJlu cLgement,p3a9r.a. ~ Judgmentp,a ra.5 32. ~o Indeedt,h eT rialC hambecro nsidertehde t estimonioefs t wow itnes,mensa,m elWyi tnessAe sa ndA C,w ho claimetdoh aves oont he.A ccuseadtt hes tadiufmi,r sbty assessitnhged etaialn dl ogitch ereitnh,e nw,h enever itd eemeidt n ecessarbyyc, o mparitnhge t estimontioe psr iosrt atemenotfs t hew itnesseasn,dp ointionugt a ny inlaereinntc onsistenSceieeT sr iaJlu dgement I~1h i P d e - a - , ~ m ' - e " i ~ n " alC h'ambesrt ate _ dw,i thr , e p g a a r rt a d 5 o s 3 , W 3 i t t o n 5 e 4 s 3 As . , that" [t]hcei rcumstanocfe Wsi tnesAs' s sightinogf theA ccuseodn thisd aya ren otc lear.("T riaJlu dgemenpta,r a . 547)a ndt hat" [aJsf ort he A ccUs'esd c onducadn do th~dre tailcso ncernitnhgec oursoef h isv isitt,h ei nformatsiuopnp libeydW itnesAs wasv eryl imited(.T"r iallu dgemenpta,r a.5 48)I.t iso nlyJ u "thea bsencoef o therd etailtsh"a tt heT rial Chambelro okeidn top riors latcmenotfs W itnesAs a nds latetdh att he" It]hceh ronoloogfy v isitbsy the Accuseads foundi n W~'mosAs' st estimodnoye sn otc oincidwei tht hato f hiss tatemeonft 2 9 June1 999." (TriaSlu dgemenpta,r a.549W)i.t h'r espectto WitnessA'C ,t heT rialC hambecro ncludtehda th ist vstimony "doesn otd onvineincgolryr oboratthea to f WimesAs. "(TriaJlu dgemenpta,r a.5 51)a nda ddedt hat" [t]he doub~t theC hamberm'isn di s notd isl~lleb.yd c onsideratoifot nh ew ituesss'tsa temeonft 2 1 ~lun1e9 99." (TriaJlu dgemenpta,r a.5 52).F inallyt,h eC hambecro ncludtehda t" [t]hpea ucitoyf th~e videnas to the A p~U~s~ escnee(.i ncludintgh e conditionosf observatioinn a crowdedS tadium)a

dducedb y th~ osecuti~orno mw xmesseAs a ndA C,w henc onsiderteodg ethewri tht hel acko f mutuaclo rroboratitohne, mgnso ~u ncertainnt tyh ea ccounotfsb othw itnessaesst ot hed ateo ft hes ightinagn,dt hes uggestiboytn h e tiouW i~¢SStehSa tt he_ Accus+ewxaisi n Maballczoam mwa~t 9 a .m.o tit hed a in quesdon rerunmsm m er rosc + usu eovni n d e ~ eo r-t heA ccus,esd ~ esencaet t heS tadiuomn 14A pril1 9 Y 94f allssh o,rt of thea pplicabsltea nda~redr ~of".(TriaJlu dgeme,n,t, ,~, ,;a~ '~ ~Qe q~::~r^mt,t ~, 'n+a--m- o-ccr, :~,n_slc.l _ertehce~et v iodenco~ef,j tph.memt ,~h.,,r .e,oew/ i.tnessensa,m elWyi tnessAeAs, A etG , who testifiteod h avinsge ent heA ccuseadt thes tadiuomn thatd ate.T .dalJ udgemenpta,r a.6 06.A s concerns WitnesAsA ,t heC hambesrt atetdh ati t woulda sses"sh i as.aw holei nc hronologiocradle r.("T riaJlu dgemenst t,e stimoannyd a nye redibillitsys uetsh atm aya rise par&6 07).A ftera nalsytinhge w itnesst'e stimoannyd priorsrt ateme(nTtrsi aJlu .;|gemepnatr,a6 .0 8t o6 18)a,n dm indfuolft hef actt hatt hes aidt estimownayst o treatet"dw ithc autioann"d t hat" othesro urcewse"r et ob e lookeidn to" forc orroborat(iTorni"a 3l" udgement, para6.1 9)t,h eT riaClh a~:abceorn cludtehda t" [i]vni ewo ft hec onsideranbmIneb eorf difficultpireess ented by WitnesAsA 'st estimontyh,e C hambeai-s unablteo acceptn yo f itse lementusn lestsh eya res trongly corroborabtye odt hers ou:te[e.s. .]("T riaJlu dgemepnatr a6,3 6).A s concerWnist nesAs, theT riaClh amber 40 CaseN o.:I CTR-95-IA+A 13 Decembe2r0 02

78.C ontrartyo theP rosecutiocno'nst entiotnh,e A ppealCsh ambeirs of thev iewt hat by adoptinsgu cha n approacht,h eT rialC hambewra ss implye xercisitnhge r equired cautioMni ndfuolf t hen eedt op roceewdi thc autioinn t hee xaminatoifoe na cha lligation regarditnhge i den~ficatainodpn r esenocfet heA ccuseadt t heS tadiutmh,e T riaClh amber focussoenda ssessitnhge c redibilaintdyr eliabiloift yh ew imessaepsp earibnegf oriet . Withr egartdo e acl:wti tnesist,w asw ithiint sd iscrettiooa ns sesasn yi nconsistennoctieeds andd etermiwnhee theirn, Hghto ft heo veralelv idencteh,e w itneswsa sr eliabalned h is evidenc Cree diblTeo.t hise nd,i te itherre sortteodc orroboratofit ohne o ralt estimofnryo m otheerv iden'c-e~,i ncludiontgh etre stimonli~e4so ,r comparoerd c onfmntehde c ontenotf theo ralt estimoonfyt hew itneswsi thh isp riorsrt atementu(ssB)u,tt heT riaClh ambedri d nots uggestth atc on:~borawtaison ne cessairnye vercy a sea sa matteorf I aw. "9.T heA ppealCsh ambefra ilst o seei n whatw ayt hea pproacahd optebdy theT rial Chambefro rc orroboratcioonns tituatnee sa terO.f c oursea,s t heP rosecutsitoant edi,t i s wells ettletdh at" thet estimoonfya singlwei tnesosn a materifaalc tm ayb ea cceptaesd evidenwciet houth en eedf orc orroborat,i,otn~.6H owevetrh,e A ppealCsh ambecro nsiders thatt hisj urisprudecnacnen obte i nterprettoem de ant hata TriaClh ambecra nnorte sortto corroborattihoenT ;r iaClh ambecra nd os ob yv irtuoef i tsd iscretiIonnt .h ep resencta se, theT riaClh ambewra se ntitlteodv eriftTh ef actasn da ssestsh ec redibiloiftw yi tnessbeys referentcoet het estimoonfyo thewri messes. 80.M oreovetrh,e A ppealCsh ambedri smissetsh eP ros~utiona'rsg umentth att heT rial Chambesro ughmtu tua"lc orroboratoifo dni"f feresntta temenmtasde b y thes amew itness notetdh ath ist estimownays " verbyr ief"r,e garditnhgeA ccuse.da'ls l egepdr e.scnbeeof orteh ea ttac(kT rial Judgmentp,a ra6 39)T h~ Chambern orexlt hatt hei nformao~v idcd p w r a o sd v i i *m d ,o eb u dy tt o W i i .t n. n t e e s r As p r w o a (i t s T -" u i all u dgcmcnpta,t 'a6.4 0)F.,m al~,l theT ri . m byW.i mesAs m h~isp ~ .nors t . atement ..., _ Y _ . : _t;nambefco undt hat~ h¢ ex~denee Chambebre ganb y consic,c ar~cm lg"e caerr.(tT

ariionam'llt nsdt ghtamtaenpta . , r a.6 4)1 L a.s.t.yl., wzthr espectto WitnesGs, the P go to thec matbiliofyt W itnesGs' st esthnon(yT"r ial J'udgemepnatr,& 6 44),t hen,a ftearn alysihngs t estimoinny d erniilt foun theP rosecution' wasi nsuffici(eTnrti a1lu dg0menpta,r as6.5 2a nd6 53). , d that s evidene~ 133 ~e ,¢~~ o.ri nstanTcrei allu dgeanepnatr,a s5.5 1,6 08,6 19,6 21,6 28,6 29,6 36a nd6 53. ~ Fore xamplaet, p ara6.3 6,t heT riaClh ambesrt atetdh at" Inv iewo ft hec onsideranbulmeb earn dv arietoyf ~ata~yted=W:.Y~ce .s"s _AA_'s_testimtoh,eaC yh ambeirs unablteo acceptatn yo f itse lementusn less 13s uy omors ources. 63:eef,o ri nstancTer,i alJ udgemenpta,r as5.3 6,5 38,5 40,5 49,5 50,5 52,6 10,6 12,6 15,6 18,6 22,6 22a nd CasoN o.:I CTR-gS-IA..A 41 13 De.cembe2r0 02

(namelya, c onfessionsatla temeonft a witnesswi thh isp reviousst atement).T1h5e7A ppeals Chambeirs oft hev iewt hat,i n thisc ase,t heT rialC hambewra ss implys eeldntgo establish thec onsistenocfy t hes aide videncea,n dh ence,t hec redibiliofyt t het estimonwyh,i chi s parto ft hem ainr esponsibiliof fi ae st riero f fact.T heA ppealCsh ambetrh erefocroen sidars thatt he TrialC hamber'fsi ndingssh ouldb e viewedw ithint he contexto f the Trial Chambero'vse ral.la sseesmefonft t hec onsistenacnyd c redibiliofyt t hee vidence. 81. /n viewo f the foregoingt,h e AppealsC hamberf indst hatt he Prosecutiohna s not demonstratetdh att he TrialC hamberc ommittetdh e allegede rrors.C onsequent/tyh,e AppealCsh ambedri smissetsh isp arto f thet hirdg roundf appeal. 2 ~theT rialC hambere rred~ --lR.tlL~oef and elianeeo n riorwrittesnt atements J . ~ 82. The Prosecutioens sentiallysyu bmitst hatt he TrialC hambere rredi n relyingo n inconsistenchieetsw eetnh es tatementmtasd et o Prosecutiionnv estigatoorns t,h eo neh and, and confessionaslt atementmsa det o Rwandana uthoritieso,n the otherh and,w ithout havinga ffordetdh e saidw itnesseasn opportunittoy explaint he inconsistenciTehse. Prosecutiroenf erst o itss econdbg roundo f appeal138a ndn otest hatt heD efencdei dn ot cross-examcienret aiPnr osecutiWoint nessweist ha viewt o testintgh eirc redibiliofyt nys ome aspectosf theirt estimotnhya ti t considerceodn tradictioarnyd,a lsot hatt heT rialC hamber didn otu sei tsd iscretitoonp utq uestiotnosw itnesses. 83. Withr egardt o the use madeb y the TrialC hambero f confessionsatla tementst,h e AppealCsh amberre iterateist sc onclusiocnosn cernitnhge secondg roundo f appealT.h us, iti su pt ot hep artwyh iccho nsideirtss elafg grievaidn,t hisc aset,h eP rosecutitoonr ,e quest the TrialC hambetro ca//bactkh e witnesssefsO r furtherc ross-examinaantd piroonv ide justificatfloorsn u chr equest. - = I~6~-~ ~IZY' '~ ,¢/~m~ A ~.,~..I~__ J__ " Th~ ~ati~llr a~esi ss;; wi~a ~~- a u~_~ ~;_. ppea/Judgementpta,r as,4 92 and 506 stated':W ithr esignetrh i~. - ~. 2002,a ~ war1e5'2p. ~ ,Pa 'r . eviP° , rU , oS . sT t ehce m u ~ t as i h o ,u n ~ S mu ct no, aa o yr nt fp t ~ e p - ~ h o m r u z ecs oc no' o t b r - t r l r , r o ~ eo b , mb. o - oa. r ,, ra. a ,. a t , . t e ~ . i , r t a , o. e ~ . s u n f u . . m e b a / . a r s n t t . a r e d t t e . q e l h d u . s e e e e t d . A a ' n a , u c t t . u i t r e c l m ~ * l - t e ~ I 3 ~ n , - u m t ° . r p , , , , i h , " , ~ ~ a . , , d s a . , & i d . : " ~ t s d _ , i e , 2 m _ o d o , S e n) f ~ g P . T w , r (h . o A i) s 2 c , e h , l I c 0 a u 1 u m l 1 t y t ' W i t n e s s " s e . o . R . t . e . s s . ~ o s a t a a t t e m e o n f t t 1 o 1 p N a o r v a e 6 . m 3 b 5 1 o e 9 f r t 9 h 9 t e o J t u h d e g R e w m a e w n n h d t e a ~ r n t t e h h o e T r r i i t a i C ¢ l . h o e a e s m r b o h e b e r o l r d t a z h t h a e ~ t # s t a t e m e o n f 2 t 2 a n d 2 3 S e p t e m b 1 e 9 r 9 9 . (" E m p h a s a i d s d e d) . J ~ A p p e l l a n t B ' r s i e f p , a r a s 4 , . 1 0 a n d 4 . 1 2 . C a s e N o . : I C T R - 9 5 - 1 A . A 4 2 1 3 D e c e m b e 2 r 0 0 2

[illegible]

Prosecutiaoinl etd. od emonstrtahtaett heT riaClh amberf'isn dinwgesr eu nreasonatbhlies, groudof appeamlu stb ed ismised. B.' _'S;Decifelrç~"r _ocrosn cernitnhgeT rin~lh amber'syt~eosfst mheene tv i.d,enicne relatitoon_ t hep urposoeft t heT rafiprroos _dblo,ctkh~e m urdeorf J uditahn dt h~ [zw4e4sencoef .thAec cusead. .tt heG atwarSo~ d!um 89. TheA ppealCsh ambehro ldst hatt heq uestionrsa isedb y theP rosecutiwoint h respecttot hc" specifeircr"o rrse latteo t hremea ind,i stinics ts ue1s4:5t heT riaClh amber's assessmeonfft her elevaenvti denrceel atitnugt hep urposoeft t beT rafiprrooa dbloctkh;e TrialC hamber'rse liancoen previousst atementnsa,m elyt,h es tatementnsa det o Prosecutiinovne stigataonrdts h ec onfessiosntaalt emenmtasd et oR wandaanu thorit(ioens thisp ointt,h eA ppealCsh ambewri lla ddrestsh eP rosecutioanr'gsu menatss a whole, insotahsrt hisi ssuaer iseisn r elatitoonv irtualallt heq uestiornasi seda)n;df inalltyh e TriaClh ambara'sss essmeonfft hee videnrceel atitnugt hea llegepdr esenocfe t heA ccused att heG atwarSot adium. ~ ldem,p ata.7 49(Emphasaidsd ed). 143K ayishemw'RuziAnpdpmema lJ udgemenpta,r a.1 65;F urund~iAjpap ealJ udgemenpta,r a.6 9;~ elebidi Ap.~aJlu dg~mcpnatt,a 4.8 1. '~ As rccaJle.bdy the AppealCsh ambeirn the introductitoon t he presenJtu dgemen(ti:) F ~. Error rclazintgo thea sssessmemnatd eb y TrialC hamberre gardilnhgo e videnctee nd#tewdi thr egartdo Ttafipro roadblo(ciki;)S econJdI :IZg.EDr.r oirn t hea sssessmoefn tth ee viden,c er elatitnogl hem urdeorf J udith(;R i) .~de rrorl:~ rtorr~ latitnugt hea sssessmeonft c videnr~e latitnog t hep resenocre" l hçA ccuseadt theO atwaro Stadiuomn 13,1 4 and1 8 April19 94. 44 CaseN o.:I CTR.95I:A.- A 13 Dcç~mlx~2r0 02

TheT rialCh umbse' ra sse.~.omfet nhter _e levaenvti,d e-,'r~e-l_a_t_it notg h ep urposoeft~ : _- Trafiv_rrooa dbl~t~ 90.T heP rosecutiroenf ertso theT rialC hamberf'isn dingisn ChapteVr o f theT rial Judgemeanst r egardtsh ep urposoeft theT rafiprrooa dblo.clka 6I t arguetsh att heT rial Chambeerr redb yn otc onsidertihnegt estimonoife sWi tnessKeCs. A B,R A,Z Ja ndt hatof theA ccusedld4.vT h4~A.p pellasnutb mittsh att hee videnrceef errteods howtsh att heA ccused wasa warteh ati dentifc3a,r dwse reb eincgh eckeadt r oadblocwkhsi,c hha db eene rectefdo r thep urposoeft ide.ati~iTnugt sisA.s e arlya s theb eginnionfg A pril1 994,t heA ccused knewt hatT utsiwse rea ctivelsyo ughotu ti n Mabanzaan do therc ommunewsi thiKni buye prefectuArcec.o rdi:taogt heP rosecutitohne,a bove-mentiWointende ssreesv ealtehde r eal p~u4rsposoeft her oadbloncakm,e lyt,of inda ndk illT utsis. TheP rosecufsiuobnm ittsh att hea forementitoensetdi monsiheoswi ne ssenteh at: TheA ccusepdr ovidetdh eb ourgmestroef Tambwea nd twoo therT utsi wom,~wni thl aissez-pasi;sn1ed4ri9sc atitnhga tt heyw ereH utu Them ainp urposoeft thes ixr oadblocmkosu nteidn Mabanzwaa st o identify T;u~tss°is The, Accuseddi ssuadfeidv eT utsin unsf romg oingt oK ibuyteo wnb ecause o~f5~~,r~o adbloctkhse yw oulde ncountoenrt heiwwa y; 14sI ndeedt,h eA ppealCsh ambenro test hatt h~a rgumenatdsv anee.b~ytl h eA ppellainnt t hev ariougsr oundosf radiia ~ verys i~a ndc anb e groupeadn da nalyseudn dert hreem ainh eadingass, s eto utb elow. TriaJtu ageruepnatr,~ s9,3 5t o9 38. 1~7A ppellanBtr'ise fp,a ras4.. 32t o4 .34. ~ AppellantB'rsi efp,a ras4., 35m ~d4 .36.I n eSsencet,h eP rosecutioanr'gsu menptr esentebde forteh e AppealCsh amberre peattsh eo nep resentbeedf or1eh eT rialC hamberP.a ra4,, 14o f theI ndictmerneta ds":I n ~icularI,g nsceB ~it.4shelm~ar mitteadn de ncouragIendt erahammwiel itiamteon setu p roadbloca kts strategilco cationisn anda roundM abam:cao mmuneT.h ep rimarpyu rposoeft thes aidr oadblocwkass t o sctre,n individuialrtso rdetro

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 - 32c,i t - inTg, 1g5N eo hvaelm~ bl1eu9rd9 g9pe,.m 1e0np9ta.,r a.2 43. 45 CaseN o.:I CTR-95-1A-A
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 7 a e t d s b e l q o . S) ai . kgsh teidn x natJ uagemepnatr,e1 .1 0. 46 CaseN o.:I CTR-95-1A.A 13D
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evidenpcree sentbeydt heP rosecutli5o~na ndt hens crutindi tzheet estimonoife tsh et wo Prosecutiowni,mse sswehso r egularaltyt endetdh eT rafiprrooa dblo~c5k7 O nt heb asiso f ther elevaenvti dencteh,e T r/aCIh ambecro nsidertehda ti tw asU nablteo c onclubdeey ond reasonabdloeu bttl :~tth ea imo ft heA ccusewdh,e nh es etu pt heT rafiprrooa dblocwka,st o screeonu ta ndk illT utscii vilians.ltShael/ iag hot£ t hea bovet,h eA ppealCsh ambefri nds nothinugr ireasonaibnl teh eT rialC hamberr'esa sonianngd f indingwsi thr egartdo this specifpioci ntI.t t h~;;refdoirseem istsheesA ppellanstu'bsm issoinot nh ipso int. v~~ statements t~ "w: - anna authorJ' ¢s 94.F irstlyt,h eP rosecutiroenf ertso theT rialC hamber'fsi ndingass regardtsh e inconsistencbieevs~ eetnh et estimonioefs W itnesseys a ndZ in theS ectioonf the Judgemtehnet3 fu dgement,dealitnhgep~ u5r,pwoiostfeht thheT rafiprrooa dblRoecfke.r rtionp ga ragr9a3p7h o " e Proseeds/uobnm ittsh at: The Trim Chambere rredi nsofara s it reliedu pon the writtens tatemento f Witnessy for the truth of its content,a ttributinmgo re weightt o this statel:aentth ant o his testimonbye foret he courta nd doings o withoute ven puttingt he statementto the Witenst o determinweh etherh e acceptedi t as truei;, ..~ -= ~:1bidp.a,r a9.3 5. i).~T riaYlu dgement, °°A tp-ara9.3 8o f t.h-ePT~ r 9i3a7ll. udgementth,eT rialC hambesrt atetdh at" the ~t" "kT~ .,~2~ J (as out ratheri n the m documentatiro rne ,,,,=T.r~a fiproany a , rm ° o f ~ f u i | l a e t A : c O arl b e S a "t"..aItt "h~pso'i n"~ts t ha ~ tt p h c eP a r :a , uon\$ t ' ~mselfe. -s Andthe T ~ da - l - C " h - u ~, m .,0u1 ~ illstru"ctioas Js~, ,;_3 , cusedw,h oah e setu p theT rail-o-s~ ecutihoansn ots hownb cyon--~ - l~rt husc oncluded zmsp aragrrgOpahd ,s,, vt,,,. . =,.prroo adblocwka,st o t d h / e f e f n e g e r m i a i n e e a c c s r u e n e t s o s c f a . ~ p t - ~ i s u , n r , gTt , ,hm ~ 'e t s w w eWi o .it p , tn r e h e o s s s u s s e Z n c d t u e e t r s ~ w i s t ' ~ o t i t n o f t n o i h t e d e e h s A d a s c t e w t e s h h o e A r e - g . s u c l r a e a d e o t y n u t t o m ~ n a _ d k ~ ~ i r l e l T , u a t * s s c o " " a n ~ v a d ~ d i e o ; a ' u , a b s t t h a t t h e t o m e l t e o r f s t h e t ~ F , r o R d p p ~ . e d a s k , e _ d h e i d m t h e T r a f i p r m o a d b l o k c g a v e ~ a s e d t o b ¢ r " t o ~ r e c t a r o a d b l o c " k b ~ c a u s v H h t i e a h d d e e e A s n x c e t P c t u i / u ~ p f a s r i i e ~ o c n d t a a e W w " h d t s d i h a b i h t e t l o i R n t o n ~ u e ' h c , t " s - - k , b A s - - ~ - s v a P L .. , w , a . t . a . s h d . x e n . , u R w . - t u a . S u k s o . y a r n m T n o w p o t a a s , a t c h h ~ o a g ~ t u d ~ z s , l e e W v , d a p ~ r i ~ s h s t " , s c i . n . t a m e . h s r s . Y r h e s . , l t . o e h n v e t a m h n r _ s e t o o _ t " a t . r d ¢ h u b f ~ e e l ' r h t a o e k i n e . w o w d r ' h z x , r s ; ~ t t i a . o ' h n i . T o t g d t t u t u h , t c , a s x h i . t i a p n . n . c s y . r e o . . e i a n . r e ¢ g a a v / c p - n a , ~ r t o s a h b w p o l e t p e / ¢ m _ / r s a , s t o ' : : o u t r t o h l e m o v - e - m - e . n o - t f , , s / - n c k r o u t D a a e t a t n r t h y t e i T e r m a p f t i t v r n o r o g i o - n ~ f . i , l ~ t ' r - t a ~ h t ' : e e . c _ ? o ' s Y m . . m a u i n a h e , a , O d c ' % o , O m t f e n r o o t m e s o i m ~ i o t t o d) ' , , = " ~ u ~ u c K ; I , C S ' L I . t l t O h 0 a t t h e A c c u s e d A p p e l l a s n B t r i e f p , a r a 4 . , 4 0 T . h e A P p e l l a r n e t f e r t s o i r a a r g u m e n r t e s g a r d i t n h g e F u s t g r o u n o d f a p p e a l . C a s e N o . : I C T R - 9 5 . 1 A . A 4 7 1 3 D e c e m b e 2 r 0 0 2

Thought herem ay be circumstaucwchse rea statemenmta y be admittefdo r theu ~utho f itsc ontentnso,t ablpyu rsuantto R ule9 2biso f theR ulesl,e~n o such consideratiowna s givenb y the TrialC hamberi n admittingt he statemenfto rt hisp urposeI.t appeartsh att heT rialC hambemra y simply have:b eenm istakeinn itsa ppreciatioofn t hed ifferenbceet weetne stimony andp riors tateme~n6t2.M oreoveirt,s r eliancoen thes tatememneta nst hati t placedg reatewre ighotn theo ut-of-courstta temetnhta nt hel ivem stimonoyf a witness.163 95. Secondly,2 1eP rosecutiocnh allengetsh e TrialC hamber'fsi ndingass regardtsh e murdero f JudithR.e ferrinmga inlyt o

paragrap9h5s9 t o 961o f theT rialJ udgemen~tc,~i t raisedt hef ollowinmga ina rguments: The inconsismucrye liedu pon by the TrialC hambert o find WitnessZ unrc).iablaer isesf roma differenabee tweenW itnessZ 's confessiotno Rwaudana uthoritiesh,i s writtens tatementatn d his testimonyH.o wever, neithetrh eD efencnco rt he TrialC hambepu tt hiss inglei nconsistentcoy ~6tA ppeltanBtr'ise fp,a za4.. 44I.n t hiisn stantchee,P rosecuitsir odne rdtogR ule9 2hiosf t heR uleofs ICTYa ndt hec asel awr t~atitnhge reto. 16~A pp~/laBurti'espfa.r a4.. 44. je xl~b icpfa,r 4a.,4 4. J~P ata9.5 9o ft heT riaJlu dgemerneta ds":O ncaeg aint,h eo nlyc videnocfet heA ~usexld'isr ect involveimnet nhte k illionfgJ uditihst het estimoofnW yi tneZs.sH ec himetdoh aveh ada conversawtiitohn theA ccusiendf ronotf t ~,t b~ureacuo mmunajlu,s ta fteJru dithweassc ortpeads t".P ara9.6 0o ft hcl udgcmnt readsT:h eC hambaecre ~ttsh atW itnegs sw asi nvolviendt hek illionfgJ udith(.A ccordtionW gi mcsYs' s statemeonf1t 7 S eptemb1e9r9 9W,i mesZs,R ushimabnadh el edJ udittho h erh ousew,h crs~h ew ask illebdy RushimbHao)w.e vetrh,eC hambcearn norte lyo no thears pecotfsW itneZs'ss a ccouonftt hei ncidenAtn.d" theT riaClh ambeard ded":I nh isc onfessoifo2 n2 J tme1 998W,i mesZs a dmittheids i nvolvemiennt th e muaieorfJ uditbhu ts aindo thianbgo uatn c neountwei.trht heA ~usr.idns, p itoef m entionhiinmig n r elation tot hek illionfgP astoMru gangHae.f irsrtc farrtcodm eetitnhge A ccusiendh iss tatemoeftn1 t8 S eptambcr 1999w,h arhee d eclare"dH:ea skeuds w herwee h adf ounJdu ditahn,d b eforweec ouladn swehre,w ento nt o say:' Thato'ksa y.T'h iiss i nc ontradicwitiitohhni st estim(oansye x~crpdt aeb,o vea)c,c ordtionw gh ictth e witnessha dt heo PIX~Rtntiotr ye pltyo t heA ccusedq'use stiboenf orbee intgo ld",T hat'fsi ne"O.t lmr inconsisteanrceai pepsm 'b.unttn eendo tb ee nteriendt hoe reT.h ep oinitst t hatth es upposceodn versation betwec,n W itnesZs a nd~ hoA ccuseidsn otc orroboraWtiemde.sY s w ho,a ccorditnoWg i tnes7s, ,w aso nly somem eterash eaddi dn otr efetro a nyc onv~atbieotnw eeWni tneZs sa ndt heA ccuseIdt.i sp ossibloef, cours.t~h,a tt heA ccuswehdo w as,a ccorditnoWg i tneYs,si nh iso fficweh enJ uditwha st akepna stt,o ok noticaen dc amoeu tt ot hee ntranwchee rhee m etW itneZs.sH owevetrh,i mse rpeo ssibilciatnyn ofto rtitfhye accouonfta witnewshso smea reliabiilsiq tuye stion(aVb.l5e. 4a.n1d5 .5).S'e eT riaJlu dgemepnatr,a 9.6 1 (Footnootmeist ted). 48 CaseN o.:I CTR.95-1A-A 13D eoctab2e0r0 2

the WitnessO.n thisp oint,t heP rosecutiroenf erst he AppcalCsh ambetro tlh6e5s ,~congrd ounodf a ppeal; The inconsistendcoye sn ot underminth e cvidcnct,h att he Accusedc ame out of his officew henJ udithw as escortepda sth is premisesa,n d had a cons~rsatiowni thW itnessZ . Furthex,W itnessY 's testimonyi s not inconsistewnitt hW itnesZs' sa nd cannotb e usedt o discrediWti tnesZs' s testimondyu ct o thef actt hat" thes upposecd nversatiboent weeWni tnesZs andr .heA ccuseids n otc orrobora't'e1d6.6I n thatc onnectiotnh,e P rosecution contendtsh atW itnessZ 'st estimoniys corroboratseudb stantialblyy t he testimonoyf Witness) 67A ccordintgo theP rosecutiotnh,e TrialC hamber shouldh aveaskedW itnesseYs a nd Z to explaint hemselveosn thesem inor inconsisten)c6i8es. 96. In the lighto f the above,t he AppealsC hamberu nderstandtsh att he Prosecution takesi ssuew itht he..T rialC hambeorn twom ainp ointsI.n respecotf thesep ointst,h e A~p6p~ealCsh ambecro nsiderass follows: TheT rialC hambenro to nlyr eliedu ponp riors tatementisn ordert o assess thec redibiliotfy t hew imssesbsu ti t alsou sedt hemf ort het ruthof their contc:at. 97. Accordintgo the Prosecutioonn,l ye videncaed mitteads hearsaym ayb e

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aketno h erh ousteo b ek illtehde ret;h asth ew ast akepna stth ~w indoofwt heo ffice oft heA
ccuseadn;dt ha!tR ushiamnbdaW itneYs ksi llehde rn,o tZ ".S eeA pl~UanBtr'ise fp,a ra4.. 57. ~sT
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a~.)___A~msenocfet]e Accuseda t e Gatward ium on 13 " 1994 102.T heP rosecu(:a[rognu etsh ata
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boxS.e eT (A)2, J ul2y0 :~p2p,1 60a nd 174A - ~ 161. ppella'sn Btr iefp,a re4,. 66. CaseN o.:I
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Prosecutiroenf erisn p articulaort hed iscrepanrceyl ieudp onb y theT rialC hmnbeirn
relatitoonw hert~h eA ccusewda ss tandianngd w hats heb eardt heA ccusesda y. 103.C
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llegetdo havea rriveadt t heS tadiuTmh.e T rial Chamberu'sse o f ~het erm"sb eforaen"d " afteri"n i

talicisn t heS udgemeanff irmtsh is interpretatInot nh.ev iewo ft heA ppealCsh axnbenro,t hinign t heT riaClh amerc'osu rse ofa ctioinn dicattheast i tw asu nreasonianbt lhei isn stance. 104.W ithr espectto thea rgumentth att hed iscrepanacsy t o thew ordinogf whatt he Accusesda idw asa minoro ne,t heA ppealCsh ambesre esn othinugn reasonaibnl teh eT rial Chamberf'isn dingast paragra5p4h1 o f theJ udgem~Itn. a nye ventt,h eP rosecutihoans failteto d emonstrtahteea llegeedr rorA.s s tatebdy t heR espondeinttw ,a st hec ombination ofi nconsistenac~i.te osw hent heR espondeanrtr ivewdh,e rhee s tooadn dw hath es aidt hat wasc onsidercerdu ciably theT rialC hambe1r7.7I ndeedt,h eT rialC hambeerx plained that" '[i]hta sn otb ee.pnr ovebde yonrde asonadbolueb tth att heA ccusewda sp resenatt t he Stadiumn Kibuyoen 1 3 April1 994.E vena ssumitnnga tb ew ast heret,h et estimonioefs thew itnessperso videldi ttlien formatiaobno utt hep urposoeft hev isitW.i tnesAsC 's tesfnnosneye mst oi ndicatthea th e simplcya met ov erifwyh ethetrh er efugeheasd a rrived att heS tadiuTmh.e ries i nsufficeiveindte nofec riminianlt entN.oc rimes, u ndetrh eS tatute ~75T heP rosecutrieofne xso,n thisp ointt,o para5.3 9o ft heT riaJlu dgemewnhti chr eads":A lsoW,i ~esAsC testifiteod s eeintgh eA ccuseodn 13 April19 94a t theS tadiurbau,t a t aroun3d p .m.T heC hambedro esn ot attacshi gnificatnoct eh ef actt hatW itnesAs m adeI liao bservataito 2n p.m.w,h ~,aWsi tn~AsC a pparently sawh ima t3 p.m.W imesAs t cstiftih~a th e wasg ivinogn lya n cstiraata@s, h e hadn o watchM.o reoveirt,i s quituen derstandiafb ll:eo twhi messheasd d i~cultiis r ecallitnhge e xactti meo ft heiorb servatailomno st sixy earsa ftert hee ventH.o weverW,i tnesAs restilietdh att heA ccusejdo inedt her efuge(s" nous retrogvda"t) a roun2d p.m.b ~oret heg ateso f theS tadiuwme roep enewdh,er eaWsi tnesAsC observehdi m arriavte a rou3n pd. m.e.t:hteer re fugweeersae t rcaidnys idMeo.r eovieftr h,e A ccusweasdp resenwt hetnh e re~gfer~o Mma banwzear aeb outtoe ntt~h eS tadiuimts, ~ msu nlikeltyh ahte w oulrde tuartna latesrt age toa skw hethtehret efttgheeh sa ds enhta da rriveadss, u ggesbtyeW di tneAsCs." SeeA ppellaBnrri'es\$, papa4.. 64. aT~R cspondBernite'pfsa, r a4.0 2. 52 C~m~N o.:I CTR-95-1A-A 13 Decembe2r0 02

hadb eenc ommittaetdt heS tadiubmy t hats tageT.h ereforteh,e rec anb e noq uestioonf l,i,a1b7iglity. (b) PAr.esenoc_ef _t.he_Aca.tct uhseeC dr atwaSr~od iuomn 1 4A pri119 9 105.T heP rosecutisounb mittsh ati n itsa ssessmeonft t hee videncree latetdo 1 4 April 1994t,h eT riaClh mnbearp plieadni ncorretcets tn,a meltyh at" int hea bsencoefd etailisn" theo ralt estimoonfyW itnesAs t heT riaClh ambecro nsidertehdep riors tatemenoftst his w1i7t9nesasn dc omparietds c ontenttoh iso ralt estimony. t06.A ccorditnog t heP rosecutitohne,o ralt estimonioefs W itnessAe sa ndA C contain ampleev idenucpeo 'wah icha reasonabtlrei eorf f actw oulhda vec oncludtehde p resenocfe theA ccuseadtt heS tadiu1m8.°I tf urthesru bmittehda tt herwea sn ob asifso rr esortitnog thep reviousst atçn~notfs t hew itnesfso r" corroboratiTohne"r.e forteh,e T rialC hamber erreidn f ailitnognp uts uchi nconsistetnocW iietn esAs a tt riatlo a fforhdi ma no pportunity tto8p 1roviedxep lanatifoornrts h es aidi nconsistencies, 107.T heA ppealCsh ambedri smisstehse P rosecutioaur'gsu menrtesl atintgo theT rial Chambera'lsI egeadp plicatoifo nan i ncorretcets ti n itsa ssessmeonftt hee videncBey. virtuoef i tsd iscretionpaorwyte rt,h eT rimC hambecro ulcdo nsidtehre w rittesnt atements "int hea bsenocfec ,thedre tailisn"o rdetto a ssestsh er eliabilaintdcy r edibiloifta y g iven wimessI.n t hisi nstanciet, i so nlya ftert heT rialC hambenro tedt hatt hei nformation providbeydW itnesA~ w as" verlyi mit'e'd18t2h ati td ecidetdo

p rocee"di,n t hea bsencoef 17~ Re,p ondentB'rsi efp,a ra4.0 8. 17, Trialf fudgcm~n~ta.,5 43, ~9 AppoUantB'rsi efp,e :m4.. 73. 18o AppellanBtr'ise fp,. ~xa4.. 74W.i thr espectto WitnesAs, t heP rosecutairognu etsh atW itnesAs p rovided detailiendf ormatrueolna titnugt h~p r~senocfo B agilisha~tmt ah eS tadiuamn dc onsidetrhsa tt hod iscl~paney observeb~yl t heT rialC ~ambcbrc twc~tnh ~t ostimoonfy W i~esAs atadh isp riors tatemenuotusg htt o have b~cmp utt ot heW itnesfso rc larilica(rSjeoenA Pl~llanBtr'ise fp,a ras4.. 75a nd4 .75)R.~ gardiWnigt nesAsC , theP rosecutisounb mittsh att herew asa tr~pleev idenucpeo nw hicht o conclutdh~a tt heW itnesAsC wasa ble to seet heR espondetn~tr ougthh eS tadiugma tesa,n ds eet heA ccusedc'asr ,w hichw asp arkeodn theo ther sideo ft heS tadiuwma ll(SccA pp~llanBtr'ise fp,a ra4.. 77). ~81A ppellanBtr'ise fp,z ~m4.. 79. m Tria.ll ,adgemopnatr,a5 .4 8. 53 CaseN o.:I CTR-95-A]- A 13 Decembe2r0 02

derail~s8"3,t ol ooki ntot hew itnespsr'i ors tatemenuTthse.A ppealCsh ambedro esn otf ind theT riaClh amb'ro, , ,a pproaucnhr easonable. 108.W ithr espectto thea rgumentth att heo ralt estimonioefs W itnesseAs a ndA C combinepdr ovidseu fficieenvti dencuep onw hicha reasonabTlrei alC hambewro uldh ave fountdh att heA ccu;sweads p resenatt t heS tadiutmh,eA ppeaClhsa mbedro esn otc onsider theT riaClh amber'r,e~a sonitnogh e unreasonablenel ,i ghto ft hee videncaed duceadn,d consideritnhge c omradictonrayt ureo f thee videnceT.h eT rialC hambears sesseadn d weighetdh ee videncaed duced,i,n viewo f thes pecificci rcumstanocfe tsh ec ase,i n detemaiinwnhge thero,n thew holet,h ea ccountosf bothw itnessewse rar elevanatn d clrse4+dible, Presenocfe(heA ccuseadtt heG atwarSot ~dim:ocnL1 8A pri1l9 9, 109.T heP rosecu,asounb mittsh att hea ssessmeonft t heo ralt estimonioefsW i tnessGes andA ,lssa ndt hei nferencdersa wnt herefrwoemr ee rroneouTsh.e P rosecuticoonn tends thatt heT riaClh ambetro oki ntoc onsideratfiaocntw sh icwhe ren ote videnotn t her ecord, andw hiccha useidt t os peculatthea tt herwee reo thefra ctorwsh ica hf fecttehde a bilitoyf WitnesGs to seet heA ccuseids.6A ccordintgo theP rosecutioinf, t heT rialC hamber assesstehde e videnccoer rectliyn, l ighotf t hef actt hatW itnesGs k newt heA ccusetdh,e verdicotf t heC hambewro ulhda veb eena ffected.'S7 110.T heA ppealCsh amberre jecttsh eP rosecutioanl'ise gatioIntsr .e calltsh att heT rial Chambeerx pressvliys iteRdw andian ordetro " bettearp preciattheee videntcoeb ea dduced durintgh et ria,l, ~ssT.h ev isinto doubetn abletdh et riailu dgetso f orma concreatned 18~I b"" " ma.,p ara5.4 9. ~4 ~rhcp aucitoyf the~ videnacse t o theA ccusedp'rse sen(cien cluditnhgec onditioonfso bservatiionn crowflcSdt adiuma)d ducebdy ~ Prosecutiforno mW itncssAo sa ndA C,w h~uc onsid~etdo gethewri thf ile lacko fm utuaclo rtobot;atliho~sn i,g nosf u ncertainVt/hiean c counotfs b othw itnessaess t ot hed a~fo ft he sightinagn,d t hes uggestiboynt woo therP rosecutwi~otnn esstehsa tt heA ccusewda si n Mabanzcao mmuna~t 9 ~m.o n thed ayi n que.~tiomne,a ntsh att heP rosecutioenv'isd enocfe t heA ceusedp'rse senactet heS tadium on1 4 April19 94f allssh oRo ft hea pplicabsltea ndaorfdp roof".S ~T riaJlt ldg~mcpnatr,a 5.5 3. lssH eret heP rosecutiiosl mta kinrge ferentcoe p aras6.4 9a nd6 51o f fileT ri~J udgemenSte.eA pl:~llant's Briefp,a ras4.. 87a nd4 .88. Is6A ppelJanBtr'ise fp,s ra4 87 Ig~ 9A_P e~~,a n,s t -B rief,l,m " r " a4 ,90,T heP rosecutiaolns oa rguetdh att hef actt hatt hew i~esmsa yn oth ave knowKna yishesmuaf ficienttolb ye ablet oc learliyd entihfiym d oesn otn ecessaraiflyfe cth ew imessa'b ility ~or~gnitshee A ccuserS.e eA ppedlantB'rsi efp,a ra.4 ,89. TriaJlu dgemenpta,r a1L0 , 54 CaseN o.:I CTR-95-1A-A 13 D~cmbm-2 002

realistoipci nioonf t hes ituatioTnh.e i nformatigoant hereddu rintgh ev isitc annobte considersepde culatkevsep,e cialgiivv etnh att hev isiwt a imeadt a ssessitnhge e vidence relatimnagi nltyo t heq uestioofnt hew itnessceosn'd itioofno sb servataitot nh es tadium. 111.I ta ppeartso timA ppealCsh ambetrh att hem aini ssuef ort heT rialC hambewra st o determinwhee theWri tnesGs c oulcl earliyd entitfhye A ccuseadt t heS tadiumn t hatd ay. TheP rosecutisounb mittsh att heT rialC hambesrh oulhda vet akeni ntoc onsiderattihoen factt hatW itnes~s knewt heA ccusedT.h isa rgumenmtu stb e rejecteads theT rial Chambedri dr ecoe.nitzhea tt heW itnes"sk newt heA ccusewdc U'~s~F urthermoriet, appeartsh att hisi ssuew asn otc ruciaflo rt heT rialC hambera;s indicateidn the RcspondenBtr'ise f,li9t° w asr athetrh ei ssueo fv isibiliwthyi cha ppeartso h aveb een cruciaflo rt heT rimC hamberT.h eq uestiobne forteh eT rialC hambewra sh owW itnesGs wasa ble,g ivent hed istanabee tweekni ma ndt hes tadiumt,o specificaildleyntiftyh e Accuseadm ongt hea ttackelr9sl.U ponr eadintgh eJ udgemenitt, a ppeartsh att heT rial Chambehra da veT,p'r ecisied eao ft hec onfiguraotfit ohne p laceI.t a lsoa ppeartsh att he Prosecuticolne arldyi dn otp rovidseu fficieinntf ormatitoont heC hambearn dt hatt he testimoniofet sh ew imesewsh oa ppearbeedf oriet c oulndo ts upporat f indinbgy t heT rial Chambetrh att heA ccusewda sp resenatt theS tadiumn 18 April 1994.O ncea gaint,h e AppealCsh ambeirs o ft hev iewt hatt heP rosecutiaoinl etdo s howt hatt hef indinogfst he TriaClh ambeorn ~ .Liss suwee reu nreasonable. 112.I n viewo f thef oregointgh,e A ppealCsh ambedri smissaelsl t hes ubmissiomnasd e undetrh et hirgdr oineodfa ppeal. 113.T heA ppealCsh ambetrh erefodries missaelsl t heg roundosf appealr aisebdy the Prosecutiaosnt ,h eP rosecuthiaosnf ailetdo e stablithha tt heT riaClh ambecro mmittaendy erroro f factl eadintgo a miscarriaogfe j usticoer anye rroro f lawi nvalidattihneg ludgement. ~s9/bipda.r,e 6.5 0. ~9oR espondenBtr'ise fp,a re4.5 5. i91l adzedt,h eT riaClh atnbe~xrp laintehda t" [a]lthoungdhe fra vourabcloen ditioofno sb servatiao fna,m iliar facem ayb ee asilrye ,o gnisablael,b einto tn e,c ~saridliys tinctitvhee,C hambeirs ooneemaesdt o howt he witneswsa s ablet o specificaildye ntiftyh eA ccuseadn dK ayishomaam ongstth ea ttackerosv ert his distancSee.eT" r ia.ll udg,.~'paaernet6..4 9. 55 C~o No,: ICTR-95-1A.A 13 Decembe2r0 02

VI. DISPOSITION Fort hef oregoirnega sontsh,e A ppealCsh ambeorn, 3 Iuly2 002,a t Arushar,u led asf ollows: "TheA ppealCsh amber, andPursuantEviAdretnicc2el4,eo t f°t heS tatuotfet heT ribunaanldR ulle1 8o ft heR uleosf P rocedure Cons~der|tnhgew rittesnu bmissioonfs t heP anicasn dt heiro rala rgumenatts t heh earing of 2/xdy2 002, Unant:0aouDsilsym isstehse a rgumenotfsI gnacBea gilishcrmeag arditnhge i nadmissibility of theP rosecutioAnp'pse al, UnamznousDliys missetsh e appeal odgedb y theP J:osecutiaogna instth e ludgement deliveroend7 June2 001a,r mw illg ivet heR easonfso rt heJ udgemeinnt d uec omsv, Afflrlttthsea cquittbaylt heT riaClh ambeorna llt hec ountisn t heI ndictment, Rulest hati t is notn ecessartyh ereforteo considearl lt hem otionfsr iedb y Ignacc Bagilishvpmuar suantto Rule1 15o f theR uleso f Proceduarned E videncaen,d t heM otion forP rotecdMveva surefso rD efeneWei tnesses, Ordertsh ei mmcdiarne leasoef IgnacBca gilishcma~ Ruletsh ati ti st herefonroetr cr~ssa.r .y .. t°.c onsidetrh,e," 'RequSutreg emdee l 'Intiemn~ demanddee mainl eveed e contrOljeu dicmw[eR espondenUtr'gse nMto tiofno rt heL ifting ofl udiciCaoln troMle asurefsi]l eodn 2 July2 002, Rulest hatt hisJ udgemesnhta llb e enforceidm mediatepluyr suatnot R ule1 19o f theR ules of

~oceduraen dE vidence. Donei a Frencahn dE nglisthh,e F rencthe xtb einagu thoritative. ClaudeJ orda MohamcdS hahabuddeen PresidiJnugd ge DavidH unt Judge Judge FaustoP ocar TheodorM eron Judge Judge Datetdh ist hirdda yo fJ uly2 002 At ArtL~hTaa,n zania." CaseN o.:I CTR-95-1A-A 57 13 Decembe2r0 02

Them asonfso rJ udgemeanrte n ows eto uti nt hef oregoitnegx t. Donei nF rencahn dE nglisthh,e F rencthe xtb einagu thoritative. i ClaudJeo rda MohamedS hahabuddeen DavidH unt PresidiJnugd ge Judge Judge FaustPoo car TheodorM eron Judge Judge Datedt hist hirteendtahy o fD ecemb2e0r0 2 [Sealo ft heT ribunal] 58 Cas~N o.:I CTR-95-1A-A 13 Decembe2r0 02

ANNEX A: APPEALS PROCEEDINGS 1, _ Summaroyf f actsr elatint~orf ilinfosn a ppeal 1. On 9 July2 001,t he Prosecutiaopnp ealetdh e Judgemenrte ndereodn 7 June2 001 by theT rialC hambe1r9.2 By decisiodna ted2 6 Septembe2r0 01,t he PresidinJgu dgeo f the AppealCsh ambedre signatheidm selPfr e-HeariJnugd gei n thep resencta se("Pill")t.9 3 19 Octobe2r0 01,t heP HI issueda n orders ettin2g4 Septembe2r0 01a s theb e~nnindga te fort hep artietso agreeo n thec ontentosf ther ecordo n appeawl4, By decisiorne ndereodn 30 November2 001 19~ JudgesC laudeJ orda, MohamedS hahabuddeenD,a vid Hunt, FaastoP ocara ndT heodoMre ronw erea ssignedto thep resencta se. In accordanwciet ht hed ecisioonf theP FIJD ated1 Octobe2r0 01t,96t heP rosecution friedi tsA ppealB riefio n 29 Octobe2r0 01.1907n 2 Novembe2r0 01,t heP rosecutifoinl eda n urgentm otiofno ra uthorizatitoon e xceedt hep agel imita llovedfo rt heA ppellantB'rsi ef and alternativveeq uesfto r extensioonf time1.9sU ponr ealizintgh ati tsa ppealb rief exceedetdh e numero f pagesa llovedb y the PracticDei rectioonn the Lengtho f Briefs andM otionosn Appeal,t,h eP rosecutiroenq uestetdh e AppealCsh ambetro allowi ts brief as filedo n 29 Octobe2r0 01a nd,a lternativetloy g,r anti t an extensioofn seven(7)d ays withinw hicht o filea newb rief.B y decisiodna ted3 0 Novembe2r0 01,t heP HIo rderetdh e Prosecutitoon f ilea nA ppellanBrrsi efi n accordanwciet ht her equiremenstestf orthi nt he PracticDei rectiwoint hins even(7)d ayso f thes aidd ecisio9n9) Thes aidd riefw asf riedo n 7 Decembe2r0 012.(~:'T he Judgeso f the AppealsC hamberw erei nformeby the Deputy Registraorf theT ribunalo,n 14 Decembe2r0 01,t hatt heA ppellantB'rsi efd idn otc omply m "NotiocfeA ppearf'l,i eidn E ngliosnh9 /ul2 001 193. ~ . y . I~ Ordonnan(cDed szgJmtdi'ounn j uged e la miaee n dtate na,.ppel) ", 26 Soptrrab2c0r0 1. "Orde1r9"O ,c tob2e,r0 01. ~gs" De~isioonnt heC ompositoifot nh eA ppealCsh ambeirnC as~N o.I CTR-95-13A0-N Ao,v emb2e0r0 1. 196" Ddcis(idoenm anddere e pord~eCd ~lai~I) "O,c tob2e0r0 1, 197u ~ . ~, A rrosec.utni os AppealB rief",f ilmo n 29 O~tolmr2 001a nd "Corrizendurmd atiM~r e,r h ~ , ~,I~B rief'f,i led o n 29 Octobe2r0 0r,f,i ledi n Englisohn 30 n~.,.~t..q,'t ~,, ~.,t ..m e Pros~LlnOll S cutiosn U rgenMto tiofno rA uthonsattiooe nx ceetdh ee Rmit anda lternaRteiqvuee fsitz erx tensoifo" n " ~ peg' ' tot heP rosecutsi Aopnp eaBlr ief a~ timef,i lemd Eng,lisohn2 Novemb2~0 01. "Decis(iRoens pondeMnott'isof no rT ranslatainodfn o rA dditioTniamle P;r os~cutUirogne'nsMt o tiofno r AuthorizattiooE nx ceetdh eP ageL imitto t heP ros~utioAnp'pse aBlr ieafn dA ltematiRvecq uesfto r EXtenSioonf Time)",3 0 Novembe2r0 01. Case No.: ICTR-95-I A-A 13 December2 002

tot heP rosecutioRne'psl Byr iefo n 23A pril2 0022, '9t ow hicht heP rosecutiroens ponded on 1 May2 002~.1°/ni tsD ecisioonf 23 2002 11 May2 , theP IIn otedt hati n ordert o ensurea fairt riale,v eryp artyh ast her ightt o challengteh ea rgumentpsu tf orwarbdy the ProsecutiIonn t.h ei nstancta seh,o wevehre,h eld,o nt heo neh and,t hatB agilishheamda had" toutl el oisidre d iscutelre sa rgumenstosu levp#asr l eP rocureduarn as onM ~moire en rdpons[ea"l lt het imet oa ddrestsh ea rgumenrtasi sebdy t heP rosecutiino nit sR eply Brief]a nd,o n theo therh and,t hatt heP rosecutioRne'psl yd idn otc ontaiann yn ew argumenrtesl atitnog t hem aing roundosf appealA.f teerm phasiztihnagt B agilishehraada tailetto s howt hafti lintgh er ejoindwearsj ustififeodra propedre terminaotfit ohnea ppeal, and,a ftere xaminitnhge d ocumencto,n

sideritnhga ti tw asn otn ecessafroyr t hep roper conclusioofnt hea ppealt,h eP HJd ismisstehde s econmdo tion. 2.M Qtionfsi leads _parotft hAa poea!Dsr oeeexlings 4. Them otionfsi leda sp arto ft hea ppealpsr oeeeAirnagiss es everaqlu estionwsh,i ch theA ppealCsh ambecro mbinfeodr c onsideratuinodne rt hef ollowihnega dings: ~s.i.bilityof the ProsecutionA'psp ealP .rief 5, On1 2S eptemb2e0r0 1B,a gilishfeimlae ad motiocnh allengtihnega dmissibiloift-v theP toseeutiaopnp'esa la,r guinngo tabloynt heg roundi,n tearl iat hati tw ast oov agu,waen d imprecisfeo rh imt o understandth eP rosecutorg'rso undosf appeala ndh ence,t o adequatperleyp arhei sd efenc2e1.2B agilishseumbam itttehda ts uchl acko fs pecificoiftt yh e ~otmdosf a ppeawla st antamoutnota lacko fg roundasn dt hatt hereforteh,eP rosecution's Noticoef A ppeadli dn ot" setf ortthh eg roundwsi"t hitnh em eaninogf R ule1 08(Ao)f t he R~es.O n 24 Septembe2r0 01,t heP rosecutiforni edi tsR esponsien Englisahn da n alternatirveeq ues~t. eekinag s uspensioofn t heB riefinsge hedu/aen da n extensioofn 2o9" Requitdee l'Intimedn demandde' " ero~:ureurf)i"l,e do n 23 AvrU2 002,a utorLmtidoen p roduiruen ed upliquaet ,m ~moireen r'pliqueu "v"er/osReeesuptonisoen; ~t-h'eRt eos pondenSte-c-osn Mdo tiofno rl eavteo f ilea Rejoindefri"l.e idt tE nglis h o21n~I . MDac~y2c 0i0sni2 o(.Requiteen demand'e ~ d autor~at~doen p roduiruen ed ttpliquaeu Mdmoireen R~pliqueu Procureur2)3, M ay2 002. z~t2S eptember"Resp°ndcnt'st2o0h 0a1v.etM h°ePt rio'sme cutoNro'tsi coef Appeadle clarienda dmissibfliel"e,od n iii CaseN o.:I CTR-95-1A.A 13 Decembe2r0 02

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ANNEX B: GLOSSARY A. Filings, of the~ Noticeo f Appeal Noticoef Appeafli,l edi n Englishby theP rosecutioonn 9 July2 002. AppellautB'rsi ef rroseeutiso nA ppealB rief(F~herr educedv ersion)", filedo n 19 Decembe2r0 01. Rcspondent'Rse sponse "RespondentB'rsi efi n Response"f,i ledon 7 February 2002. ProsecutionR'esp ly "Prosecut/oRne'psl yB rief,f,i ledon 2 5 Februar2y0 02. B. Referenceerse !attutgo the Indictment AmendedI ndictmenitn TheP rosecutovr. Ignace BagilishemaC,a seN o. ICTR-95-1A-T, 17 Septembe1x9 99. Hearingosn Appeal Hearingosn thea rgumentosf thep artieosn appealh,e ld on 2 and3 July2 002. Bagilishemoar Respondent IgnaceB a#lishema. AppealsC hamber The AppealsC hambero f the InternationaClr iminal Tribunaflo rt heP rosecutioofn P ersonRse sponsibfloer Genocidaen dO therS eriouVsi olationosf International HumanitarianL aw Committedi n the Territorio f Rwandaa nd RwandanC itizenrse sponsibfloer genocide ando thers uchv iolatiocnosm mitteidn thet erritoroyf neighbourinSgt ates,b etween1 January1 994 and CaseN o.;I CTR-95-1A.A I3 Decembe2r0 02

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