

PART ONE: INTRODUCTION

THE CHARGES BY PROSECUTION HAVE NOT BEEN PROVEN BEYOND ALL REASONABLE DOUBT

1. It was a most interesting experience, reading the Prosecutor's Final Brief. It was written with the style and grace of a novel, compellingly telling a sweeping and dramatic story. It must be noted, however, that so much of that story is *not* referenced to *any* evidence in the trial record. That is of course, because vast portions of the Prosecutor's gripping tale are *nowhere* to be found in the evidence, but are rather a nefarious form of speculative fiction, weaving together bits and pieces of evidence into a narrative of what the Prosecutor guesses might have happened. Perhaps it can be said that the narrative portion of the Prosecutor's Final Brief reads so much like a novel, because that is precisely what it is.
2. Do not be fooled by the polished writing. The question before the Trial Chamber is *not*: 'Can the Prosecutor spin a compelling tale?' The question which must be answered is: 'Has the Prosecutor presented sufficiently compelling *evidence* for the Trial Chamber to be able to find the Accused guilty *as charged in his indictment* beyond all reasonable doubt?' The answer lies in an analysis of both the evidence and the indictment and of the relationship between the two. The fundamental issue that the Chamber must decide is whether or not the evidence admitted in this trial, and *only* the evidence admitted in this trial, has *eliminated all* reasonable doubt that the Accused has committed the *specific* crimes which are detailed and described in his *specific* indictment, and *not* other crimes which are described nowhere in his indictment. Concomitant to this is the Chamber's obligation to hold the Prosecutor to the indictment which was filed, and not some *other* indictment which was *never* filed.
3. It is submitted that the Prosecution has failed to prove *any* of the charges against the Accused Ntabakuze *beyond a reasonable doubt* and that, consequently, the Accused Ntabakuze *must be acquitted* of all charges against him. The indictment against the Accused is extraordinary vague and, it is submitted, the defects were never "cured" because the only "cure" for a disjuncture between the facts adduced at trial, and the formal allegations set forth in the Indictment is amendment of the Indictment with the approval of the Chambers. The mere admission of evidence into the trial record (which must permit challenge by the Defence) cannot be the same thing as "curing" the Indictment, by adding new charges *sub*

silentio. With respect to the valid paragraphs of the indictment supporting the counts, the Prosecution did not adduce evidence for nearly any of these paragraphs. While there *might* be *some* light evidence related to *some* of the paragraphs of the indictment, it is submitted that the quantity and quality of evidence specifically against the Accused Ntabakuze is *manifestly inadequate or insufficient* to sustain a conviction on any ground, and to convict him on such deficient evidence would be a gross injustice.

4. Much of the evidence that has been presented concerns events which *do not appear anywhere in the Indictment*, and it is thus submitted that, notwithstanding the Chamber's decisions to *admit* such evidence during the trial, the evidence can not rationally be used to ground a conviction for matters which *do not* fall within the scope of the indictment upon which the trial is premised, and to which the Accused must respond. Notwithstanding the Accused Ntabakuze's position that he has *not been charged* with such allegations within the Indictment upon which the Prosecution is proceeding and can not, thus, be convicted of allegations outside the Indictment, or a formally amended Indictment prior to presenting the Defence case, out of an abundance of caution, the Ntabakuze Defence has presented compelling evidence *to rebut* such allegations, as he has for any allegations that *do* appear in the indictment.
5. While the obligation to prove its case rests *entirely* upon the Prosecution, and while the Defence has no burden to *prove* the *innocence* of the Accused, the Accused must benefit from the *presumption* of innocence, and it would be juridically unfair to be required of him to prove that which is already presumed. Nevertheless, it is submitted that the Accused Ntabakuze has presented sufficient credible evidence *rebutting each of the allegations* of the Prosecution to have entirely satisfied any burden of *persuasion* to demonstrate his innocence of each and every accusation leveled against him.
6. Furthermore, the Accused Ntabakuze has presented compelling evidence of an alternative scenario of the events in Rwanda at the relevant time, a scenario that, being based upon facts, eyewitness testimony and contemporaneous documentation, is more compelling and more likely to accord with the actual historical reality than the speculative "it must have happened that way" scenario of the Prosecution. This alternative explanation of events recognizes that, like all wars before and after the Rwanda War, *both* sides in the Rwanda War committed crimes. But, this is the only Tribunal in history with a mandate to prosecute all crimes during the Rwanda War (unlike Nuremberg, the Tokyo Trials and the Hussein

Trial), which has not found responsibility on opposing combatants. Notwithstanding the popular bias, based on years of successful propagandizing by the current governing regime of Rwanda, towards uncritical acceptance “whole cloth” of the Prosecution version of events, now that *new* evidence is in the ICTR Record, this Chamber is being asked to become complicit in constructing ICTR “legal impunity” for the aggressors and victors in the Rwanda War. The alternative explanation of the tragic events in Rwanda places them in their true historical context, and provides an explanation for these events without recourse to a speculated *plan* or *conspiracy* to have brought them about. Increasingly, facts from many different sources are coming to light that sustain and support this more complex explanation for the War and civilian casualties arising from that War suggested by the Defence. IF this alternative explanation is closer to the truth, it is only a matter of time until coinciding facts force an acceptance of the obvious. This Chamber is in a particularly strong position to set history on a new, and more accurate, trajectory.

7. Following this Introduction, in Part Two, the Ntabakuze Final Trial Brief will briefly look at the law to assist the Chamber in its evaluation both of what follows in the remainder of the brief, but also of the Prosecutor’s brief. We shall remark upon the law applicable to indictments, discussing issues of vagueness as well as evidence not included in the indictment. We shall also briefly discuss other relevant legal issues, such as the application of the ‘reasonable doubt standard’, the persuasive value of circumstantial evidence, issues related to command responsibility, the use to which various types of evidence may be put in the Chamber’s final evaluation of the evidence, the evidentiary value of documents and reports, and issues concerning the weight to be attached to various different categories of evidence.
8. This will be followed, in Part Three by an extensive exposition on the evidence concerning the facts of the case. In that part of the Brief, we will discuss witness credibility issues. We will present a description of our alternative explanation of the factual underpinnings of why the tragic events in Rwanda happened when and how they did, negating the Prosecution’s planning and conspiracy theory of the case. We will also present the Accused’s version of the events and time period in question. This will be followed by a step by step analysis of each of the specific allegations which we have identified as arising from the evidence against Ntaakuze, notwithstanding that the vast majority of these allegations appear nowhere in the indictment. We shall demonstrate therein that the Prosecutor’s case against Major Ntabakuze has not been proved beyond a reasonable doubt, when analysed on an allegation by

allegation basis. This Part of the Trial Brief will also contain a table, listing all of the Ntabakuze Exhibits, with a brief explanation of what we consider to be the relevance of each.

9. This will be followed, at Part Four, by a section specifically responsive to parts of the Prosecutor's Final Trial Brief, notwithstanding that certain responsive elements appear throughout this Brief. We will include a list of excluded evidence, references to which appear inappropriately in the Prosecutor's Final Trial Brief, which references should, of course, be ignored by the Chamber in its deliberations.
10. Then, at Part Five, we shall examine the specific paragraphs of the Indictment that are indicated therein to be the locus of the material facts pled to support the charges. We shall examine the concordance or discordance between the evidence led at trial, and the 'facts' pled in the Indictment. We shall demonstrate therein that the material facts pled in the Indictment have not been proved beyond a reasonable doubt, when analysed on a paragraph by paragraph basis, and that therefore, the Prosecutor's case against Major Ntabakuze has not achieved the level of proof beyond a reasonable doubt.
11. Having done our analysis of the indictment in function of the facts of the case, at Part Six, we shall turn our attention to the essential elements of each of the charges, and, it is submitted, we shall demonstrate to the Chamber that none of the Counts can be said to have been proven beyond a reasonable doubt, in that one or more of the essential elements of each charge have not been proven beyond all reasonable doubt. Thus shall demonstrate therein that the Prosecutor's case has not been proved beyond a reasonable doubt, when analysed on a Count by Count basis.
12. We shall end this brief, at Part Seven, with some comments on sentencing issues and our General Conclusion, at Part Eight. For the reader's convenience, we append to our brief, in Annex, Major Ntabakuze's Deposition, which was referred to throughout his testimony. It is not in evidence *per se* in the trial, but the Chamber expressed a willingness to "have it close at hand" when deliberating on his testimony. Its inclusion herein, is simply to facilitate that.
13. Throughout the Brief we have attempted to be responsive to specific issues arising from the Prosecutor's Brief, although some response will, no doubt, be reserved for final arguments.