

ICTR-01-64-A
01-02-2006
(1655/A-1652/A)

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International Criminal Tribunal for Rwanda
Tribunal Pénal International pour le Rwanda

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APPEALS CHAMBER

Before: Judge Mohamed Shahabuddeen, *Presiding*
Judge Mehmet Güney
Judge Liu Daqun
Judge Theodor Meron
Judge Wolfgang Schomburg

Registrar: Mr. Adama Dieng

Date of filing: 1 February 2006

ICTR-01-P-55
1655/A-1652/A
1 FEB 2006

THE PROSECUTOR

v.

SYLVESTRE GACUMBITSI

Case No. ICTR-2001-64-A

**PROSECUTOR'S NOTICE
WITH RESPECT TO APPEALS HEARING**

Office of the Prosecutor

James Stewart
Neville Weston
George Mugwanya
Inneke Onsea

Counsel for Sylvestre Gacumbitsi

Me Kouengoua
Me Anne Ngatio Mbattang

Notice respecting decisions affecting oral argument

1. The Prosecutor, who is the Appellant in this appeal, hereby respectfully gives notice to the Appeals Chamber and to the Respondent of the approach the Appellant proposes to take to certain of the grounds of appeal in the oral argument scheduled for 8 February 2006 in the Appellant's appeal:

Ground 5

2. On Ground 5, pertaining to the refusal of the Trial Chamber to allow the Prosecution to rely upon joint criminal enterprise liability,¹ the Appellant will make the same submissions as in the Appellant's Brief:

- The Prosecution provided adequate notice to the Respondent of its intention to argue that he was acting pursuant to a joint criminal enterprise; and
- The findings of the Trial Chamber show that the Respondent acted pursuant to a joint criminal enterprise.²

3. In light of recent decisions, however, especially in the *Kvočka et al.* Appeal Judgement, the Appellant acknowledges that the Indictment is vague, because it fails to:

- Make specific mention of "joint criminal enterprise"; and
- Indicate which form of joint criminal enterprise is being alleged.³

As a result, the Appellant is abandoning the submissions set out in paragraphs 188 to 190 of his Appellant's Brief.

4. The Appellant will maintain, however, the crux of his submissions pertaining to Ground 5, that is, that the Respondent received timely, clear and consistent information

¹ See Judgement, para. 289.

² Appellant's Brief, 28 September 2004, paras. 184-211.

³ See *Prosecutor v. Kvočka et al.*, Case No. IT-98-30/1-A, Judgement, 28 February 2005, paras. 28 and 42.

of the Prosecutor's intention to rely on a theory of joint criminal enterprise liability, through:

- The Indictment, which mentions the common purpose doctrine and pleads the material facts of the joint criminal enterprise; and
- The supporting evidence set forth in the Prosecution's Pre-Trial Brief, in the Prosecution's opening address and in arguments presented in the Prosecution's Closing Brief.

The Appellant will maintain that the Respondent, therefore, suffered no prejudice and his ability to prepare his defence was not materially impaired.

Ground 6

5. The Appellant will rely upon recent Judgments of the Appeals Chamber that further support the position the Prosecutor took in relation to Ground 6 of his Appeal, namely, the meaning of ORDERING.

6. In Ground 6, paragraph 216 of his Appellant's Brief, the Prosecutor relied on judgments of Trial Chambers, given that the Appeals Chamber had not yet expressed itself on the issue of ordering. Since the filing of the Appellant's Brief, the Appeals Chamber recently has delivered judgments which further support the positions taken by the Prosecutor in Ground 6. The Appellant informs the Appeals Chamber and the Respondent that, in addition to the Trial Judgments referred to in paragraph 216 of his Appellant's Brief, he will, without modifying the position he took in the Appeal Brief, also rely on the following Appeals Chamber Judgments:

- *Prosecutor v. Dario Kordic and Mario Cerkez*, Case No. IT-95-14/2-A, Judgement, 17 December 2004, para. 28;
- *Laurent Semanza v. the Prosecutor*, Case No. ICTR-97-20-A, Judgement, 20 May 2005, paras. 361-363; and

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- *Jean de Dieu Kamuhanda v. the Prosecutor*, ICTR-99-54A-A, Judgement, 19 September 2005, para. 76.

Respectfully submitted.

Dated 1 February 2006, at Arusha, Tanzania.



Neville Weston
Appeals Counsel



TRANSMISSION SHEET FOR FILING OF DOCUMENTS WITH CMS

COURT MANAGEMENT SECTION
(Art. 27 of the Directive for the Registry)

I - GENERAL INFORMATION (To be completed by the Chambers / Filing Party)

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	<input type="checkbox"/> Chief, CMS J.-P. Fomété	<input type="checkbox"/> Deputy Chief, CMS M. Diop	<input type="checkbox"/> Chief, JPU, CMS K. K. A. Afande	<input type="checkbox"/> Appeals Chamber / The Hague R. Burriss
From:	<input type="checkbox"/> Chamber (names)	<input type="checkbox"/> Defence (names)	<input checked="" type="checkbox"/> Prosecutor's Office <i>for J. Stewart</i> (names)	<input type="checkbox"/> Other: OTP - (names)
Case Name:	The Prosecutor vs. Gacumbitsi			Case Number: ICTR-01-64-A
Dates:	Transmitted:		Document's date: 1 February 2006	
No. of Pages:	4	Original Language:	<input checked="" type="checkbox"/> English	<input type="checkbox"/> French <input type="checkbox"/> Kinyarwanda
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Reference material is provided in annex to facilitate translation.

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