ICTR-97-20-A
4th July 2001
(415 bis A - 381 b (i) A)

415 bis (i)

International Criminal Tribunal for Rwanda
Tribunal Pénal International pour le Rwanda
Arusha International Conference Centre
P.O.Box 6016, Arusha, Tanzania - B.P. 6016, Arusha, Tanzanie
Tel: 255 27 2504207-11 2504367-72 or 1 212 963 2850 Fax: 255 27 2504000/2504373 or 1 212 963 2848/49

ENGLISH
Original : FRENCH

APPEALS CHAMBER

Before Judges: Claude Jorda, Presiding
Lal Chand Vohrah
Mohamed Shahabuddeen
Rafael Nieto-Navia
Fausto Pocar

Registry: Agwu U. Okali

Decision of: 31 May 2000

Laurent Semanza
(Appellant)

vs.

THE PROSECUTOR
(Respondent)

Case No. ICTR-97-23-A

DECISION

Counsel for the Appellant :
Mr. Charles Taku

Counsel for the Prosecution :
Ms Carla Del Ponte
Ms Holo Makwaia
Mr. Bernard Muna
Mr. Frédéric Ossogo
Mr. David Spencer
Mr. Mohamed Othman

4146 A

I. INTRODUCTION

1. The Appeals Chamber of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January 1994 and 31 December 1994 (respectively, "the Appeals Chamber" and "the Tribunal") has before it an interlocutory Appeal lodged on 12 October 1999 (the "Appeal")[1] by Laurent Semanza (the "Appellant") against the "Decision on the 'Motion to Set Aside the Arrest and Detention of Laurent Semanza as Unlawful'" (the "impugned Decision").[2] The Appeals Chamber must also rule on the "Prosecutor's Request to Supplement the Record on Appeal" (the "Prosecutor's Request").[3]

2. The impugned Decision was delivered by Trial Chamber III on 6 October 1999. In that Decision, the Trial Chamber denied the "Motion to Set Aside the Arrest and Detention of Laurent Semanza as Unlawful" (the "Motion to Set Aside as Unlawful").[4] Citing the similarity between the instant case and the interlocutory Appeal as well as the Application for Review in *Jean-Bosco Barayagwiza v. The Prosecutor*[5], the Prosecutor's Request seeks leave to present additional evidence before the Appeals Chamber.

3. Both Parties have adduced the similarity between *Semanza* and *Barayagwiza*.[6] The Chamber recognizes that the two cases are indeed similar in terms of both fact and procedure. However, the similarity between the two cases does not necessarily imply that the legal findings will be the same. The Appeals Chamber would like to recall the specific features of the instant case relative to the *Barayagwiza* case and states that it has considered the issues raised in the instant case on the basis of the specific arguments and grounds submitted to it by the Parties.

---

1 Case No. ICTR-97-20-I, *The Prosecutor v. Laurent Semanza*, "Notice of Appeal (Filed under Article 24 of the Statute and Rules 72 (B), (D) and (E) and 108 of the Rules of Procedure and Evidence)", 12 October 1999.

2 Case No. ICTR-97-20-I, *The Prosecutor v. Laurent Semanza*, "Decision on the 'Motion to Set Aside the Arrest and Detention of Laurent Semanza as Unlawful'", Trial Chamber III, 6 October 1999.

3 "Prosecutor's Request to Supplement the Record on Appeal", 9 November 1999.

4 Case No. ICTR-97-20-I, *The Prosecutor v. Laurent Semanza*, "Motion to Set Aside the Arrest and Detention of Laurent Semanza as Unlawful", 16 August 1999.

5 Case No. ICTR-97-19-AR72, *Jean-Bosco Barayagwiza v. The Prosecutor*, "Decision", Appeals Chamber, 3 November 1999; Case no. ICTR-97-19-AR72, *Jean-Bosco Barayagwiza v. The Prosecutor*, "Decision (Application by the Prosecutor for Review or Reconsideration)", Appeals Chamber, 31 March 2000.

6 Case No. ICTR-97-19-AR72, *Jean-Bosco Barayagwiza v. The Prosecutor*, "Decision", Appeals Chamber, 3 November 1999.

II. PROCEDURAL BACKGROUND[7]

4. On or about 26 March 1996, the authorities in Cameroon arrested the Appellant pursuant to an international arrest warrant issued by the Parquet général (Office of the Public Prosecutor) of the Republic of Rwanda.

5. On 15 April 1996, the Prosecutor submitted a request for provisional measures in respect of the Appellant and 11 others under Rule 40 of the Tribunal's Rules of Procedure and Evidence (the "Rules").

6. On 6 May 1996, the Prosecutor made a request based on Rule 40 of the Rules for the authorities in Cameroon to extend detention by three weeks for all the suspects, including the Appellant.

7. On 17 May 1996, the Prosecutor informed the authorities in Cameroon of its intention to proceed against only four suspects, not including the Appellant.

8. On 21 February 1997, the Court of Appeal for the Centre Province in Yaounde, Cameroon (the "Yaounde Court of Appeal") dismissed the extradition request by Rwanda as inadmissible and ordered the Appellant's release. That same day, the Prosecutor filed a further request for the Appellant to be arrested and placed in provisional detention, pursuant to a second motion based on Rule 40.

9. On 24 February 1997, the Prosecutor applied to the Tribunal for a Transfer and Provisional Detention Order under Rule 40 *bis*. The application was heard on 3 March 1997 at an *ex parte* hearing before Judge Aspegren, who issued an Order that same day, which order was filed on 4 March 1997. The documents were served on the authorities in Cameroon on 6 March 1997 and the Appellant received a copy thereof on 10 March 1997.

10. While awaiting transfer to the Tribunal, on 29 September 1997 the Appellant filed a writ of *habeas corpus* with the Trial Chamber challenging the lawfulness of his detention in Cameroon.

11. On 16 October 1997, the Prosecutor submitted an indictment against the Appellant. The review hearing was held on 17 October 1997 and on 23 October 1997 the indictment was confirmed by Judge Aspegren.

12. The Appellant was transferred to the Tribunal's Detention Facility on 19 November 1997.

13. On 16 February 1998, the Appellant made his initial appearance before the Tribunal and pleaded not guilty to the seven counts in the 23 October 1997 indictment against him.

---

[7] Some dates mentioned in this section differ from the dates used by Trial Chamber III in the impugned Decision. The corrections have been made on the basis of evidence submitted by the Parties and accepted by the Appeals Chamber. Where the dates have not been admitted by the Parties and in the absence of written proof, the Appeals Chamber has restored them to the dates which favoured the Accused.

41261 A

14. On 31 May 1998, the Prosecutor filed a motion under Rule 50 seeking leave to amend the indictment in order to add a new count. By oral Decision of 18 June 1999, Trial Chamber II granted the Prosecutor's motion. A written Decision was subsequently filed, on 2 September 1999.

15. On 24 June 1999, pursuant to Rule 50 (B), the Appellant made a second initial appearance on the basis of the amended indictment and pleaded not guilty to all counts.

16. The same day, after the Appellant had made his plea, the Prosecutor sought leave to correct errors in the English and French translations of the amended indictment. The Trial Chamber granted the Prosecutor's motion and the Prosecutor filed a second amended indictment on 2 July 1999.

17. On 16 August 1999, Counsel for the Appellant filed the Motion to Set Aside the Arrest and Detention of Laurent Semanza as Unlawful.

18. Trial Chamber III heard both Parties on 23 September 1999 and on 6 October 1999 delivered its Decision dismissing the said Motion.

19. On 12 October 1999, the Appellant appealed against the Decision of 6 October 1999.

20. On 9 November 1999, the Prosecutor filed the "Prosecutor's Request to Supplement the Record on Appeal".

III. APPLICABLE PROVISIONS

A. The Statute

Article 9: *Non bis in idem*

[...]2. A person who has been tried before a national court for acts constituting serious violations of international humanitarian law may be subsequently tried by the International Tribunal for Rwanda only if:

(a) The act for which he or she was tried was characterised as an ordinary crime; or

(b) The national court proceedings were not impartial or independent, were designed to shield the accused from international criminal responsibility, or the case was not diligently prosecuted. [...]

Article 19: Commencement and conduct of trial proceedings

1. The Trial Chambers shall ensure that a trial is fair and expeditious and that proceedings are conducted in accordance with the Rules of Procedure and Evidence, with full respect for the rights of the accused and due regard for the protection of victims and witnesses.

2. A person against whom an indictment has been confirmed shall, pursuant to an order or an arrest warrant of the International Tribunal for Rwanda, be taken into custody, immediately informed of the charges against him or her and transferred to the International Tribunal for Rwanda. [...]

4116J A

Article 20: Rights of the Accused

[...]4. In the determination of any charge against the accused pursuant to the present Statute, the accused shall be entitled to the following minimum guarantees, in full equality:

(a) To be informed promptly and in detail in a language which he or she understands of the nature and cause of the charge against him or her;

(b) To have adequate time and facilities for the preparation of his or her defence and to communicate with counsel of his or her own choosing;

(c) To be tried without undue delay; [...]

B. The Rules

Rule 40 *bis*: Transfer and Provisional Detention of Suspects

[...](C) The provisional detention of the suspect may be ordered for a period not exceeding 30 days from the day after the transfer of the suspect to the detention unit of the Tribunal.

Rule 40 *bis*: Transfer and Provisional Detention of Suspects (as adopted on 15 May 1996)

[...](D) The provisional detention of a suspect shall be ordered for a period not exceeding 30 days from the signing of the provisional detention order. [...]

Rule 62: Initial Appearance of Accused

Upon his transfer to the Tribunal, the accused shall be brought before a Trial Chamber without delay, and shall be formally charged. [...]

Rule 72: Preliminary Motions

[...](B) Preliminary motions by the accused are:

(i) Objections based on lack of jurisdiction;

(ii) Objections based on defects in the form of the indictment;

(iii) Applications for severance of crimes joined in one indictment under Rule 49, or for separate trials under Rule 82 (B);

(iv) Objections based on the denial of request for assignment of counsel.

[...](D) Decisions on preliminary motions are without interlocutory appeal, save in the case of dismissal of an objection based on lack of jurisdiction, where an appeal will lie as of right.

(E) Notice of appeal envisaged in Sub-Rule (D) shall be filed within seven days from the impugned decision. [...]

418bis

Rule 115: Additional Evidence

(A) A party may apply by motion to present before the Appeals Chamber additional evidence which was not available to it at the trial. Such motion must be served on the other party and filed with the Registrar not less than fifteen days before the date of the hearing.

(B) The Appeals Chamber shall authorise the presentation of such evidence if it considers that the interests of justice so require.

IV. THE PROSECUTOR'S REQUEST TO SUPPLEMENT THE RECORD ON APPEAL

21. Before considering the interlocutory Appeal, the Appeals Chamber must rule on the Prosecutor's Request to Supplement the Record on Appeal.

A. Procedural Background

22. On 9 November 1999, the Prosecutor filed a Request[8] seeking leave for both Parties to present additional evidence in the light of the findings in the Appeals Chamber Decision rendered on 3 November 1999 in the case of *Jean-Bosco Barayagwiza v. The Prosecutor* (the "*Barayagwiza* Decision").[9] On 11 November 1999, the Appellant filed a response[10] to the Prosecutor's Request.

23. In a Scheduling Order[11] delivered on 8 December 1999, the Appeals Chamber ordered the Prosecutor to file, within seven days, a brief specifying the additional evidence which it wished to present before the Appeals Chamber under Rule 115. The same Order granted the Appellant leave to respond to that brief within seven days of receipt. The Appeals Chamber stated that it would then rule on the question of additional evidence.

24. On 15 December 1999, the Prosecutor filed a Brief[12] containing the additional evidence, in accordance with the Scheduling Order. The Appellant responded,[13] through his Lead Counsel, on 21 December 1999. On 22 December 1999, his co-Counsel filed a separate Brief in response,[14] which also addressed the issue of admissibility of the additional evidence.

---

8 "Prosecutor's Request to Supplement the Record on Appeal", 9 November 1999.

9 Case No. ICTR-97-19-AR72, *Jean-Bosco Barayagwiza v. The Prosecutor*, "Decision", Appeals Chamber, 3 November 1999.

10 "Defendant's Reply in Opposition to Prosecutor's Request to Supplement the Record on Appeal", 11 November 1999.

11 "Decision and Scheduling Order", 8 December 1999.

12 "Prosecutor's Brief in Response to the Appeals Chamber's Decision and Scheduling Order of 8 December 1999", 15 December 1999.

13 "Respondent/Appellant's Brief in Response to the Appeals Chamber's Decision and Scheduling Order of 8 December 1999", 21 December 1999.

14 "Response to the Prosecutor's Brief dated 15 November 1999 and Communicated to the Appellant on 16 and 17 November 1999", 22 December 1999.

4096/5A

25. On 14 January 2000, the Appeals Chamber ruled[15] on the Prosecutor's Request, in accordance with the Scheduling Order. The Order granted the Prosecutor leave to proceed on the basis of the additional evidence cited in its Brief while allowing the Appellant to challenge that admissibility and probative value of said evidence. At a hearing held in Arusha on 16 February 2000, the Appeals Chamber heard the Parties on the issue of admissibility of the additional evidence.

B. Arguments of the Parties

26. On 15 December 1999, the Prosecutor filed 14 documents[16] which she viewed as components of the additional evidence needed for the Appeals Chamber to rule on the lawfulness of the Appellant's arrest and detention. On 21 January 2000, the Prosecutor completed the Record on Appeal by annexing thereto a further 7 documents.[17]

27. The Prosecutor takes the view that the *Semanza* case, which is in many respects identical to the *Barayagwiza* case, "is not sufficiently ripe for a decision".[18] The *Barayagwiza* Decision of 3 November 1999, in her view, set forth new jurisprudence which "was either undecided or unsettled"[19] prior to that Decision and which the Parties could not have known at the hearing on the Motion to Set Aside as Unlawful. In her view, that situation therefore created a need to supplement the Record on Appeal, which, she believed, would be enriched by fresh legal arguments based on and in the light of the findings set forth in the *Barayagwiza* Decision.

28. On the basis of Rule 115 (A), the Prosecutor argues that the evidence in question was not available to Trial Chamber III during the proceedings and "submits that the question of whether the evidence was available at the trial must be determined on a case-by-case basis, considering the circumstances that existed at the time of the trial at issue".[20]

29. The Prosecutor submits that two factors should be taken into consideration, the first of which is the relevance of the evidence to the trial: thus, according to the Prosecutor, "one reason for evidence to be deemed not available is that it is not relevant to the issues of fact raised in the motion presented to the Trial Chamber".[21] In the instant case, the Prosecutor submits that the Prosecution could not have presented evidence which it deemed irrelevant both to the Appellant's Motion before the Trial Chamber and to the impugned Decision.

---

15 "Order (Prosecutor's Request to Supplement the Record on Appeal)", 14 January 2000.

16 "Prosecutor's Brief in Response to the Appeals Chamber's Decision and Scheduling Order of 8 December 1999", 15 December 1999, Annexes A to N.

17 "The Prosecutor's Response to the Preliminary Appellate Brief in Support of the Notice of Appeal of 12 October 1999 from the Order of 6 October 1999 Rendered by Trial Chamber III on the Defence Motion to Set Aside the Arrest and Detention of Laurent Semanza as Unlawful", 21 January 2000, Annexes O to T.

18 "Prosecutor's Request to Supplement the Record on Appeal", 9 November 1999, para. 13.

19 *Ibid.*, para. 12.

20 "Prosecutor's Brief in Response to the Appeals Chamber's Decision and Scheduling Order of 8 December 1999", 15 December 1999, para. 27.

21 *Ibid.*, para. 29.

4086 A

30. The second factor which must be considered, in the Prosecutor's view, is the relevance of the evidence under the applicable law: the Prosecutor argues that "No party can be expected to offer evidence that is not relevant under the applicable law, and no party can be expected to introduce evidence in anticipation of a new interpretation of the law that may change the applicable law in the future. Therefore, another reason for evidence to be deemed not available is that it is not relevant under the law that is known to apply to the matter before the Trial Chamber at the time of trial".[22] In the instant case, the Prosecutor's view is that the new evidence was rendered unavailable inasmuch as it related to points of law which the Chamber had not considered; those points of law were raised only after the *Barayagwiza* Decision had been delivered.

31. The Prosecutor submits that the interests of justice also require the Appeals Chamber to take into account all the evidence presented by the Prosecution. In the Prosecutor's view,[23] the interests of justice should be viewed principally in the light of the reasons for establishing the International Criminal Tribunal for Rwanda set out in the United Nations Security Council resolution 955 (1994).

32. The Appellant, on the other hand, contends that the Prosecutor has failed to prove that the Prosecution did not have the evidence presented in its Brief at its disposal at the time of the trial. In the Appellant's view, "this application is but a frantic attempt to anticipate issues and/or reopen the debate on the jurisprudence of *Jean-Bosco Barayagwiza*".[24] The Appellant argues that the evidence was available as, in his view, it related to issues raised at the hearing before Trial Chamber III of his preliminary motion challenging the lawfulness of his arrest. The Appellant adds that some documents are in relation to unfounded arguments[25] and that he was not mentioned therein either by name or status.[26] In addition, according to the Appellant, part of the evidence had not been disclosed to him in spite of the Prosecutor's obligations under the Rules.[27] Consequently, the Appellant rejects the Prosecutor's arguments in respect of the availability of the evidence. In his view, the Prosecutor did possess the evidence but simply failed to make use of it.[28] The Prosecutor had never requested the Tribunal to extend the time-limit to enable her to obtain those items of evidence, nor did she make use of the opportunities available to her under the Statute and the Rules.[29]

---

22 *Ibid.*, para. 34.
23 *Ibid.*, paras. 57-64.
24 "Defendant's Reply in Opposition to Prosecutor's Request to Supplement the Record on Appeal", 11 November 1999, para. 11.
25 "Transcript", 16 February 2000, pp. 75-76.
26 "Response to the Prosecutor's Brief dated 15 November 1999 and Communicated to the Appellant on 16 and 17 November 1999", 22 December 1999; § IV, fifth para.; "Transcript", 16 February 2000, p. 75.
27 "Respondent/Appellant's Brief in Response to the Appeals Chamber's Decision and Scheduling Order of 8 December 1999", 21 December 1999 p. 6, final para.
28 "Defendant's Reply in Opposition to Prosecutor's Request to Supplement the Record on Appeal", 11 November 1999, para. 19; "Transcript", 16 February 2000, pp. 37-38.
29 "Response to the Prosecutor's Brief dated 15 November 1999 and Communicated to the Appellant on 16 and 17 November 1999", 22 December 1999; § III, seventh to ninth paras.

40761

33. On a more fundamental level, the Appellant does not accept the Prosecutor's arguments as to the interpretation of Rule 115, maintaining that "whereas the confusion between the unavailability of evidence and the need to adduce or not said evidence in fulfilment of its mission by an organ of the Tribunal, cannot be considered as sufficient explanation for the availability or not of said evidence, whose proven unavailability would result in its admissibility at appeal".[30] In the Appellant's view, the interests of justice should therefore oblige the Appeals Chamber to refuse to admit the evidence presented by the Prosecutor, who, "just as for any other organ of the Tribunal, or any party, [...] is bound by the rights and privileges stipulated in the Statute and Rules".[31]

C. Discussion

34. Rule 115 sets forth the basic criteria for presenting additional evidence. Under the Rule, two criteria must be met: the additional evidence must not have been available at the trial, and said evidence would be presented if the interests of justice so require.

35. Just as the Appeals Chamber of the International Criminal Tribunal for the Former Yugoslavia held in its *Tadić* Decision[32] of 15 October 1998, this Appeals Chamber holds that generally, admission of additional evidence must be restrictive and confined to narrowly defined limits. In the *Tadić* Decision, ICTY Appeals Chamber held that "there is some limitation to any additional evidentiary material sought to be presented to the Appeals Chamber; otherwise, the unrestricted admission of such material would amount to a fresh trial. Further, additional evidence should not be admitted lightly at the appellate stage, considering that Rule 119 [Request for Review] provides a remedy in circumstances in which new facts are discovered after the trial".[33]

36. Any analysis of the criteria stipulated by Rule 115 for presentation of additional evidence must therefore be rigorous. The Appeals Chamber will first discuss the two criteria, their significance and the principles that underlie their application. It will then apply those principles to the instant case.

1. Criteria for the admissibility of additional evidence

(a) Unavailability of evidence

37. To be admissible under Rule 115, evidence must not have been available to the moving Party at the time of the trial. In the aforementioned *Tadić* Decision, ICTY Appeals Chamber considered the principles for interpreting the unavailability criterion. This Appeals Chamber will recall the substance of the general principles for interpreting this criterion

---

30 *Ibid.*, p. 11, final para.
31 *Ibid.*, p. 13, § V, para. 5
32 Case No. IT-94-1-A, *Prosecutor v. Duško Tadić*, "Decision on Appellant's Motion for the Extension of the Time limit and Admission of Additional Evidence", 15 October 1998. At the time the *Tadić* Decision was delivered, the content of Rule 115 of the Rules of Procedure and Evidence of ICTY was identical to that of ICTR Rule 115.
33 *Ibid.*, para. 42.

4068is A

which were considered in the *Tadić* Decision and will therefore also adopt the following conclusions:

- The reasons adduced to justify the unavailability of evidence are of capital importance in decisions on the admissibility of additional evidence. If the moving Party does not put forward valid reasons as to why the evidence was not available, said evidence is deemed to have been available and is therefore not admitted.[34]

- It is not possible to dissociate consideration of the unavailability criterion from the criterion of diligence of the Party filing a motion under Rule 115. The moving Party must show that it acted with due diligence,[35] implying that it must prove that it used "all mechanisms of protection and compulsion available under the Statute and the Rules of the International Tribunal to bring evidence [...] before the Trial Chamber".[36] Otherwise, the evidence will not be deemed unavailable.

(b) The interests of justice

38. Rule 115 states that "The Appeals Chamber shall authorise the presentation of such evidence if it considers that the interests of justice so require". In the *Tadić* Decision, ICTY Appeals Chamber took the opportunity to rule on the significance of this criterion, holding that "[...] the interests of justice require admission only if: (a) the evidence is relevant to a material issue; (b) the evidence is credible; and (c) the evidence is such that it would probably show that the conviction was unsafe".[37]

(c) Principles for applying the two admissibility criteria

39. In the *Tadić* Decision, ICTY Appeals Chamber explains the general principles for applying the two criteria discussed above.

40. Generally speaking, the unavailability criterion must be satisfied before the interests-of-justice criterion is considered.[38] In the view of ICTY Appeals Chamber, the primacy of the unavailability criterion derives from the principle of finality: "if [...]

---

[34] In the *Tadić* Decision, the Appeals Chamber is definite about this point, holding that "additional evidence is not admissible under Rule 115 in the absence of a reasonable explanation as to why it was not available at trial" (*ibid.*, para. 45). On several occasions, the Chamber therefore refused to admit some evidentiary material because their unavailability had not been duly proven.

[35] The principle that the diligence criterion must be included when interpreting Rule 115 derives from the Statute: as the Appeals Chamber explains, "[...] Rule 115 is to be read in the light of the Statute; it is therefore subject to requirements of the Statute which have the effect of imposing a duty to be reasonably diligent. Where evidence is known to [a Party], but he fails through lack of diligence to secure it for the Trial Chamber to consider, he is of his own volition declining to make use of his entitlements under the Statute and of the machinery placed thereunder at his disposal [...]" (*ibid.*, para 44).

[36] Case No. IT-94-1-A, *Prosecutor v. Duško Tadić*, "Decision on Appellant's Motion for the Extension of the Time limit and Admission of Additional Evidence", 15 October 1998, para. 47.

[37] *Ibid.*, para. 71.

[38] Thus, ICTY Appeals Chamber declares that "[...] it is clear from the structure of Rule 115 that the 'interests of justice' do not empower the Appeals Chamber to authorise the presentation of additional evidence if it was available to the moving party at the trial" (*ibid.*, para. 35).

405bis A

evidence is admitted on appeal even though it was available at trial, the principle of finality would lose much of the value which it has in any sensible system of administering justice".[39]

41. However, this principle may exceptionally be rendered less absolute by the need to avoid a miscarriage of justice.[40] In the *Tadić* Decision, ICTY Appeals Chamber held that "[...] the principle would not operate to prevent the admission of evidence that would assist in determining whether there could have been a miscarriage of justice".[41] ICTY Appeals Chamber nevertheless emphasized the restrictive nature of this possibility.[42] ICTR Appeals Chamber reaffirms that easing the finality principle must remain a most exceptional act.

2. Application to the instant case of the criteria as outlined

42. The Appeals Chamber has considered the 21 documents (Annexes A to T)[43] presented by the Prosecutor. Some of those documents, namely Annexes O to T, which were attached to the Prosecutor's Response of 21 January 2000,[44] were not formally

---

[39] *Ibid.*

[40] The *Tadić* Decision states that "[...] the principle of finality must be balanced against the need to avoid a miscarriage of justice; when there could be a miscarriage, the principle of finality will not operate to prevent the admission of additional evidence that was not available at trial, if that evidence would assist in the determination of guilt or innocence" (*ibid.*).

[41] *Ibid.*, para. 72.

[42] In the opinion of ICTY Appeals Chamber, this restrictiveness derives from the purpose of the finality principle, which "[...] clearly [...] does suggest a limit to the admissibility of additional evidence at the appellate stage" (*ibid.*).

[43] In annex to "Prosecutor's Brief in Response to the Appeals Chamber's Decision and Scheduling Order of 8 December 1999", 15 December 1999: "Records of the Arrest of the Accused in Cameroon" (Annex A); "Record of Service in Cameroon" (Annex B); "Records of the *Procès-Verbal d'Interrogatoire* in Cameroon" (Annex C); "Letters of Appointment of Counsel" (Annex D); "Prosecutor's Rule 40 Detention Request of 15 April 1996" (Annex E); "Record of Proceedings before the Court of Appeal of Centre Province of Cameroon" (Annex F); "Submissions of the *Avocats-Généraux*" (Annex G); "Decision of the Court of Appeal of Centre Province of Cameroon of 21 February 1997" (Annex H); "Extradition Law of Cameroon: *Loi № 97/010 du 10 janvier 1997 modifiant certaines dispositions de la Loi № 64/LF/13 du 26 juin 1964 fixant le régime de l'extradition*" (Annex I); "Letter from the Registrar Concerning the Transfer of the Accused" (Annex J); "Accused's Application for Writ of *Habeas Corpus* (Annex K); "Documents of the Registry Concerning Appointment of Attorney and Initial Appearance" (Annex L); "Report by Judge C. G. Mballe, Judge of the Supreme Court of Cameroon" (Annex M); "Affidavit of Ambassador David J. Scheffer, U. S. State Department" (Annex N). In annex to "Prosecutor's Response to the Preliminary Appellate Brief in Support of the Notice of Appeal of 12 October 1999 from the Order of 6 October 1999 Rendered by Trial Chamber III on the Defence Motion to Set Aside the Arrest and Detention of Laurent Semanza as Unlawful", 21 January 2000: *Lettre du Procureur du Tribunal (TPIR) du 15 octobre 1996* (Annex O); "*Décret № 97/182 du 21 octobre 1997 autorisant le transfert de l'accusé Laurent Semanza*" (Annex O *bis*); "Order for Transfer and Provisional Detention (Rule 40 *bis*)" (Annex P); "Appeals Chamber Decision on the Defence 'Extremely Urgent Motion Seeking a Ruling that Appeals from Orders Ruling on the Trial Chamber's Lack of Jurisdiction and Request for Dismissal of Counts are Suspensive' of 15 November 1999 based on Rule 72 (D)" (Annex Q); two Appeals Chamber Decisions dated 21 January 2000 in *The Prosecutor v. Gratien Kabiligi* (ICTR-97-34-A) and *The Prosecutor v. Aloys Ntabakuze* (ICTR-97-34-A) (Annex R); "*Loi № 64-LF-13 du 26 juin 1964 fixant le régime de l'extradition*" (Annex S); "United States of America Speedy Trial Act (18 USC 3161-3162)" (Annex T).

[44]

404bis A

presented by the Prosecutor as additional evidence. The Appeals Chamber will therefore not rule on their admissibility as additional evidence under Rule 115.

43. The Appeals Chamber has considered the 16 other documents presented by the Prosecutor in its 15 December 1999 Brief[45] in the light of the aforementioned *Tadić* Decision and using the evaluation criteria for admitting evidence which are outlined above. The Chamber ruled that the documents did not meet the first admissibility criterion for additional evidence, namely the unavailability criterion: the Prosecutor had failed to prove in what respect they had not been available at trial. The Prosecutor argued that the *Barayagwiza* Decision was a reason for unavailability. The Appeals Chamber must reject that argument: developments in case-law can in no case be the cause or grounds for, or even a factor in the unavailability of evidence. The argument – which was actually made for all the documents presented – is not relevant. The unavailability of said evidence has therefore not been proven.[46]

44. In conformity with the *Tadić* Decision, this finding should in principle imply that all the evidence submitted by the Prosecutor should be dismissed. However, as discussed above, admission of additional evidence which does not fulfil the first admissibility criterion stipulated by Rule 115 is possible on an exceptional basis if and only if admission is necessary in order to prevent a miscarriage of justice.

45. That is certainly the case in the instant matter: by admitting the new facts presented in the *Barayagwiza* case, ICTY Appeals Chamber, in reviewing the Decision, rectified the miscarriage of justice which had emerged in the light of those facts. The Appeals Chamber is consequently aware that if henceforth it refuses to admit certain items of evidence in the instant case a miscarriage of justice will result. This exceptional situation consequently enables it to admit said evidence, which - as is discussed below - is of particular relevance in analyzing the arguments on the merits of the interlocutory Appeal.

46. The Appeals Chamber admits Annexes E, F, G, H, I, J, M, N, O *bis* and S.[47] As will be shown in the second part of this Decision, Annexes E, F, G, and H proved critical for the

---

[45] In this Brief ("Prosecutor's Brief in Response to the Appeals Chamber's Decision and Scheduling Order of 8 December 1999" 15 December 1999, the Prosecutor presented 16 documents, of which 14 (Annexes A to N) were attached to the Brief itself and 2 (Annexes O *bis* and S) were communicated to the Appeals Chamber subsequently in the "Prosecutor's Response to the Preliminary Appellate Brief in Support of the 12 October 1999 Notice of Appeal against the Trial Chamber III Order of 6 October 1999 on the Defence Motion to Set Aside the Arrest and Detention of Laurent Semanza as Unlawful", 21 January 1999.

[46] Case No. IT-94-1-A, *Prosecutor v. Duško Tadić*, "Decision on Appellant's Motion for the Extension of the Time limit and Admission of Additional Evidence", 15 October 1998, para. 45.

[47] In annex to "Prosecutor's Brief in Response to the Appeals Chamber's Decision and Scheduling Order of 8 December 1999", 15 December 1999: "Prosecutor's Rule 40 Detention Request of 15 April 1996" (Annex E); "Record of Proceedings before the Court of Appeal of Centre Province of Cameroon" (Annex F); "Submissions of the *Avocats-Généraux*" (Annex G); "Decision of the Court of Appeal of Centre Province of Cameroon of 21 February 1997" (Annex H); "Extradition Law of Cameroon: *Loi № 97/010 du 10 janvier 1997 modifiant certaines dispositions de la Loi № 64/LF/13 du 26 juin 1964 fixant le régime de l'extradition*" (Annex I); "Letter from the Registrar Concerning the Transfer of the Accused" (Annex J); "Report by Judge C. G. Mballe, Judge of the Supreme Court of Cameroon" (Annex M); "Affidavit of Ambassador David J. Scheffer, U. S. State Department" (Annex N). In annex to "Prosecutor's Response to the

403bis A

Chamber's consideration of the suspect's right to be informed of the nature of the Prosecutor's charges against him. The remaining documents (Annexes I, J, M, N, O *bis* and S) were similarly relevant in assessing the extent of the Prosecutor's negligence, as alleged by the Appellant, in the course of the proceedings.

47. Turning to Annex K,[48] neither Party disputed the existence or content of an application for a writ of *habeas corpus*. Indeed, the text of the writ had been filed by the Appellant in his preliminary Brief[49] submitted to the Appeals Chamber in support of his Notice of Appeal and by the Prosecutor in the "Prosecutor's Request to Supplement the Record on Appeal".[50] The Appeals Chamber consequently acknowledges that an Application for writ of *habeas corpus* exists without any need to admit the Application as additional evidence under Rule 115.

48. Furthermore, the Appeals Chamber admits Annex F[51] as additional evidence only insofar as it shows the course of proceedings before the Yaoundé Court of Appeal in the case of *Le Ministère public c. Ruzindana Augustin et autres*. Moreover, it is apparent from other evidence[52] whose validity and probative value is not disputed by the Appellant that the Appellant was a subject of those proceedings.

49. The Appeals Chamber rules Annex N[53] admissible solely insofar as the document enables the Chamber to appreciate the political situation in Cameroon when the Appellant was detained. The Appeals Chamber rejects the Appellant's argument that the Annex has no probative value in the instant case because Jean-Bosco Barayagwiza is the Party whose name and status are given. In the view of the Appeals Chamber, the document concerns the Appellant too, for two main reasons. Firstly, the *Barayagwiza* and the *Semanza* cases are similar in many respects, particularly in terms of procedure. The Appellant was detained in Cameroon at the same time as Jean-Bosco Barayagwiza along with other Rwandan citizens and was transferred to the Tribunal's Detention Facility at the same time. The similarity between the two cases has been repeatedly mentioned in the instant case by both Parties.[54]

Preliminary Appellate Brief in Support of the Notice of Appeal of 12 October 1999 from the Order of 6 October 1999 Rendered by Trial Chamber III on the Defence Motion to Set Aside the Arrest and Detention of Laurent Semanza as Unlawful", 21 January 2000; "*Décret № 97/182 du 21 octobre 1997 autorisant le transfert de l'accusé Laurent Semanza*" (Annex O bis); "*Loi № 64-LF-13 du 26 juin 1964 fixant le régime de l'extradition au Cameroun*" (Annex S).

[48] "Accused's Application for Writ of *Habeas Corpus*", Annex K, "Prosecutor's Brief in Response to the Appeals Chamber's Decision and Scheduling Order of 8 December 1999", 15 December 1999.

[49] "Preliminary Appellate Brief in Support of the Notice of Appeal of 12 October 1999 from the Order of 6 October 1999 rendered by Trial Chamber III on the Defence Motion to Set Aside the Arrest and Detention of Laurent Semanza as Unlawful", 12 November 1999.

[50] "Prosecutor's Request to Supplement the Record on Appeal", 9 November 1999.

[51] "Record of Proceedings before the Court of Appeal of Centre Province of Cameroon", Annex F, "Prosecutor's Brief in Response to the Appeals Chamber's Decision and Scheduling Order of 8 December 1999", 15 December 1999.

[52] Specifically, "Submissions of the *Avocats-Généraux* and "Decision of the Court of Appeal of Centre Province of Cameroon of 21 February 1997", Annexes G and H, op. cit *supra*.

[53] "Affidavit of Ambassador David J. Scheffer, U. S. State Department", Annex N, *ibid*.

[54] "Prosecutor's Request to Supplement the Record on Appeal", 9 November 1999, para. 7; "Defendant's Reply in Opposition to Prosecutor's Request to Supplement the Record on Appeal", 11 November 1999, para. 4.

Secondly, the substance of the general problem posed in Annex N, namely the overall political picture in Cameroon when he was arrested, does concern the Appellant.

50. Unlike the evidence cited above, there is no connection between the other documents filed by the Prosecutor (Annexes A, B, C, D and L)[55] and the arguments on the merits of the interlocutory Appeal. Those documents are inadmissible under Rule 115 as they are of no use to the Appeals Chamber in avoiding a miscarriage of justice.

V. THE APPEAL AGAINST THE DECISION REJECTING THE MOTION TO SET ASIDE AS UNLAWFUL

A. Procedural Background

51. On 12 October 1999, the Appellant filed a Notice of Appeal[56] against the impugned Decision and the Prosecutor filed a Response[57] on 28 October 1999. Although not required under Rule 117 (A),[58] on 12 November 1999 the Appellant filed a Preliminary Appellate Brief[59] in Support of the Notice of Appeal, and on 18 November 1999 he filed three Annexes[60] thereto. On 14 January 2000, the Appeals Chamber issued an Order[61] for the Prosecutor to file a Response to the Appellant's Preliminary Appellate Brief by 21 January 2000 at the latest and for the Appellant to submit his Reply to the Prosecutor's Response within seven days of his receipt of the Response in its French version. In compliance with the Order, the Prosecutor filed a Response[62] on 21 January 2000. This was subsequently amended on 9 February 2000.[63] Both Counsel for the Appellant filed separate

---

55 In annex to "Prosecutor's Brief in Response to the Appeals Chamber's Decision and Scheduling Order of 8 December 1999", 15 December 1999; "Records of the Arrest of the Accused in Cameroon" (Annex A); "Record of Service in Cameroon" (Annex B); "Records of the *Procès-Verbal d'Interrogatoire* in Cameroon" (Annex C); "Letters of Appointment of Counsel" (Annex D) and "Documents of the Registry Concerning Appointment of Attorney and Initial Appearance" (Annex L).

56 Case No. ICTR-97-20-I, *The Prosecutor v. Laurent Semanza*, "Notice of Appeal (Filed under Article 24 of the Statute and Rules 72 (B), (D) and (E) and 108 of the Rules of Procedure and Evidence)", 12 October 1999.

57 "The Prosecutor's Response to the Notice of Appeal by the Defence from the Decision of 6 October 1999 Rendered by Trial Chamber III on the Defence Motion to Set Aside the Arrest and Detention of Semanza as Unlawful", 28 October 1999.

58 Rule 117 (A): "An appeal under Rule 108 (B) shall be heard expeditiously on the basis of the original record of the Trial Chamber and without the necessity of any brief. [...]".

59 "Preliminary Appellate Brief in Support of the Notice of Appeal of 12 October 1999 from the Order of 6 October 1999 rendered by Trial Chamber III on the Defence Motion to Set Aside the Arrest and Detention of Laurent Semanza as Unlawful", 12 November 1999.

60 Annexes to op. cit. *supra*, 18 November 1999.

61 "Order (Prosecutor's Request to Supplement the Record on Appeal)", 14 January 2000.

62 "Prosecutor's Response to the Preliminary Appellate Brief in Support of the Notice of Appeal of 12 October 1999 from the Order of 6 October 1999 Rendered by Trial Chamber III on the Defence Motion to Set Aside the Arrest and Detention of Laurent Semanza as Unlawful", 21 January 2000.

63 "Amendment to the Prosecutor's Response to the Preliminary Brief in Support of the 12 October 1999 Notice of Appeal against the Trial Chamber III Order of 6 October 1999 on the Defence Motion to Set Aside the Arrest and Detention of Laurent Semanza as Unlawful", 9 February 2000.

Replies, on 28 January[64] and 31 January 2000.[65] The Parties' oral arguments were heard in Arusha on 16 February 2000.

52. The principal arguments which the Parties put forward in their written submissions and at the hearing are summarized and briefly discussed below.

B. The Arguments

1. The Appellant's arguments

53. Firstly, the Appellant alleges that Trial Chamber III (the "Chamber") made an error of fact by establishing a chronology of events that was unsubstantiated and was wrong to distinguish between his periods in detention[66]. In his view, such distinction is an arbitrary reading of the facts which is not based on any obligation in law.[67]

54. Secondly, the Appellant argues that the Chamber made several errors of fact by finding that he had failed to distinguish between the two periods of detention.[68] The Appellant alleges also that the Chamber erred by placing on him the burden of proving that his rights had been violated during those two periods.[69]

55. Thirdly, the Appellant contends that the Chamber erred by restricting its jurisdiction to the period during which he had been physically in the Tribunal's custody.[70]

56. Fourthly, the Appellant argues that the Chamber erred in law by holding that the belated filing of the indictment was "wrong", yet failing to find that the Appellant's rights and freedoms under Rule 40 *bis* had been violated.[71] To that effect, he alleges that the Chamber erred in law, moreover, by finding that the 30-day deadline in Judge Aspegren's

---

[64] "Reply by the Defense to the Prosecutor's Submission in Reply to Appellant's Preliminary Submissions Based on the Appeal Dated 12 October 1999 against the Decision of the III Trial Chamber's Dated the 6th October 1999 Relating to the Motion to Declare Null and Void *ab initio* the Arrest and Detention of Laurent Semanza on the Grounds of Illegality", 28 January 2000 (Mr. Charles A. Taku).

[65] "Brief in Reply to the Response to the Preliminary Brief in Support of the 12 October 1999 Notice of Appeal against the Trial Chamber III Order of 6 October 1999 on the Defence Motion to Set Aside the Arrest and Detention of Laurent Semanza as Unlawful", 31 January 2000 (Mr. André Dumont).

[66] "Preliminary Appellate Brief in Support of the Notice of Appeal of 12 October 1999 from the Order of 6 October 1999 rendered by Trial Chamber III on the Defence Motion to Set Aside the Arrest and Detention of Laurent Semanza as Unlawful", 12 November 1999, § III, paras. IV-VI.

[67] Case No. ICTR-97-20-I, *The Prosecutor v. Laurent Semanza*, "Notice of Appeal (Filed under Article 24 of the Statute and Rules 72 (B), (D) and (E) and 108 of the Rules of Procedure and Evidence)", 12 October 1999, submission, third para.

[68] *Ibid.*; "Preliminary Appellate Brief in Support of the Notice of Appeal of 12 October 1999 from the Order of 6 October 1999 rendered by Trial Chamber III on the Defence Motion to Set Aside the Arrest and Detention of Laurent Semanza as Unlawful", 12 November 1999, § III, paras. IX-XI; "Transcript", 16 February 2000, pp. 18-19.

[69] Op. cit. footnote 66, § III, para. VI.

[70] Op. cit. footnote 67, submission, fourth para. *et seq.*; op. cit. footnote 66, § III, paras. VII-VIII; "Transcript", 16 February 2000, p. 19.

[71] Op. cit. footnote 66, § III, para. XIII; "Transcript", 16 February 2000, p. 184.

400b(i) A

Order of 24 February 1997 was a mere suggestion which was not legally binding on the Prosecutor.[72]

57. Fifthly, the Appellant further argues that the Chamber wrongly ruled that the proceedings undertaken by the Tribunal did not violate the principle of *non bis in idem* in light of the extradition proceedings undertaken in Cameroon.[73]

58. Sixthly, the Appellant maintains that the Chamber erred in law by failing to respond, in the operative part of its Decision, to all the arguments advanced by the Parties both in their written submissions and at the hearing.[74]

59. In conclusion, the Appellant requests the Appeals Chamber to vacate the Trial Chamber III Decision; to find that his fundamental rights were violated and that the principle of equality of arms was not complied with; to vacate the arrest and detention proceedings as unlawful; to order his release; and to rule the Appeal suspensive of proceedings before the Trial Chamber.[75]

2. The Prosecutor's arguments

60. The Prosecutor's leading argument is that the interlocutory appeal is inadmissible,[76] and, alternatively, she rebuts the Appellant's case with the following arguments:

61. Firstly, that in the impugned Decision, the Chamber did not err in its account of the facts; rather, she contends that the Chamber rehearsed the chronology of events exactly.[77]

62. Secondly, that in none of the nine paragraphs in the impugned Decision relating to the Trial Chamber's findings was there any finding whereby the Chamber imposed the

---

[72] Op cit. footnote 67,, eighth para. *et seq.*; op cit. footnote 66, § III, para. XIV; "Transcript", 16 February 2000, p. 184.

[73] "Transcript", 16 February 2000, pp. 117-18 (French text).

[74] Op cit. footnote 66, § III, para. XV.

[75] Case No. ICTR-97-20-I, *The Prosecutor v. Laurent Semanza*, "Notice of Appeal (Filed under Article 24 of the Statute and Rules 72 (B), (D) and (E) and 108 of the Rules of Procedure and Evidence)", 12 October 1999, submission, end; "Preliminary Appellate Brief in Support of the Notice of Appeal of 12 October 1999 from the Order of 6 October 1999 rendered by Trial Chamber III on the Defence Motion to Set Aside the Arrest and Detention of Laurent Semanza as Unlawful", 12 November 1999, § IV. The Appeals Chamber ruled on the issue of whether the Appeal was suspensive by rejecting the Defence motion in its "Decision on the Defence 'Extremely Urgent Motion Seeking a Ruling that Appeals from Orders Ruling on the Trial Chamber's Lack of Jurisdiction and Request for Dismissal of Counts are Suspensive'", 15 November 1999.

[76] "The Prosecutor's Response to the Notice of Appeal by the Defence from the Decision of 6 October 1999 Rendered by Trial Chamber III on the Defence Motion to Set Aside the Arrest and Detention of Semanza as Unlawful", 28 October 1999, paras. 7-9; "Prosecutor's Response to the Preliminary Appellate Brief in Support of the Notice of Appeal of 12 October 1999 from the Order of 6 October 1999 Rendered by Trial Chamber III on the Defence Motion to Set Aside the Arrest and Detention of Laurent Semanza as Unlawful", 21 January 2000, paras 31-55.

[77] Vid. *supra*, second reference, paras. 76-80.

burden of proof on the Appellant concerning violations of his rights during his two periods of detention in Cameroon;[78]

63. Thirdly, that the Trial Chamber properly held that no remedy was open to the Accused under the Statute or Rules of the Tribunal for matters predating his transfer to the Tribunal. The Prosecutor takes the view that this is self-evident because the above-mentioned legal instruments contain no provision for reviewing the domestic legislation of States in which arrest and detention take place;[79]

64. Fourthly, that it is evident from the Trial Chamber's reasoning that neither Rule 40 nor Rule 40 *bis* was breached in the instant case;[80]

65. Fifthly, that dismissal of the Prosecution charges is not a remedy which is permitted under international human rights law,[81] and furthermore, that even if such a remedy were compatible with international law, the facts of the instant case would not justify it.[82]

66. The Prosecutor concludes by requesting the Appeals Chamber to dismiss the Appeal; or, failing that, to find it without merit;[83] or, as a further alternative, to consider the proposals for remedy submitted in the Prosecutor's Response, specifically, compensation and release with safeguards.[84]

C. Admissibility of the Appeal

67. The Appeals Chamber will first discuss the admissibility of the interlocutory Appeal[85] filed on 12 October 1999 by Counsel for the Appellant under Article 24 of the Statute and Rules 72 (B), (D) and (E) and 108 of the Rules of Procedure and Evidence.

68. The Prosecutor argues that the Appeal is inadmissible on the principal ground that Rule 72 does not apply in the instant case. According to the Prosecutor, "not only did the Defence raise no *objection based on lack of jurisdiction* as a *preliminary motion* before Trial Chamber III; moreover, there was no discussion before Trial Chamber III between the

---

78 *Ibid.*, paras. 81-82.

79 *Ibid.*, paras. 88-94.

80 *Ibid.*, paras 83-93.

81 The Prosecutor takes the view that the Tribunal's Statute and Rules of Procedure and Evidence do not permit "dismissal with prejudice to the Prosecutor". Furthermore, she states that the legal instruments to which the *Barayagwiza* Decision refers either contain no such remedy (Article 9 of the International Covenant on Civil and Political Rights, and Article 5 of the European Convention for the Protection of Human Rights and Fundamental Freedoms) or specifically prohibit it (Article 7 (5) of the American Convention on Human Rights). See *ibid.*, paras. 1-11.

82 *Ibid.*, paras. 12-37.

83 *Ibid.*, paras 95-96 and final page.

84 *Ibid.*, para. 97, § D and final page.

85 Case No. ICTR-97-20-I, *The Prosecutor v. Laurent Semanza*, "Notice of Appeal (Filed under Article 24 of the Statute and Rules 72 (B), (D) and (E) and 108 of the Rules of Procedure and Evidence)", 12 October 1999.

3986A

Parties based on any *objection based on lack of jurisdiction stricto sensu*".[86] In the Prosecutor's view, the Appellant had raised only questions of whether certain legal acts had been irregular and "had intended to seek legal penalties for what he believed were irregularities in those acts by demanding that they should be voided".[87]

69. According to the Appellant, the cause of the Appeal is "identical"[88] to that of the *Barayagwiza* case and the provisions adduced in support of Barayagwiza's appeal are applicable in the instant case. More specifically, in respect of Rule 72 the Appellant states that the substance of his objection based on lack of jurisdiction is identical[89] to that accepted by the Appeals Chamber in the *Barayagwiza* case. In his view, the "Notice of Appeal raises the following serious questions of law touching on issues over which the International Tribunal would exercise jurisdiction and those over which it would not. It poses the question whether under the Statute and the Rules of Procedure and Evidence as well as international law the International Tribunal has jurisdiction to control and punish prosecutorial misconduct. It poses the question whether the International Tribunal has jurisdiction to protect the rights of accused persons under its custody and whether the Statute, the Rules of Procedure and Evidence confers such jurisdiction".[90] In particular, the Appellant avers that "the objection is not to acts in law whose compliance with the Rules is the only point at issue, but more fundamentally to the actions and conduct of organs of the Tribunal granted their powers by the Rules and obliged to observe those Rules in their exercise of those powers", and "it is this kind of action and conduct that has been denounced by the Appellant as failure to respect fundamental freedoms and as an abuse of law by arbitrarily prolonging detention, without Court supervision and in contempt of the rights of the Defence".[91]

70. The Appeals Chamber notes that the Notice of Appeal was timely filed within the prescribed time-limits and rejects the Prosecutor's arguments that the provisions it cites do not apply. The Chamber further holds that by challenging the lawfulness of his detention, the Appellant has effectively raised the issue of whether the Tribunal has jurisdiction over

---

[86] "Prosecutor's Response to the Preliminary Appellate Brief in Support of the Notice of Appeal of 12 October 1999 from the Order of 6 October 1999 Rendered by Trial Chamber III on the Defence Motion to Set Aside the Arrest and Detention of Laurent Semanza as Unlawful", 21 January 2000, para. 54. [New trans.]

[87] *Ibid.*, para 48. [New translation.]

[88] "Preliminary Appellate Brief in Support of the Notice of Appeal of 12 October 1999 from the Order of 6 October 1999 rendered by Trial Chamber III on the Defence Motion to Set Aside the Arrest and Detention of Laurent Semanza as Unlawful", 12 November 1999, § I, para. IV. [New translation.]

[89] "Brief in Reply to the Response to the Preliminary Brief in Support of the 12 October 1999 Notice of Appeal against the Trial Chamber III Order of 6 October 1999 on the Defence Motion to Set Aside the Arrest and Detention of Laurent Semanza as Unlawful", 31 January 2000, § IV (A), p. 9.

[90] "Reply by the Defense to the Prosecutor's Submission in Reply to Appellant's Preliminary Submissions Based on the Appeal Dated 12 October 1999 against the Decision of the III Trial Chamber Dated the 6th October 1999 Relating to the Motion to Declare Null and Void *ab initio* the Arrest and Detention of Laurent Semanza on the Grounds of Illegality", 28 January 2000, ninth para. [cit.]

[91] Op. cit. footnote 89, § IV (A) sixteenth-seventeenth paras. [Retranslation.]

3976/A

him *ratione personae* and is thus appealing against a Decision dismissing an objection based on lack of jurisdiction under Rule 72.[92]

71. Accordingly, the Appeals Chamber finds the interlocutory Appeal admissible.

D. Discussion

72. Before considering the violations alleged by the Appellant, the Appeals Chamber wishes to comment on one of the grounds of appeal which he has adduced. The Appellant argues that Trial Chamber III wrongly imposed on him the burden of proving that his rights were indeed violated during his two periods of detention in Cameroon.[93] Without pronouncing on the question of who bears the burden of proof, the Appeals Chamber simply notes that the relevant remarks by the Trial Chamber do not refer to the two periods of detention in Cameroon, as the Appellant claims, but to the period of detention after he was transferred to the custody of the Tribunal. The penultimate paragraph of the 6 October 1999 Decision states that:

> "The Trial Chamber consequently finds that the Defence has failed to show any violation of the provisions of the Statute and the Rules with regard to Semanza's detention after his transfer to the custody of the Tribunal".[94]

73. This ground of appeal is therefore without merit.

1. The principle of *non bis in idem*

74. Article 9 of the Statute of the Tribunal sets forth the principle of *non bis in idem*. The Appeals Chamber accepts the interpretation of this Article and Article 10 of the Statute of ICTY[95] given by various Trial Chambers of the international criminal Tribunals whereby:

- Article 9 (2) of the Statute sets a limit on the extent to which the Tribunal can prosecute persons who have been tried by a national Court for acts constituting serious violations of international humanitarian law;[96]

---

92 The Appeals Chamber also accepted as admissible an appeal under Rule 72 by Jean Bosco Barayagwiza challenging the lawfulness of his arrest and detention (Case No. ICTR-97-19-72, *The Prosecutor v. Jean-Bosco Barayagwiza*, "Decision and Scheduling Order", 5 February 1999, penultimate para.

93 Op. cit. footnote 88, § III, para. VI.

94 Case No. ICTR-97-20-I, *The Prosecutor v. Laurent Semanza*, "Decision on the 'Motion to Set Aside the Arrest and Detention of Laurent Semanza as Unlawful'", Trial Chamber III, 6 October 1999, para. 36.

95 These provisions of the ICTY and ICTR Statutes are identical for all practical purposes. Moreover, the *non bis in idem* principle is set out in paragraph 7 of Article 14 of the International Covenant on Civil and Political Rights in the following terms: "No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country".

96 Case No. ICTR-96-7-D, *The Prosecutor v. Thenoeste Bagosora*, "Decision on the Application by the Prosecutor for a Formal Request for Deferral", Trial Chamber I, 17 May 1996, para. 13: "Article 9.2 of the Tribunal's Statute, concerning the principle of *non bis in idem*, sets limits to the subsequent prosecution by the Tribunal of persons who have been tried by a national Court for acts constituting serious violations of

396bis A

The *non bis in idem* principle applies only where a person has effectively already been tried. The term "tried" implies that proceedings in the national Court constituted a trial[97] for the acts covered by the indictment brought against the Accused by the Tribunal[98] and at the end of which trial a final judgement is rendered.[99]

75. The Appellant alleges that the proceedings before the Tribunal in *The Prosecutor v. Laurent Semanza* violate the principle of *non bis in idem* because proceedings had already been brought against him in Cameroon. The core question for the Appeals Chamber is whether in Cameroon the Appellant was the subject of a trial in the sense of Article 9 (2) of the Statute, that is, whether the trial was for acts constituting serious violations of international humanitarian law and whether a final judgement on those offences was delivered.

76. The Appeals Chamber finds that proceedings were raised against the Appellant in Cameroon following the extradition request from the Parquet général (Public Prosecutor Office) of the Republic of Rwanda. However, in view of the extradition law of Cameroon[100] and the Decision by the Yaoundé Court of Appeal on the issue,[101] it is apparent that those proceedings concerned only admissibility of the extradition request from the Rwandan Government and was in no wise a trial for acts constituting serious violations of international humanitarian law.[102] It is therefore apparent that the Yaoundé Court of Appeal did not deliver any final judgement on the charges brought against the Appellant before this Tribunal.

77. In view of these findings, the Appeals Chamber concludes that the action against the Appellant in Cameroon did not constitute a trial in the sense of Article 9 (2) of the Statute. Therefore, the proceedings before the Tribunal do not violate the principle of *non bis in idem*.

international humanitarian law". See also Case No. ICTR-96-5-D, *The Prosecutor v. Musema*, "Decisions on the Formal Request for Deferral Presented by the Prosecutor", Trial Chamber I, 12 March 1996, para. 12.

97 Case No. IT-94-1-T, *The Prosecutor v. Duško Tadić*, "Decision on the Defence Motion on the Principle of *non bis in idem*", Trial Chamber II, 14 November 1995, paras. 9-11.

98 "[...] There can be no violation of *non bis in idem*, under any known formulation of that principle, unless the accused has already been tried. Since the accused has not yet been the subject of a judgement on the merits on any of the charges for which he has been indicted, he has not yet been tried for those charges. As a result, the principle of *non bis in idem* does not bar his trial before this Tribunal" (*ibid.*, para. 24.)

99 *Ibid.*, para. 22.

100 "Extradition Law of Cameroon: *Loi № 97/010 du 10 janvier 1997 modifiant certaines dispositions de la Loi № 64/LF/13 du 26 juin 1964 fixant le régime de l'extradition*", Annex I, "Prosecutor's Brief in Response to the Appeals Chamber's Decision and Scheduling Order of 8 December 1999", 15 December 1999; "*Loi № 64-LF-13 du 26 juin 1964 fixant le régime de l'extradition*", Annex S, "Prosecutor's Response to the Preliminary Appellate Brief in Support of the Notice of Appeal of 12 October 1999 from the Order of 6 October 1999 Rendered by Trial Chamber III on the Defence Motion to Set Aside the Arrest and Detention of Laurent Semanza as Unlawful", 21 January 2000.

101 "Decision of the Court of Appeal of Centre Province of Cameroon of 21 February 1997", Annex H to "Prosecutor's Brief", see footnote above.

102 In this instance, the Yaoundé Court of Appeal ruled against admitting the request for extradition on grounds, *inter alia*, that the request from Rwanda had not come through the diplomatic channel, that the offences named in international arrest warrants did not exist in Cameroon's criminal law, and that there were serious grounds for believing that if extradited the individuals were likely to be tortured. (*ibid.*)

39566

2. The right of the suspect[103] to be informed promptly of the nature of the charges against him

78. The Appeals Chamber holds that a suspect arrested by the Tribunal has the right to be informed promptly of the reasons for his or her arrest.[104] In accordance with the norms of international human rights law,[105] the Appeals Chamber has also accepted that this right comes into effect from the moment of arrest and detention.[106]

79. In the instant case, the Appellant was detained in Cameroon at the Prosecutor's request during two distinct periods. The first period ran from 15 April 1996, the date of the Prosecutor's first request under Rule 40, to 17 May 1996, when the Prosecutor informed the authorities in Cameroon that he was dropping his case against the Appellant. The second period of detention ran from 21 February 1997, the date of the Prosecutor's second Rule 40 request, to 19 November 1997, when the Appellant was transferred to the Tribunal's Detention Facility.

80. The facts relating to these two periods of detention must be examined in order to determine whether the Prosecutor respected the Appellant's right to be informed promptly of the nature of the charges against him on those two occasions. For each of those periods, the Appeals Chamber must first assess the length of time between the date on which the Appellant's right to be informed came into effect and the date on which he was informed of the nature of the Prosecutor's charges against him. Secondly, the Chamber must decide whether such length of time is consistent with the norms of international human rights law.

---

[103] In its consideration of subsections D 2 to D 5 of Part V of this Decision, the Appeals Chamber takes note of the distinction made in the *Barayagwiza* Decision of 3 November 1999 regarding the Appellant's status. Under Rule 2, he remains a "suspect" until an indictment against him is confirmed; thereafter he becomes an "accused". The relevance of such a distinction stems from the fact that guaranteed individual rights, in particular as to the permissible length of pre-trial detention, vary depending on the status of the individual concerned (Case No. ICTR-97-19-AR72, *Jean-Bosco Barayagwiza v. The Prosecutor*, "Decision", Appeals Chamber, 3 November 1999, para. 41).

[104] The Chamber came to an identical conclusion in the *Barayagwiza* case (*ibid.*, paras. 79-80). Specifically, the right of an arrested individual to be informed promptly of the nature of the charges against him is respected if the indictment against him is served upon him in rapid order. The right to be charged promptly by means of an indictment, as provided for under Article 20 (4) (a) of the Statute, must nevertheless be distinguished from the right to be informed promptly of the nature of the charges on account of which the arrested individual is deprived of his liberty. Confirmation and service of the indictment may follow some time after arrest. However, the individual must be informed in substance of the nature of the charges against him at the time of his arrest or shortly thereafter.

[105] See, in particular, Article 9 (2) of the International Covenant on Civil and Political Rights; Article 5 (2)of the European Convention for the Protection of Human Rights and Fundamental Freedoms; Article 7 (4) of the American Convention on Human Rights.

[106] Op. cit. footnote 103, paras. 81-82. As the Appeals Chamber stresses in these paragraphs of the *Barayagwiza* Decision, there is no requirement for the Tribunal to provide the suspect with a copy of the arrest warrant or any other document setting forth the charges against him during this initial phase of detention. This right only guarantees the arrested suspect that he will be informed of the reasons why he has been deprived of his liberty.

3946(A

(a) First period of detention

81. Regarding the first period of detention, the Appeals Chamber finds that the Appellant's right to be informed promptly of the nature of the International Tribunal's charges against him came into effect on 15 April 1996,[107] when he was remanded in custody by the Prosecutor pursuant to the first request under Rule 40. Based on the earliest available date, it is apparent that the Appellant had been informed of the nature of the crimes for which he was being pursued by the Prosecutor on 3 May 1996, on which date the Yaoundé Court of Appeal deferred judgement on the extradition request[108] against the Appellant from Rwanda. To support this last finding, certain facts relating to the context of the Appellant's detention in Cameroon should be rehearsed.

82. Like 11 other Rwandan nationals, the Appellant was initially arrested and detained in Cameroon pursuant to an international arrest warrant issued by the Government of Rwanda.[109] On 18 March 1996, Counsel for the Government of Rwanda referred a request to the Minister of Justice of Cameroon (the "Office of the Public Prosecutor") for the extradition of 12 Rwandans[110] detained in Cameroon in implementation of warrants signed by the *Procureur général* (Public Prosecutor) of the Kigali Court of Appeal.[111] The Office of the Public Prosecutor in Cameroon had filed charges in the case of *Le Ministère public c. Ruzindana Augustin et autres*.[112] On 19 April 1996, *inter partes* proceedings involving the Office of the Public Prosecutor of Cameroon and the Rwandan nationals sought by the Public Prosecutor of Rwanda opened before the Yaoundé Court of Appeal.[113] At those hearings, a certain Mr. Ondigui acted as Counsel for eight of the Rwandans, including the Appellant.[114] On 3 May 1996, the Office of the Public Prosecutor of Cameroon requested the Yaoundé Court of Appeal to defer judgement.[115] On 31 May 1996, the Court suspended the extradition proceedings begun on behalf of the Government of Rwanda and adjourned

---

107 "Prosecutor's Rule 40 Detention Request of 15 April 1996", Annex E, "Prosecutor's Brief in Response to the Appeals Chamber's Decision and Scheduling Order of 8 December 1999", 15 December 1999.

108 "Record of Proceedings before the Court of Appeal of Centre Province of Cameroon", Annex F, op. cit. *supra*.

109 See, in particular "Preliminary Appellate Brief in Support of the Notice of Appeal of 12 October 1999 from the Order of 6 October 1999 rendered by Trial Chamber III on the Defence Motion to Set Aside the Arrest and Detention of Laurent Semanza as Unlawful", 12 November 1999, § II, and "Prosecutor's Response to the Preliminary Appellate Brief in Support of the Notice of Appeal of 12 October 1999 from the Order of 6 October 1999 Rendered by Trial Chamber III on the Defence Motion to Set Aside the Arrest and Detention of Laurent Semanza as Unlawful", 21 January 2000, § I.

110 Augustin Ruzindana, Jean-Baptiste Butera, André Ntagerura, Laurent Semanza, Félicien Muberuka, Théoneste Bagosora, Anatole Nsengiyumva, Pasteur Musabe, Ferdinand Nahimana, Telesphore Bizimungu, Michel Bakuzakunde and Jean-Bosco Barayagwiza.

111 "Submissions of the *Avocats-Généraux*", Annex G, "Prosecutor's Brief in Response to the Appeals Chamber's Decision and Scheduling Order of 8 December 1999", 15 December 1999.

112 *Ibid*.

113 "Record of Proceedings before the Court of Appeal of Centre Province of Cameroon", Annex F, op. cit. *supra*.

114 See footnote 111.

115 See footnote 113.

393 bis A

the hearing until 17 January 1997.[116] On 21 February 1997, the Yaoundé Court of Appeal delivered its decision[117] on the Rwandan extradition request.

83. The proceedings before the Yaoundé Court of Appeal are not without interest. Indeed, one of the submissions by the Office of the Public Prosecutor refers to the Prosecutor's application for the Appellant to be placed in provisional detention. The Appeals Chamber deems it appropriate to cite the relevant excerpts from that submission[118] by the Office of the Public Prosecutor in the case of *Le Ministère public c. Ruzindana Augustin et autres* with a view to obtaining a stay of judgement:

> "[...] Whereas they all challenged the jurisdiction of the Rwandan courts and preferred rather to appear before the International Criminal Tribunal for Rwanda established in August 1994 with its seat in Arusha, Tanzania;
>
> [...] Whereas by letter dated 15 April 1996, *the aforementioned Prosecutor [the Prosecutor of the Tribunal]* has requested the judicial authorities of Cameroon to place the above-named Rwandans [including the Appellant], under provisional arrest *on charges of serious violations of international humanitarian law and other crimes within the jurisdiction of the aforementioned International Tribunal* [...]".[119] (Emphasis added.)

84. The Appeals Chamber would like to emphasize the similarity in the manner the Office of the Public Prosecutor framed the submission referred to above and the Prosecutor's request of 15 April 1996 brought under Rule 40. In this document, the Prosecutor requests:

> "[...] that the Criminal Authorities of Cameroon arrest the undernoted persons provisionally [...] *for serious violations of international humanitarian law and crimes within the jurisdiction of the Tribunal*".[120] (Emphasis added.)

85. It is clear from the front page of the 21 February 1997 Decision by the Yaoundé Court of Appeal ruling on the extradition request by Rwanda that the proceedings initiated by the Office of the Public Prosecutor against the Appellant were *inter partes*.[121] Consequently, there is no doubt that Mr. Ondigui, who acted as Counsel for the Appellant, had received a copy of the submissions by the Office of the Public Prosecutor, including the one to which the Appeals Chamber has just referred. Considering the principles governing the counsel/client relationship, it is reasonable to infer that the Appellant had been informed in substance of the nature of the crimes for which he was being sought by the Prosecutor of the Tribunal.

---

116 *Ibid.*

117 "Decision of the Court of Appeal of Centre Province of Cameroon of 21 February 1997", Annex H, op. cit. *supra*. On that day, the Yaoundé Court of Appeal ruled the extradition request from Rwanda inadmissible and consequently ordered the Appellant's release. By 21 February 1997, four (Théoneste Bagosora, André Ntagerura, Ferdinand Nahimana and Anatole Nsengiyunva) of the 12 Rwandans initially arrested had been transferred to the Tribunal's Detention Facility in Arusha.

118 See footnote 111.

119 *Ibid.* [New translation.]

120 "Prosecutor's Rule 40 Detention Request of 15 April 1996", Annex E, op. cit. *supra*.

121 See footnote 117. The cover page of the Decision contains the note "*contradictoire*" (*inter partes*).

39260 A

86. However, the Appeals Chamber notes that the date recorded on the aforesaid copy of the submission is illegible. In the absence of that information, the Chamber has decided to go by the date on which the verbal request for a stay was granted, namely, 3 May 1996, and concludes that the Appellant was informed on 3 May 1996 at the latest[122] of the nature of the Prosecutor's charges against him.

87. Consequently, 18 days elapsed between the time the Appellant was taken into custody, on 15 April 1996, and the time he was informed of the nature of the charges brought against him by the Prosecutor, on 3 May 1996. In the opinion of the Appeals Chamber, this constitutes a violation, in relation to his first period of detention, of the Appellant's right to be informed promptly of the nature of the charges against him.[123] A fitting remedy for this violation is justified.

(b) Second period of detention in Cameroon

88. The Appeals Chamber holds that with respect to the Appellant's second period of detention in Cameroon, his right to be informed promptly of the nature of the charges against him by the Prosecutor came into effect on 21 February 1997, when he was taken into custody pursuant to the Prosecutor's second Rule 40 request. It is apparent from the evidence in the file that the Appellant was formally informed of the charges laid against him by the Tribunal when the Order issued under Rule 40 *bis* was served on him in Cameroon on 10 March 1997.

89. Nevertheless, the Appeals Chamber has already established that the Appellant was informed in substance of the nature of the Tribunal's charges against him during his first period of detention. There is no doubt, therefore, that from then on the Appellant was aware of the nature of the Prosecutor's charges against him. Consequently, when the Appellant was taken into custody at the Prosecutor's request for the second time, he had known since his first period of detention what the nature of the Prosecutor's charges against him was.

90. The fact remains that the interval which elapsed between the date on which the Appellant's right to be informed came into effect for his second period of detention and the date on which he was informed of the nature of the Prosecutor's charges against him was 18 days. This could be said to constitute a violation of the Appellant's right. However, the Appeals Chamber considers that the violation is less serious since the Appellant had been informed in substance of the nature of the Prosecutor's charges against him during his first period in detention.

---

122 "Record of Proceedings before the Court of Appeal of Centre Province of Cameroon", Annex F, "Prosecutor's Brief in Response to the Appeals Chamber's Decision and Scheduling Order of 8 December 1999", 15 December 1999.

123 The Appeals Chamber recalls that in its *Barayagwiza* Decision of 3 November 1999 it cited a Decision of the European Court of Human Rights whereby intervals of up to 24 hours between arrest and informing the suspect of charges was lawful. (*X. v. Denmark*, No. 6730/74, 1 Digest 457 (1975), cited in the *Barayagwiza* Decision, para. 84).

3. The suspect's right to be promptly charged

91. In the *Barayagwiza* Decision, the Appeals Chamber held that the suspect's right to be promptly charged, as set forth in Rule 40 *bis*, becomes effective as soon as a Rule 40 *bis* Order is filed.[124]

92. The Appeals Chamber adopts the findings of ICTY Appeals Chamber in the *Aleksovski* case[125] and recalls that in the interests of legal certainty and predictability, the Appeals Chamber should follow its previous decisions, but should be free to depart from them for cogent reasons in the interests of justice. Applying this principle, the Appeals Chamber has altered the interpretation it gave Rule 40 *bis* in its *Barayagwiza* Decision for the reasons hereinafter given.

93. In the instant case, the Prosecutor called the Appeals Chamber's attention to the legislative history of Rule 40 *bis*.[126] The Appeals Chamber has consequently decided to reconsider the interpretation of Rule 40 *bis* in the light of the Prosecutor's argument, firstly, to identify the starting point for calculating the time-limit for a suspect's provisional detention before the indictment is confirmed and, secondly, to consider the alleged violation of the Appellant's right to be promptly charged.

94. On 15 May 1996, Rule 40 *bis* was adopted under the procedure provided for in Rule 6 (b), to read as follows:

> "[...] The provisional detention of the suspect may be ordered for a period not exceeding 30 days *from the signing of the provisional detention order*". (Emphasis added.)

---

[124] Case No. ICTR-97-19-AR72, *Jean-Bosco Barayagwiza v. The Prosecutor*, "Decision", Appeals Chamber, 3 November 1999, paras. 54 and 61.

[125] Case No. IT-95-14/1-A, *The Prosecutor v. Zlatko Aleksovski*, "Decision", Appeals Chamber, 24 March 2000, paras. 107-109: "The Appeals Chamber, therefore, concludes that a proper construction of the Statute, taking due account of its text and purpose, yields the conclusion that in the interests of certainty and predictability, the Appeals Chamber should follow its previous decisions, but should be free to depart from them for cogent reasons in the interests of justice [para. 107]. Instances of situations where cogent reasons in the interests of justice require a departure from a previous decision include cases where the previous decision has been decided on the basis of a wrong legal principle or cases where a previous decision has been *given per incuriam*, that is a judicial decision that has been 'wrongly decided, usually because the judge or judges were ill-informed about the applicable law' [para. 108]. It is necessary to stress that the normal rule is that previous decisions are to be followed, and departure from them is the exception. The Appeals Chamber will only depart from a previous decision after the most careful consideration has been given to it, both as to the law, including the authorities cited, and the facts" [para. 109].

[126] "Prosecutor's Brief in Response to the Appeals Chamber's Decision and Scheduling Order of 8 December 1999", 15 December 1999, para. 39. The Prosecutor's argument is presented as follows: "In addition, the interpretation made of Rules 40 and 40 *bis* in the *Barayagwiza* Decision make relevant the procedural history of Rule 40 *bis*, specifically including its adoption on 15 May 1996 and its amendment, less than two months later, to the present language on 5 July 1996 by the Plenary of the ICTR (sic) [4 July 1996]. Evidence of this procedural history was not relevant, and therefore not available, before the *Barayagwiza* Decision called the interpretation of the rule into question".

39065 A

95. Rule 40 *bis* was subsequently amended, on 4 July 1996, to read as follows:

> "[...] The provisional detention of the suspect may be ordered for a period not exceeding 30 days *from the day after the transfer of the suspect to the detention unit of the Tribunal*". (Emphasis added.)

96. In the light of the latter text, it is clearly apparent that the clock for the Rule 40 *bis* time-limit starts running only from the day the suspect is transferred to the Tribunal's Detention Facility. Although the interpretation whereby the time-limit is to be calculated from the day the Order is filed is of course in keeping with the spirit and letter of the Rule adopted on 15 May 1996, the Appeals Chamber must take into account the abrogative effect of any legislative amendment. The principal effect of the 4 July 1996 amendment was to break with the interpretation of Rule 40 *bis* in the form in which it emerged from the 15 May 1996 text.

97. It is thus unambiguously clear that the Rule 40 *bis* time-limit runs not from the day the Order is filed but rather from the day the suspect is transferred to the Tribunal's Detention Facility. The 4 July 1996 amendment confirms that interpretation. Furthermore, the Appeals Chamber notes that the first sentence of the current paragraph (A) of Rule 40 *bis* is in keeping with this finding.[127] Therefore, the Rule 40 *bis* time-limit for confirming the indictment consequently runs from the day the suspect is transferred to the Tribunal's Detention Facility.

98. The Appeals Chamber will now turn its attention to the alleged violation of the Appellant's right to be promptly charged.

99. In the instant case, the Appellant was transferred to the Tribunal's Detention Facility on 19 November 1997.[128] Interestingly, the Prosecutor's first indictment[129] was confirmed by Judge Aspegren on 23 October 1997, before the Appellant had even been transferred to the Tribunal's Detention Facility.

100. The Appeals Chamber concluded *supra* that the time-limit provided for under Rule 40 for confirming the indictment runs from the day the suspect is transferred to the Tribunal's Detention Facility. In the instant case, therefore, it is clear that on 19 November 1997, the starting date for the time-limit computation, the first indictment against the Appellant had already been confirmed. Consequently, the Appellant's right to be promptly charged, in accordance with the true meaning of Rule 40 *bis*, could not have been violated.

101. Moreover, the Appeals Chamber emphasizes that in any event, the Tribunal is not responsible for the time that elapsed before the Appellant was transferred to the Tribunal's

---

[127] The sentence is worded as follows: "In the conduct of an investigation, the Prosecutor may transmit to the registrar, for an order by a Judge assigned pursuant to Rule 28, *a request for the transfer to and provisional detention of a suspect in the premises of the detention unit of the Tribunal*". (Emphasis added.)

[128] "Letter from the Registrar Concerning the Transfer of the Accused", Annex J, op. cit. footnote 126.

[129] The first indictment against the Appellant was confirmed on 23 October 1997. It was subsequently amended on 18 June 1999 and 2 July 1999.

3896bis A

Detention Facility. The evidence before the Appeals Chamber shows that Cameroon was not inclined to transfer the Appellant before 21 October 1997. The written report[130] by Judge Mballe of the Supreme Court of Cameroon explains that Rule 40 *bis* was transmitted to the President of the Republic immediately it was received by the authorities in Cameroon on 6 March 1997.[131] As of that date, under the extradition laws of Cameroon[132] the proceedings for transferring the Appellant to the Tribunal became subject to the President's signing a decree. Judge Mballe's report confirms that, once the request had been submitted to the Executive branch, "nothing else could be done than to wait for the Head of State to sign the Presidential Decree".[133]

102. The decree granting leave for the Appellant to be transferred to the Tribunal's Detention Facility was signed on 21 October 1997.[134] A letter from the Registry of the Tribunal shows that the steps taken to transfer the Appellant postdated the signing of the Decree.[135]

103. Judge Mballe explains in his report[136] that the time which elapsed between 6 March 1997 and 21 October 1997 was attributable to political and judicial factors. The Rule 40 *bis* Order was wrongly subjected to Cameroon's extradition procedure.[137] Also, at that time Rwanda was putting pressure on the authorities in Cameroon for the detainees arrested in Cameroon, including the Appellant, to be extradited to Kigali rather than Arusha. Moreover, David Scheffer, United States Ambassador-at-Large for War Crimes Issues,

---

130 "Report by Judge C. G. Mballe, Judge of the Supreme Court of Cameroon", Annex M, "Prosecutor's Brief in Response to the Appeals Chamber's Decision and Scheduling Order of 8 December 1999", 15 December 1999.

131 "Preliminary Appellate Brief in Support of the Notice of Appeal of 12 October 1999 from the Order of 6 October 1999 rendered by Trial Chamber III on the Defence Motion to Set Aside the Arrest and Detention of Laurent Semanza as Unlawful", 12 November 1999, § II, para. II, tenth-eleventh sub paras.

132 "In the event of a favourable opinion from the Court as to the extradition request's admissibility in law, the Ministry of Justice shall, if appropriate, submit to the President of the Federal Republic for signature a decree ordering extradition." [New translation.] (Article 24 of *Loi № 64-LF-18 du 26 juin 1964 fixant le régime de l'extradition*, Annex S, op. cit. footnote 130). Judge Mballe confirms in his report (see footnote 130) that "The final act that gives effect to transfer on grounds of extradition is that of the Head of State and this is purely political".

133 See footnote 130.

134 "*Décret № 97/182 du 21 octobre 1997 autorisant le transfert de l'accusé Laurent Semanza*", Annex O *bis*, "Prosecutor's Response to the Preliminary Appellate Brief in Support of the Notice of Appeal of 12 October 1999 from the Order of 6 October 1999 Rendered by Trial Chamber III on the Defence Motion to Set Aside the Arrest and Detention of Laurent Semanza as Unlawful", 21 January 2000.

135 "Letter from the Registrar Concerning the Transfer of the Accused", Annex J, op. cit. footnote 130.

136 See footnote 130.

137 Article 28 of the Statute makes cooperation with the Tribunal an obligation for all States, in terms which include the following: "States shall comply without undue delay with any request for assistance or an order issued by a Trial Chamber, including but not limited to: [...] (e) The surrender or the transfer of the accused to the International Tribunal for Rwanda". In addition, Rule 58 stipulates that: "The obligations laid down in Article 28 of the Statute shall prevail over any legal impediments to the surrender or transfer of the accused or of a witness to the Tribunal which may exist under national law or extradition treaties of the State concerned".

388 bis A

indicates in his affidavit[138] that the pending elections in Cameroon at that time were an additional factor contributing to the delay in signing the decree.

104. In the light of the above evidentiary material, the Appeals Chamber finds, firstly, that Cameroon was not prepared to transfer the Appellant before the 21 October 1997 decree had been signed and, secondly, that the time which elapsed before the said decree was signed was the result of factors unrelated to lack of diligence on the part of the Prosecutor as alleged by the Appellant. The Appeals Chamber finds that the time which elapsed was not attributable to the Prosecutor and consequently that the Tribunal did not violate Rule 40 *bis*.

4. The right of the accused to be brought before a Trial Chamber without delay and to be formally charged

105. Rule 62, which is rooted in Articles 19 and 20 of the Statute, states that the accused shall be brought before a Trial Chamber without delay to be formally charged. However, neither Rule 62 nor the relevant treaties relating to international human rights law provide for a specific period beyond which the time which elapsed before the accused's initial appearance becomes excessive.

106. In the instant case, the first indictment against the Appellant was confirmed on 23 October 1997, when the Appellant became an accused within the meaning of Rule 2.[139] The Appellant was then transferred to the Tribunal's Detention Facility on 19 November 1997 and appeared before Trial Chamber III on 16 February 1998.

107. Under Rule 62, the Appellant's right to be brought before a Trial Chamber without delay and be formally charged came into effect on the date of his transfer to the Tribunal.[140] The Appeals Chamber notes that 89 days elapsed between 19 November 1997, when the accused's right came into effect, and 16 February 1998, when the Appellant made his appearance and was formally charged. A delay of that kind could lead the Appeals Chamber to find that the Appellant's right had been violated. However, it is clear from the evidence before the Appeals Chamber that other circumstances must also be considered in the instant case.

108. The first date set for the Appellant's initial appearance was 3 February 1998.[141] The transcript of the initial appearance hearing on 16 February 1998 shows that it was Counsel for the Appellant who requested postponement of the initial appearance scheduled for

---

[138] "Affidavit of Ambassador David J. Scheffer, U. S. State Department", Annex N, "Prosecutor's Brief in Response to the Appeals Chamber's Decision and Scheduling Order of 8 December 1999", 15 December 1999.

[139] "[...] Accused: A person against whom one or more counts in an indictment have been confirmed in accordance with Rule 47; [...]" (Rule 2).

[140] Rule 62 states that: "Upon his transfer to the Tribunal, the accused shall be brought before a Trial Chamber without delay, and shall be formally charged [...]".

[141] "Transcript", 16 February 1998 (Trial Chamber II), p. 4.

3 February 1998.[142] It is clear that the postponement of the Appellant's initial hearing to 16 February 1998 was at the express request of his Counsel.

109. Furthermore, although the Appellant alleged in his Motion of 16 August 1999[143] that his right to be brought before a Trial Chamber and be formally charged had been violated, on no other occasion than in that Motion has he amplified on this grievance as an independent ground for complaint. At no time before Trial Chamber III did the Appellant allege that there had been a violation arising out of the 89 days which elapsed between his transfer and his initial appearance,[144] nor was it used as a separate ground of appeal in the written submissions in the instant case.[145] Lastly, Counsel for the Appellant did not draw the Appeals Chamber's attention to this particular violation in setting forth his grounds of appeal during his opening statement at the 16 February 2000 hearing.[146]

110. The Parties to a case are responsible for the strategies they use in conducting it. In the instant matter, the Appeals Chamber recalls that Counsel for the Appellant explicitly requested that the date which the Registry of the Tribunal had set for the Appellant's initial appearance should be postponed to 16 February 1998. By so doing, Counsel for the Appellant consented to having the Appellant's initial appearance not take place within the shortest possible lapse of time and himself contributed to prolonging it.

111. The Appeals Chamber finds that Counsel's request has the import of waiving the Appellant's right to claim violation of his right to be brought before a Trial Chamber without delay and be formally charged.

5. The right to challenge the lawfulness of detention (*habeas corpus*)

112. Neither the Statute nor the Rules of the Tribunal specifically address writs of *habeas corpus*. However, the Appeals Chamber has already pointed out that the possibility for a detained individual to have recourse to an independent judicial authority for review of the lawfulness of his detention is "well established by the Statute and Rules".[147] This is a

---

142 *Ibid.*, "Transcript", 16 February 2000 (Appeals Chamber), p. 101.

143 Case No. ICTR-97-20-I, *The Prosecutor v. Laurent Semanza*, "Motion to Set Aside the Arrest and Detention of Laurent Semanza as Unlawful", 16 August 1999, para. 21. "[...] The suspect or the accused [...] shall be arraigned before a Judge as soon as possible, [...].

144 "Transcript", 23 September 1999 (Trial Chamber III); Case no. ICTR-97-20-I, *The Prosecutor v. Laurent Semanza*, "Decision on the 'Motion to Set Aside the Arrest and Detention of Laurent Semanza as Unlawful'", Trial Chamber III, 6 October 1999.

145 Case No. ICTR-97-20-I, *The Prosecutor v. Laurent Semanza*, "Notice of Appeal (Filed under Article 24 of the Statute and Rules 72 (B), (D) and (E) and 108 of the Rules of Procedure and Evidence)", 12 October 1999; "Preliminary Appellate Brief in Support of the Notice of Appeal of 12 October 1999 from the Order of 6 October 1999 rendered by Trial Chamber III on the Defence Motion to Set Aside the Arrest and Detention of Laurent Semanza as Unlawful", 12 November 1999.

146 "Transcript", 16 February 2000 (Appeals Chamber), pp. 77-84). Counsel for the Appellant addressed this issue at the hearing only in response to questions from the Bench.

147 Case No. ICTR-97-19-AR72, *Jean-Bosco Barayagwiza v. The Prosecutor*, "Decision", Appeals Chamber, 3 November 1999, para. 88.

3866A

fundamental right and is enshrined in international human rights law,[148] which also provides that the right of an individual to challenge the lawfulness of his detention implies that "a writ of *habeas corpus* must be heard".[149]

113. The Appeals Chamber wishes to confirm the principle which it laid down in the *Barayagwiza* case: if an accused files a writ of *habeas corpus*, the Tribunal must hear it and rule upon it without delay, as principal instruments of international human rights law prescribe.[150] If such a writ is filed but not heard, the Chamber will find that a fundamental right of the accused has been violated.

114. In the instant case, Counsel for the Appellant filed a writ of *habeas corpus* on 29 September 1997 challenging the lawfulness of the Appellant's detention; the Appellant having been taken into custody in Cameroon pursuant to the Prosecutor's Rule 40 *bis* request.[151] It is clear from the evidence before the Appeals Chamber that this writ of *habeas corpus* was not placed on the cause list by the Registry and was not heard by a Trial Chamber. The Appeals Chamber therefore finds that the Appellant's right to challenge the lawfulness of his detention was violated.

115. To assess the extent of the violation and its consequences in terms of remedy, the Chamber deems it pertinent to take into account all the circumstances surrounding the matter.

116. His 29 September 1997 writ of *habeas corpus* aside, the Appellant challenged the lawfulness of his arrest and detention in Cameroon for a second time in his Motion to Set Aside as Unlawful,[152] which he filed on 16 August 1997 before Trial Chamber III. Interestingly, that Motion contains no reference to the 29 September 1997 writ. The Appeals Chamber also notes that neither did the Appellant refer to the 29 September 1997 writ in his Notice of Appeal[153] of 12 October 1999.

117. It is apparent that the first allegation which the Appellant raised before the Tribunal concerning the writ of *habeas corpus* is to be found in his 11 November 1999 "Defendant's

---

148 *Ibid.*, paras. 88-89. See in particular Article 8 of the Universal Declaration of Human Rights; Article 9 (4) of the International Covenant on Civil and Political Rights; Article 5 (4) of the European Convention for the Protection of Human Rights and Fundamental Freedoms; and Article 7 (6) of the American Convention on Human Rights.

149 *Ibid.*, para. 89.

150 *Ibid.*, para. 88.

151 Case No. ICTR-97-20-I, *The Prosecutor v. Laurent Semanza*, "Application for Order of *Habeas Corpus ad Subjiciendum* by Laurent Semanza", 29 September 1997, reproduced under "Accused's Application for Writ of *Habeas Corpus*", Annex K, "Prosecutor's Brief in Response to the Appeals Chamber's Decision and Scheduling Order of 8 December 1999", 15 December 1999. Also, "Prosecutor's Rule 40 Detention Request of 15 April 1996", Annex E, *ibid.*

152 Case No. ICTR-97-20-I, *The Prosecutor v. Laurent Semanza*, "Motion to Set Aside the Arrest and Detention of Laurent Semanza as Unlawful", 16 August 1999.

153 Case No. ICTR-97-20-I, *The Prosecutor v. Laurent Semanza*, "Notice of Appeal (Filed under Article 24 of the Statute and Rules 72 (B), (D) and (E) and 108 of the Rules of Procedure and Evidence)", 12 October 1999.

38566 A

Reply in Opposition to the Prosecutor's Request to Supplement the Record on Appeal".[154] A second allegation is to be found in the "Preliminary Appellate Brief in Support of the Notice of Appeal of 12 October 1999 from the Order of 6 October 1999 rendered by Trial Chamber III on the Defence Motion to Set Aside the Arrest and Detention of Laurent Semanza as Unlawful"[155] of 12 November 1999. In the latter document, the Appellant refers to the writ of *habeas corpus* in the following terms:

> "'[...] 'While awaiting transfer, the Appellant filed a writ of *habeas corpus* on 29 September 1997. The Trial Chamber never considered this application' (this quotation taken from the decision in the matter of the Prosecutor vs. Jean-Bosco Barayagwiza, Case No. ICTR 97-19-AR72, para. 8, concerning the writ of *habeas corpus*, perfectly suits the Appellant [...]"[156]

118. It is therefore apparent that the Appellant became interested in the fate of his writ of *habeas corpus* only after the Appeals Chamber's 3 November 1999 Decision in the *Barayagwiza* case.[157]

119. Also, Counsel for the Appellant made no representations to the Registry or the Prosecutor to carry the matter he had taken up on the Appellant's behalf through to conclusion. Very evidently, Counsel for the Appellant neglected to follow up the 29 September 1997 writ of *habeas corpus* until the *Barayagwiza* Decision had been delivered. The fact that Counsel for the Appellant elected to challenge the lawfulness of the Appellant's arrest and detention in August 1999 in a second motion confirms this finding.

120. The Appeals Chamber would emphasise that Defence Counsel appearing before the Tribunal have a duty of diligence. This duty is expressly set forth in the Code of Professional Conduct for Defence Counsel (the "Code of Conduct") adopted by the Judges of the Tribunal under Article 14 of the Statute. Article 6 of the Code of Conduct states that:

> "Counsel must represent a client diligently in order to protect the client's best interests. Unless the representation is terminated, *Counsel must carry through to conclusion all matters undertaken for a client within the scope of his legal representation.*" (Emphasis added.)

121. In the instant case, the Appeals Chamber finds that Counsel for the Appellant failed in his duty of diligence by not carrying through to conclusion the matter he had undertaken on the Appellant's behalf in his writ of *habeas corpus*. Such failure which has been

---

154 "Defendant's Reply in Opposition to the Prosecutor's Request to Supplement the Record on Appeal", 11 November 1999, para. 5: "That the Respondent filed a writ of *habeas corpus* before the Trial Chambers on the 29th September 1997 and ever since no action was taken by the Prosecution or the Registry to hear his application".

155 "Preliminary Appellate Brief in Support of the Notice of Appeal of 12 October 1999 from the Order of 6 October 1999 rendered by Trial Chamber III on the Defence Motion to Set Aside the Arrest and Detention of Laurent Semanza as Unlawful", 12 November 1999.

156 *Ibid.*, § II, para. II, thirteenth sub para.

157 In the *Barayagwiza* Decision, the Appeals Chamber found that Jean-Bosco Barayagwiza's right to challenge the lawfulness of his detention had been violated because the Trial Chamber had failed to hear his writ of *habeas corpus* (Case No. ICTR-97-19-AR72, *Jean-Bosco Barayagwiza v. The Prosecutor*, "Decision", Appeals Chamber, 3 November 1999, para. 90).

3846 I S A

established by the Appeals Chamber derives also from the fact that Counsel for the Appellant failed to bring the alleged violation to the Tribunal's attention before the *Barayagwiza* Decision was delivered.

122. The Appeals Chamber, having established that the Appellant's right was violated and having clarified the circumstances surrounding that violation, must consider the consequences of such violation in terms of appropriate remedy. The Appellant claims that a remedy for the violation of his right to challenge the lawfulness of his detention should be given under Rule 5.[158] Paragraph (A) of Rule 5 states that:

> "Where an objection on the ground of non-compliance with the Rule or Regulations is raised by a party at the earliest opportunity, the Trial Chamber shall grant relief, if it finds that the alleged non-compliance is proved and that *it has caused material prejudice to that party*." (Emphasis added.)

123. The Appeals Chamber is of the opinion that the material prejudice to which Rule 5 refers must be assessed, as must all prejudice, in the light of the circumstances of the case.

124. The Appellant adduced two principal grounds in his 29 September 1997 writ of *habeas corpus*. Firstly, he contends that the Prosecutor was responsible for the continuing increase in the lapse of time before he was transferred to the Tribunal's Detention Facility and, secondly, that he was detained with no formal legal justification.[159] The Appeals Chamber recalls that an indictment was confirmed against the Appellant on 23 October 1997 and that he was transferred to the Tribunal's Detention Facility on 19 November 1997. The results sought by filing the writ of *habeas corpus* were therefore achieved relatively soon after the writ was filed. In such circumstances, the Appeals Chamber finds that while indeed there was prejudice caused, it must be seen in perspective and thus does not take the form of material prejudice alleged by the Appellant.

125. The Appeals Chamber nevertheless finds that any violation, even if it entails only a relative degree of prejudice, requires a proportionate remedy.

---

[158] "Reply by the Defense to the Prosecutor's Submission in Reply to Appellant's Preliminary Submissions Based on the Appeal Dated 12 October 1999 against the Decision of the III Trial Chamber's Dated the 6th October 1999 Relating to the Motion to Declare Null and Void *ab initio* the Arrest and Detention of Laurent Semanza on the Grounds of Illegality", 28 January 2000, penultimate para.

[159] In paragraphs 1 and 2 of his writ of *habeus corpus* (Case No. ICTR-97-20-I, *The Prosecutor v. Laurent Semanza*, "Application for Order of *Habeas Corpus ad Subjiciendum* by Laurent Semanza", 29 September 1997, reproduced under "Accused's Application for Writ of *Habeas Corpus*", Annex K, "Prosecutor's Brief in Response to the Appeals Chamber's Decision and Scheduling Order of 8 December 1999", 15 December 1999), Counsel for the Appellant applies to the Tribunal for a Trial Chamber to issue: "An order in the nature of *habeas corpus* [do issue] directed to the Prosecutor to have the body of one *Laurent Semanza* produced before the Honourable Tribunal at such time and palce as the Tribunal's President may direct [and] An order that the said Prosecutor do appear in person and by his authorised agents together with the original of any warrant or orders of detention to show cause why *Laurent Semanza* should not be forthwith released."

3836A

126. In that connection, the Appeals Chamber also kept in mind the Tribunal's mandate, particularly in respect of the protection of international public order.

VI. CONCLUSION

127. It is clear from the above analysis that the Appellant suffered a violation, under the recognized norms of international human rights law, of his right to be informed promptly of the nature of the charges against him.

128. It is clear also that the fact that the Trial Chamber did not hear the *habeas corpus* motion constitutes a violation of the Appellant's right to challenge the lawfulness of his detention. (Judge Shahabuddeen provides a separate and dissenting opinion on this point.)

129. Nevertheless, the remedy sought by the Appellant, namely his release, is disproportionate, in the instant case.

The other violations alleged by the Appellant are found to be without merit.

382bisA

VII. DISPOSITION

For the foregoing reasons, **THE APPEALS CHAMBER** hereby:

(1) **GRANTS** the Prosecutor's Request in respect of the evidence contained in annexes E, F, G, H, I, J, M, N, O *bis* and S;

(2) **DENIES** the Prosecutor's request to admit the additional evidence contained in annexes A, B, C, D, K and L;

(3) **ALLOWS** the Appeal in respect of the violation of the Appellant's rights to the extent specified above;

(4) **DISMISSES** the Appeal in respect of the Appellant's application for his arrest and detention to be set aside as unlawful;

(5) **DISMISSES** the Appeal in respect of the Appellant's application to be released;

(6) **DECIDES** that for the violation of his rights, the Appellant is entitled to a remedy which shall be given when judgement is rendered by the Trial Chamber, as follows:

(a) If he is found not guilty, the Appellant shall be entitled to financial compensation;

(b) If he is found guilty, the Appellant's sentence shall be reduced to take into account the violation of his rights, pursuant to Article 23 of the Statute.

Judge Vohrah and Judge Nieto-Navia append Declarations to this Decision.

Judge Shahabuddeen appends a Separate Opinion to this Decision.

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

381/At

[signed] [signed] [signed]

Claude Jorda
Presiding Judge

Lal Chand Vohrah

Mohamed Shahabuddeen

[signed] [signed]

Rafael Nieto-Navia

Fausto Pocar

Dated this thirty-first day of May 2000

At The Hague,

The Netherlands

[Seal of the Tribunal]

Translation certified by LCSS, ICTR
HAG(A)01-012 (E)

UNITED NATIONS
NATIONS UNIES

COURT MANAGEMENT
ADMINISTRATION DES CHAMBRES

Arusha International Conference Centre
P.O Box 6016, Arusha, Tanzania - B.P. 6016, Arusha, Tanzanie
Tel: 255 57 504207-11 504367-72 or 1 212 963 2850 Fax: 255 57 504000/504373 or 1 212 963 2848/49

APPEALS - PROOF OF SERVICE – BY FAX
PREUVE DE NOTIFICATION - CHAMBRE D'APPEL – PAR FAX

Date: **4 July. 2001**	Case Name / *affaire:* Case No / *no. de l'affaire:*	**Laurent SEMANZA** vs. The Prosecutor **ICTR-97-20-A**
To: *A:*	Matar Diop, Legal Officer, Rosette Muzigo Morrison, Legal Officer, Appeals Unit, The Hague **For onward transmission to the Appeals Judges:**	☒ Judge / *Juge* Claude Jorda, President / *Président* ☒ Judge / *Juge* Mohamed Shahabuddeen ☒ Judge / *Juge* Lal Chand Vohrah ☒ Judge / *Juge* Rafael Nieto-Navia ☒ Judge / *Juge* Fausto Pocar
	ACCUSED / DEFENSE ☒ Accused / *Accusé* : **Laurent SEMANZA** (see / voir "CMS4") ☒ Lead Counsel / *Conseil Principal:* ☐ In Arusha / à Arusha: **ME.Charles TAKU** (see / voir CMS3) ☒ Fax: ☐ Co-Counsel / *Conseil Adjoint:* ☐ Arusha (see / voir CMS3) ☐ Fax: **OTP / *BUREAU DU PROCUREUR*** ☒ C. del Ponte, Prosecutor ☐ B. Muna, Deputy Prosecutor ☒ K. Fleming, OIC, Prosecutions ☒ OTP, Trial Attorney in charge of case (name) ☐ The Hague / *La Haye* ☒ Arusha (see / voir CMS3) ☐ Kigali	
From: *De:*	☐ JP. Fomété ☒ F. Talon Ahouandogbo ☐ Nadine Cavanihac ☐ Other:	
CC:	☒ Registrar ☐ OLA, NY ☒ D. Reg. ☐ P&PA ☐ Spokesman ☐ WVSS-P ☐ WVSS-D ☐ LDFMS ☐ GLSS ☐ CSS	
Subject *Objet:*	**Kindly find attached the following documents / *Veuillez trouver en annexe les documents suivants*:**	

Documents name / *titre du document*	Date Filed / *Date enregistré*	Pages
DECISION	**04-07-2001**	**(415bisA-381bisA)**

CENTRAL REGISTRY: ALL FAX TRANSMISSION SHEETS MUST BE ANNEXED TO THIS FORM
No. of pages transmitted including this cover sheet / *Nombre de pages transmises, page de garde comprise:* 58
In case of transmission difficulties, please contact: Central Registry / *En cas de difficulté de transmission, veuillez contacter:*
Tel: 212-963 4828 ext. 5333, 5063 Fax: 212-963 2848 Email: giani@un.org or lipscombe@un.org

CMS 3F