# ANNEX A

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International Criminal Tribunal for Rwanda

Tribunal Pénal International pour le Rwanda

UNITED NATIONS

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**TRIAL CHAMBER III**

**Original: English**

**Before Judges:** Yakov Ostrovsky, Presiding
Lloyd G. Williams, QC
Pavel Dolenc

**Registrar:** Adama Dieng

**Date:** 15 May 2003



**THE PROSECUTOR**

**v.**

**LAURENT SEMANZA**

**Case No. ICTR-97-20-T**

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# Separate and Dissenting Opinion of Judge Pavel Dolenc

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**Counsel for the Prosecution:**

Chile Eboe-Osuji

**Counsel for the Defence:**

Charles Acheleke Taku
Sadikou Ayo Alao

## A. Introduction

1. In addressing cumulative charges and multiple convictions based on the same facts in this case, the Chamber has relied on the test articulated by the Appeals Chamber Judgement in *Musema*, which permits cumulative convictions when the different crimes have mutually distinct elements.[1] For the reasons set out in this separate opinion, I do not entirely agree with this approach. In my opinion, the criteria articulated and applied in *Musema* are too formalistic, and result in cumulative convictions in instances where they should not be allowed. Although the *Musema* test purports to limit cumulative convictions by requiring that each of the cumulative crimes has different elements, the practical result is that inter-article cumulative convictions for the three crimes in the Statute are always possible without any legal obstacle.

2. As a result, for reasons of apparent ideal concurrence of offences explained below, I would not enter a conviction either for extermination as a crime against humanity (Count 5), or for serious violations of Common Article 3 (Counts 7 and 13).

3. In the jurisprudence of the Tribunal and of the ICTY, the terms "crime" and "offence" are employed interchangeably to mean either the legal description of the crime or the factual occurrence of the prohibited behaviour or results. To avoid confusion, I will use the term "criminalisation" to denote the legal definition of the crime.

4. In this separate opinion I use the terms "ideal concurrence" and "real concurrence", which are well understood in civil law systems and which have been incorporated into the jurisprudence of the Tribunals. Real concurrence of offences arises when the accused commits more than one crime, either by violating the same criminalisation a number of times, or by violating a number of different criminalisations by separate acts. Apparent real concurrence may arise when a series of separate, but closely related, acts fulfil all the elements of a certain criminalisation, but are considered as a single, albeit continuing, crime. Ideal concurrence refers to the

situation whereby a single act or factual situation violates more than one criminalisation.[2] Apparent ideal concurrence of offences arises when a relationship of concurrence is resolved by the application of further analytical methods.

## B. The Formal Approach to Ideal Concurrence: Jurisprudence of the Two Ad Hoc Tribunals

5. A review of the jurisprudence of both this Tribunal and the ICTY reveals that the question of cumulative convictions for ideal concurrence of offences has troubled trial chambers since the first cases and that the Tribunals' response has been far from uniform. This review will also demonstrate that there have been definite shifts in legal approaches in addressing these concerns. In the first Judgements, the ICTR limited the cumulation of convictions,[3] while the ICTY addressed cumulation only as a matter of sentencing.[4] In a second phase of development, the ICTY Appeals Chamber limited cumulation by applying a reciprocal speciality test.[5] This test was then adopted and applied by the ICTR Appeals Chamber.[6] In what I view as a third phase of development, the ICTY Appeals Chamber then warned that the reciprocal speciality test may not sufficiently address the adverse effects of cumulation of convictions in all circumstances.[7] I accept this conclusion and propose that additional substantive tests be considered.

6. From its first case, *Akayesu*, the Tribunal recognised that multiple convictions based on the same facts should be limited because of the potential prejudice to an accused. The Trial Chamber held that, in light of the prohibition against multiple jeopardy, multiple convictions for the same conduct are generally impermissible.[8] In order to limit the accumulation of multiple convictions, the Trial Chamber set forth

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[1] *Semanza,* Judgement and Sentence, ("Judgement") paras. 408, 409, *citing Musema*, Judgement, AC, paras. 361, 363, 369.
[2] *Kupreskic*, Judgement, TC, paras. 662.
[3] *See, e.g., Musema*, Judgement, TC, paras. 289-299; *Rutaganda*, Judgement, TC, paras. 108-119; *Kayishema and Ruzindana*, Judgement, TC, paras. 625-650; *Akayesu*, Judgement, TC, paras. 461-470.
[4] *See, e.g., Furundzija,* Judgement, TC, paras. 292, 296; *Celebici*, Judgement, TC, para. 1286; *Prosecutor v. Tadic,* Decision on Defence Motion on Form of the Indictment, IT-94-1-T, TC, 14 November 1995.
[5] *Celebici*, Judgement, AC, para. 412.
[6] *Musema*, Judgement, AC, paras. 361, 363.
[7] *Kunarac*, Judgement, AC, paras. 168-198.
[8] *Akayesu*, Judgement, TC, para. 462.

three circumstances where multiple convictions on the same facts are permissible: (1) where the offences have different elements; or (2) where the provisions creating the offences protect different interests; or (3) where it is necessary to record a conviction for both offences in order fully to describe what the accused did.[9] Multiple convictions, however, are not permissible when one offence is a lesser included offence of another, or when an accused is charged as a principal and as an accomplice in the commission of the same crime.[10]

7. In the *Kayishema and Ruzindana* Judgement, the majority of the Trial Chamber, Judge Khan dissenting, narrowed the *Akayesu* test by eliminating the need to consider the full description of the criminal conduct, and retaining the two other criteria. Pursuant to this approach, cumulative convictions were permitted where the offences have different elements or where the laws protect different social interests.[11] The Chamber specifically considered the cumulation of convictions for genocide and extermination as a crime against humanity and found that the legal elements of genocide generally differed from those of crimes against humanity, but that the violation of both may overlap in a particular factual scenario.[12] In the circumstances of the case, the Chamber found that genocide overlapped with murder and extermination as crimes against humanity because the same evidence established both counts.[13] Accordingly, the social interest protected by the three crimes was identical, and the elements were the same.[14] Murder and extermination as crimes against humanity were "subsumed" by the genocide, making all three the "same offence".[15] In such circumstances, concurrent convictions for all three crimes would be improper, untenable, and would amount to convicting twice for the same offence.[16]

8. In his dissenting opinion, Judge Khan considered that the cumulation of convictions for the same factual conduct was permissible, and that the consequence of

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[9] *Akayesu*, Judgement, TC, para. 468.
[10] *Akayesu*, Judgement, TC, para. 468.
[11] *Kayishema and Ruzindana*, Judgement, TC, para. 627.
[12] *Kayishema and Ruzindana,* Judgement, TC, para. 636.
[13] *Kayishema and Ruzindana*, Judgement, TC, para. 647.
[14] *Kayishema and Ruzindana*, Judgement, TC, paras. 641-643.
[15] *Kayishema and Ruzindana,* Judgement, TC, para. 648.
[16] *Kayishema and Ruzindana*, Judgement, TC, paras. 649-650.

concurrence of convictions should be considered only at sentencing.[17] He noted that while national courts differ, the international jurisprudence has consistently approached this question as one of sentencing.[18]

9. The Khan dissent followed a series of ICTY decisions and judgements, based on an early *Tadic* preliminary motion decision, which concluded that multiple charges and convictions based on ideal concurrence of crimes are generally permissible because cumulative convictions are at all relevant only "if and when matters of penalty fall for consideration."[19] According to the *Tadic* approach, the Prosecutor has wide discretion to charge multiple counts, either alternatively or cumulatively, for the same alleged conduct. The logical conclusion is that an accused may be convicted for multiple counts based on the same facts, but that the sentence will reflect the criminal conduct of the accused, rather than the "technicalities of pleading".[20]

10. The trial Judgements in *Rutaganda* and *Musema* agreed that it is permissible to convict an accused of two or more offences for the same conduct under certain circumstances. The Trial Chamber reiterated the *Akayesu* findings and concluded that the offences in the Statute have "disparate ingredients" and are aimed at protecting discrete interests.[21] At the same time, both Judgements endorsed the dissenting opinion of Judge Khan, particularly in relation to the importance of cumulative convictions in capturing the full extent of the crimes.[22]

11. In *Celebici*, the Appeals Chamber departed from the permissible approach adopted by a number of Trial Chambers, recognising that, for reasons of fairness to the accused, only distinct crimes may justify multiple convictions.[23] The Appeals

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[17] *Kayishema and Ruzindana*, Judgement, Separate and Dissenting Opinion of Judge Tafazzal Hossain Khan Regarding the Verdicts Under the Charges of Crimes Against Humanity/Murder and Crimes Against Humanity/Extermination, TC, para. 6.
[18] *Kayishema and Ruzindana*, Judgement, Separate and Dissenting Opinion of Judge Tafazzal Hossain Khan Regarding the Verdicts Under the Charges of Crimes Against Humanity/Murder and Crimes Against Humanity/Extermination, TC, paras. 12, 23.
[19] *Prosecutor v. Tadic*, Decision on Defence Motion on Form of the Indictment, IT-94-1-T, TC, 14 November 1995, para 17. *See also Celebici*, Judgment, TC, para. 1268.
[20] *Prosecutor v. Tadic*, Decision on Defence Motion on Form of the Indictment, IT-94-1-T, TC, 14 November 1995, para. 17.
[21] *Musema*, Judgement, TC, para. 297; *Rutaganda*, Judgement, TC, para. 117.
[22] *Musema*, Judgement, TC, para. 296; *Rutaganda*, Judgement, TC, para. 116.
[23] *Celebici*, Judgement, AC, para. 412. This test has been affirmed and applied in subsequent ICTY cases. *See, e.g., Kupreskic*, Judgement, AC, paras. 385-388; *Jelisic*, Judgement, AC, para. 82; *Vasiljevic*, Judgment, TC, paras. 265-266; *Krnojelac*, Judgement, TC, paras. 502-503; *Kvocka*,

Chamber concluded that cumulative convictions for ideal concurrence of crimes are permissible when they have materially distinct elements (the test of reciprocal speciality).[24] The Appeals Chamber found that it was not permissible to convict for the same violation for war crimes under Article 3 of the ICTY Statute and for violations of Geneva Conventions under Article 2 of that Statute because they do not have materially distinct contextual elements.[25] In such a case, the Appeals Chamber applied the principle of specificity, so that the more specific criminalisation applies.[26] The *Musema* Appeals Judgement adopted this test.[27]

12. However, even as the Appeals Chamber adopted the reciprocal speciality test in the *Celebici* judgement, two of the five judges on the panel considered that this approach was problematic.[28] Judges Hunt and Bennouna reasoned from the premise that, as a matter of principle, cumulative convictions for the same conduct should be avoided because they cause unjust prejudice to the accused.[29] They agreed that multiple convictions for the same conduct may be permissible when the competing criminalisations have mutual distinct material elements.[30] In the minority's opinion, however, this determination should be limited to the legal description of the accused's conduct *(actus reus* and *mens rea*), and should not focus on the contextual (legal prerequisite or chapeaux) elements of the crimes, because these general provisions bear no relevance either to the culpable conduct of the accused or to the victims.[31]

13. In the *Kunarac* case, the ICTY Appeal Chamber upheld the reciprocal speciality test adopted by the *Celebici* Appeals Judgement, applying it also to ideal concurrence

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Judgement, TC, paras. 213-215; *Krstic*, Judgement, TC, para. 664; *Kordic and Cerkez*, Judgement, TC, para. 814-818; *Kunarac*, TC, paras. 549-552.

[24] *Celebici*, Judgement, AC, para. 412.

[25] *Celebici*, Judgement, AC, paras. 423-427.

[26] *Celebici*, Judgement, AC, para. 413.

[27] *Musema*, Judgement, AC, paras. 361, 363.

[28] *Celebici*, Judgement, Separate and Dissenting Opinion of Judge David Hunt and Judge Mohamed Bennouna, AC.

[29] *Celebici*, Judgement, Separate and Dissenting Opinion of Judge David Hunt and Judge Mohamed Bennouna, AC, paras. 22, 23 (considering the prejudice of "the punishment and social stigmatization inherent in being *convicted* of a crime" and the impact on sentence, parole, early release, risk of increased sentence for subsequent convictions in another jurisdiction (emphasis in original)).

[30] *Celebici*, Judgement, Separate and Dissenting Opinion of Judge David Hunt and Judge Mohamed Bennouna, AC, para. 24.

[31] *Celebici*, Judgement, Separate and Dissenting Opinion of Judge David Hunt and Judge Mohamed Bennouna, AC, paras. 25-27, 33. *See also Kupreskic*, Judgement, TC, para. 699 ("In order to apply the

of war crimes under Article 3 and crimes against humanity under Article 5 of the ICTY Statute.[32] However, the Appeals Chamber cautioned that the test is "deceptively simple", and that it is difficult to apply in a way that is "conceptually coherent and promotes the interests of justice."[33] The Appeals Chamber recognized that cumulative convictions create a real risk of prejudice to the accused that is not cured by concurrent sentencing.[34] The Appeals Chamber concluded that the permissibility of multiple convictions ultimately turns on the intentions of the lawmakers, and found that the Security Council desired that all species of the crimes be "adequately described and punished".[35]

14. In my view, the jurisprudence of both ad hoc Tribunals establishes that, in principle, multiple convictions based on the same facts should be limited because of the risk of prejudice to the accused. Various chambers have articulated different tests intended to serve this limiting purpose. The reciprocal speciality approach, articulated in the Appeals Chamber Judgements in *Celebici* and *Musema*, is based on this very concern. However, in practice, this test does not really provide any limiting effect. I believe that this is the issue addressed by the *Kunarac* Appeals Chamber in its warning against a mechanical application of the test.

15. In my opinion, this dilemma is even more evident in the context of this Tribunal, insofar as each of the three sets of crimes in the ICTR Statute, genocide, crimes against humanity, and serious violations of Common Article 3 and Additional Protocol II, has different contextual elements. It must be recalled that the *Celebici* test was developed in response to multiple convictions based on Articles 2 and 3 of the ICTY Statute. Absurdly, the test created to *limit* multiple convictions at the ICTY results in blanket permission for inter-article cumulation of convictions at the ICTR, which only has a single war crimes article. In the *Musema* Judgement, the Appeals Chamber declined to confirm this obvious effect, which results from abandoning the

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principles on cumulation of offences set out above specific offences rather than diverse sets of crimes must be considered." (emphasis in original)).

[32] *Kunarac*, Judgement, AC, paras. 168-198.

[33] *Kunarac*, Judgement, AC, para. 172.

[34] *Kunarac*, Judgement, AC, para. 169.

[35] *Kunarac*, Judgement, AC, para. 178.

more restrictive *Akayesu* approach in favour of the *Celebici* reciprocal speciality test.[36]

16. This problem is exacerbated by the factual context of the crimes committed in Rwanda in 1994, where genocide, consisting of widespread and systematic attacks against Tutsi civilians, overlapped with armed conflict. In such circumstances, the very same factual context will necessarily satisfy all of the contextual elements of each of the three crimes. Thus, virtually every criminal act could be classified as a violation of three different contextual provisions.

17. In my view, such results are not consistent with basic principles of law. Logically, and pursuant to the civil law principle of *ultima ratio,* a lawmaker should repress socially harmful conduct or results through a single criminalisation only as a last resort. It is also an elementary principle of justice that an accused should be punished for his criminal conduct only once. To achieve this objective, the lawmaker should exclude from the legal description of the crime those particulars which may occur in specific cases but are not significant for the definition of the socially dangerous behaviour.

18. In this regard, I disagree with the conclusion that it was the intention of the Security Council to permit cumulative convictions.[37] The Statute is not a premeditated criminalisation of contemporary international criminal law, which evidences a desire to enable cumulative convictions for ideal concurrence of crimes; rather the Statute is an often awkward and overlapping assembly of three formerly independent crimes into a single Statute.[38] If the intention of the authors of the Statute was to permit cumulative convictions, contrary to the ordinary principles of logic, rationality, and justice, then this intention should have been clearly indicated. Moreover, if the Security Council really intended to permit cumulative convictions in order to reflect

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[36] *Musema*, Judgment, AC, para. 368.
[37] *See, e.g., Kunarac*, Judgement, AC, para. 178.
[38] *See Celebici*, Judgement, Separate and Dissenting Opinion of Judge David Hunt and Judge Mohamed Bennouna, AC, paras. 21, 27.

the totality of a perpetrator's criminal conduct, then this objective is not achieved by concurrent sentencing for multiple convictions based on the same facts.[39]

19. Moreover, to dissect the complex factual circumstances of the Rwandan conflict in order to satisfy distinct contextual elements for the purposes of multiple convictions interferes with the principle that the verdict and sentence should reflect the *totality* of the accused's criminal conduct. In my view, it is more appropriate to consider these events, and an accused's participation in them, as a complete whole. Integral facts which do not directly satisfy an element of the selected crime may constitute aggravating circumstances. It serves no purpose, in my view, to convict an accused, on the basis of a single act, for genocide, crimes against humanity, *and* war crimes, for the sole purpose of demonstrating the three facets of the contextual situation.

### C. Substantive Approach to Ideal Concurrence

20. I believe that the concept of ideal concurrence of crimes is well understood, notwithstanding certain terminological differences between legal systems. Ideal concurrence of crimes may result in multiple convictions and penalties for the same conduct, which runs contrary to elementary principles of justice and may prejudice the accused. In particular, multiple convictions for the same conduct unfairly stigmatises an accused and may have adverse collateral consequences, such as increasing the sentence or diminishing the accused's eligibility for parole.[40]

21. The *Celebici/Musema* test takes a formal approach to ideal concurrence of offences, grammatically analysing the elements of the legal definitions of crimes,

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[39] If the single act is committed in a context which results in three separate convictions under each of the three crimes in the Statute, the result will, in most cases, be three concurrent sentences. In my view, this approach results in more lenient sentences and fails to reflect the totality of the context, since each of the sentences is assigned in ignorance of the other two crimes. For example, one sentence will reflect the accused's conduct in connection with the armed conflict, another sentence will reflect his conduct as part of the widespread attack, and the third will reflect his conduct as part of the genocide; no single concurrent sentence will reflect the totality of his conduct within the total context. On the other hand, if the factual and contextual circumstances are considered in their totality, resulting in a single appropriate conviction and sentence, then all relevant circumstances would be reflected in both the verdict and the sentence.

[40] *See, e.g., Celebici*, Judgement, Separate and Dissenting Opinion of Judge David Hunt and Judge Mohamed Bennouna, AC, paras. 22, 23.

including the contextual elements, in the abstract. This approach fails to consider the importance of the apparently different elements, either in relation to the events in Rwanda or in the particular circumstances of the case. Such an approach cannot achieve an accurate assessment of whether the criminal definitions are really distinct. Since the expressed purpose of the *Celebici/Musema* test is to limit cumulative convictions to genuinely distinct crimes, I am of the view that the test is insufficient to achieve this purpose.

22. Therefore, I propose to articulate a more substantive analysis. In doing so, I have reasoned from the premise, already accepted in the jurisprudence of the Tribunal, that the verdict must fully reflect the entire culpable conduct of the accused. Cumulative convictions which exceed this objective are therefore unsound. Cumulative convictions, while theoretically permissible, should not be the norm; rather cumulative convictions based on ideal concurrence of offences should be the exception.

23. In principle, I agree that the starting point of the analysis should be a comparison of the different elements of the crimes in order to determine reciprocal speciality. I further agree that the contextual elements should be considered as part of this analysis. However, I believe that this comparison must include a substantive assessment of whether the contextual elements of each article are of such significance that they considerably change the nature or gravity of the crimes in question and therefore justify cumulative convictions for the ideal concurrence of crimes under several articles.[41] This additional criterion is particularly useful in the circumstances of Rwanda. As already noted, most culpable conduct in Rwanda in 1994 was committed in circumstances which fulfilled the contextual requirements of all three sets of crimes.

24. The tools for this substantive analysis are already present in the jurisprudence of the Tribunals. For example, the principle of consumption *(lex consumens derogat legi consumptae)* could also be applied as an additional method to determine the propriety

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[41] *See, e.g., Celebici*, Judgement, Separate and Dissenting Opinion of Judge David Hunt and Judge Mohamed Bennouna, AC, para. 18 ("However, we do not believe that the interests identified by the Prosecution are so *genuinely different* that they justify cumulative convictions for otherwise identical criminal conduct.") (emphasis added).

of cumulative convictions for ideal concurrence.[42] Consumption refers to relationships between offences of the same kind, but of considerably different gravity, that are designed to protect the same or closely related social interests, but which differ in relation to particular elements. In such circumstances, the more grave crime consumes the lesser crime. Similarly, the more serious forms of participation consume the less serious forms, so that the direct commission of a crime would consume instigation or assistance and even forms of superior responsibility.

25. Subsidiarity, which has also been applied by both the ad hoc Tribunals, may also be useful in identifying circumstances of apparent ideal concurrence.[43] Pursuant to the principle *lex primaria derogat legi subsidiariae,* a less authoritative or "inferior" criminalisation only applies when the competing "superior" criminalisation is not applicable. This type of relationship may be expressly provided, for example by the use of "if not otherwise provided" or "other... acts", or may be inferred from the nature of the competing criminalisations.

26. The principle of inclusion may also provide some further assistance in certain circumstances. Where an accused's conduct violates two or more substantially different criminalisations, but where it would be unreasonable to render cumulative convictions because of the insignificance of the lesser crime, the principle of inclusion permits the less serious crime to be included in the more serious crime.

## D. Application of the Substantive Approach to the Facts

27. In my view, genocide is a more specific crime than crimes against humanity or serious violations of Common Article 3 and Additional Protocol II. Accordingly, applying the principles of speciality and subsidiarity to competing criminalisations in ideal concurrence, the crimes constituting genocide should prevail over both of the other competing sets of crimes.

28. When faced with a situation of ideal concurrence of the accused's conduct that also fulfils all the contextual elements of all three sets of crimes, I would thus enter a

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[42] *See, e.g., Kunarac,* Judgement, AC, para. 170; *Kupreskic*, Judgement, TC, para. 688.

conviction for only genocide. By comparing the significance of the contextual elements of the three crimes, I consider that the genocidal purpose, to destroy a particular group of people on discriminatory grounds, is more important, stigmatizing, and far-reaching than the contextual elements of the other two crimes. In the context of Rwanda, genocide consumes crimes against humanity in relation to the same factual conduct committed on the same discriminatory grounds against the same civilian population. Genocide and crimes against humanity consume serious violations of Common Article 3 and Additional Protocol II based on the same facts committed against the same civilian population, because the link between the acts of the Accused and the armed conflict is of considerably less significance than the genocidal intent, or the widespread or systematic discriminatory attack against civilians.

29. In the present case, the Accused has been charged with six crimes based on identical allegations of criminal conduct at four massacre sites. The Chamber has found that he is criminally responsible for complicity in genocide (Count 3) and for aiding and abetting extermination (Count 5) on the basis of the same facts. The majority, relying on reciprocal speciality test in *Musema*, considers that inter-article ideal concurrence in this case is appropriate and finds the Accused responsible for both crimes. In my opinion, the genocidal contextual elements in Count 3 consume the reciprocally specific contextual elements of extermination as a crime against humanity in Count 5, because in the circumstances of this case, the genocide was the widespread discriminatory attack. I therefore would not enter a conviction for Count 5, because it is in apparent ideal concurrence with Count 3.

30. For the same reasons, I would not enter a conviction for violations of Common Article 3 at the massacre sites (Count 7) because, in the factual circumstances of this case, the genocide was linked to the armed conflict and the Accused's conduct at the site is fully described by Count 3. I also consider that the violations of Common Article 3 (Count 13) are in apparent ideal concurrence with the convictions for rape, torture, and murder as crimes against humanity (Counts 10, 11, 12). Accordingly, I do not support a conviction for Count 13.

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[43] *See, e.g., Kvocka*, Judgement, TC, para. 228 (finding that other inhumane acts under Article 5(i) a

## E. Apparent Real Concurrence of Crimes

31. Finally, I wish to address the issue of apparent real concurrence of crimes. Although I do not disagree with any part of the Judgement on this issue, I wish to express my opinion in order to highlight the importance of apparent real concurrence of crimes for future indictments and judgements.

32. The most common example of apparent real concurrence is a continuing offence, where each act in a series of separate but closely related acts fulfils all the elements of a certain criminalisation. In such circumstances, it is possible to regard the entire transaction, or series of repeated crimes, as a single crime. For these acts to be joined together, certain linking elements should be taken into account, such as the repetition of the same kind of crimes, the uniformity of the perpetrator's intent, the proximity in time between the acts, the location, the victim or class of victims, the object or purpose, and the opportunity. The construction of continuous offences is especially important in relation to the international crimes in our Statute, particularly in light of the nature of mass violations of basic human rights in Rwanda during a relatively short period of time.

33. In the Indictment, however, the Prosecutor has manipulated the principle of apparent real concurrence for no obvious purpose. For his participation in four separate massacres, the Accused is charged with eight separate counts, six based solely on the general massacres and two other counts based, in part, on his participation in the torture and murder of Rusanganwa. From the construction of the six general counts, it is obvious that the Prosecutor considers all four massacres as one continuing event, despite the fact that the Indictment alleges different forms of participation and different types of crimes, committed against multiple victims, at different times and locations. The Chamber accepts that in this case, the Accused's actions at all four massacres form a single crime. I agree with this conclusion, which is based on the linking elements enumerated above and in the Judgement.[44]

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have a subsidiary nature).

[44] Judgement, para. 508. Although the notion of the "transaction" defined in Rule 2 is not identical to the concept of a continuing offence, the same linking elements may be useful in determining whether a series of crimes is a continuing offence.

34. However, the charges of torture and murder as crimes against humanity in Counts 11 and 12 are less obvious, because they join two otherwise unrelated events involving different forms of participation against different victims at different sites: namely, the torture and murder of Rusanganwa on 13 April 1994 at Musha Church, and the instigation to rape and kill Tutsi women on the same day in Gikoro Commune.[45] These counts of torture and murder join these two separate underlying crimes without any indication of the Prosecutor's justification for this linkage. While charging is, in principle, a matter within the discretion of the Prosecutor, this discretion cannot be used in an arbitrary, illogical, or unfair manner. In my view, the Prosecutor's failure to logically organise and define the scope and nature of the counts in an indictment may result in prejudice to an accused, who must then organise his defence in response to a confusing and illogical indictment. In my view, such arbitrary charging is unsatisfactory and should not be permitted in the future.

## F. Conclusion

35. For the foregoing reasons, I would not enter a conviction for Counts 5, 7, or 13. Since the totality of the Accused's criminal conduct is already reflected in the remaining convictions, this acquittal would not affect the Accused's sentence.

Done in English and French, the English text being authoritative.

Arusha, 15 May 2003.

Pavel Dolenc
Judge

*(Seal of the Tribunal)*

[45] This problem is also apparent in Count 13 (Violations of Common Article 3), for which the Chamber has not entered a conviction.

## ANNEX I: THE INDICTMENT

## THIRD AMENDED INDICTMENT

1. The Prosecutor of the International Criminal Tribunal for Rwanda, pursuant to the authority stipulated in Article 17 of the Statute of the Tribunal of the International Criminal Tribunal for Rwanda (the "Statute of the Tribunal") charges

**LAURENT SEMANZA**

with **GENOCIDE, DIRECT AND PUBLIC INCITEMENT TO COMMIT GENOCIDE, COMPLICITY IN GENOCIDE, CRIMES AGAINST HUMANITY** and **SERIOUS VIOLATIONS OF ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS of 12 August 1949 AND OF ADDITIONAL PROTOCOL II THERETO of 8 June 1977**, all offenses committed in violation of Articles 2, 3 and 4 respectively of the Statute of the Tribunal.

### 2.THE ACCUSED

2.1 **Laurent SEMANZA** was born in 1944 in Musasa Commune, Kigali Rural Prefecture, Republic of Rwanda. The accused was Bourgmestre of Bicumbi Commune for twenty years, until being replaced by Juvenal RUGAMBARARA in 1993.

### 3. CONCISE STATEMENT OF THE FACTS

3.1 Unless specifically stated herein, the violations of International Humanitarian Law referred to in this indictment took place in Rwanda between the 1st of April and 31st of July 1994.

3.2 During the events referred to in this indictment, Tutsis, Hutus and Twas were identified as ethnic or racial groups.

3.3 During the events referred to in this indictment, there were in Rwanda widespread or systematic attacks directed against a civilian population on political, ethnic or racial grounds.

3.4 After the Rwandan Patriotic Front (RPF) attack of October 1990, the Rwandan Government policy was characterized by the identification of the Tutsis as the enemies to be defeated.

3.4.1 This policy defined the main enemy as the Tutsis from inside or outside the country, who wanted power, who did not recognize the achievement of the revolution of 1959, and who was seeking armed confrontation. The secondary enemy was defined as those who provided any kind of assistance to the main enemy. This latter category was considered as accomplices of RPF.

3.4.2 During the events referred to in this indictment, there was a non-international armed conflict in the territory of Rwanda between the Government of Rwanda and the Rwandan Patriotic Front (RPF). The victims referred to in this indictment were Tutsi civilians in Bicumbi and Gikoro communes. These were persons who were protected

under Article 3 common to the Geneva Conventions of 1949 and under Additional Protocol II thereto, and who were not taking active part in the conflict.

3.4.3 Laurent SEMANZA intended the attacks on these victims to be part of the non-international armed conflict because he believed that Tutsi civilians were enemies of the Government and/or accomplices of the RPF and that destroying them would contribute to the implementation of the Government policy against the enemies and the defeat of the RPF.

3.5 At the time of the events referred to in this indictment, the MRND (*Mouvement Republicain National pour le Developpement et la Democratie*) was one of the political parties in Rwanda. The members of the youth wing of the MRND were called *Interahamwe*. The majority of them went on to become paramilitary militiamen. During the events referred to in this indictment the term *Interahamwe* came to be applied civilians, regardless of their political or organizational affiliation, who attacked the Tutsi civilian population.

3.6 **Laurent SEMANZA** was Bourgmestre of BICUMBI commune for over twenty years. At the time of the events referred to in this indictment, the accused was a member of the Central Committee of the MRND. Furthermore, he was nominated as an MRND Representative to the National Assembly of the broad-based transitional government, which was to be established pursuant to the Arusha Accords. Consequently, he was a very influential person in his community, both in Bicumbi commune and in neighbouring GIKORO commune, and had *de facto* and/or *de jure* authority and control over militiamen, in particular *Interahamwe*, and other persons, including members of the Rwandan Armed Forces (FAR), communal police and other government agents. He used his influence and authority as an agent of the government to advance its war effort against the RPF.

3.7 Between 1991 and 1994, **Laurent SEMANZA** chaired meetings during which he made threatening remarks towards Tutsis and those who were not MRND members.

3.8 As of the beginning of 1994, **Laurent SEMANZA** chaired meetings to incite, plan and organize the massacres of the Tutsi civilian population.

3.9 As early as 1991, **Laurent SEMANZA** aided and participated in the distribution of weapons and the training of young MRND militiamen, the *Interahamwe* who were well structured, complementary and acted in concert with the Armed Forces in the non-international armed conflict above mentioned (sub-parag. 3.4.2), and continued to do so until 1994, inclusive. During the events referred to in this indictment, several of these militiamen were directly involved in the massacres of the Tutsi civilian population. Laurent SEMANZA intended these massacres to be in junction with the non-international armed conflict as stated in subparagraph 3.4.3 *supra*.

3.10 On or about 10 April 1994, **Laurent SEMANZA** worked in close cooperation with the Bourgmestre of Gikoro, Paul BISENGIMANA, to organize and execute the Ruhanga massacres, Gikoro commune, where thousands of persons had taken refuge to escape the killings in their sector.

3.11 Between 9 and 13 April 1994, **Laurent SEMANZA** worked in close cooperation with the Bourgmestre of Gikoro, Paul BISENGIMANA, to organize and execute the massacres at Musha church, Gikoro commune, where several hundred people had taken refuge to escape the killings in their sector. On or about 13 April 1994, Laurent SEMANZA led the attack on the refugees at the Musha church and personally participated in the killings.

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

3.13. On or about 12 April 1994, **Laurent SEMANZA** organized and executed the massacre at Mabare mosque, Bicumbi commune, where several hundred people had taken refuge to escape the killings. On or about 12 April 1994, **Laurent SEMANZA** directed the attacks on refugees at the Mabare mosque and personally participated in the killings.

3.14 The massacres referred to in paragraphs 3.8 through 3.13 above, included killing and causing serious bodily and mental harm, including rape and other forms of sexual violence, to members of the Tutsi ethnic group. Laurent SEMANZA intended these massacres to be part of the non-international armed conflict against the RPF because he believed the Tutsi refugees to be enemies of the Government and/or accomplices of the RPF as stated in paragraph 3.4.2 and 3.4.3 *supra*.

3.15 Between 6 April and 30 April, 1994, in Bicumbi and Gikoro Communes, Laurent SEMANZA instigated, ordered and encouraged militiamen, in particular *Interahamwe*, and other persons to rape Tutsi women or commit other outrages upon the personal dignity of Tutsi women, and such people did rape Tutsi women or commit other outrages upon the personal dignity of Tutsi women in response to the instigation, orders and encouragement of SEMANZA.

3.16 Between 6 April and 30 April, 1994, in Bicumbi and Gikoro Communes, Laurent SEMANZA had *de facto* and/or *de jure* authority and control over militiamen, in particular *Interahamwe*, and other persons, including members of the Rwandan Armed Forces (FAR), communal police and other government agents, and he knew or had reason to know that such persons were about to commit acts of rape or other outrages against the personal dignity of Tutsi women, and he failed to take necessary and reasonable measures to prevent such acts, which were subsequently committed. Laurent SEMANZA intended the acts described in Paragraphs 3.15 and 3.16 to be part of the non-international armed conflict against the RPF as stated in subparagraphs 3.4.2 and 3.4.3 *supra*.

3.17 Between April 7 and April 30 1994, Laurent SEMANZA spoke to a small group of men in Gikoro Commune. He told them that they had killed Tutsi women but that they must also rape them before killing them. In response to Semanza's words the same men immediately went to where two Tutsi women, Victim A and Victim B, had taken refuge. One of the men raped Victim A and two men raped and murdered Victim B. Laurent SEMANZA intended the acts described in this paragraph to be part

of the non-international armed conflict against the RPF as stated in subparagraphs 3.4.2 and 3.4.3 *supra*.

3.18 On or about 13 April 1994, in Musha Secteur, Gikoro Commune, Laurent SEMANZA and Paul BISENGIMANA interrogated a Tutsi man, Victim C, in order to obtain information about the military operations of the *Inkotanyi*, or RPF. During the time the interrogation was taking place, the RPF was advancing toward Gikoro and Bicumbi communes. Laurent SEMANZA and Paul BISENGIMANA each cut off one of Victim C's arms while they were interrogating him. Victim C died as the result of these injuries. Laurent SEMANZA intended the acts described in this paragraph to be part of the non-international armed conflict against the RPF as stated in subparagraphs 3.4.2 and 3.4.3 *supra*.

3.19 On or about 8 April 1994, Laurent SEMANZA met Juvenal RUGAMBARARA and a group of *Interahamwe* in front of a particular house in Bicumbi Commune. Laurent SEMANZA told the *Interahamwe* to search for and kill the members of a particular Tutsi family. Immediately thereafter, in Laurent SEMANZA's presence, Juvenal RUGAMBARARA also told the *Interahamwe* to locate and kill the same Tutsi family. A short time later the *Interahamwe* searched a field near the house and found and killed four members of the family; Victim D, Victim E, Victim F and Victim G, and also a neighbor, Victim H, and her baby, Victim J.

## CHARGES

The violations of International Humanitarian Law referred to in this indictment were committed in the territory of the Republic of Rwanda between the 1st of April and the 31st of July 1994 and refer to the facts described in paragraphs 3.1 to 3.19 above.

For all the acts described in the paragraphs specified in each of the counts, the accused either planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation and execution of the said acts, or he knew or had reason to know that people acting under his authority and control were about to commit the said acts or had done so and he failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof.

## COUNT 1

By his acts referred to in paragraphs 3.7 to 3.16 above, **Laurent SEMANZA** is responsible for killing and the causing of serious bodily or mental harm to members of the Tutsi population with the intent to destroy, in whole or in part, an ethnic or racial group, as such, and has thereby committed **GENOCIDE**, stipulated in Article 2(3)(a) of the Statute of the Tribunal as a crime, attributed to him by virtue of Articles 6(1) and 6(3), and punishable in reference to Articles 22 and 23 of the same Statute.

## COUNT 2

By his acts in relation to the events described in paragraphs 3.7 and 3.8 above, **Laurent SEMANZA** did directly and publicly incite to kill and to cause serious

bodily or mental harm to members of the Tutsi population with the intent to destroy, in whole or in part, an ethnic group as such, and has thereby committed **DIRECT AND PUBLIC INCITEMENT TO COMMIT GENOCIDE** stipulated in Article 2(3)(c) of the Statute of the Tribunal as a crime, attributed to him by virtue of Article 6(1) and punishable in reference to Articles 22 and 23 of the same Statute.

**COUNT 3**

By his acts in relation to the events described in paragraphs 3.7 to 3.16 above, **Laurent SEMANZA** is an accomplice to the killing and causing of serious bodily or mental harm to members of the Tutsi population and has thereby committed **COMPLICITY TO COMMIT GENOCIDE** stipulated in Article 2(3)(e) of the Statute of the Tribunal as a crime, attributed to him by virtue of Article 6(1) and punishable in reference to Articles 22 and 23 of the same Statute.

**COUNT 4**

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

**COUNT 5**

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

**COUNT 6**

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

**COUNT 7**

By his acts in relation to the events described in paragraphs 3.4 (subparagraphs 3.4.1 to 3.4.3), 3.6 and 3.9 to 3.16 in particular, **Laurent SEMANZA** is responsible for causing violence to life, health and physical or mental well-being of persons, in the course of a non-international armed conflict, in particular murder as well as cruel treatment such as rape, torture, mutilations or any form of corporal punishment, and has thereby committed **SERIOUS VIOLATIONS OF ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS** of 12 August 1949, for the **PROTECTION OF WAR VICTIMS**, particularly paragraph (1)(a), and of **ADDITIONAL PROTOCOL II** thereto of 8 June 1977, particularly Article 4(2)(a), stipulated in Article 4(a) of the Statute of the Tribunal as a crime, attributed to him by virtue of Articles 6(1) and 6(3), and punishable in reference to Articles 22 and 23 of the same Statute.

**COUNT 8**

By his acts in relation to the events described in paragraphs 3.15 and 3.16 above, **Laurent SEMANZA** is responsible for the **RAPE** of civilians as part of a widespread or systematic attack against a civilian population on political, ethnic or racial grounds, and has thereby committed a **CRIME AGAINST HUMANITY** stipulated in Article 3 (g) of the Statute of the Tribunal as a crime, attributed to him by virtue of Articles 6(1) and 6(3), and punishable in reference to Articles 22 and 23 of the same Statute.

**COUNT 9**

By his acts in relation to the events described in paragraphs 3.4 (subparagraphs 3.4.1 to 3.4.3), 3.6, 3.14, 3.15 and 3.16, **Laurent SEMANZA** is responsible for causing outrages upon personal dignity of women, including humiliating and degrading treatment, rape, sexual abuse and other forms of indecent assault, in the course of a non-international armed conflict, and has thereby committed **SERIOUS VIOLATIONS OF ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS** of 12 August 1949, for the **PROTECTION OF WAR VICTIMS** particularly paragraph (1)(c), and of **ADDITIONAL PROTOCOL II** thereto of 8 June 1977, particularly Article 4(2)(e), stipulated in Article 4(e) of the Statute of the Tribunal as a crime, attributed to him by virtue of Articles 6(1) and 6(3), and punishable in reference to Articles 22 and 23 of the same Statute.

**COUNT 10**

By his acts in relation to the events described in paragraph 3.17 above, **Laurent SEMANZA** is responsible for the **RAPE** of Victim A and Victim B as part of a widespread or systematic attack against a civilian population on political, ethnic or racial grounds, and has thereby committed **CRIMES AGAINST HUMANITY** stipulated in Article 3(g) of the Statute of the Tribunal as a crime, attributed to him by virtue of Articles 6(1) and 6(3), and punishable in reference to Articles 22 and 23 of the same Statute.

**COUNT 11**

By his acts in relation to the events described in paragraphs 3.17 and 3.18 above, **Laurent SEMANZA** is responsible for the **TORTURE** of Victim A, Victim B and Victim C as part of a widespread or systematic attack against a civilian population on political, ethnic or racial grounds, and has thereby committed **CRIMES AGAINST HUMANITY** stipulated in Article 3(f) of the Statute of the Tribunal as a crime, attributed to him by virtue of Articles 6(1) and 6(3), and punishable in reference to Articles 22 and 23 of the same Statute.

**COUNT 12**

By his acts in relation to the events described in paragraphs 3.17 and 3.18 above, **Laurent SEMANZA** is responsible for the **MURDER** of Victim B and Victim C as part of a widespread or systematic attack against a civilian population on political, ethnic or racial grounds, and has thereby committed **CRIMES AGAINST HUMANITY** stipulated in Article 3(a) of the Statute of the Tribunal as a crime, attributed to him by virtue of Articles 6(1) and 6(3), and punishable in reference to Articles 22 and 23 of the same Statute.

**COUNT 13**

By his acts in relation to the events described in paragraphs 3.4 (subparagraphs 3.4.1 to 3.4.3), 3.6, 3.17 and 3.18 above **Laurent SEMANZA** is responsible for causing violence to the life, health and physical or mental well-being of Victim A, Victim B and Victim C in the course of a non-international armed conflict, including murder as well as cruel treatment; to wit rape, torture and mutilation, and has thereby committed **SERIOUS VIOLATIONS OF ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS** of 12 August 1949, for the **PROTECTION OF WAR VICTIMS**, particularly paragraph (1)(a), and of **ADDITIONAL PROTOCOL II** thereto of 8 June 1977, particularly Article 4(2)(a), stipulated in Article 4(a) of the Statute of the Tribunal as a crime, attributed to him by virtue of Articles 6(1) and 6(3), and punishable in reference to Articles 22 and 23 of the same Statute.

**COUNT 14**

By his acts in relation to the events described in paragraph 3.19 above, **Laurent SEMANZA** is responsible for the **MURDER** of Victim D, Victim E, Victim F, Victim G, Victim H and Victim J as part of a widespread or systematic attack against a civilian population on political, ethnic or racial grounds, and has thereby committed **CRIMES AGAINST HUMANITY** stipulated in Article 3(a) of the Statute of the Tribunal as a crime, attributed to him by virtue of Articles 6(1) and 6(3), and punishable in reference to Articles 22 and 23 of the same Statute.

Kigali, Rwanda 12-10-99

For the Prosecutor

Bernard A. Muna

Deputy Prosecutor

## ANNEX II: JUDICIAL NOTICE

### PART A

1. Between 6 April 1994 and 17 July 1994, citizens native to Rwanda were severally identified according to the following ethnic classifications: Tutsi, Hutu and Twa.

2. The following state of affairs existed in Rwanda between 6 April 1994 and 17 July 1994. There were throughout Rwanda widespread or systematic attacks against a civilian population based on Tutsi ethnic identification. During the attacks, some Rwandan citizens killed or caused serious bodily or mental harm to persons perceived to be Tutsi. As a result of the attacks, there was a large number of deaths of persons of Tutsi ethnic identity.

3. Between 1 January 1994 and 17 July 1994 in Rwanda there was an armed conflict not of an international character.

4. Between 1 January 1994 and 17 July 1994, Rwanda was a state party to the *Convention on the Prevention and Punishment of the Crime of Genocide* (1948), having acceded to it on 16 April 1975.

5. Between 1 January 1994 and 17 July 1994, Rwanda was a state party to the Geneva Conventions of 12 August 1949 and their Additional Protocol II of 8 June 1977, having succeeded to the Geneva Conventions of 12 August 1949 on 5 May 1964 and having acceded to Protocols additional thereto of 1977 on 19 November 1984.

6. Before the introduction of multi-party politics in Rwanda in 1991, the office of the *Bourgmestre* was characterised by the following features:

(a) The *Bourgmestre* represented executive power at the *commune* level.
(b) The *Bourgmestre* was appointed and removed by the President of the Republic on the recommendation of the Minister of the Interior.
(c) The *Bourgmestre* had authority over the civil servants posted in his *commune*.
(d) The *Bourgmestre* had policing duties in regard to maintaining law and order.

### PART B

i. Décret-Loi no. 01/81 du 16 janvier 1981 relatif au recensement à la carte d'identité, au domicile et à la residence des Rwandais.
ii. Arrete ministeriel no. 01/03 du 19 janvier 1981 portant mesures d'execution du décret-Loi no. 01/81 du 16 janvier 1981 relatif au recensement à la carte d'identite, au domicile et à la résidence des Rwandais: J.O. no. 2 *bis* du 20 janvier 1981.
iii. Commission pour le memorial du génocide et des massacres au Rwanda, "Rapport préliminaire d'identification des sites du génocide et des massacres d'avril–juillet 1994 au Rwanda."
iv. UN Secretary-General, "Report on the situation of Human Rights in Rwanda" submitted by Mr. R Degni-Ségui, Special Rapporteur of the Commission on Human Rights, under paragraph 20 of commission resolution E/DN.4/S-3/1 of 25 May 1994, 28 June 1994, pages 5, 6, 7, 8 and 17. UN Document

E/CD.4/1995/7.

v. UN Secretary General, 'Report on the situation of Human Rights in Rwanda' submitted by Mr. R. Degni-Ségui, Special Rapporteur of the Commission on Human Rights, under paragraph 20 of commission resolution E/DN.4/S-3/1 of 25 May 1994, 18 January 1995. UN Document E/CD.4/1995/7.

vi. UN Secretary-General, "Final Report of the Commission of Experts Established Pursuant to Security Council Resolution 935 (1994)". UN Document S/1994/1405, 9 December 1994.

vii. Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions on his mission to Rwanda, submitted by Mr. Bacre Waly Ndiaye, 8–17 April 1993, including as annex II the statement of 7 April 1993 of the Government of Rwanda concerning the final report of the independent International Commission of Inquiry on human rights violations in Rwanda since 1 October 1990. UN Document E/CN.4/1994/7/add.1, 11 août 1993.

viii. Rapport spécial du Secrétaire Général sur la Mission des Nations Unies pour l'assistance au Rwanda (MINUAR), le 20 avril 1994. UN Document S/1994/470.

ix. Report of the United Nations High Commission for Human Rights on his Mission to Rwanda of 11–12 May 1994, dated 19 May 1994. UN Document E/CN.4/S-3/3.

x. The United Nations and Rwanda 1993–1996. The United Nations Blue Books Series, Volume X (New York: Department of Public Information, United Nations, 1996).

## ANNEX III: LIST OF CITED JUDGEMENTS AND SENTENCES

Akayesu (ICTR)

*The Prosecutor v. Akayesu*, Case No. ICTR-96-4-T, Judgement, ICTR TC, 2 September 1998.

*The Prosecutor v. Akayesu*, Case No. ICTR-96-4-T, Sentence, ICTR TC, 2 October 1998.

*The Prosecutor v. Akayesu*, Case No. ICTR-96-4-A, Judgement, ICTR AC, 1 June 2001.

Aleksovski (ICTY)

*The Prosecutor v. Aleksovski*, Case No. IT-95-14/1-T, Judgement, ICTY TC, 25 June 1999.

*The Prosecutor v. Aleksovski*, Case No. IT-95-14/1-A, Judgement, ICTY AC, 24 March 2000.

Bagilishema (ICTR)

*The Prosecutor v. Bagilishema*, Case No. ICTR-95-1A-T, Judgement, ICTR TC, 7 June 2001.

*The Prosecutor v. Bagilishema*, Case No. ICTR-95-1A-A, Motifs de l'Arrêt, ICTR AC, 13 December 2002.

Blaskic (ICTY)

*The Prosecutor v. Blaskic*, Case No. IT-95-14-T, Judgement, ICTY TC, 3 March 2000.

Celebici (ICTY)

*The Prosecutor v. Delalic et al. (Celebici Case)*, Case No. IT-96-21-T, Judgement, ICTY TC, 16 November 1998.

*The Prosecutor v. Delalic et al. (Celebici Case)*, Case No. IT-96-21-A, Judgement, ICTY AC, 20 February 2001.

Furundzija (ICTY)

*The Prosecutor v. Furundzija*, Case No. IT-95-17/1-T, Judgement, ICTY TC, 10 December 1998.

Jelisic (ICTY)

*The Prosecutor v. Jelisic*, Case No. IT-95-10-T, Judgement, ICTY TC, 14 December 1999.

*The Prosecutor v. Jelisic,* Case No. IT-95-10-A, Judgement, ICTY AC, 5 July 2001.

Kambanda (ICTR)

*The Prosecutor v. Kambanda,* Case No. ICTR-97-23-S, Judgement and Sentence, ICTR TC, 4 September 1998.

*Kambanda v. The Prosecutor,* Case No. ICTR-97-23-A, Judgement, ICTR AC, 19 October 2000.

Kayishema and Ruzindana (ICTR)

*The Prosecutor v. Kayishema and Ruzindana,* Case No. ICTR-95-1-T, Judgement, ICTR TC, 21 May 1999.

*The Prosecutor v. Kayishema and Ruzindana,* Case No. ICTR-95-1-T, Sentence, ICTR TC, 21 May 1999.

*The Prosecutor v. Kayishema and Ruzindana,* Case No. ICTR-95-1-A, Judgement, ICTR AC, 1 June 2001.

Kordic and Cerkez (ICTY)

*The Prosecutor v. Kordic and Cerkez,* Case No. IT-95-14/2-T, Judgement, ICTY TC, 26 February 2001.

Krnojelac (ICTY)

*The Prosecutor v. Krnojelac,* Case No. IT-97-25-T, Judgement, ICTY TC, 15 March 2002.

Krstic (ICTY)

*The Prosecutor v. Krstic,* Case No. IT-98-33-T, Judgement, ICTY TC, 2 August 2001.

Kunarac (ICTY)

*The Prosecutor v. Kunarac et al.,* Case No. IT-96-23-T & IT-96-23/1-T, Judgement, ICTY TC, 22 February 2001.

*The Prosecutor v. Kunarac et al.,* Case No. IT-96-23-A & IT-96-23/1-A, Judgement, ICTY AC, 12 June 2002.

Kupreskic (ICTY)

*The Prosecutor v. Kupreskic et al.,* Case No. IT-95-16-T, Judgement, ICTY TC, 14 January 2000.

*The Prosecutor v. Kupreskic et al.,* Case No. IT-95-16-A, Judgement, ICTY AC, 23 October 2001.

Kvocka (ICTY)

*The Prosecutor v. Kvocka et al.,* Case No. IT-98-30/1-T, Judgement, ICTY TC, 2 November 2001.

Musema (ICTR)

*The Prosecutor v. Musema,* Case No. ICTR-96-13-T, Judgement and Sentence, ICTR TC, 27 January 2000.

*Musema v. The Prosecutor,* Case No. ICTR-96-13-A, Judgement, ICTR AC, 16 November 2001.

Ntakirutimana (ICTR)

*The Prosecutor v. Elizaphan and Gerard Ntakirutimana,* Case No. ICTR-96-10-T & ICTR-96-17-T, Judgement and Sentence, ICTR TC, 21 February 2003.

Ruggiu (ICTR)

*The Prosecutor v. Ruggiu,* Case No. ICTR-97-32-I, Judgement and Sentence, ICTR TC, 1 June 2000.

Rutaganda (ICTR)

*The Prosecutor v. Rutaganda,* Case No. ICTR-96-3-T, Judgement and Sentence, ICTR TC, 6 December 1999.

Serushago (ICTR)

*The Prosecutor v. Serushago*, Case No. ICTR-98-39-S, Sentence, ICTR TC, 5 February 1999.

Sikirica (ICTY)

*The Prosecutor v. Sikirica et al.*, Case No. IT-95-8-S, Sentencing Judgement, ICTY TC, 13 November 2001.

Simic (ICTY)

*The Prosecutor v. Simic*, Case No. IT-95-9/2-S, Sentencing Judgement, ICTY TC, 17 October 2001.

Tadic (ICTY)

*The Prosecutor v. Tadic,* Case No. IT-94-1-T, Opinion and Judgement, ICTY TC, 7 May 1997.

*The Prosecutor v. Tadic,* Case No. IT-94-1-A, Judgement, ICTY AC, 15 July 1999.

*The Prosecutor v. Tadic*, Case No. IT-94-1-A and IT-94-1-A*bis*, Judgement in Sentencing Appeals, ICTY AC, 26 January 2000.

Todorovic (ICTY)

*The Prosecutor v. Todorovic*, Case No. IT-95-9/1-S, Sentencing Judgement, ICTY TC, 31 July 2001.

Vasiljevic (ICTY)

*The Prosecutor v. Vasiljevic,* Case No. IT-98-32-T, Judgement, ICTY TC, 29 November 2002.