UNITED NATIONS
NATIONS UNIES

Tribunal Pénal International pour le Rwanda
International Criminal Tribunal for Rwanda

IN THE APPEALS CHAMBER

Before: **Judge Patrick Robinson, Presiding**
Judge Fausto Pocar
Judge Liu Daqun
Judge Theodor Meron
Judge Carmel Agius

Registrar: **Mr. Adama Dieng**

Judgement of: **18 March 2010**

SIMÉON NCHAMIHIGO

v.

THE PROSECUTOR

Case No. ICTR-2001-63-A

JUDGEMENT

Counsel for the Appellant

Mr. Denis Turcotte
Ms. Nathalie Leblanc

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Mr. Hassan Bubacar Jallow
Mr. Alex Obote-Odora
Mr. George Mugwanya

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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 ("Appeals Chamber" and "Tribunal", respectively) is seized of an appeal by Siméon Nchamihigo ("Appellant") against the Judgement and Sentence rendered on 12 November 2008 in the case of *The Prosecutor v. Siméon Nchamihigo* ("Trial Judgement") by Trial Chamber III of the Tribunal ("Trial Chamber").[1]

A. Background

2. The Appellant was born on 7 August 1959 in Gatare commune, Cyangugu prefecture, Rwanda. In 1994, he was Deputy Prosecutor in Cyangugu, Rwanda.[2] He left Rwanda on 17 July 1994 to go into exile in Bukavu, Democratic Republic of Congo ("DRC", formerly Zaire) and was arrested in Arusha, Tanzania on 19 May 2001.[3]

3. The Trial Chamber convicted the Appellant pursuant to Article 6(1) of the Statute of the Tribunal ("Statute") of genocide (Count 1);[4] murder as a crime against humanity (Count 2);[5] extermination as a crime against humanity (Count 3);[6] and other inhumane acts as a crime against humanity (Count 4).[7] The Trial Chamber imposed a single sentence of imprisonment for the remainder of the Appellant's life.[8]

[1] *The Prosecutor v. Siméon Nchamihigo*, Case No. ICTR-01-63-T, Judgement and Sentence, 12 November 2008. For ease of reference, two annexes are appended to this Judgement: Annex A - Procedural Background and Annex B - Cited Materials and Defined Terms.
[2] Trial Judgement, para. 6.
[3] Trial Judgement, paras. 6, 7.
[4] Trial Judgement, paras. 347 (killings that took place on or about 7 April 1994), 354 (killings of Joséphine Mukashema, Hélène and Marie), 357 (killing of Father Joseph Boneza), 360 (killings of those taken from Kamarampaka stadium on 16 April 1994), 369 (massacre at Shangi parish), 371 (massacre at Hanika parish), 374 (massacre at Mibilizi parish and hospital), 375 (massacre at Nyakanyinya school), 378 (massacre in Gihundwe sector).
[5] Trial Judgement, paras. 354 (killings of Joséphine Mukashema, Hélène, and Marie), 357 (killing of Father Joseph Boneza).
[6] Trial Judgement, paras. 347 (killings that took place on or about 7 April 1994), 374 (massacre at Mibilizi parish and hospital), 375 (massacre at Nyakanyinya school), 378 (massacre in Gihundwe sector).
[7] Trial Judgement, para. 350 (attack on Jean de Dieu Gakwandi).
[8] Trial Judgement, para. 396.

B. The Appeals

4. The Appellant presented thirty-six grounds of appeal in his Notice of Appeal challenging his convictions and sentence.[9] He requests that the Appeals Chamber overturn the Trial Judgement, enter acquittals on all counts of the Indictment, and order his immediate release.[10] In the alternative, the Appellant requests that the Appeals Chamber consider the existence of extensive mitigating circumstances and re-evaluate his sentence.[11] In his Appellant's Brief, the Appellant did not develop a number of grounds set out in his Notice of Appeal; these were either abandoned or subsumed within other grounds.[12]

5. The Prosecution responds that all grounds of appeal raised by the Appellant should be dismissed as none of them demonstrates any error of law invalidating the judgement, or error of fact occasioning a miscarriage of justice, pursuant to Article 24 of the Statute.[13]

6. The Appeals Chamber heard oral submissions regarding this appeal on 29 September 2009.

[9] *See* Revised Defence Notice of Appeal (Article 24 of the Statute of the Tribunal and Rule 111 of the Rules of Procedure and Evidence), signed on 8 May 2009, but filed on 11 May 2009 ("Notice of Appeal").
[10] Notice of Appeal, para. 154. *See also* Appellant's Brief (Article 24 of the Statute of the Tribunal and Rule 111 of the Rules of Procedure and Evidence), 20 May 2009 ("Appellant's Brief"), paras. 454, 456.
[11] Appellant's Brief, para. 457.
[12] Ground of Appeal 6 (Appellant's Brief, para. 59) and Ground of Appeal 35 (Appellant's Brief, para. 435) have been subsumed within other grounds of appeal; Ground of Appeal 19 (Appellant's Brief, para. 229) has been abandoned.
[13] *See* The Prosecutor's Respondent Brief, 29 June 2009 ("Respondent's Brief"), para. 6.

II. STANDARDS OF APPELLATE REVIEW

7. The Appeals Chamber recalls the applicable standards of appellate review pursuant to Article 24 of the Statute. The Appeals Chamber only reviews errors of law which invalidate the decision of the Trial Chamber and errors of fact which have occasioned a miscarriage of justice.[14]

8. Regarding errors of law, the Appeals Chamber has stated:

> Where a party alleges that there is an error of law, that party must advance arguments in support of the submission and explain how the error invalidates the decision. However, if the appellant's arguments do not support the contention, that party does not automatically lose its point since the Appeals Chamber may step in and, for other reasons, find in favour of the contention that there is an error of law.[15]

9. Where the Appeals Chamber finds an error of law in the trial judgement arising from the application of an incorrect legal standard, it will articulate the correct legal standard and review the relevant factual findings of the Trial Chamber accordingly. In so doing, the Appeals Chamber not only corrects the legal error, but, when necessary, also applies the correct legal standard to the evidence contained in the trial record and determines whether it is itself convinced beyond reasonable doubt as to the factual finding challenged by the appellant before that finding may be confirmed on appeal.[16]

10. Regarding errors of fact, it is well established that the Appeals Chamber will not lightly overturn findings of fact made by a Trial Chamber:

> Where the Defence alleges an erroneous finding of fact, the Appeals Chamber must give deference to the Trial Chamber that received the evidence at trial, and it will only interfere in those findings where no reasonable trier of fact could have reached the same finding or where the finding is wholly erroneous. Furthermore, the erroneous finding will be revoked or revised only if the error occasioned a miscarriage of justice.[17]

11. A party cannot merely repeat on appeal arguments that did not succeed at trial, unless it can demonstrate that the Trial Chamber's rejection of those arguments constituted an error warranting the intervention of the Appeals Chamber.[18] Arguments which do not have the potential to cause the

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[14] *Zigiranyirazo* Appeal Judgement, para. 8. *See also Karera* Appeal Judgement, para. 7; *Muvunyi* Appeal Judgement, para. 8; *Milo{evi}* Appeal Judgement, para. 12.
[15] *Zigiranyirazo* Appeal Judgement, para. 9, *quoting Ntakirutimana* Appeal Judgement, para. 11 (citations omitted).
[16] *Zigiranyirazo* Appeal Judgement, para. 10. *See also Karera* Appeal Judgement, para. 9; *Milo{evi}* Appeal Judgement, para. 14.
[17] *Zigiranyirazo* Appeal Judgement, para. 11, *quoting Krsti}* Appeal Judgement, para. 40 (citations omitted).
[18] *Zigiranyirazo* Appeal Judgement, para. 12. *See also Karera* Appeal Judgement, para. 11; *Muvunyi* Appeal Judgement, para. 11; *Milo{evi}* Appeal Judgement, para. 17.

impugned decision to be reversed or revised may be immediately dismissed by the Appeals Chamber and need not be considered on the merits.[19]

12. In order for the Appeals Chamber to assess arguments on appeal, the appealing party must provide precise references to relevant transcript pages or paragraphs in the decision or judgement to which the challenge is made.[20] Further, the Appeals Chamber cannot be expected to consider a party's submissions in detail if they are obscure, contradictory, vague, or suffer from other formal and obvious insufficiencies.[21] Finally, the Appeals Chamber has inherent discretion in selecting which submissions merit a detailed reasoned opinion in writing and will dismiss arguments which are evidently unfounded without providing detailed reasoning.[22]

[19] *Zigiranyirazo* Appeal Judgement, para. 12. *See also Karera* Appeal Judgement, para. 11; *Muvunyi* Appeal Judgement, para. 11; *Orić* Appeal Judgement, para. 13.
[20] Practice Direction on Formal Requirements for Appeals from Judgement, 15 June 2007, para. 4(b). *See Zigiranyirazo* Appeal Judgement, para. 13; *Karera* Appeal Judgement, para. 12; *Muvunyi* Appeal Judgement, para. 12.
[21] *Zigiranyirazo* Appeal Judgement, para. 13. *See also Karera* Appeal Judgement, para. 12; *Muvunyi* Appeal Judgement, para. 12; *Milo{evi}* Appeal Judgement, para. 16.
[22] *Zigiranyirazo* Appeal Judgement, para. 13. *See also Karera* Appeal Judgement, para. 12; *Muvunyi* Appeal Judgement, para. 12; *Milo{evi}* Appeal Judgement, para. 16.

III. ALLEGED ERRORS RELATING TO THE INDICTMENT (GROUNDS OF APPEAL 1, 2, AND 3)

13. The Initial Indictment in this case was filed on 21 June 2001[23] and was amended several times.[24] The Second Revised Amended Indictment ("Indictment"),[25] on which the Trial Judgement is based, was filed on 11 December 2006 in response to the Trial Chamber Order of 7 December 2006.[26] The trial started on 25 September 2006, based on the Second Amended Indictment, filed on 18 July 2006.[27]

14. In his first three grounds of appeal, the Appellant submits that the Trial Chamber erred: (1) by granting, in its Decision of 17 July 2006, the Prosecution leave to amend the Amended Indictment of 26 June 2001;[28] (2) in ordering the commencement of the trial before rendering its decision on a pending Defence preliminary motion;[29] and (3) by denying him the time and facilities necessary for the preparation of his defence.[30]

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[23] *The Prosecutor v. Siméon Nchamihigo*, Case No. ICTR-2001-63-T, Indictment, 21 June 2001 ("Initial Indictment"). The Initial Indictment charged the Appellant with genocide, or complicity in genocide (in the alternative), extermination as a crime against humanity, or murder as a crime against humanity (in the alternative), and violations of Article 3 Common to the Geneva Conventions and of Additional Protocol II. The Confirming Judge confirmed the Initial Indictment on 23 June 2001, ordering a number of amendments. In compliance with the order, the Prosecution filed the Amended Indictment (*see The Prosecutor v. Siméon Nchamihigo*, Case No. ICTR-2001-63-I, Amended Indictment (in Conformity with the Confirming Judge's Order Dated 23 June 2001), 26 June 2001 ("Amended Indictment")). Following *The Prosecutor v. Siméon Nchamihigo*, Case No. ICTR-2001-63-I, Decision on Request for Leave to Amend the Indictment, signed on 14 July 2006, but filed on 17 July 2006 ("Decision of 17 July 2006"), granting leave to amend, the Prosecution filed a Second Amended Indictment (*see The Prosecutor v. Siméon Nchamihigo*, Case No. ICTR-2001-63-I, Amended Indictment (in Conformity with Trial Chamber I Decision Dated 14 July 2006), 18 July 2006 ("Second Amended Indictment")). On 13 September 2006, the Trial Chamber denied the Defence's request for certification to appeal the Decision of 17 July 2006. The trial commenced on 25 September 2006. On 27 September 2006, the Trial Chamber granted in part the Defence motion on defects in the form of the Second Amended Indictment, and ordered the Prosecution to make some adjustments. The Prosecution complied with the order on 29 September 2006 by filing the Revised Amended Indictment (*see The Prosecutor v. Siméon Nchamihigo*, Case No. ICTR-2001-63-T, Revised Amended Indictment (In conformity with Trial Chamber III Decision dated 27 September 2006), 29 September 2006 ("Revised Amended Indictment")). On 7 December 2006, in adjudicating a Defence motion, the Trial Chamber ordered the Prosecution to make further amendments to the Revised Amended Indictment and to provide additional information in certain instances. The Prosecution complied on 11 December 2006 by filing the Indictment (*see The Prosecutor v. Siméon Nchamihigo*, Case No. ICTR-2001-63-I, Second Revised Amended Indictment (in conformity with Trial Chamber III Decision dated 7 December 2006), 11 December 2006 ("Indictment")) on which the Trial Judgement is based.

[24] *See* Trial Judgement, paras. 400-410 (Annex I: Procedural History).

[25] *The Prosecutor v. Siméon Nchamihigo*, Case No. ICTR-2001-63-I, Second Revised Amended Indictment (in conformity with Trial Chamber III Decision dated 7 December 2006), 11 December 2006.

[26] *The Prosecutor v. Siméon Nchamihigo*, Case No. ICTR-2001-63-T, Decision on Defence Motion for Non-Conformity of the Indictment with the Trial Chamber's Decision on Defects in the Form of the Indictment, 7 December 2006.

[27] *The Prosecutor v. Siméon Nchamihigo*, Case No. ICTR-2001-63-I, Amended Indictment (in Conformity with Trial Chamber I Decision Dated 14 July 2006), 18 July 2006 ("Second Amended Indictment").

[28] Notice of Appeal, para. 5, *referring to* Decision of 17 July 2006, Amended Indictment. *See also* AT. 29 September 2009 pp. 5-8.

[29] Notice of Appeal, para. 6; Appellant's Brief, paras. 18-26, *referring to The Prosecutor v. Siméon Nchamihigo*, Case No. ICTR-2001-63-I, *Requête de la Défense en Exception Préjudicielle pour vices de forme de l'Acte d'accusation,*

A. Alleged Error Relating to the Decision of 17 July 2006 (Ground of Appeal 1, in part)

15. The Appellant claims that, in its Decision of 17 July 2006, the Trial Chamber misapplied the Rules and the Tribunal's case law by granting the Prosecution leave to further amend the Amended Indictment of 26 June 2001.[31] He argues that the amendments allowed by the Trial Chamber were "inherently illegal".[32]

16. The Appellant also submits that, contrary to the Trial Chamber's finding that the amendments reduced the scope of the Amended Indictment, the Second Amended Indictment substantially expanded its scope.[33] He claims that it included 50 new factual paragraphs with new supporting allegations, distorted the meaning of the allegations, and included new charges.[34] He points out that the Trial Chamber[35] and the Prosecution[36] acknowledged the novelty and the expanded scope of these allegations and that, as a result, there would be a need for additional investigations.

17. The Prosecution responds that the Trial Chamber properly exercised its discretion and applied the correct legal standard in allowing the amendments.[37] It contends that the Appellant merely states that the Trial Chamber drew incorrect conclusions without identifying any error that justifies appellate intervention.[38] The Prosecution argues that in exercising its discretion, the Trial Chamber took into account a number of factors.[39] These factors included: (1) that the changes improved the clarity and precision of the charges; (2) the diligence of the Prosecution in making the amendments in a timely manner; and (3) the likely delay or other possible prejudice to the Appellant, if any, caused by the amendments.[40]

((Art. 50 C) du Réglement de Procédure et de Preuve), 29 August 2006 ("Motion of 29 August 2006"). *See also* AT. 29 September 2009 pp. 5-8.
[30] Notice of Appeal, para. 7; Appellant's Brief, paras. 29-31. *See also* AT. 29 September 2009 pp. 5-8.
[31] Notice of Appeal, para. 5, *referring to* Decision of 17 July 2006, para. 9.
[32] Notice of Appeal, para. 5. The French original version of the notice of appeal reads: "intrinsèquement illégales".
[33] Appellant's Brief, para. 5. *See also* AT. 29 September 2009 p. 6.
[34] Appellant's Brief, para. 7 and fn. 7 *referring to* Annex II of the Appellant's Brief, containing a "*Tableau comparatif des Actes d'accusation établis contre Nchamihigo*" ("Indictments Comparison Table") and to his arguments developed in numerous written and oral motions. The Appellant provides a list of these motions.
[35] Appellant's Brief, para. 12, *referring to* Decision of 17 July 2006.
[36] Appellant's Brief, para. 10, *referring to* statements made by the Prosecution at the Status Conference of 19 May 2006.
[37] Respondent's Brief, para. 12.
[38] Respondent's Brief, paras. 14, 15.
[39] Respondent's Brief, para. 16.
[40] Respondent's Brief, para. 16.

18. The Appeals Chamber recalls that Trial Chambers enjoy considerable discretion in the conduct of proceedings before them.[41] However, this discretion must be exercised consistently with Articles 19 and 20 of the Statute which require the Trial Chamber to ensure that a trial is fair and expeditious.[42] The Decision of 17 July 2006 granting leave to amend the Indictment is a discretionary decision to which the Appeals Chamber accords deference.[43] The Appeals Chamber will therefore limit itself to considering whether the Trial Chamber abused its discretion by committing a "discernible error".[44] The Appeals Chamber will only overturn the Trial Chamber's exercise of its discretion where it is found to be: (1) based on an incorrect interpretation of governing law; (2) based on a patently incorrect conclusion of fact; or (3) so unfair or unreasonable as to constitute an abuse of the Trial Chamber's discretion.[45]

19. The Appeals Chamber finds no merit in the Appellant's claim that the authorised amendments were "inherently illegal". It recalls that nothing in Rule 50 of the Rules prevents the Prosecution from proposing substantial amendments to an indictment.[46] This argument is therefore dismissed.

20. Furthermore, the Appeals Chamber finds that the Appellant misapprehends the Trial Chamber's findings. The Trial Chamber did not find that the amendments sought by the Prosecution reduced the scope of the Amended Indictment; instead it found that the proposed amendments refined some of the allegations by providing additional details.[47] These additional details were found to "assist in clarifying and narrowing otherwise general allegations" and to provide "a more accurate picture of the [Prosecution] case."[48] The Trial Chamber found that the amendments had "an ameliorating effect on the clarity and the precision of the case to be met."[49] In so finding, the Trial Chamber noted that the additional details could require further investigations by the Appellant.[50] The Trial Chamber also acknowledged that some of the proposed amendments

[41] *See Augustin Ngirabatware v. The Prosecutor*, Case No. ICTR-99-54-A, Decision on Augustin Ngirabatware's Appeal of Decisions Denying Motions to Vary Trial Date, 12 May 2009 ("*Ngirabatware* Decision of 12 May 2009"), para. 22.
[42] *Ngirabatware* Decision of 12 May 2009, para. 22.
[43] *See The Prosecutor v. Édouard Karemera et al.*, Case ICTR-98-44-AR73, Decision on Prosecutor's Interlocutory Appeal Against Trial Chamber III Decision of 8 October 2003 Denying Leave to File an Amended Indictment, 19 December 2003 ("*Karemera et al.* Decision of 19 December 2003"), para. 9, stating that "Ғiğf the Trial Chamber has properly exercised its discretion, the Appeals Chamber may not intervene solely because it may have exercised the discretion differently."
[44] *Ngirabatware* Decision of 12 May 2009, para. 8.
[45] *Ngirabatware* Decision of 12 May 2009, para. 8.
[46] *Karemera et al.* Decision of 19 December 2003, para. 11.
[47] Decision of 17 July 2006, para. 15.
[48] Decision of 17 July 2006, para. 15.
[49] Decision of 17 July 2006, para. 15.
[50] Decision of 17 July 2006, para. 15.

expanded the scope of the charges[51] and, for that reason, it rejected some of them.[52] For those amendments it accepted, it gave reasons for doing so. For example, in one instance, it found that the proposed amendments concerned events already pleaded in the Amended Indictment and thus the "Defence's previous investigations should already have substantially addressed the subject-matter concerned," thereby minimising the risk of prejudice.[53] In another, it explained that the expansion of the geographic scope of the charges to include an additional area would not prejudice the Appellant as he was already on notice of this charge through a general pleading under other paragraphs of the Amended Indictment.[54]

21. The Appeals Chamber is not persuaded that the Trial Chamber erred in the exercise of its discretion in its Decision of 17 July 2006. It is clear from the Trial Chamber's decision that it closely considered all of the issues raised by the Appellant. It addressed a number of the new paragraphs, focusing on the separate pleading of the crimes of extermination and murder as crimes against humanity,[55] the insertion and removal of counts and modes of liability,[56] the additional pleading of joint criminal enterprise,[57] the "specification" of material facts,[58] and the inclusion of new material facts and charges.[59] The Appellant has failed to demonstrate any discernible error in the Trial Chamber's approach.

22. The Appellant also submits that the Trial Chamber erred in allowing the amendments despite having acknowledged a lack of diligence on behalf of the Prosecution. The Appellant argues that the Prosecution waited five years before requesting the amendments and did so only a few months before the anticipated commencement of the trial,[60] without providing any explanation.[61]

23. The Appeals Chamber recalls that the timeliness of a Prosecution request for leave to amend an indictment must be assessed in the context of Article 20 of the Statute which requires the Trial Chamber to ensure that a trial is fair.[62] In its Decision of 17 July 2006, the Trial Chamber acknowledged its overriding obligation to ensure the fairness of the proceedings. It stated that the factors to be taken into account in making its determination included the diligence of the

[51] Decision of 17 July 2006, paras. 21-25.
[52] Decision of 17 July 2006, paras. 21, 23.
[53] Decision of 17 July 2006, para. 22.
[54] Decision of 17 July 2006, para. 25.
[55] Decision of 17 July 2006, para. 10.
[56] Decision of 17 July 2006, paras. 11-13.
[57] Decision of 17 July 2006, para. 14.
[58] Decision of 17 July 2006, paras. 15-18.
[59] Decision of 17 July 2006, paras. 19-27.
[60] Appellant's Brief, para. 11.
[61] Appellant's Brief, para. 9. The Appellant provides references to these written and oral motions in his Appellant's Brief, fn. 14.

Prosecution in requesting the amendment in a timely manner so as to avoid creating an unfair tactical advantage.[63] In addressing the question of the Prosecution's diligence, the Trial Chamber noted that it had "provided little information regarding its diligence and timeliness in bringing this motion".[64] However, it concluded that the Prosecution's "shortcoming Ŧwasğ outweighed by other factors Ŧdescribed elsewhere in the Decision of 17 July 2006ğ including the ameliorating effect of the amendments on the clarity and precision of the case to be met".[65] It also noted that the amendments would streamline the case and considered that "the ŦAppellant wouldğ have an adequate opportunity to prepare his defence".[66]

24. The Appellant further asserts that the Appeals Chamber's intervention is required to assess the validity of the amendments.[67] However, the Appeals Chamber is not persuaded that the Appellant has demonstrated that the circumstances warrant its intervention. The Appellant has failed to establish that the Trial Chamber committed a discernible error in allowing the amendments.

25. The Appellant finally claims that the Trial Chamber erred by failing to grant his request for certification to appeal the Decision of 17 July 2006, thus causing him "incurable prejudice".[68] As the Appeals Chamber finds no discernible error on the part of the Trial Chamber in reaching the Decision of 17 July 2006, the issue of certification to appeal the decision is moot.

26. Accordingly, the Appellant's arguments are rejected.

B. Alleged Error Relating to the Commencement of the Trial (Ground of Appeal 2, in part)

27. At the Status Conference of 7 August 2006, the date for commencement of the trial was tentatively set for 25 September 2006,[69] and a scheduling order was issued to this effect on 10 August 2006.[70]

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[62] *See Karemera et al.* Decision of 19 December 2003, para. 13.
[63] Decision of 17 July 2006, para. 9, *referring to, inter alia, Karemera et al.* Decision of 19 December 2003.
[64] Decision of 17 July 2006, para. 29.
[65] Decision of 17 July 2006, para. 30.
[66] Decision of 17 July 2006, para. 30.
[67] Appellant's Brief, para. 5, *referring generally to Akayesu* Appeal Judgement.
[68] Notice of Appeal, para. 5; Appellant's Brief, para. 13, *referring to The Prosecutor v. Siméon Nchamihigo*, Case No. ICTR-2001-63-PT, Decision on Request for Certification of Appeal on Trial Chamber I's Decision Granting Leave to Amend the Indictment, Rule 73 (B) of the Rules of Procedure and Evidence, 13 September 2006 ("Decision of 13 September 2006").
[69] T. 7 August 2006 pp. 2-4 (Status Conference).
[70] *The Prosecutor v. Siméon Nchamihigo*, Case No. ICTR-2001-63-PT, Scheduling Order, 10 August 2006. The starting date for the trial was discussed in an earlier status conference on 19 May 2006, following a request by the Defence, but a definite date could not be set due to a pending Prosecution motion to further amend the Amended Indictment.

28. On 29 August 2006, the Appellant filed a motion objecting to certain defects in the form of the Amended Indictment.[71] At a Status Conference held on 25 September 2006, before the start of the trial, the Appellant expressed his concern with the Trial Chamber's decision to start the trial before disposing of the Motion of 29 August 2006.[72] Despite this concern, the Trial Chamber held that the trial would start as scheduled, explaining that its decision on the Motion of 29 August 2006 was almost ready and would not affect the testimony of the first Prosecution witness.[73] The Trial Chamber also stated that it would revisit the issue of timing should the decision not be delivered by the end of that witness's testimony.[74] Accordingly, the trial started on 25 September 2006 with the Prosecution's opening statement. On 26 September 2006, Witness Jeanette Kwedi Eboua ("Witness Eboua"), an investigator for the Prosecution, started her testimony.[75] The decision on the Motion of 29 August 2006 was filed on 27 September 2006, two days after the start of the trial.[76]

29. The Appellant submits that the Trial Chamber manifestly erred in starting the trial on 25 September 2006, prior to resolving all contested matters in relation to the Indictment, notably the Motion of 29 August 2006.[77] He argues that the Trial Chamber was required to dispose of the preliminary motion prior to the commencement of trial pursuant to Rule 72(A) of the Rules, as well as Article 20(4)(a) of the Statute.[78]

30. The Prosecution responds that decisions related to the general conduct of trial are matters within the discretion of the Trial Chamber, and that the Appellant has failed to demonstrate an abuse of that discretion.[79] It further notes that the Appellant filed the Motion of 29 August 2006, more than 10 days after the expiration of the 30-day period stipulated by Rule 50(C) of the Rules.[80] The Prosecution also argues that the Appellant has failed to demonstrate that he suffered any prejudice as he has not shown how the testimony of the first Prosecution witness impeded his ability to prepare his defence.[81]

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[71] *The Prosecutor v. Siméon Nchamihigo*, Case No. ICTR-2001-63-I, *Requête de la Défense en Exception Préjudicielle pour vices de forme de l'Acte d'accusation (Art. 50 C) du Règlement de Procédure et de Preuve)*, filed in French on 29 August 2006 ("Motion of 29 August 2006").
[72] T. 25 September 2006 pp. 2-3 (Status Conference).
[73] T. 25 September 2006 p. 3 (Status Conference).
[74] T. 26 September 2006 p. 2.
[75] *See* T. 25, 26, 27 September 2006.
[76] *The Prosecutor v. Siméon Nchamihigo*, Case No. ICTR-2001-63-T, Decision on Defence Motion on Defects in the Form of the Indictment, 27 September 2006.
[77] Notice of Appeal, para. 6; Appellant's Brief, para. 15.
[78] Notice of Appeal, para. 6; Appellant's Brief, para. 26.
[79] Respondent's Brief, para. 22.
[80] Respondent's Brief, paras. 23, 24.
[81] Respondent's Brief, para. 29.

31. The Appeals Chamber finds that in deciding to start the trial prior to ruling on the pending Motion of 29 August 2006, the Trial Chamber violated the express provision of Rule 72(A) of the Rules that preliminary motions "shall be disposed of […] before the commencement of the opening statements".[82] Because the language of Rule 72(A) of the Rules is mandatory, the Trial Chamber committed a discernible error of law when it allowed the trial to commence without disposing of the Appellant's motion.

32. Nonetheless, the Appeals Chamber is not convinced that the Trial Chamber's error invalidates the Trial Judgement. The trial started two days before the delivery of the decision on the Motion of 29 August 2006, during which time the Trial Chamber only heard the Prosecution's opening statement and the first part of Witness Ebouea's testimony. Significantly, the Trial Chamber found that Witness Ebouea's "testimony was not critical to any finding of fact that the Chamber [had] to make".[83] Accordingly, the Appellant's arguments are rejected.

C. Alleged Error Relating to the Time and Facilities Allowed for the Preparation of the Appellant's Defence (Ground of Appeal 3 and Grounds of Appeal 1 and 2, in part)

33. The Appellant contends that the amendments introduced in the Second Amended Indictment of 18 July 2006 prejudiced the preparation of his defence and thus violated his rights under Article 20(4)(a) and (b) of the Statute.[84] He argues that the timing of the amendments, five years after the Initial Indictment was confirmed and approximately two months prior to the commencement of trial, seriously prejudiced the preparation of his case.[85] He points out that he was allowed no additional time to prepare for trial, even though his strategy and preparation over the previous five years had been based on the facts and witness statements included in the Amended Indictment of 26 June 2001.[86] In further support of his contention of prejudice, he refers to the Trial Chamber's recognition, in its interlocutory decisions and the Trial Judgement, of the novelty and scope of the amendments.[87] He asserts that the Trial Chamber erred in forcing him to make an express request on each occasion the Defence required more time, despite its own recognition of the untimeliness of the Prosecution's amendments, and despite his written motions and oral objections challenging the late amendments.[88] The Appellant further argues that in so doing, the Trial Chamber gave

[82] T. 25 September 2006 pp. 2, 3 (Status Conference).
[83] Trial Judgement, para. 16.
[84] Notice of Appeal, paras. 5, 7; Appellant's Brief, paras. 12, 29-31.
[85] Appellant's Brief, para. 11.
[86] Appellant's Brief, para. 11.
[87] Appellant's Brief, paras. 7, 8.
[88] Notice of Appeal, para. 7; Appellant's Brief, paras. 7, 9, 31.

precedence to expediting the trial and pursuing the Tribunal's completion strategy rather than upholding his basic right to a fair trial.[89]

34. The Appeals Chamber considers that, although the Appellant states that his case preparation was undertaken on the basis of the Amended Indictment of 26 June 2001 and not the Second Amended Indictment, he does not identify how his defence would have differed or what further investigations would have been undertaken had he been given more time. The Appeals Chamber therefore finds that the Appellant's contention that he suffered prejudice in the preparation of his case has not been substantiated.

D. Conclusion

35. For the foregoing reasons, Grounds of Appeal 1, 2, and 3 are dismissed in their entirety.

[89] Appellant's Brief, para. 31.

IV. ALLEGED ERROR RELATING TO THE CORROBORATION OF ACCOMPLICE WITNESSES' TESTIMONY (GROUNDS OF APPEAL 4 AND 5, IN PART)

A. Introduction

36. In a section dealing with preliminary matters in the Trial Judgement, the Trial Chamber stated that:

> ŦŠ the Prosecution adduced evidence from many witnesses who admitted to participating in the crimes charged against Nchamihigo. These are accomplices. It is accepted both as a matter of law and common sense that the testimony of accomplices may be tainted by motives or incentives to falsely implicate an accused to gain some benefit or advantage in regard to their own case or sentence. A Chamber must therefore look at the testimony of accomplices, and the circumstances under which it has come to be delivered, with caution. However, there is no rule requiring corroboration in the assessment of accomplice testimony. The ŦTrialğ Chamber may rely on the testimony of an accomplice who has not been corroborated if, after careful examination, the ŦTrialğ Chamber is convinced of the truthfulness and reliability of the witness. Testimony which supports the evidence adduced by an accomplice may bolster and strengthen the reliance that can be placed on it.[90]

The Trial Chamber then relied on the testimony of accomplice Prosecution Witnesses LDC,[91] BRJ,[92] LAG,[93] AOY,[94] BRK,[95] and BRN[96] to make the factual findings underlying a number of the Appellant's convictions.

37. In his Appellant's Brief, the Appellant contends in Grounds of Appeal 4 and 5 that the Trial Chamber erred in law in stating that it did not have an obligation to search for corroboration when evaluating the testimony of an accomplice witness.[97] While the Appellant did not raise this

[90] Trial Judgement, para. 17 (footnotes omitted).
[91] Trial Judgement, paras. 50-53, 96-98, 104, 137, 143, 281, 289, 308-312, 314-316, 391. Witness LDC testified to the Appellant's alleged leadership within the *Interahamwe*, the looting of Ndayisaba's house, and the killing of his family.
[92] Trial Judgement, paras. 41, 50, 53, 160. Witness BRJ testified to the Appellant's alleged efforts to recruit individuals for militia training.
[93] Trial Judgement, paras. 59-65, 77, 90-95. Witness LAG testified to the Appellant's alleged instructions to *Interahamwe* to search for and kill Tutsis and political opponents shortly after the death of President Habyarimana.
[94] Trial Judgement, paras. 166-168, 197-203, 217, 218, 231-233, 242, 243, 246, 264, 334, 336, 346. Witness AOY testified to the Appellant's alleged involvement in strategies to kill Tutsis such as the massacres at Kamarampaka stadium and in Shangi parish.
[95] Trial Judgement, paras. 40, 48, 179-181, 214-218, 276-278, 284-286, 288, 291, 294-297, 302-306, 391. Witness BRK testified to the Appellant's alleged role within the CDR and his involvement in the massacres at Kamarampaka stadium, Mibilizi parish and hospital, and Nyakanyinya school.
[96] Trial Judgement, paras. 250-252, 259-261, 264, 266. Witness BRN testified to the Appellant's alleged involvement in the massacres in Hanika parish.
[97] Appellant's Brief, paras. 33, 39, 53, 54.

argument in his Notice of Appeal,[98] the Prosecution did not object to it being raised for the first time in the Appellant's Brief. In such circumstances, the Appeals Chamber has discretion to consider the Appellant's argument in order to ensure the fairness of the proceedings.[99] It finds it appropriate to do so in the instant case.

38. The Appellant also submits that the Trial Chamber erred by finding the testimony of Prosecution accomplice witnesses to be corroborated by facts that were irrelevant, and by failing to take into account alleged inconsistencies, contradictions, and improbabilities in their testimony.[100] The Appellant has failed to substantiate this allegation with any references to the Trial Judgement, and therefore, the Appeals Chamber dismisses it without further discussion. The Appellant also specifically alleges that the Trial Chamber erred in assessing the testimony of accomplice Witnesses LDC and LAG.[101] The Appeals Chamber will address this argument under sections X (Ground of Appeal 13) and XII.A (Ground of Appeal 15), as it overlaps with arguments presented under those grounds of appeal.

B. Alleged Error in Finding that Corroboration is Not Required for Evidence Provided by an Accomplice Witness

39. The Appellant submits that the Trial Chamber erred in stating that "there is no rule requiring corroboration in the assessment of accomplice testimony".[102] He argues that when assessing the evidence of accomplice witnesses, consideration of whether there is corroborative evidence should form part of the assessment and not to require it is "an error that affects the fairness of the Trial".[103]

40. The Appellant claims that, pursuant to the jurisprudence of the Appeals Chamber, the Trial Chamber must consider whether an accomplice witness's evidence is corroborated.[104] The Appellant relies chiefly on the *Nahimana et al.* and *Muvunyi* Appeal Judgements in support of his claim. He asserts that in *Nahimana et al.* the Appeals Chamber found that it was not an error for a

[98] In his Notice of Appeal, the Appellant merely claimed that the Trial Chamber erred in relying on accomplice witnesses testimony despite the fact that they were not corroborated on substantive aspects. Notice of Appeal, pp. 5, 6.
[99] *Simba* Appeal Judgement, para. 12.
[100] Notice of Appeal, paras. 8-11. In footnote 13 of the Notice of Appeal, the Appellant refers to several paragraphs of the Trial Judgement relating to the assessment of the evidence of Witnesses BRJ, LDC, LAG, LDB, AOY, BRK, BRN, BRF, and BRD, who he appears to assert are accomplice witnesses. However, in his Appellant's Brief, under Grounds of Appeal 4 and 5, he only presents arguments in relation to Witnesses LDC and LAG.
[101] Appellant's Brief, paras. 46-52. *See also* Appellant's Brief in Reply, 15 July 2009 ("Brief in Reply"), para. 2 (rephrasing Ground of Appeal 4 to state that the Trial Chamber erred because it believed the testimony of accomplice witnesses that was contradictory and either lacked corroboration, or was corroborated with unsupportive facts).
[102] Appellant's Brief, para. 39, *citing* Trial Judgement, para. 17.
[103] Appellant's Brief, para. 39.
[104] Appellant's Brief, paras. 34, 35 (*citing Niyitegeka* Appeal Judgement, para. 98), 41 (*citing Rukundo* Trial Judgement, paras. 145, 146).

Trial Chamber to require that an accomplice witness's testimony be supported.[105] Similarly, he contends that in *Muvunyi* the Appeals Chamber found it necessary for the Trial Chamber to consider whether the testimony of an accomplice was corroborated.[106]

41. The Prosecution responds that the Trial Chamber did not err. It asserts that a Trial Chamber has the "discretion to rely on uncorroborated accomplice witness testimony, as long as it carefully evaluates the totality of the circumstances in which it is tendered and finds it credible".[107] It asserts, relying on the *Krajišnik* Appeal Judgement, that the Trial Chamber exercised appropriate caution in assessing accomplice evidence, in compliance with the Appeals Chamber's jurisprudence.[108]

42. The Appeals Chamber has held that nothing in the Statute or the Rules prohibits a Trial Chamber from relying upon the testimony of accomplice witnesses.[109] However, such evidence is to be treated with caution, "the main question being to assess whether the witness concerned might have motives or incentives to implicate the accused".[110] Nevertheless, a Trial Chamber retains discretion to rely on uncorroborated, but otherwise credible, witness testimony[111] because it is best placed to evaluate the probative value of evidence.[112] Acceptance of and reliance upon uncorroborated evidence does not in itself constitute an error of law.[113] The Appeals Chamber notes that the Appeals Chamber of the Special Court for Sierra Leone has extended this proposition to accomplice witnesses, stating that a Trial Chamber "may convict on the basis of the evidence of a single witness, even an accomplice, provided such evidence is viewed with caution."[114]

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[105] Appellant's Brief, para. 37, *citing Nahimana et al.* Appeal Judgement, para. 439.
[106] Appellant's Brief, para. 38, *citing Muvunyi* Appeal Judgement, para. 131.
[107] Respondent's Brief, para. 34, *citing Muvunyi* Appeal Judgement, para. 128. *See also* Respondent's Brief, para. 39.
[108] Respondent's Brief, para. 35, *citing Krajišnik* Appeal Judgement, para. 146.
[109] *Niyitegeka* Appeal Judgement, para. 98.
[110] *Nahimana et al.* Appeal Judgement, para. 439, *citing Ntagerura et al.* Appeal Judgement, paras. 203-206. *See also Niyitegeka* Appeal Judgement, para. 98 ("However, considering that accomplice witnesses may have motives or incentives to implicate the accused person before the Tribunal, a Chamber, when weighing the probative value of such evidence, is bound to carefully consider the totality of the circumstances in which it was tendered."). The Appeals Chamber notes that the Appeals Chamber of the Special Court for Sierra Leone similarly stated in *Brima et al.* that "in assessing the reliability of an accomplice, the main consideration for the Trial Chamber should be whether or not the accomplice has an ulterior motive to testify as he did." *Prosecutor v. Alex Tamba Brima, Brima Bazzy Kamara and Santigie Borbor Kanu*, Case SCSL-2004-16-A, Appeal Judgement, 3 March 2008 ("*Brima et al.* Appeal Judgement"), para. 128. In some instances a situation may arise where Rule 95 of the Rules is applicable. *See Karera* Appeal Judgement, para. 234 and fn. 498, *referring to Nahimana et al.* Appeal Judgement, para. 545.
[111] *Muvunyi* Appeal Judgement, para. 128. *See Karera* Appeal Judgement, para. 46 ("a Trial Chamber has the discretion to decide, in the circumstances of each case, whether corroboration of evidence is necessary and to rely on uncorroborated, but otherwise credible, witness testimony.").
[112] *See Rutaganda* Appeal Judgment, para. 29 ("It is possible for one Trial Chamber to prefer that a witness statement be corroborated, but neither the jurisprudence of the International Tribunal nor of the ICTY makes this an obligation."); *Musema* Appeal Judgment, paras. 36-38; *Kayishema and Ruzindana* Appeal Judgement, paras. 154, 187, 320, 322; *Čelebići* Appeal Judgment, para. 506; *Aleksovski* Appeal Judgment, paras. 62, 63; *Tadić* Appeal Judgment, para. 65; *Kupreškić et al.* Appeal Judgement, para. 33.
[113] *Niyitegeka* Appeal Judgement, para. 92.
[114] *Brima et al.* Appeal Judgement, para. 129.

43. Similarly, in a number of domestic jurisdictions, judges and jurors can rely on the uncorroborated evidence of an accomplice witness provided they assess such evidence with caution. For example, the Indian judiciary has recognized that corroboration is not lawfully required but that it is wise to assess accomplice evidence with caution.[115] Moreover, corroboration requirements for accomplices have been abolished in Canada,[116] the United Kingdom,[117] and Australia.[118] The Appeals Chamber further recalls the discussion in *Tadić* of corroboration requirements in civil law countries, which concluded that "there is no ground for concluding that this requirement of corroboration is any part of customary international law and should be required by Fthe ICTYğ."[119]

44. The *Nahimana et al.* and *Muvunyi* Appeal Judgements upon which the Appellant relies do not represent a different proposition. When the Appeals Chamber stated in *Muvunyi* that it was necessary for the Trial Chamber to consider whether the testimony of a particular accomplice witness was corroborated, it did so because the Trial Chamber had already found that the witness had a general motive to enhance Muvunyi's role in the crimes and to diminish his own.[120] Contrary to the Appellant's argument, this does not evidence a categorical rule requiring Trial Chambers to search for corroboration when evaluating the testimony of an accomplice witness. Rather, the Appeals Chamber simply found that corroboration was necessary in those circumstances because the accomplice witness had a motive to enhance the accused's role in the crimes.

45. In the passage from the *Nahimana et al.* Appeal Judgement upon which the Appellant relies, the Appeals Chamber considered whether the Trial Chamber erred when it relied on the testimony of an accomplice witness only to the extent that it was corroborated.[121] The *Nahimana* Trial Chamber had concluded that it could only rely on the witness's evidence to the extent that it was corroborated because, in addition to being an accomplice, the witness gave testimony that was confusing and inconsistent.[122] The *Nahimana* Appeal Judgement found that there was no error in

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[115] *See Dagdu & Others Etc. v. State of Maharashtra* (1977) 3 S.C.R. 636, 643 (India) (explaining that section 133 of the Evidence Act permits a conviction to be based on uncorroborated accomplice testimony but given that such evidence may be "hazardous," a judge should dispense with corroboration "only if the peculiar circumstances of a case make it safe to" do so); *Rameshwar v. State of Rajasthan* (1952) S.C.R. 377, 385 (India) (clarifying that in cases tried by a judge, the judge should indicate that he considered the rule of caution and "explain why he considered it safe to convict without corroboration in the particular case").

[116] *R. v. Vetrovec*, F1982ğ 1 S.C.R. 811, 830 (Canada) (holding "that there is no special category for accomplices" but cautioning that a jury warning may sometimes be appropriate).

[117] *See* Criminal Justice and Public Order Act 1994, s. 32 (Untited Kingdom) (abolishing any requirement for a corroboration warning).

[118] Evidence Act 1995 (Cth), s. 164(1). *See, e.g., Conway v. The Queen* (2002) 209 C.L.R. 203, 223-224 (Australia) (applying section 164(1) of the Evidence Act 1995, in the context of a case involving testimony from accomplice witnesses, and affirming that the corroboration requirement has been abolished in such circumstances).

[119] *Tadić* Trial Judgement, para. 539.

[120] *Muvunyi* Appeal Judgement, paras. 129-131.

[121] *Nahimana et al.* Appeal Judgement, para. 439.

[122] *Nahimana et al*. Trial Judgement, para. 824.

this approach.[123] This reflects the fact that Trial Chambers are endowed with the discretion to require corroboration, but does not mean that corroboration is required when evaluating the testimony of all accomplice witnesses.

46. In support of his proposition, the Appellant also points to a passage from the *Krajišnik* Appeal Judgement.[124] There, the ICTY Appeals Chamber stated that a Trial Chamber should briefly explain why it accepted the evidence of witnesses who may have had motives or incentives to implicate the accused to show its cautious assessment of such evidence.[125] This passage does not mean that corroboration is required. It simply stresses that Trial Chambers cannot merely state that they exercised caution when assessing the evidence of an accomplice witness, but must establish that they in fact did so.

47. The Appeals Chamber recalls that a Trial Chamber has full discretion to assess the appropriate weight and credibility to be accorded to the testimony of a witness.[126] In so doing, a Trial Chamber has to consider relevant factors on a case-by-case basis, including the witness's demeanour in court; his role in the events in question; the plausibility and clarity of his testimony; whether there are contradictions or inconsistencies in his successive statements or between his testimony and other evidence; any prior examples of false testimony; any motivation to lie; and the witness's responses during cross-examination.[127] Some factors are particularly relevant for the assessment of accomplice witnesses, including: the extent to which discrepancies in the testimony were explained;[128] whether the accomplice witness has made a plea agreement with the Prosecution; whether he has already been tried and, if applicable, sentenced for his own crimes or is still awaiting the completion of his trial;[129] and whether the witness may have any other reason for holding a grudge against the accused.[130] Corroboration is also one of many potential factors relevant to the Trial Chamber's assessment of a witness's credibility.[131] The application of these factors, and the positive or negative impact they may have on the witness's credibility, varies according to the specific circumstances of each case.

48. In light of the above, the Appeals Chamber considers that the proposition that a Trial Chamber retains the discretion to rely on uncorroborated, but otherwise credible, witness testimony

[123] *Nahimana et al.* Appeal Judgement, para. 439.
[124] Brief in Reply, paras. 3, 6.
[125] *Krajišnik* Appeal Judgement, para. 146.
[126] *Nahimana et al.* Appeal Judgement, para. 194.
[127] *See Nahimana et al.* Appeal Judgement, para. 194.
[128] *See Simba* Appeal Judgement, para. 129; *Kordi} and ^erkez* Appeal Judgement, para. 266.
[129] *See Blagojevi} and Joki}* Trial Judgement, para. 24.
[130] *See Kajelijeli* Trial Judgement, para. 151.
[131] *Simba* Appeal Judgement, para. 24, *quoting Ntakirutimana* Appeal Judgement, para. 132.

applies equally to the evidence of accomplice witnesses provided that the trier of fact applies the appropriate caution in assessing such evidence.

49. The Appeals Chamber therefore dismisses the Appellant's contention that the Trial Chamber erred in law in holding that it was not obliged to seek evidence in corroboration of accomplice witness testimony.

V. ALLEGED ERROR RELATING TO FAVOURING PROSECUTION WITNESSES (GROUND OF APPEAL 6)

50. In his Sixth Ground of Appeal, the Appellant argues that the Trial Chamber erred in law and in fact in its assessment of the credibility of witnesses by favouring the Prosecution witnesses' testimony over an objective analysis of the evidence.[132] He asserts that the Trial Chamber thus failed to give him the benefit of reasonable doubt.[133] He does not develop this argument in his Appellant's Brief, but states that this ground of appeal is argued within other relevant sections of his Appeal.[134] The Appeals Chamber has therefore addressed these arguments where they arise.

[132] Notice of Appeal, paras. 15-18.
[133] Notice of Appeal, paras. 15-18.
[134] Appellant's Brief, para. 59.

VI. ALLEGED ERROR IN FINDING THAT THE APPELLANT POSSESSED THE *MENS REA* FOR THE KILLINGS ON OR ABOUT 7 APRIL 1994 (GROUND OF APPEAL 7)

51. The Trial Chamber found that the Appellant "ordered [Witness] LAG and those *Interahamwe* and others to whom he spoke at Kamembe on 7 April 1994 to go and look for and kill Tutsis and other civilians who were RPF supporters."[135] Based primarily on these factual findings, the Trial Chamber concluded that the Appellant was guilty of genocide because he instigated the killing of Tutsis, including Karangwa, Dr. Nagafizi, and Ndayisaba's family, with the intent to destroy, in whole or in part, the Tutsi ethnic group.[136] The Trial Chamber also found the Appellant guilty of extermination as a crime against humanity because the killings were part of a widespread and systematic attack against a civilian population and that the same people, acting upon the instigation of the Appellant, killed the aforementioned civilian Tutsis, as well as Kongo, a prominent Hutu businessman considered to be an RPF accomplice.[137]

52. Under this ground of appeal, the Appellant contends that: (1) he lacked notice of the charges for which he was convicted;[138] and (2) the Trial Chamber erred in law by applying an objective standard for determining his intent to kill.[139]

A. Alleged Lack of Notice

53. In its analysis underlying the conclusion that the Appellant ordered people—including Witness LAG, *Interahamwe*, and others—to look for and kill Tutsis and other civilians who were RPF supporters, the Trial Chamber found that "the young men to whom Nchamihigo spoke in the presence of [Witness] LAG included *Interahamwe* who felt that they had to obey Nchamihigo's orders as they understood them."[140]

54. The Appellant claims that the Trial Chamber erred in reaching this conclusion because he lacked notice of the underlying facts.[141] He submits that he was only charged with ordering or instigating Thomas Mubiligi and a group of young Hutus in Kamembe to search for Tutsis and RPF accomplices and hand them over to the *Interahamwe*, not with ordering or instigating *Interahamwe*

[135] Trial Judgement, para. 100.
[136] Trial Judgement, para. 347.
[137] Trial Judgement, para. 347.
[138] Notice of Appeal, paras. 59, 60; Appellant's Brief, paras. 61, 63.
[139] Notice of Appeal, para. 19; Appellant's Brief, para. 65.
[140] Trial Judgement, para. 95.
[141] Appellant's Brief, para. 63.

to search for Tutsis and RPF accomplices on the morning of 7 April 1994.[142] The Appellant asserts that his defence was prejudiced by the Trial Chamber's misinterpretation of the Indictment,[143] as it obviated the need for the Prosecution to establish a "link between an order to a group of youths and [the] handing over Ŧofğ Tutsi to the *Interahamwe* to be killed".[144]

55. The Prosecution responds that this argument should be summarily dismissed because it was raised for the first time in the Appellant's Brief.[145] The Prosecution also submits that, in any event, the Trial Chamber did not lower the Prosecution's burden of proof[146] as it "still had the burden of proving all the essential elements, namely that the Appellant instigated or ordered the *Interahamwe* or other persons identified in paragraph 22 [of the Indictment]."[147]

56. The Appeals Chamber has previously stated that "[t]he charges against an accused and the material facts supporting those charges must be pleaded with sufficient precision in an indictment so as to provide notice to the accused."[148] The importance of providing notice to the accused is paramount, and in reaching its judgement a Trial Chamber can only convict the accused of crimes that are charged in the indictment.[149] Accordingly, despite the fact that the Appellant raised this issue for the first time in his Appellant's Brief and the Prosecution objected, the Appeals Chamber finds that it is in the interests of justice to consider the Appellant's claim that the Trial Chamber erred by relying on a material fact not pleaded in the Indictment.[150]

57. The Appeals Chamber is not persuaded that the Trial Chamber relied on a material fact that was not pleaded in the Indictment, as alleged by the Appellant. Paragraph 22 of the Indictment alleges that:

> On or about 7 April 1994, [the Appellant] spoke to Thomas Mubiligi and a group of young Hutu in Kamembe and ordered or instigated them to look for all the Tutsi and RPF accomplices and hand them over to the *Interahamwe* and to set ablaze all the places where the opposition was well-established. Following [the Appellant's] orders or instigation, the *Interahamwe* tracked down and

[142] Appellant's Brief, paras. 60, 61.
[143] Appellant's Brief, para. 63.
[144] Appellant's Brief, para. 62.
[145] Respondent's Brief, para. 46.
[146] Respondent's Brief, para. 49.
[147] Respondent's Brief, para. 49.
[148] *Muvunyi* Appeal Judgement, para. 18.
[149] *Nahimana et al.* Appeal Judgement, para. 326; *Ntagerura et al.* Appeal Judgement, para. 28; *Kvo~ka et al.* Appeal Judgement, para. 33.
[150] The Appeals Chamber has previously considered arguments which were raised for the first time in an appellant's brief in the interests of justice. *See Kamuhanda* Appeal Judgement, para. 133, fn. 281.

> killed many people, mostly Tutsi men, women and children, on or about 7 April 1994 and in the months that followed.[151]

The Appeals Chamber considers that, read in context, this paragraph provided the Appellant with adequate notice that he was charged with having ordered or instigated a group of people, including *Interahamwe*, to kill Tutsis and that these people subsequently acted on this order or instigation. Accordingly, the Appellant's argument is dismissed.

B. Alleged Error Regarding the *Mens Rea*

58. The Appellant claims that the Trial Chamber erred in law in concluding that he "must have known that the natural consequence of addressing those men in the way that he did would be that they would go out and kill Tutsis and Tutsi sympathizers."[152] He contends that the Trial Chamber applied an objective standard in determining his intent to kill[153] while the required *mens rea* for proving "murder" is a subjective intent to kill.[154] He argues that the Trial Chamber should have first found the *mens rea* for "murder" before proceeding to make a finding on his *mens rea* for genocide.[155]

59. The Prosecution responds that the Trial Chamber did not err in concluding that the Appellant's specific intent to commit genocide was proven beyond reasonable doubt based on a holistic evaluation of the evidence.[156] It asserts that the Trial Chamber's approach is consistent with the jurisprudence of the Appeals Chamber, which establishes that the specific intent to commit genocide can be inferred from, among other things, the overall context in which the crime occurred.[157]

60. As a preliminary issue, the Appeals Chamber notes that while the English translation of the Appellant's Brief refers to "murder", in the original French version the term used is "*meurtre*".[158] As *meurtre* can be translated as "murder" or "killing" and the Appellant was not convicted of murder but rather of instigating genocide, with the underlying act of killing, and of instigating

[151] Indictment, para. 22. The Appeals Chamber interprets this sentence to mean that the Appellant was charged with directly ordering and instigating *Interahamwe* to track down and kill many people, mostly Tutsis, based on the phrase "[f]ollowing SIMEON NCHAMIHIGO's orders or instigation".
[152] Trial Judgement, para. 95.
[153] Notice of Appeal, para. 24; Appellant's Brief, para. 66.
[154] Notice of Appeal, para. 19; Appellant's Brief, para. 65, *citing Semanza* Trial Judgement, para. 319, *Akayesu* Trial Judgement, paras. 500, 501, *Rutaganda* Trial Judgement, para. 50, *Bagilishema* Appeal Judgement, paras. 57, 58, *Kayishema and Ruzindana* Appeal Judgement, para. 15.
[155] Appellant's Brief, paras. 70, 71.
[156] Respondent's Brief, paras. 51, 52.
[157] Respondent's Brief, para. 51, *citing Nahimana et al.* Appeal Judgement, para. 524, *Gacumbitsi* Appeal Judgement, para. 41.
[158] Appellant's Brief, paras. 70, 71.

extermination as a crime against humanity,[159] the Appeals Chamber understands that the Appellant is referring to the *mens rea* for instigating the underlying act of killing, not murder.

61. The Appeals Chamber recalls that the *mens rea* for instigating is established where the perpetrator acts with either direct intent to prompt another to commit a crime, or with awareness of the substantial likelihood that a crime will be committed in execution of that instigation.[160] Furthermore, where the crime alleged is genocide, it must also be proven that the perpetrator acted with the specific intent to destroy a protected group as such in whole or in part.[161]

62. The Appeals Chamber rejects the Appellant's claim that the Trial Chamber was required to conclude that he possessed the *mens rea* for instigating killing before proceeding to make a finding on his genocidal intent. Provided that the Trial Chamber finds that both elements of the *mens rea* have been established, it is immaterial in which order it does so. In relation to the killings on or about 7 April 1994, the Trial Chamber concluded that the Appellant had both the *mens rea* for instigation[162] and the specific intent for genocide.[163]

63. The Appellant further submits that the Trial Chamber erred by imputing Witness LAG's subjective state of mind to him in determining whether the Appellant possessed the necessary *mens rea*.[164] The Appeals Chamber disagrees. The Trial Chamber did not attribute Witness LAG's state of mind to the Appellant. Rather, it relied on the language used by the Appellant, as reported by Witness LAG in his evidence, in order to make a finding regarding the Appellant's intent.[165] Witness LAG testified that the Appellant told the people gathered in Kamembe on the morning of 7 April 1994 that the presidential plane had been shot down by the Tutsis, the *Inyenzi*, and the RPF[166] and then instructed the crowd to search for Tutsis, their accomplices, and MRND opponents.[167] The Trial Chamber also relied on the context of the death of President Habyarimana and the aftermath of insecurity and chaos, along with the fact that the Appellant was an important figure to whom young men would defer.[168] On that basis, it found that the Appellant must have

[159] Trial Judgement, para. 347.
[160] *Kordić and Čerkez* Appeal Judgement, paras. 29, 32.
[161] *Seromba* Appeal Judgement, para. 175.
[162] Trial Judgement, para. 95.
[163] Trial Judgement, para. 336.
[164] Notice of Appeal, para. 24; Appellant's Brief, paras. 68, 69. In paragraph 68 of his Appellant's Brief, the Appellant refers to the transcript of 17 January 2007, page 39, lines 31-37 and page 40, lines 1-2 where Witness LAG stated that he interpreted the Appellant's statement to "search for the Tutsis and their accomplices" to mean that these people should be killed, and that because the Appellant was the Deputy Prosecutor, these orders could be implemented without the perpetrators suffering any consequences.
[165] *See* Trial Judgement, para. 333.
[166] Trial Judgement, para. 60.
[167] Trial Judgement, para. 60.
[168] Trial Judgement, para. 95.

known that the consequence of his speech in Kamembe would be that the people who heard it would kill Tutsis and Tutsi sympathisers.[169] The Appeals Chamber finds that the Appellant has not demonstrated that a reasonable Trial Chamber could not have found that the only conclusion to be drawn from the evidence on the record was that he possessed the required *mens rea* for instigating killings and the specific intent to commit genocide. Therefore, this argument is dismissed.

C. Conclusion

64. For the foregoing reasons, Ground of Appeal 7 is dismissed in its entirety.

[169] Trial Judgement, para. 95.

VII. ALLEGED ERRORS RELATING TO THE KILLING OF JOSEPHINE MUKASHEMA, HÉLÈNE, AND MARIE (GROUND OF APPEAL 8)

65. The Trial Chamber convicted the Appellant of genocide and murder as a crime against humanity in part based on its finding that the Appellant took three Tutsi girls, Josephine Mukashema, Hélène, and Marie from Witness BRD's house to Gatandara roadblock so that they could be killed, declaring them to be *Inkotanyi*.[170] In connection with this factual finding, the Trial Chamber held that the Appellant aided and abetted the killing of the three Tutsi girls, that he did so with the intent to destroy the Tutsi ethnic group in whole or in part, and that his acts were part of a widespread attack on the Tutsi civilian population.[171]

66. The Appellant submits that the Trial Chamber committed numerous errors of fact and law in reaching these findings.[172] He argues that the Trial Chamber erred: (1) in convicting him on the basis of facts not pleaded in the Indictment; and (2) in assessing and in drawing inferences from the evidence of Witness BRD.[173]

A. Alleged Error in Finding that the Appellant Aided and Abetted the Killing of the Three Tutsi Girls Based on Witness BRD's Evidence

1. Background and Submissions

67. The Trial Chamber's finding that the Appellant aided and abetted the killing of the three Tutsi girls was based on the evidence of Witness BRD.[174] Witness BRD testified that he attended the Nyalukemba Institute in Bukavu, the DRC,[175] with the three Tutsi girls prior to April 1994.[176] It was his evidence that the girls took refuge in his home until the Appellant removed them, promising to take them to a safe location.[177] Witness BRD subsequently learned from the Appellant that the

[170] Trial Judgement, paras. 353, 357. *See also* Trial Judgement, para. 125.
[171] Trial Judgement, para. 354.
[172] Notice of Appeal, paras. 25-32; Appellant's Brief, paras. 73, 76, 77, 79- 81, 86-88, 90-94, 97.
[173] Appellant's Brief, paras. 87, 94-96.
[174] Trial Judgement, paras. 125, 353, 354.
[175] Trial Judgement, paras. 121, 122; Exhibits D62, D63, D64, D65. The Appeals Chamber notes that the school name was spelled "Nyarukemba" by Witness BRD (*see* T. 24 January 2007 p. 49) and the Trial Chamber (*see* Trial Judgement, para. 119). However, the Appeals Chamber adopts the spelling used in the school's own records (*see* Exhibits D62, D63).
[176] T. 24 January 2007 pp. 49, 62.
[177] T. 24 January 2007 p. 49.

three Tutsi girls had been killed because they were *Inkotanyi*.[178] Witness BRD then went to Gatandara where he found their bodies.[179]

68. In assessing Witness BRD's credibility, the Trial Chamber noted that there was no corroboration of his testimony and that he had been convicted for forgery. However, the Trial Chamber found him to be forthright and persuasive and therefore believed his evidence.[180] The Trial Chamber concluded that the "only reasonable inference to be drawn from ŦWitness BRD'sğ testimony is that [the Appellant] took the girls to the ŦGatandarağ[181] roadblock for the purpose of having them killed because they were *Inkotanyi.*"[182]

69. The Appellant asserts that the Trial Chamber made two errors in its consideration of the evidence of Witness BRD. First, the Appellant argues that the Trial Chamber erred in its assessment of Witness BRD's credibility, and second, that it erred in finding that the only reasonable inference to be drawn from this evidence was that the Appellant aided and abetted the killing of the three Tutsi girls.[183]

70. With respect to Witness BRD's credibility, the Appellant submits that the Trial Chamber erred in its assessment of Defence evidence relating to the school attendance of Witness BRD and the three Tutsi girls[184] and in shifting the burden of proof to him.[185] Specifically, the Appellant contends that the Trial Chamber abused its discretion in concluding that the Defence evidence did not raise reasonable doubt about Witness BRD's claim that he and the three Tutsi girls attended the same school.[186]

71. The Appellant also submits that the Trial Chamber erred in finding that the only reasonable inference to be drawn from Witness BRD's testimony was that the Appellant aided and abetted the killing of the three Tutsi girls.[187] He argues that the Trial Chamber failed to consider alternative inferences that would be consistent with the evidence.[188] He notes that the evidence allows for the

[178] T. 24 January 2007 pp. 49, 50.
[179] T. 24 January 2007 p. 50.
[180] Trial Judgement, para. 125. *See* Trial Judgement, paras. 119-125.
[181] Although paragraph 125 of the Trial Judgement does not specify which roadblock, it is clear from paragraphs 120 and 353 that the Trial Chamber was referring to Gatandara roadblock.
[182] Trial Judgement, para. 125.
[183] Appellant's Brief, paras. 72-97.
[184] Notice of Appeal, para. 25; Appellant's Brief, paras. 76, 79- 81, 97.
[185] Appellant's Brief, paras. 87, 90. The Appellant also alleges that the Trial Chamber erred by failing to consider or give proper weight to Witness BRD's past criminal record. Appellant's Brief, para. 94.
[186] Appellant's Brief, paras. 76, 77, 79, 88, 89, 97; Brief in Reply, para. 19-24, *referring to* Trial Jugement, paras. 123, 124.
[187] Notice of Appeal, para. 30; Appellant's Brief, paras. 72-74, 91-93, *referring to* Trial Judgement, paras. 121, 123-125.
[188] Appellant's Brief, paras. 91-93.

inference that he took the three Tutsi girls to a place of refuge, as promised, and that the girls subsequently left or were abducted and killed by persons unrelated to him.[189] He further submits that the Trial Chamber erred in finding that the Appellant uttered threats to Witness BRD about assisting Tutsis, as this finding is not supported by the evidence.[190]

72. The Prosecution responds that the Appellant fails to articulate any error in the Trial Chamber's assessment of the documentary evidence and witness testimony.[191] It submits that the Trial Chamber duly considered the entirety of the evidence adduced by Witness RDCB regarding the Nyalukemba Institute's school records.[192] It further argues that even if the evidence did not prove that the Appellant uttered threats against Witness BRD as alleged in the Indictment, this fact is immaterial to the ultimate conviction.[193] It is also the Prosecution's position that the Trial Chamber committed no error in concluding that the Appellant aided and abetted their killing.[194]

2. Witness BRD's Credibility

73. In order to challenge Witness BRD's claim that he attended school with the three Tutsi girls, the Appellant adduced a number of records from the Nyalukemba Institute, namely, honours rolls from the 1992-1993 and 1993-1994 school years (collectively, "Honours Rolls"),[195] and certain attendance registers from the 1993-1994 school year (collectively, "Attendance Records").[196] The Appellant also called Witness RDCB, who joined the Nyalukemba Institute in 1996, who testified that the names of Witness BRD and the three Tutsi girls did not appear in the school records.[197] Given that these records were adduced during the Defence case, Witness BRD did not have an opportunity to comment on them.[198]

74. The Trial Chamber concluded that it would not rely on the school records to establish whether Witness BRD and the three Tutsi girls attended the school. In so deciding, the Trial Chamber noted: (1) Witness BRD's testimony that he and the three Tutsi girls did not return to school after April 1994; (2) Witness RDCB's testimony that the records were compiled at the end of the year; (3) the chaotic nature of events during 1994; and (4) the significant difference in the

[189] Appellant's Brief, para. 92. *See also* Brief in Reply, paras. 22-24.
[190] Notice of Appeal, paras. 27, 28; Appellant's Brief, paras. 82, 83.
[191] Respondent's Brief, para. 55.
[192] Respondent's Brief, para. 56.
[193] Respondent's Brief, para. 62.
[194] Respondent's Brief, para. 62.
[195] Exhibits D62 and D63.
[196] Exhibits D64 and D65. *See also* T. 17 September 2007 p. 8.
[197] T. 17 September 2007 pp. 3, 6, 9-13 (closed session).
[198] Trial Judgement, para. 123.

numbers of students on the records between the school years 1992-1993 and 1993-1994.[199] The Trial Chamber's dismissal of the Appellant's challenge to Witness BRD's credibility was therefore premised on the assumption that the school records were compiled at the end of each year and, in the context of the events, could not be relied upon safely.

75. The Appeals Chamber, Judges Pocar and Liu dissenting, notes that although Witness RDCB indeed testified that the Honours Rolls were compiled at the end of every school year, he also explained that every student who attended the school was noted in these records, including those who left school during the year.[200] Thus, even if Witness BRD and the three Tutsi girls left school in April 1994, their names should have been reflected in the Honours Roll for that year.[201] Further, the significance of the difference in the number of students between the two years is unclear, given that Witness BRD and the three Tutsi girls should have been included in the Honours Roll for the 1992-1993 school year if they attended school together in that year.

76. The Appeals Chamber, Judges Pocar and Liu dissenting, also observes that the Attendance Records clearly indicate that they were compiled daily from October 1993 through June 1994. Witness RDCB confirmed that these records reflected daily attendance.[202] The names of Witness BRD and the three Tutsi girls do not appear in either the Honours Rolls or the Attendance Records.

77. The Appeals Chamber, Judges Pocar and Liu dissenting, concludes that the Trial Chamber failed to properly consider the Defence evidence suggesting that neither Witness BRD nor the three Tutsi girls attended the Nyalukemba Institute. This evidence was a significant challenge to Witness BRD's claim to have attended school with the three Tutsi girls. The Trial Chamber should have considered the impact of this evidence on his credibility, despite the fact that he was not confronted with the records. The challenge to Witness BRD's credibility was particularly significant given his conviction for committing forgery[203] and the lack of corroboration of his testimony. Consequently, the Appeals Chamber, Judges Pocar and Liu dissenting, finds that the Trial Chamber abused its discretion in the assessment of Witness BRD's credibility.

3. Reasonableness of the Trial Chamber's Finding

78. From the Trial Judgement, it is apparent that the Trial Chamber based its conclusion that the Appellant aided and abetted the killing of the three Tutsi girls on the following factors: (1) the

[199] Trial Judgement, para. 123.
[200] T. 17 September 2007 p. 5 (closed session); Exhibit D62 p. 3; Exhibit D63 p. 3.
[201] Exhibit D62.
[202] Exhibits D64 and D65; T. 17 September 2007 p. 8 (closed session).
[203] *See* Trial Judgement, para. 125.

Appellant knew that they were Tutsi; (2) the Appellant specifically sought them out; (3) the Appellant told Witness BRD that they had been killed because they were *Inkotanyi*; and (4) the Appellant uttered threats to Witness BRD about assisting Tutsis.[204]

79. The Appeals Chamber notes, however, that no evidence on the subject of threats was presented at trial. In the relevant part of his testimony, Witness BRD merely stated:

> Those three girls were lodged in our house, and when I found out that they were being taken away, I wanted to find out what had become of them. I wanted to know where they had been taken, so I left my house. And when I got to Ku Cyapa, I met [the Appellant] who told me that the three girls had already been killed because they were *Inkotanyi*. I did not believe what he was saying, so I went right to Gatandara, and there I found out that what he had told me was the truth, because the three girls were my friends, and I could not do anything about it.[205]

Consequently, the Trial Chamber's finding that the Appellant threatened Witness BRD for assisting Tutsis is unfounded.[206] The Appeals Chamber notes that the Trial Chamber concluded that the alleged threat uttered by the Appellant provided an "undeniable link" between the Appellant and the killing of the three Tutsi girls.[207] As there is no basis for this factual finding, the Appeals Chamber, Judges Pocar and Liu dissenting, finds that the Trial Chamber's inference that the Appellant was involved in the killing of the three Tutsi girls is severely undermined.

80. The Appellant also challenges the reasonableness of the inference drawn by the Trial Chamber on the basis that it was not the only reasonable inference available from the evidence.[208] The Appeals Chamber recalls that:

> Where the challenge on appeal is to an inference drawn to establish a fact on which the conviction relies, the standard is only satisfied if the inference drawn was the only reasonable one that could be drawn from the evidence presented. In such instances, the question for the Appeals Chamber is whether it was reasonable for the Trial Chamber to exclude or ignore other inferences that lead to the conclusion that an element of the crime was not proven. If no reasonable Trial Chamber could have ignored an inference which favours the accused, the Appeals Chamber will vacate the Trial Chamber's factual inference and reverse any conviction that is dependent on it.[209]

81. The Trial Chamber inferred that the Appellant "took the girls to Gatandara roadblock so that they may be killed, declaring them to be *Inkotanyi*" and by these actions aided and abetted their killing.[210] However, the Appeals Chamber, Judges Pocar and Liu dissenting, finds that the Trial Chamber's findings concerning the Appellant's actions were not supported by Witness BRD's

[204] Trial Judgement, para. 132.
[205] T. 24 January 2007 p. 50.
[206] *See* Trial Judgement, para. 132.
[207] Trial Judgement, para. 132.
[208] Notice of Appeal, para. 30; Appellant's Brief, paras. 72-74, 91-93, *referring to* Trial Judgement, paras. 121, 123-125.
[209] *Stakić* Appeal Judgement, para. 219 (footnotes omitted). *See also Čelebići* Appeal Judgement, para. 458; *Kvo~ka et al*. Appeal Judgement, para. 18; *Vasiljević* Appeal Judgement, para. 12.

evidence. Witness BRD testified that he had no knowledge of where the Appellant took the girls when they were removed from his house; that the Appellant told him at Kucyapa that three Tutsi girls had been killed; and that Witness BRD himself found the girls' bodies at Gatandara. Witness BRD also denied that there was a roadblock at Gatandara,[211] and as discussed above, never claimed that the Appellant uttered threats against him.

82. The Trial Chamber therefore drew conclusions concerning the Appellant's actions which so exceed the evidence that it calls into question whether it was a reasonable inference that the Appellant aided and abetted their killing. The Appeals Chamber, Judges Pocar and Liu dissenting, finds that the Trial Chamber's failure to adequately explain why its inference was the only reasonable one to be drawn from the evidence, particularly given Witness BRD's testimony that the Appellant promised to take the girls to safety, constituted an abuse of discretion.

B. Conclusion

83. The Appeals Chamber, Judges Pocar and Liu dissenting, finds that the Trial Chamber committed multiple errors in convicting the Appellant for the killing of the three Tutsi girls. First, it erroneously rejected challenges to a key witness's credibility, which were of particular concern considering that witness's conviction for forgery. Second, it made an erroneous factual finding which was particularly prejudicial because it attributed incriminating statements to the Appellant which he did not in fact make. Finally, in setting out its conclusions regarding the Appellant's actions, the Trial Chamber found that his guilt was the only reasonable inference, without providing adequate reasoning. Given the seriousness of these errors, the Appeals Chamber, Judges Pocar and Liu dissenting, quashes the Appellant's convictions based on the killing of the three Tutsi girls. Accordingly, the Appeals Chamber need not address the Appellant's remaining contentions under this ground of appeal.

[210] Trial Judgement, paras. 353, 354.
[211] T. 24 January 2007 pp. 49, 50, 63, 67, 69, 70.

VIII. ALLEGED ERRORS RELATING TO THE INVESTIGATIONS (GROUND OF APPEAL 9)

84. At trial, the Appellant challenged the methods and results of the Prosecution's investigators, arguing that they "disclose a disregard [for] the truth" and that they employed "methods which bring the administration of justice into disrepute".[212] He urged the Trial Chamber to consider the purported incompetence and bias of two Prosecution investigators, Witness Ebouea and Mamadou Koné ("Witness Koné"), in its assessment of the Prosecution's evidence.[213]

85. The Trial Chamber, addressing this matter in the Trial Judgement, stated:

> The Defence has complained that the investigators were unreliable. Two investigators testified in this case. The ŦTrialğ Chamber considers that the submissions with regard to Mamadou Koné do not warrant development, because he does not play a significant role in the case and the primary reason for his testimony was to admit a statement allegedly taken from Nchamihigo shortly after he was taken into custody. The ŦTrialğ Chamber has already ruled that as a matter of law the statement was inadmissible. The second investigator, Jeannette Ebouea, put into evidence certain maps and gave evidence about various locations. However, there was abundant evidence on these matters from other witnesses in the case. Her testimony was not critical to any finding of fact that the Chamber has to make. Still, the Defence complains about her responses to a series of questions about her investigative methods. In particular, the Defence submits that her admission that she did not take notes from the majority of persons she interviewed gives rise to the inference that her investigation was biased and that she only took notes of an incriminating nature thereby depriving Nchamihigo of an investigation which may have revealed exculpatory material. The ŦTrialğ Chamber considers these submissions to be speculative. There was no evidence to support a conclusion that the Prosecution failed to disclose any exculpatory material in its possession, and the Defence did not make any such allegations. The submissions do not reveal any breach of duty, and the rules governing disclosure do not contain any obligation on the Prosecution to actively search for exculpatory material.[214]

86. On appeal, the Appellant reiterates that the investigations were of poor quality and submits that the Trial Chamber erred in its assessment of Prosecution evidence.[215] He claims that Witnesses Koné and Ebouea were "either liars, biased, negligent, of bad faith, cheats, or manipulators".[216] In support of this claim, he refers to the Defence Final Trial Brief in which he argued that Witnesses Ebouea and Koné refused to testify openly, were unable to recall dates and facts, failed to take notes during missions, and displayed a general laxity and incompetence.[217] He also repeats arguments

[212] Defence Final Trial Brief, para. 123.
[213] Defence Final Trial Brief, paras. 65-70. The Appellant spells these two witnesses' names "Eboua" and "Kone". However, the Appeals Chamber adopts the spellings used by the Trial Chamber.
[214] Trial Judgement, para. 16 (footnotes omitted).
[215] Notice of Appeal, paras. 33-38; Appellant's Brief, paras. 98-104.
[216] Appellant's Brief, para. 98.
[217] Appellant's Brief, paras. 98, 101, 103; Defence Final Trial Brief, paras. 65-123.

made at trial to the effect that Witness Ebouea inhibited disclosure by failing to preserve information discovered during her investigations pursuant to Rule 68(A) of the Rules.[218]

87. The Appellant further claims that the Trial Chamber erred by failing to consider the poor quality of the Prosecution investigations in its assessment of the reliability of Prosecution evidence.[219] He contends that "the [Trial] Chamber's interpretation of the Defence submissions is wrong" because it focused on the Prosecution's obligation to disclose evidence in its possession rather than its failure to preserve exculpatory evidence during the investigations.[220]

88. The Appeals Chamber considers that the Appellant simply repeats on appeal arguments that were unsuccessful at trial. The Trial Chamber noted the Defence's contention that Witness Ebouea, by admission, did not take notes from the majority of people she interviewed. It also considered the Defence's assertion that her investigations were biased and that she only took notes on material of an incriminating nature thereby depriving the Appellant of an investigation which may have revealed exculpatory material. The Trial Chamber dismissed these submissions as speculative.[221] The Appellant has advanced no additional argument on appeal showing that the Trial Chamber erred in so finding or that the Appeals Chamber's intervention is warranted in the circumstances.

89. Accordingly, the Appeals Chamber dismisses the Appellant's submission that the Trial Chamber misinterpreted Defence arguments concerning the Prosecution's investigations. Accordingly, this ground of appeal is dismissed.

[218] Appellant's Brief, paras. 99-102.
[219] Notice of Appeal, paras. 33-38; Appellant's Brief, para. 104; Brief in Reply, para. 25.
[220] Appellant's Brief, para. 104.
[221] Trial Judgement, para. 16.

IX. ALLEGED ERRORS RELATING TO THE ALIBI (GROUNDS OF APPEAL 10, 11, AND 12)

90. At trial the Appellant raised an alibi to establish that he could not have committed the crimes for which he was indicted, all of which were alleged to have occurred in Cyangugu prefecture. He filed a Notice of Alibi on 19 April 2007, after the close of the Prosecution case.[222] The Trial Chamber addressed the alibi under the section on "Preliminary Matters",[223] as well as under other sections in relation to specific Prosecution allegations.[224] In the section on "Preliminary Matters", the Trial Chamber analysed the alibi for two different periods: (1) before March 1994,[225] and (2) from April to July 1994.[226] The Trial Chamber found that entering an alibi at such a late stage of the proceedings "deprived the Prosecution of the opportunity to adduce evidence related to the alibi" and also "raised the question whether the alibi was recently concocted".[227] Based on a holistic consideration of the alibi evidence, the Trial Chamber concluded that it placed "no reliance on Nchamihigo's general alibi testimony, which lacks credibility".[228]

91. The Appellant claims that the Trial Chamber made numerous errors of law and fact in relation to his alibi.[229] Specifically, he contends that the Trial Chamber erred in: (1) discrediting his

[222] *The Prosecutor v. Siméon Nchamihigo*, Case No. ICTR-2001-63-T, Notice of Alibi pursuant to Rule 67 (A)(ii) of the Rules served on the Prosecution on 19 April 2007, filed in French on 24 April 2007 (*Transmission de la copie de l'Avis d'intention de la Défense de Nchamihigo d'invoquer une défense d'alibi, conformément à l'article 67 A)ii)a) du Règlement de procédure et de preuve, suite à la conférence de mise en état du 23 avril 2007)* ("Notice of Alibi"). The Notice of Alibi detailed a number of anticipated testimonies of witnesses who claimed that between 6 April 1994 and July 1994 they either saw the Appellant every day at his office, or they were regularly in close contact with him at work. Specifically, the anticipated testimonies would cover the alleged movements of the Appellant on 7, 11, 12, 15, 16, and 18 April 1994.

[223] Trial Judgement, paras. 20-31 (in Chapter II on "Factual Findings").

[224] Trial Judgement, paras. 76, 94 (alibi relating to individual killings on or about 7 April 1994); para. 115 (alibi relating to the killing of Emilien Nsengumuremyi, Aloys Gasali, Isidore Kagenza, and Jean-Marie Vianney Tabaro, on or about 15 April 1994); paras. 138, 142 (alibi for 19 May 1994, relating to the killing of Father Joseph Boneza); paras. 184-186, 194 (alibi relating to the Kamarampaka events); para. 206 (alibi relating to removal of refugees from Kamarampaka stadium on 16 April 1994); para. 237 (alibi relating to the attack at Shangi parish, on 14 April 1994); para. 253 (alibi relating to the Hanika parish massacre, on 11 and 12 April 1994); para. 282 (alibi for 18 April 1994 relating to the attack at Mibilizi parish and hospital); para. 298 (alibi for 12 April 1994 relating to the attack at Nyakanyinya school); paras. 312, 316 (alibi relating to the events in Gihundwe sector on 14 and 15 April 1994).

[225] Trial Judgement, paras. 21-24.

[226] Trial Judgement, paras. 25-31.

[227] Trial Judgement, para. 20.

[228] Trial Judgement, para. 30. The Trial Chamber stated that: "Nchamihigo filed an alibi notice on 19 April 2007, long after the close of the Prosecution case. Rule 67 (B) of the Rules specifies that failure of the Defence to provide such notice shall not limit the right of the accused to rely on an alibi defence. This provision is consistent with the principle of the presumption of innocence and the duty of the Prosecution to prove guilt beyond reasonable doubt. In the present case, compliance at such a late stage in the proceedings deprived the Prosecution of the opportunity to adduce evidence related to the alibi. It also raised the question whether the alibi was recently concocted to fit the evidence adduced against Nchamihigo." Trial Judgement, para. 20.

[229] Notice of Appeal, paras. 39-47; Appellant's Brief, paras. 105-135. The alibi is also referred to under a number of other grounds of appeal in the Appellant's Brief in relation to specific incidents as follows: Ground of Appeal 15, in relation to the Appellant's alibi for the morning of 7 April 1994 (Appellant's Brief, para. 200); Ground of Appeal 21, in relation to the Appellant's alibi at the time of Father Boneza's killing (Appellant's Brief, para. 249); Ground 23 of

alibi evidence based on its alleged late filing;[230] (2) assessing the evidence of the Appellant's alleged location before March 1994;[231] and (3) interpreting the Appellant's testimony for the period between April and July 1994.[232]

92. As the Appellant's submissions under Grounds of Appeal 10, 11, and 12 relate to the his alibi evidence, the Appeals Chamber recalls the basic principles of the assessment of alibi evidence before considering the specific contentions raised under each ground. The Appeals Chamber recalls that an alibi does not constitute a defence in its proper sense.[233] By raising an alibi, an accused is simply denying that he was in a position to commit the crime with which he was charged.[234] An accused does not bear the burden of proving his alibi beyond reasonable doubt.[235] Rather, "[h]e must simply produce the evidence tending to show that he was not present at the time of the alleged crime."[236] If the alibi is reasonably possibly true, it must be accepted.[237]

93. Where an alibi is properly raised, the Prosecution must establish beyond reasonable doubt that, despite the alibi, the facts alleged are nevertheless true.[238] The Prosecution may do so, for instance, by demonstrating that the alibi does not in fact reasonably account for the period when the accused is alleged to have committed the crime. Where the alibi evidence does *prima facie* account for the accused's activities at the time of the commission of the crime, the Prosecution must

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Appeal, in relation to the Appellant's alibi covering times he allegedly attended Prefecture Security Council meetings and transferred refugees (Appellant's Brief, para. 265); Ground of Appeal 33, in relation to the Appellant's alibi at the time of the Nyakanyinya school attack (Appellant's Brief, para. 413).

[230] Appellant's Brief, paras. 106-109.

[231] Appellant's Brief, paras. 128-135.

[232] Appellant's Brief, paras. 111-127.

[233] *Zigiranyirazo* Appeal Judgement, para. 17, *citing Ndindabahizi* Appeal Judgement, para. 66; *Kajelijeli* Appeal Judgement, paras. 41, 42; *Kayishema and Ruzindana* Appeal Judgement, para. 106; *Čelebi}i* Appeal Judgement, para. 581.

[234] *Zigiranyirazo* Appeal Judgement, para. 17, *citing Nahimana et al.* Appeal Judgement, para. 414; *Ndindabahizi* Appeal Judgement, para. 66; *Kajelijeli* Appeal Judgement, paras. 41, 42; *Niyitegeka* Appeal Judgement, para. 60; *Musema* Appeal Judgement, paras. 205, 206; *Kayishema and Ruzindana* Appeal Judgement, para. 106; *Čelebi}i* Appeal Judgement, para. 581.

[235] *Zigiranyirazo* Appeal Judgement, para. 17, *citing Nahimana et al.* Appeal Judgement, para. 414; *Simba* Appeal Judgement, para. 184; *Karera* Appeal Judgement, para. 331; *Musema* Appeal Judgement, para. 202; *Kayishema and Ruzindana* Appeal Judgement, para. 107.

[236] *Zigiranyirazo* Appeal Judgement, para. 17, *quoting Musema* Appeal Judgement, para. 202.

[237] *Zigiranyirazo* Appeal Judgement, para. 17, *citing Nahimana et al.* Appeal Judgement, para. 414; *Kamuhanda* Appeal Judgement, para. 38; *Kajelijeli* Appeal Judgement, para. 41; *Musema* Appeal Judgement, paras. 205, 206.

[238] *Zigiranyirazo* Appeal Judgement, para. 18, *citing Karera* Appeal Judgement, para. 330; *Nahimana et al.* Appeal Judgement, para. 414; *Simba* Appeal Judgement, para. 184; *Kajelijeli* Appeal Judgement, para. 42; *Niyitegeka* Appeal Judgement, para. 60; *Musema* Appeal Judgement, paras. 205, 206; *Kayishema and Ruzindana* Appeal Judgement, para. 107; *Limaj et al.* Appeal Judgement, para. 64.

"eliminate the reasonable possibility that the alibi is true,"[239] for example, by demonstrating that the alibi evidence is not credible.

A. Alleged Error in Discrediting the Alibi Evidence Due to Late Notice (Ground of Appeal 10)

94. The Appellant submits that the Trial Chamber erred in discrediting his alibi evidence because he filed his alibi notice long after the close of the Prosecution case.[240] He specifically argues that the Trial Chamber erred in: (1) assessing the burden of proof on the alibi;[241] (2) finding that the late filing of the Notice of Alibi deprived the Prosecution of the opportunity to adduce evidence in relation to the alibi when it never sought to present evidence to rebut the alibi;[242] and (3) concluding that the late notice "raised the question whether the alibi was recently concocted to fit the evidence adduced against Nchamihigo" without considering that the Indictment against the Appellant was filed late.[243]

95. The Appeals Chamber will limit its discussion in the present section to alleged errors relating to the late notice of alibi. The allegation that the Trial Chamber erred in assessing the burden of proof on the alibi will be discussed below under section C.2: "Reversal of Burden of Proof".

96. The Prosecution responds that the Trial Chamber did not draw adverse inferences from the late disclosure of the Appellant's alibi.[244] Nevertheless, it asserts that the Trial Chamber had discretion to discredit the alibi on the basis of its late disclosure.[245]

97. In certain circumstances, failure to raise an alibi in a timely manner can impact a Trial Chamber's findings,[246] as it may take such failure into account when weighing the credibility of the

[239] *Zigiranyirazo* Appeal Judgement, para. 18, *citing Kajelijeli* Appeal Judgement, para. 41; *Kayishema and Ruzindana* Appeal Judgement, para. 106. *See also Limaj et al.* Appeal Judgement, paras. 64, 65; *Čelebi}i* Appeal Judgement, para. 581.
[240] Appellant's Brief, paras. 105-110.
[241] Appellant's Brief, paras. 105, 110.
[242] Appellant's Brief, para. 106.
[243] Notice of Appeal, para. 41; Appellant's Brief, para. 109. The Appeals Chamber notes that Ground of Appeal 10 of the Appellant's Brief subsumes Grounds of Appeal 10 and 11 of the Notice of Appeal. The arguments made under Ground of Appeal 11 in the Appellant's Brief are new. However, as the Prosecution has not objected to these new arguments, they will be considered.
[244] Respondent's Brief, para. 71.
[245] Respondent's Brief, para. 71, *citing Musema* Appeal Judgement, para. 201; *Semanza* Appeal Judgement, paras. 95-97, 102, 113.
[246] *Rutaganda* Appeal Judgement, fn. 392.

alibi.[247] Therefore, the Trial Chamber was entitled to take into account the Appellant's late submission of the Notice of Alibi when assessing the credibility of the alibi.[248]

98. Regarding the Trial Chamber's statement that the late filing of the Notice of Alibi deprived the Prosecution of the opportunity to adduce evidence related to the alibi, the Appeals Chamber notes that the Prosecution could have requested to present rebuttal evidence on the alibi after the close of the Defence case, but, as the Appellant notes in his Brief in Reply,[249] it never did so.[250] Nonetheless, the Prosecution was deprived of the opportunity of addressing the alibi in the course of its case. The Notice of Alibi was filed on 19 April 2007, well after the close of the Prosecution's case on 1 February 2007.[251] Therefore, to the extent that the Trial Chamber's statement related to the opportunity of the Prosecution to address the alibi during its case, it was a reasonable observation for the Trial Chamber to make when assessing the credibility of the Appellant's alibi.

99. While the Appeals Chamber accepts the Appellant's argument that the late filing of the Notice of Alibi should be considered in light of the late filing of the Indictment on 11 December 2006, it observes that the Notice of Alibi was filed over four months later, on 19 April 2007. Accordingly, the Appeals Chamber finds that it was within the Trial Chamber's discretion to consider that the late filing of the Notice of Alibi undermined the credibility of the alibi.[252] Accordingly, this ground of appeal is dismissed.

B. Alleged Errors Regarding Evidence of the Appellant's Whereabouts Before March 1994 (Ground of Appeal 12)

100. In assessing the Appellant's evidence "that it was impossible for him to have engaged in certain alleged activities because he did not reside in Cyangugu town before the end of February 1994", the Trial Chamber noted that "Ŧsğeveral Prosecution witnesses testified that they saw and had dealings with Nchamihigo in Cyangugu in 1992, 1993 and early 1994" and that certain "Defence witnesses admitted to having dealings with [him] in Cyangugu prior to March 1994".[253]

[247] *Kajelijeli* Trial Judgement, para. 164; *Kamuhanda* Trial Judgement, para. 82; *Musema* Trial Judgement, para. 107; *Niyitegeka* Trial Judgement, para. 50; *Kayishema and Ruzindana* Trial Judgement, para. 237; *Semanza* Trial Judgement, para. 82.
[248] Trial Judgement, para. 20.
[249] Brief in Reply, para. 26.
[250] Appellant's Brief, para. 106.
[251] The Prosecution case was presented from 25 September to 20 October 2006 and 9 January to 1 February 2007.
[252] *Musema* Appeal Judgement, para. 201; *Semanza* Appeal Judgement, paras. 95-97, 102, 113.
[253] Trial Judgement, paras. 21-24.

101. The Appellant submits that the Trial Chamber made numerous errors in assessing the evidence relating to his alleged location before March 1994.[254]

102. The Appeals Chamber notes that the Appellant was only convicted in relation to events that occurred after March 1994.[255] As the Appellant has not shown how the Trial Chamber's analysis of his alibi in relation to the period prior to March 1994 had any adverse impact on his convictions or on the Trial Chamber's analysis of his alibi for the period from April to July 1994, this ground of appeal is dismissed.[256]

C. Alleged Error in Conclusions on the Appellant's Alibi Testimony for the Period 6 April to 17 July 1994 (Ground of Appeal 11)

103. The Trial Chamber summarized the Appellant's testimony on his whereabouts between 6 April and 17 July 1994, by noting that he stated that during this period "he went to work every day, where he remained all day except on few occasions, and therefore could not have been at the places where Prosecution witnesses claimed to have seen him"[257] and that "he stayed home every evening with his Ŧpregnantğ wife." [258] He provided more specific alibis for 7, 11, 12, 15, 16, and 18 April 1994 in his Notice of Alibi and refuted the testimony of Prosecution witnesses who claimed to have seen him in his Suzuki jeep, claiming that his vehicle was not working during the period in question.[259]

104. The Trial Chamber concluded that it would not rely on the Appellant's general alibi testimony, which it found was not credible.[260] The Trial Chamber explained that while it did not question that the Appellant left his office on the occasions he described, it did not accept that those were the only times he left his office during working hours.[261] In so finding it noted that the

[254] Appellant's Brief, paras. 128-134.
[255] Trial Judgement, Section 1.2.2. "Period from April to July 1994", para. 30.
[256] *See Martić* Appeal Judgement, para. 17 ("Where the Appeals Chamber considers that an appellant is challenging factual findings on which a conviction or sentence does not rely or making submissions that are clearly irrelevant to the Trial Chamber's factual findings, it will summarily dismiss that alleged error or argument"). *See also Strugar* Appeal Judgement, para. 19; *Brđanin* Appeal Judgement, para. 22.
[257] Trial Judgement, para. 25. The Trial Chamber identified five occasions on which the Appellant left the office: (1) on 12 April 1994, when he accompanied two Belgian nuns across the border to Bukavu; (2) over the weekend of 30 April 1994, when he drove his sister and her three children to the Gatare commune after working hours; (3) on 29 May 1994, when he travelled to the Gatare commune to visit his parents; (4) on 7 July 1994, when he drove his wife to Bukavu; and (5) on 17 July 1994, when he left Rwanda to go into exile. *See* Trial Judgement, para. 26.
[258] Trial Judgement, para. 25.
[259] *See* Notice of Alibi; Trial Judgement, para. 25. During his testimony the Appellant submitted alibi evidence for the period before the end of February 1994 and for the period 6 April to 17 July 1994. There is no alibi provided for the month of March 1994.
[260] Trial Judgement, para. 30.
[261] Trial Judgement, para. 30.

Appellant's own witnesses damaged his alibi by offering contradictory evidence on his work attendance and the breakdown of his vehicle.[262]

105. The Appellant submits that the Trial Chamber erred in its assessment of his alibi evidence by: (1) discrediting his general alibi as to his whereabouts between April and July 1994;[263] (2) shifting the burden of proof onto him;[264] and (3) neglecting to consider evidence tending to show that he was not at the crime scenes.[265] He asserts that the multiple errors of the Trial Chamber in the analysis of his alibi have caused him irreparable prejudice by incurably damaging his credibility.[266]

1. The Trial Chamber's Assessment of the Appellant's General Alibi Testimony

106. The Trial Chamber understood the Appellant's general alibi to be that, with only a few exceptions, he did not leave his office during working hours between 6 April and 17 July 1994.[267] It concluded that this was not credible, finding that the credibility of the Appellant's testimony was damaged by Defence witnesses who offered contradicting evidence.[268]

107. The Appellant asserts that the Trial Chamber knew that the essence of his alibi was that he was occupied with professional activities at the Cyangugu Prosecutor's Office in Kamembe during working hours during the period in question.[269] He contends that it was clear that, when he testified that he left his office only on five occasions during this period, he was only referring to travels outside Cyangugu prefecture.[270] The Appellant further submits that the Trial Chamber erred in finding that Witness CNN's testimony contradicted his own and that this shows that the Trial Chamber was "unreasonably severe" in its assessment of his alibi evidence.[271]

108. The Prosecution responds that the trial record clearly shows that "the Appellant was asked a very specific question regarding his whereabouts between April and July 1994, and the entirety of his response unambiguously refers to his whereabouts within Cyangugu *préfecture*".[272] It also

[262] Trial Judgement, para. 30.
[263] Appellant's Brief, paras. 111-123.
[264] Appellant's Brief, para. 124.
[265] Appellant's Brief, paras. 125-127.
[266] Appellant's Brief, para. 123.
[267] Trial Judgement, paras. 27-30.
[268] Trial Judgement, paras. 27-30. In particular, Witnesses SNB and SGA testified about the Appellant leaving the office to carry out investigations (T. 30 August 2007 p. 44 (Witness SNB) (closed session); T. 23 April 2007 pp. 16, 17 (Witness SGA) (closed session)), and Witness CNN testified about the Appellant's use of the Suzuki Jeep (Trial Judgement, para. 27).
[269] Appellant's Brief, para. 117.
[270] Appellant's Brief, paras. 112-117, especially paras. 115, 116.
[271] Appellant's Brief, paras. 118, 119.
[272] Respondent's Brief, para. 74.

contends that the Trial Chamber "carefully considered the evidence in support of the Appellant's alibi and concluded that given the contradictory nature of the totality of the evidence in support, it could not rely on the Appellant's alibi testimony".[273]

109. The Appeals Chamber first addresses the Appellant's contention that the Trial Chamber misinterpreted his testimony by stating that his position was that he left his office only five times between 7 April and 17 July 1994, except to go home. It notes that, whereas his Notice of Alibi provided an alibi for specific dates during April and July 1994,[274] during his testimony the Appellant stated that he was always at home or in his office during this period and that he left the Cyangugu area only on five specific dates.[275]

110. During cross-examination the Prosecution asked the Appellant:

> […] From the 7th of April to the 17th of July 1994, could you tell the Trial Chamber how many times you stayed out of your office, except for the times when you were at home, of course? How many times did you leave your office to go elsewhere?[276]

In response, the Appellant stated five dates: 12 April,[277] the weekend of 30 April,[278] 29 May,[279] 7 July,[280] and 17 July 1994.[281] The Prosecution then asked the following:

> Q. Mr. Nchamihigo, you forgot one other trip, the one of the 11th of May 1994, when you went to the stadium. Do you remember that one?
>
> A. Thank you. *I didn't need to mention that date as one during which I went on a trip because I was within the area of jurisdiction where I worked*. […] It was as if you were saying I had gone out of my office, say, to attend to nature's call, to go and see the judge of the -- or check whether the judge of the court of first instance was there. *So I only made mention of the occasions where I moved getting out of where I used* [*to*] *live in Kamembe*.[282]
>
> […]
>
> Q. In six trips over a three-month period, Mr. Nchamihigo, six trips, more or less, did you see dead people? Did you notice corpses on your way?
>
> A. Thank you. *Let me say to you that I moved out on five trips, at the very least, to get out of my area of jurisdiction. The sixth trip was not important because I was still in the same area.*[…][283]

[273] Respondent's Brief, para. 75.
[274] *See* Notice of Alibi. *See also supra* para. 103.
[275] *See* T. 21 September 2007 pp. 23-27.
[276] T. 21 September 2007 p. 23.
[277] T. 21 September 2007 pp. 24-25.
[278] T. 21 September 2007 p. 24.
[279] T. 21 September 2007 p. 26.
[280] T. 21 September 2007 p. 26.
[281] T. 21 September 2007 pp. 26, 27.
[282] T. 21 September 2007 p. 27 (emphasis added).
[283] T. 21 September 2007 p. 28 (emphasis added).

From this exchange, it appears that the Appellant focused only on instances when he left his jurisdiction, *i.e*. when he travelled outside Cyangugu prefecture, and that he did not consider his movement within the prefecture as an important matter in this context. Thus, the Appellant's testimony was not specific with regard to his movements in and out of his office except on the particular occasions when he left the Cyangugu prefecture.

111. The Trial Chamber, therefore, misconstrued the Appellant's testimony by stating that he left his office only on five occasions during the period in question. In fact, the Appellant's evidence was that while he was generally occupied at home or in the office during the relevant period, he travelled within Cyangugu prefecture and he ventured outside the prefecture on five particular occasions.[284]

112. The Appeals Chamber notes, however, that the Trial Chamber's error does not impact the Appellant's convictions. All of the crimes for which the Appellant was convicted took place in Cyangugu prefecture. The Appellant's general alibi does not account for all his movements *within* the prefecture. It was thus insufficient to raise reasonable doubt in view of the Prosecution's evidence that the Appellant as at specific crime scenes on particular occasions. Accordingly, the Appeals Chamber, while accepting that the Trial Chamber erred in characterizing the Appellant's alibi, finds that the Trial Chamber's error was non consequential.[285]

113. The Appeals Chamber next turns to the Appellant's contention that the Trial Chamber erred in finding that Witness CNN's evidence contradicted the Appellant's testimony regarding his whereabouts on the morning of 10 June 1994.[286] While the Trial Chamber mentioned Witness CNN's testimony about his meeting with the Appellant on 10 June 1994, a date which was not significant in terms of the allegations in the Indictment, it appeared to have been concerned not by this but rather by the fact that Witness CNN directly contradicted the Appellant's testimony that his vehicle, a Suzuki jeep, was not in working order from early April to early June 1994.[287] The Trial Chamber noted Witness CNN's testimony that after 6 April 1994, he saw the Appellant in his car

[284] T. 21 September 2007 p. 27, clarified in the Appellant's Brief, para. 115.
[285] The Appeals Chamber has reviewed the Trial Chamber's treatment of the Appellant's specific alibi evidence relevant to each of his convictions and has found in each instance that the Trial Chamber correctly assessed the Appellant's specific alibi on a case-by-case basis, s*ee infra* paras. 183, 220, 221 (Appellant's challenge to the Trial Chamber's treatment of his alibi and Witness LAG's testimony relating to individual killings on or about 7 April 1994 under Ground of Appeal 15, and Grounds of Appeal 4 and 5 in part); paras. 272-275 (Appellant's challenge to the Trial Chamber's assessment of his alibi and evidence from Defence Witnesses RO1, HDN, and ZSA relating to the killing of Father Boneza under Ground of Appeal 21); paras. 375-379 (Appellant's challenge to the Trial Chamber's findings regarding his presence at the attacks in Gihundwe Sector under Ground of Appeal 34).
[286] Appellant's Brief, paras. 118, 119.
[287] Trial Judgement, para. 27.

about twice a week; that even if the car had broken down, it could have been repaired; and that he did not think that it would take a month to repair it.[288]

114. The Appellant contends that the evidence regarding his vehicle is irrelevant to determining whether he performed his professional duties on a daily basis.[289] He avers that the Trial Chamber erred in considering that Witness SGA's evidence contradicted his testimony with regard to his modes of transport.[290] He further argues that the Trial Chamber failed to consider the testimony of Witness SNB, who affirmed that the Appellant began to drive his Suzuki jeep again at the beginning of June 1994.[291] The Appellant contends that as a result of these errors the Trial Chamber disregarded the possibility that his testimony was in fact corroborated.[292]

115. The Appeals Chamber considers that in view of Witness CNN's evidence about the Appellant's car, it was not unreasonable for the Trial Chamber to have found that Defence evidence contradicted his claim that his personal vehicle was not working from early April to early June 1994.[293] Additionally, there is no indication that the Trial Chamber misconstrued the testimony of Witnesses SNB and SGA concerning the Appellant's vehicle or that it found that any contradiction arose in that respect.[294] Therefore, the Appeals Chamber dismisses the Appellant's claim that the Trial Chamber erred in analysing evidence regarding his Suzuki jeep when assessing his alibi evidence.

2. Reversal of Burden of Proof

116. The Appellant submits that the Trial Chamber attached insufficient weight to his alibi and shifted the burden of proof.[295] The Prosecution responds that the Trial Chamber did not reverse the burden of proof because it required the Prosecution to prove the Appellant's presence at all the crime scenes.[296]

117. The Appeals Chamber recalls that at the end of its discussion of the alibi, the Trial Chamber noted that its disbelief of the Appellant's alibi did not mean that he was guilty of the charges against him, that the Appellant was still presumed to be innocent, and that the Prosecution bore the onus of

[288] T. 3 May 2007 p. 22. *See also* Trial Judgement, para. 27.
[289] Appellant's Brief, para. 120.
[290] Appellant's Brief, para. 121.
[291] Appellant's Brief, para. 122.
[292] Appellant's Brief, para. 122.
[293] T. 3 May 2007 p. 22. *See also* Trial Judgement, para. 27.
[294] Trial Judgement, paras. 28-30
[295] Appellant's Brief, para. 124.
[296] Respondent's Brief, para. 72.

establishing his guilt beyond reasonable doubt.[297] Thus, it is clear that, although the Trial Chamber was not satisfied with the credibility of the alibi, it still required the Prosecution to prove the Appellant's guilt beyond reasonable doubt.

118. Furthermore, in each of the sections of the Trial Judgement in which the Trial Chamber considered the Appellant's alibi in relation to a specific Prosecution allegation, the Trial Chamber assessed the Appellant's alibi evidence in order to ascertain whether it raised doubt in the Prosecution evidence.[298] In each instance, the Trial Chamber based its conclusions as to the Appellant's guilt on the Prosecution evidence and not on its disbelief of the Appellant's alibi.[299] Accordingly, the Appellant has not demonstrated that the Trial Chamber misapplied the burden of proof.[300] The Appellant's argument is therefore rejected.

3. Other Evidence that the Appellant Was Not at the Crimes Scenes

119. The Appellant submits that the Trial Chamber erred by failing to consider a number of documents including: (1) Exhibit D71, a preliminary report published in 1996 on the identification of genocide and massacre sites in Rwanda by the Commission for the Memorial of the Genocide and the Massacres in Rwanda;[301] (2) Exhibit P4, a map of Cyangugu;[302] (3) Exhibit D6, a Kigali Tribunal of First Instance Judgement;[303] (4) Exhibit D56, Witness Baziruwiha's statement of 5 November 1994;[304] and (5) Annex II of the Defence Final Trial Brief.[305]

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[297] Trial Judgement, para. 31.
[298] *See supra* fn. 225.
[299] For example, in relation to individual killings on or about 7 April 1994, the Trial Chamber deliberated: "[Witness] LAG's account of events was consistent with [Witness] Baziruwiha's testimony. [Witness] LAG's testimony was also supported materially by several other witnesses, including those for the Defence. Nchamihigo's alibi was in direct contradiction to [Witness] LAG's testimony that he saw Nchamihigo on 7 April 1994 arrive in a Suzuki jeep in Kamembe at about 9h00. […] The [Trial] Chamber believes [Witness] LAG beyond reasonable doubt." Trial Judgement, paras. 94, 95. The Trial Chamber then went on to find support in the testimonies of Prosecution Witnesses LDC, BOH and LDB, finally concluding that "The [Trial] Chamber finds that the Prosecution has established that Nchamihigo ordered [Witness] LAG and those *Interahamwe* and others to whom he spoke at Kamembe on 7 April 1994 to go and look for and kill Tutsi and other civilians who were RPF supporters." Trial Judgement, para. 100.
[300] *See also* Trial Judgement, paras. 12, 20.
[301] Appellant's Brief, para. 125. *See also* Notice of Appeal, para. 128.
[302] Appellant's Brief, para. 126.
[303] Appellant's Brief, para. 126.
[304] Appellant's Brief, para. 127. *See also* Notice of Appeal, para. 136; Brief in Reply, para. 29. In his reply, the Appellant also states that Exhibit P44 suggests that Witness LAG never confirmed that the "orders to look for the Tutsis and hand them over to the *Interahamwe*" was given by the Appellant on 7 April 1994 at 9.00 a.m. Brief in Reply, para. 30. This argument is addressed in Ground of Appeal 15.
[305] Appellant's Brief, para. 126. *See also* Notice of Appeal, para. 138.

120. The Prosecution responds that the Appellant's contention that his name did not feature in any pre-established lists of alleged perpetrators in Cyangugu prefecture "is irrelevant as his guilt was established beyond reasonable doubt based on the evidence at trial".[306]

121. The Appeals Chamber notes that the Trial Chamber did not explicitly address any of the aforementioned documents, with the exception of Exhibit D56. However, it recalls that while a Trial Chamber has a duty to consider all relevant evidence,[307] it is not required to refer to the testimony of every witness or every piece of evidence on the trial record.[308] Although certain evidence may not have been referred to by a Trial Chamber, in the particular circumstances of a given case, it may nevertheless be reasonable to assume that the Trial Chamber took it into account.[309]

122. The Appeals Chamber observes that Exhibit D71 is a preliminary report published in 1996 on the identification of genocide and massacre sites in Rwanda by the Commission for the Memorial of the Genocide and the Massacres in Rwanda. The report's foreword notes that it is an imperfect provisional document and that the information therein has not been subject to exhaustive verification and is subject to improvement.[310] Given the incomplete nature of this report, the Appeals Chamber considers that the absence of the Appellant's name from this document does not raise a reasonable doubt as to whether the Appellant was one of the perpetrators of the genocide in Cyangugu prefecture and therefore finds no error in the Trial Chamber's failure to mention it explicitly.

123. With respect to Annex II of the Defence Final Trial Brief, the Appeals Chamber observes that it simply contains a list of references to the *Ntagerura et al.* Trial Judgement. Because the Appellant did not seek to have the findings of that judgement judicially noticed pursuant to Rule 94 of the Rules, the findings are not part of the trial record and the Trial Chamber was not required to consider them.

124. In relation to Exhibit D6, a Kigali Tribunal of First Instance Judgement,[311] the Appeals Chamber does not consider the fact that the Appellant's name does not appear in the judgement of a separate trial involving different accused as sufficient to undermine the reasonableness of the Trial

[306] Respondent's Brief, para. 75.
[307] *Galić* Appeal Judgement, para. 256.
[308] *Kajelijeli* Appeal Judgement, paras. 59, 60. *See also Kvočka et al.* Appeal Judgement, para. 23; *^elebi}i* Appeal Judgement, paras. 483, 485, 498.
[309] *Simba* Appeal Judgement, para. 152; *Musema* Appeal Judgement, para. 19.
[310] Exhibit D71, Foreword.
[311] Exhibit D6 contains an uncertified French translation of a judgement by the Tribunal of First Instance of Kigali ("Kigali Tribunal Judgement").

Chamber's findings on appeal.[312] Nonetheless, the Appeals Chamber considers elsewhere in this Judgement whether the Trial Chamber took into account the Kigali Tribunal Judgement in relation to specific charges which were common both to the Kigali Tribunal Judgement and the Appellant in the present case.[313] The Appeals Chamber further notes that the Appellant has failed to explain in what respect the Trial Chamber should have considered Exhibit P4, a map of Cyangugu. Accordingly, the Appeals Chamber finds no error in the Trial Chamber not specifically referring to these exhibits.

125. Finally, in relation to Exhibit D56, which is Witness Baziruwiha's statement of 5 November 1994, the Appeals Chamber notes that the Trial Chamber appears to have discussed this exhibit in the Trial Judgement, although it apparently mistakenly identified it as a September 1994 statement, stating that the original version of this document was not admitted into evidence.[314] The Appeals Chamber considers that the error as to the date appears to have been a typographical error given that no September 1994 statement was mentioned in Witness Baziruwiha's testimony.[315] However, the Appeals Chamber is satisfied that it is the same statement because the witness's testimony recounted in the Trial Judgement in relation to the September 1994 statement matches her testimony at trial regarding the 5 November 1994 statement.[316] In light of this, it is clear that the Trial Chamber did consider Exhibit D56 both in the Trial Judgement, where it noted the inconsistencies between the statement and Witness Baziruwiha's testimony,[317] as well as in its decision to admit the statement.[318] Therefore, the fact that it did not expressly address the absence of the Appellant's name from the list in the annex to the statement does not call into question either whether the Trial Chamber duly considered the exhibit or the reasonableness of its findings.

126. For the foregoing reasons, this ground of appeal is dismissed.

4. Conclusion

127. Accordingly, Grounds of Appeal 10, 11, and 12 are dismissed.

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[312] *Cf. Georges Anderson Nderubumwe Rutaganda v. The Prosecutor*, Case No. ICTR-96-03-R, Decision on Reconsideration, Review, Assignment of Counsel, Disclosure, and Clarification, 8 December 2006, para. 13; *Kajelijeli* Appeal Judgement, para. 176.
[313] *See infra* Ground of Appeal 21 (killing of Father Boneza) and Ground of Appeal 34 (attacks in Gihundwe sector).
[314] Trial Judgement, para. 207.
[315] *The Prosecutor v. Siméon Nchamihigo*, Case No. ICTR-2001-63-T, Decision on Defence Motion in Order to Admit Into Evidence the Certified Copy Conform to the Original of the Extrajudicial Declaration of Prosecution Witness Marianne Baziruwiha, Dated 5 November 1994, 14 August 2007 ("Decision to Admit Extrajudicial Declaration of Witness Baziruwiha"); T. 5 September 2007 p. 53.
[316] T. 16 January 2007 pp. 35-58.
[317] Trial Judgement, para. 207.
[318] Decision to Admit Extrajudicial Declaration of Witness Baziruwiha.

X. ALLEGED ERRORS RELATING TO THE APPELLANT'S POLITICAL RELATIONSHIPS (GROUND OF APPEAL 13)

128. Based on the evidence of Witnesses LDC and BRJ, the Trial Chamber found that the Appellant publicly exhibited support for the MRND and CDR, and that he participated in recruiting young Hutu men for militia training as *Interahamwe* and *Impuzamugambi*.[319] It further concluded that "these findings, while incapable of sustaining convictions on their own, provided context to other allegations in the Indictment."[320] It later recalled these findings in concluding that the Appellant possessed the requisite specific intent to destroy, in whole or in part, the Tutsi ethnic group.[321]

129. The Appellant claims that the Trial Chamber made numerous errors in relation to these findings.[322] He specifically contends that: (1) he lacked notice of the underlying charges;[323] (2) the Trial Chamber erred in assessing the evidence of Prosecution witnesses;[324] (3) the Trial Chamber failed to provide a reasoned opinion;[325] (4) the Trial Chamber failed to draw inferences from its findings;[326] and (5) the Trial Chamber erred in using its findings as context for other allegations against the Appellant.[327]

130. The Prosecution responds that the Appellant does not demonstrate that the Trial Chamber committed any error in its findings regarding the Appellant's political connections.[328] It submits that the Appellant misapprehends the Trial Chamber's findings in relation to his political affiliations with the MRND and CDR,[329] as the Trial Chamber did not find that he was a member of the MRND and CDR, but merely that he publicly supported these parties.[330] It argues that, in any case, these

[319] Trial Judgement, para. 53. The Appeals Chamber notes that the Trial Chamber dismissed the allegation that the Appellant held any official position with either the MRND or CDR, or as a leader of the *Interahamwe* or *Impuzamugambi*. Trial Judgement, para. 53. *See also* Trial Judgement, paras. 46-52.
[320] Trial Judgement, para. 53.
[321] Trial Judgement, paras. 335, 336.
[322] Notice of Appeal, paras. 48-55.
[323] Notice of Appeal, paras. 52, 53; Appellant's Brief, paras. 140-142.
[324] Notice of Appeal, para. 55; Appellant's Brief, paras. 143-146, 149, 150.
[325] Appellant's Brief, para. 151.
[326] Notice of Appeal, paras. 49, 50; Appellant's Brief, paras. 137-139.
[327] Notice of Appeal, para. 54; Appellant's Brief, para. 147.
[328] Respondent's Brief, paras. 78, 79.
[329] Respondent's Brief, para. 81, *referring to* Trial Judgement, para. 49, 53.
[330] Respondent's Brief, para. 81. The Prosecution also cites a dictionary definition of "affiliation" as one's attachment, adoption or association to a party not necessarily requiring formal membership. The Prosecution submits that the Trial Chamber's use of the term "political affiliation" should be understood in this way. Respondent's Brief, para. 81, *citing* "Oxford English Reference Dictionary, 1996" and *referring to* Trial Judgement, paras. 49, 53.

findings do not form the basis of his convictions.[331] It asserts that the Trial Chamber's findings were not dependent on his membership or leadership position and "were supported by evidence."[332]

A. Alleged Lack of Notice

131. The Appellant claims that the Trial Chamber erred in admitting evidence related to the allegation that he publicly exhibited his support for the MRND and CDR and participated in recruiting young Hutu men for militia training as *Interahamwe* and *Impuzamugambi* as he lacked notice of these charges.[333] He asserts that, because the Indictment charged more specific conduct, he was not on proper notice of the narrower allegation that he merely supported political parties and participated in militia recruitment.[334]

132. The Prosecution responds that this claim is unfounded because the Indictment alleges multiple forms of conduct, including the Appellant's involvement in the recruitment of militia and in political activities.[335]

133. The Appeals Chamber recalls that the charges against an accused and the material facts supporting those charges must be pleaded with sufficient precision in an indictment so as to provide notice to the accused of the material facts that underpin the charges.[336] An indictment that fails to do so is defective.[337]

134. In the instant case, the Indictment alleged that the Appellant was "involved in political activities" for both the MRND and the CDR from about 1992 until 17 July 1994.[338] It also alleged that, between 1 February and 17 July 1994, the Appellant was an *Interahamwe* leader in Cyangugu prefecture, that he recruited many young Hutu men as *Interahamwe*, that he instructed other *Interahamwe* in Karambo military camp to train the new recruits and "enable them to kill the Tutsi", and that he ordered or instigated the *Interahamwe* to kill Tutsis, or otherwise, aided and abetted their killing.[339]

135. Thus, the Indictment clearly alleged the Appellant's public support for both the MRND and CDR, as well as his recruitment of young Hutu men as *Interahamwe*. Contrary to the Appellant's

[331] Respondent's Brief, para. 79.
[332] Respondent's Brief, para. 79, *referring to* Trial Judgement, para. 53.
[333] Appellant's Brief, paras. 140-142.
[334] Notice of Appeal, paras. 52-54; Appellant's Brief, paras. 141, 142, *referring to* Trial Judgement, para. 38.
[335] Respondent's Brief, para. 80.
[336] *Karera* Appeal Judgement, para. 292.
[337] *Karera* Appeal Judgement, para. 293.
[338] Indictment, para. 6.
[339] Indictment, para. 8.

submission, the Trial Chamber did not misconstrue the Indictment in finding that the Appellant publicly exhibited support for both political parties, and that he participated in recruiting young Hutu men for militia training as *Interahamwe*.[340] Moreover, the fact that only these parts of the Prosecution's allegations were proven at trial does not undermine the sufficiency of the pleadings. It was the Trial Chamber's duty to decide which of the Prosecution's allegations were proven and to dismiss those that were not.

136. In relation to the Trial Chamber's finding that the Appellant participated in recruiting young Hutu men for militia training as *Impuzamugambi*, the Appeals Chamber notes that the Trial Chamber stated that this finding was incapable of sustaining a conviction on its own.[341] It further recalled this finding when assessing whether the Appellant had the specific intent for genocide.[342] The Appeals Chamber recalls that, with respect to *mens rea*, an indictment may plead either (1) the state of mind of the accused, in which case the facts by which that state of mind is to be established are matters of evidence, and need not be pleaded; or (2) the evidentiary facts from which the state of mind is to be inferred.[343]

137. In the instant case, the Indictment pleaded that the Appellant had "the intent to destroy, in whole or in part, an ethnic or racial group as such",[344] thus providing sufficient notice to the Appellant of the allegation that he possessed the specific intent to commit genocide. The Indictment therefore did not have to plead that the Appellant participated in recruiting young Hutu men for militia training as *Impuzamugambi*.

B. Alleged Error in the Assessment of Prosecution Evidence

138. The Appellant claims that the Trial Chamber erred in assessing Witness Baziruwiha's testimony,[345] in accepting the testimonies of Witnesses LDC and BRJ without requiring corroboration,[346] and by failing to give sufficient weight to its findings that Witness LDC might have had an incentive to cooperate with Rwandan authorities and to testify against the Appellant.[347]

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[340] Trial Judgement, para. 53.
[341] Trial Judgement, para. 53.
[342] Trial Judgement, paras. 53, 335, 336. *See also* Indictment, para. 19.
[343] *Nahimana et al.* Appeal Judgement, para. 347. *See also Blaški}* Appeal Judgement, para. 219.
[344] Indictment, para. 19.
[345] Appellant's Brief, paras. 143-148.
[346] Appellant's Brief, para. 149.
[347] Notice of Appeal, para. 14; Appellant's Brief, para. 51, *citing* Trial Judgement, paras. 96, 97. Although the Appellant raises this argument under Ground of Appeal 4, it is closely related to his argument challenging the Trial Chamber's assessment of evidence with respect to the Appellant's political affiliations and will be addressed in this ground of appeal.

1. Witness Baziruwiha

139. The Trial Chamber accepted Witness Baziruwiha's testimony that the Appellant made his political affiliations to the MRND and CDR publicly known during political campaigns, rallies, meetings, and demonstrations.[348] The Trial Chamber also noted that it was "mindful of the Defence's submission that [Witness Baziruwiha's] testimony should be viewed with caution," but observed that no motive had been shown for her to falsely incriminate the Appellant and that, as a massacre survivor, she had "an interest in justice and in the identification of the perpetrator of the crimes against her."[349]

140. The Appellant asserts that the Trial Chamber erred in assessing Witness Baziruwiha's evidence by: (1) reversing the burden of proof when it determined that no motive had been shown for her to falsely incriminate him;[350] (2) misconstruing her testimony regarding the Appellant's political affiliations;[351] (3) crediting her testimony about the Appellant's attendance at a rally;[352] and (4) characterizing Witness Baziruwiha's evidence as providing context to other allegations in the Indictment.[353]

(a) Burden of Proof

141. The Appellant submits that the Trial Chamber reversed the burden of proof when it determined that no motive was shown for Witness Baziruwiha to falsely incriminate the Appellant.[354] He contends that it is not incumbent upon him to show that Witness Baziruwiha falsely incriminated him.[355]

142. The Prosecution responds that stating that no motive had been shown for Witness Baziruwiha to falsely incriminate the Appellant was not tantamount to reversing the burden of proof,[356] but was simply recognition that the Appellant had not adduced sufficient evidence to raise reasonable doubt about her testimony.[357]

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[348] Trial Judgement, para. 49.
[349] Trial Judgement, para. 49.
[350] Notice of Appeal, para. 55, *citing* Trial Judgement, para. 49. Appellant's Brief, para. 143.
[351] Appellant's Brief, para. 145, *referring to* Trial Judgement, para. 49.
[352] Appellant's Brief, para. 146.
[353] Appellant's Brief, paras. 147, 148, *citing* Trial Judgement, para. 53.
[354] Notice of Appeal, para. 55, *citing* Trial Judgement, para. 49. Appellant's Brief, para. 143.
[355] Appellant's Brief, para. 144.
[356] Respondent's Brief, para. 81.
[357] Respondent's Brief, para. 81.

143. The Trial Chamber noted the Appellant's submission that Witness Baziruwiha's testimony should be viewed with caution.[358] Despite this, it found that no motive had been shown for her to falsely incriminate the Appellant.[359] The Appeals Chamber is satisfied that the Trial Chamber's approach did not amount to shifting the burden of proof to the Appellant. It simply shows that, in assessing the credibility of Witness Baziruwiha, the Trial Chamber noted the Defence's submission that Witness Baziruwiha's testimony should be viewed with caution, considered that there was no evidentiary basis to find that she had a motive to falsely incriminate the Appellant, and accordingly dismissed his challenge to the witness's credibility. The Appeals Chamber therefore dismisses this argument.

(b) Political Affiliation

144. The Appellant further submits that the Trial Chamber misconstrued Witness Baziruwiha's testimony by stating that she testified that he had made his affiliations with the MRND and CDR publicly known.[360]

145. The Prosecution responds that the Trial Chamber's language in restating Witness Baziruwiha's testimony was consistent with the witness's testimony and was limited to describing the Appellant's public support for these parties.[361]

146. The Trial Chamber stated that, according to Witness Baziruwiha, the Appellant "made his political affiliations to the MRND and CDR publicly known during political campaigns, rallies, meetings, and demonstrations".[362] The relevant passage of Witness Baziruwiha's testimony reads:

> Q. Did you know what [the Appellant] was doing in Cyangugu?
>
> A. Yes. He was the first deputy prosecutor in the Cyangugu public prosecutor's office. But apart from that, like everybody else, he had also made known his political affiliations and identified himself with the MRND/CDR.
>
> Q. How had he made known his political affiliations?
>
> A. Like everyone else, we made our political affiliations known during political campaigns, during rallies, during meetings, and demonstrations. […] For example, at Hôtel Inyenyeli, I had the opportunity to meet him when he was participating in the MRND/CDR rallies.[363]

[358] Trial Judgement, para. 49. The possibility that the witness might incriminate the Appellant was one of a number of factors the Trial Chamber took into account in assessing the witness's credibility. *See* Trial Judgement, paras. 207, 208 (assessing inconsistencies in the witness's testimony, support from other witnesses, and also the fact that the events took place over a decade ago). Also, the Appellant does not expressly suggest that the witness intended to falsely incriminate him, however, he did argue that the testimony was incorrect. S*ee* Defence Final Trial Brief, paras. 191-194.
[359] Trial Judgement, para. 49.
[360] Appellant's Brief, para. 145, *referring to* Trial Judgement, para. 49.
[361] Respondent's Brief, para. 81.
[362] Trial Judgment, para. 49.

147. Thus, the Trial Chamber's statement is consistent with Witness Baziruwiha's testimony. The Appeals Chamber therefore finds no error in the Trial Chamber's statement, and accordingly dismisses this argument.

(c) Attendance at MRND/CDR Rallies

148. The Appellant claims that the Trial Chamber erred in its assessment of Witness Baziruwiha's testimony because, although the witness testified in relation to the Appellant's participation in the MRND/CDR rallies, when questioned at trial, she was unable to provide the date or an account of the Appellant's actions at the rallies.[364]

149. The Appeals Chamber notes that Witness Baziruwiha was asked to provide details concerning her statement that she had seen the Appellant at an MRND/CDR "meeting" at Hotel Inyenyeli.[365] She could recall that the "meeting" was held in the courtyard of the hotel, and could name some of the more important people whom she met or who spoke; however, she could not specify the date of the rally or the amount of time she spent there.[366] The Appeals Chamber recalls that it is not unreasonable for a Trial Chamber to accept the substance of a witness's evidence notwithstanding the witness's inability to recall certain details, especially when a significant amount of time has elapsed since the events to which the witness's evidence relates.[367] Thus, the Appeals Chamber finds that a reasonable trier of fact could have concluded that Witness Baziruwiha's credibility was not called into doubt by her inability to recall the date or the amount of time she spent at the rally, particularly in light of the other detailed facts she was able to provide in relation to this incident.

150. The Appellant has failed to establish that no reasonable trier of fact could have relied on Witness Baziruwiha's account of the Appellant's attendance at a rally. The Appeals Chamber therefore dismisses this argument.

(d) Contextual Support for Specific Intent

151. The Appellant contends that characterizing Witness Baziruwiha's evidence as "providing context to other allegations in the Indictment" was an unreasonable approach to assessing the evidence.[368] He asserts that this approach amounted to an error "so pervasive that it seriously

[363] T. 15 January 2007 p. 68.
[364] Appellant's Brief, para. 146.
[365] T. 16 January 2007 pp. 28, 29.
[366] T. 16 January 2007 p. 29.
[367] *See Kvo~ka et al*. Appeal Judgement, para. 591.
[368] Appellant's Brief, para. 147, *citing* Trial Judgement, para. 53.

undermines confidence in the way evidence is used or in a fair application of the presumption of innocence principle."[369] The Prosecution responds that the impugned findings do not form the basis of his conviction.[370]

152. The Appeals Chamber considers that while the findings on the Appellant's political connections do not support any convictions on their own, they do form part of the Trial Chamber's reasoning underpinning the Appellant's conviction for genocide. In this respect, the Trial Chamber considered the evidence on his political connections in support of its finding of genocidal intent.[371] However, though taken into account, the Trial Chamber primarily based its conclusion that the Appellant had the requisite genocidal intent on other findings.[372] For example, the Trial Chamber cited the evidence of Witness LAG, who testified that the Appellant asked him to search for and kill Tutsis, including Father Boneza, whom the Appellant referred to as a Tutsi,[373] and Witness AOY, who testified that he and the Appellant shared a common intention to exterminate the Tutsis in Cyangugu prefecture, and that both planned and implemented the agreement to exterminate Tutsis.[374] Accordingly, the Trial Chamber treated Witness Baziruwiha's evidence as corroborative of other evidence that he possessed the requisite genocidal intent. The Appellant has failed to demonstrate an error on the part of the Trial Chamber and his argument is therefore dismissed.

2. Witness LDC

153. Witness LDC testified that he became a member of the *Interahamwe* following a meeting at which the Appellant and other authorities urged those present to create a wing of the MRND party which would be responsible for security.[375] He also recalled that the Appellant supervised the training of a group of *Interahamwe*.[376] Based on Witness LDC's testimony, as well as that of Witness BRJ, the Trial Chamber found that the Appellant publicly supported both the MRND and the CDR, and that he participated in recruiting young Hutu men for militia training.[377]

154. In assessing Witness LDC's credibility, the Trial Chamber noted that Witness LDC was an accomplice witness who was charged with criminal participation in the genocide in Rwanda and

[369] Appellant's Brief, para. 148.
[370] Respondent's Brief, para. 79.
[371] Trial Judgement, paras. 49, 53.
[372] Trial Judgement, paras. 333-336.
[373] Trial Judgement, para. 333.
[374] Trial Judgement, para. 334.
[375] Trial Judgement, para. 42.
[376] Trial Judgement, para. 42.
[377] Trial Judgement, para. 53.

that accordingly his testimony had to be considered with great caution.[378] It found that he gave evidence in a straightforward and cooperative manner but took into account that his testimony was motivated by a desire to expedite the prosecution of his own case in Rwanda.[379] The Trial Chamber noted that, as a result of his cooperation with the Rwandan authorities, it appeared he had been treated more leniently than other prisoners.[380] It also expressly took into account the Defence contention that Witness LDC "might still have to cooperate with the Rwandan authorities, and that such cooperation might embrace his testimony before the Tribunal in this case".[381] The Trial Chamber accordingly found that Witness LDC could have a motive to incriminate the Appellant.[382]

155. The Appellant submits that the Trial Chamber failed to give sufficient weight to Witness LDC's belief that his confession contributed to a reduction in his sentence and to the fact that he might have an incentive to testify.[383] He claims that the Trial Chamber erred by failing to require corroboration of Witness LDC's evidence.[384]

156. The Prosecution responds that the Trial Chamber did not err because it specifically considered the potential incentive for Witness LDC to incriminate the Appellant and stated that it would approach Witness LDC's testimony with caution.[385] It argues that the Trial Chamber provided reasons for believing Witness LDC and that corroboration of accomplice testimony is not mandatory.[386]

157. The Appellant merely states that the Trial Chamber did not give sufficient weight to the witness's circumstances and should have required corroborative evidence of the witness's testimony, but does not substantiate any allegation of errors made by the Trial Chamber in its findings. The Appeals Chamber recalls that mere assertions that the Trial Chamber failed to give sufficient weight to certain evidence, or that it should have interpreted evidence in a particular manner, are liable to be summarily dismissed.[387] As noted above, the Trial Chamber duly took into account all the factors raised by the Appellant.[388] In addition, the Appeals Chamber notes that Witness LDC's testimony was corroborated by that of Witness BRJ.[389] The Appellant has not

[378] Trial Judgement, paras. 51, 96.
[379] Trial Judgement, para. 52.
[380] Trial Judgement, para. 52.
[381] Trial Judgement, para. 52.
[382] Trial Judgement, paras. 53, 96.
[383] Notice of Appeal, para. 14; Appellant's Brief, para. 51, *citing* Trial Judgement, paras. 96, 97.
[384] Appellant's Brief, para. 149, *citing* Trial Judgement, para. 53.
[385] Respondent's Brief, paras. 35, 37.
[386] Respondent's Brief, para. 82.
[387] *See Marti}* Appeal Judgement, para. 19; *Strugar* Appeal Judgement, para. 21; *Brđanin* Appeal Judgement, para. 24.
[388] *See supra* para. 154.
[389] *See* Trial Judgement, paras. 41, 50-53.

demonstrated that the Trial Chamber failed to properly assess the testimony of Witness LDC or that no reasonable trier of fact could have found him to be credible. Therefore, the Appeals Chamber dismisses this argument.

3. Witness BRJ

158. Prosecution Witness BRJ testified that the Appellant advised him and his friends to undergo military training and told them that they would inherit their victims' property.[390] He further testified that he considered himself to be part of the *Impuzamugambi*, the CDR party's youth-wing militia whose duty it was to track down and kill Tutsis.[391]

159. Based on Witness BRJ's testimony, as well as that of Witnesses LDC and Baziruwiha, the Trial Chamber found that the Appellant had publicly supported the MRND and CDR and participated in recruiting young Hutu men for militia training.[392] However, the Trial Chamber doubted the reliability of Witness BRJ's testimony in other regards, namely with respect to the role he claimed the Appellant played in erecting roadblocks.[393]

160. The Appellant submits that the Trial Chamber erred in relying on Witness BRJ's testimony that the Appellant recruited him for militia training because it later rejected another part of that his testimony.[394] He also contends that the Trial Chamber erred in accepting Witness BRJ's accomplice evidence without requiring corroboration.[395]

161. The Appeals Chamber finds no merit in the Appellant's argument, as it recalls that a Trial Chamber may accept some parts of a witness's testimony while rejecting others.[396] The Appeals Chamber finds no reason to depart from this principle in the case of an accomplice witness provided that the Trial Chamber is satisfied that the witness's evidence is credible and reliable.

162. Furthermore, the Trial Chamber duly noted that Witness BRJ was an accomplice and that he could have had a motive to incriminate the Appellant to obtain a lesser sentence in his own case.[397] It recalled the need to exercise "great caution" in the assessment of his testimony.[398] Accordingly, the Appellant has not demonstrated that the Trial Chamber failed to assess properly the testimony of

[390] T. 19 January 2007 pp. 23, 24.
[391] T. 19 January 2007 p. 24.
[392] Trial Judgement, para. 53.
[393] Trial Judgement, paras. 160, 161.
[394] *See* Trial Judgement, para. 41; Appellant's Brief, para. 150.
[395] Appellant's Brief, para. 149.
[396] *Karera* Appeal Judgement, para. 88. *See also Seromba* Appeal Judgement, para. 110, *citing Simba* Appeal Judgement, para. 212; *Kamuhanda* Appeal Judgement, para. 248, *citing Kupreškić et al.* Appeal Judgement, para. 333.
[397] Trial Judgement, paras. 50, 53.

Witness BRJ or that no reasonable trier of fact could have relied on his evidence to find that he recruited people for militia training in absence of corroboration. In any event, the Appeals Chamber recalls that Witness BRJ's evidence was corroborated by that of Witness LDC.[399] The Appeals Chamber therefore dismisses the Appellant's argument.

C. Alleged Failure to Provide a Reasoned Opinion in Relation to Defence Witnesses

163. In discussing the allegations of the Appellant's political connections, the Trial Chamber explicitly noted that several Defence witnesses testified that they never saw the Appellant carry a weapon or wear military attire between 6 April 1994 and 18 July 1994.[400] The Appellant submits that the Trial Chamber erred by failing to provide reasons for not accepting their testimony.[401]

164. While the Appellant does not specifically identify the witnesses to whom he is referring, the Appeals Chamber understands that they are Witnesses SBM, ZSA, Colette Uwubuheta, and the Appellant himself, as they are referred to in the relevant section of the Trial Judgement.[402]

165. The Appeals Chamber recalls that a Trial Chamber is required to provide a reasoned opinion under Article 22(2) of the Statute and Rule 88(C) of the Rules.[403] A reasoned opinion ensures that the accused can exercise his right of appeal and that the Appeals Chamber can carry out its statutory duty under Article 24 of the Statute.[404] However, this requirement relates to the Trial Judgment as a whole, not to each submission made at trial.[405] In addition, a Trial Chamber "is not required to set out in detail why it accepted or rejected a particular testimony."[406]

166. Furthermore, although certain evidence may not have been referred to by a Trial Chamber, in the particular circumstances of a given case it may nevertheless be reasonable to assume that the Trial Chamber took it into account.[407] A Trial Chamber need not refer to every witness testimony or every piece of evidence provided there is no indication that the Trial Chamber completely

[398] Trial Judgement, paras. 50, 53.
[399] *See* Trial Judgement, paras. 42, 50-53.
[400] Trial Judgement, para. 45, *citing* T. 29 August 2007 p. 21 (Witness SBM); T. 18 September 2007 p. 29 (Siméon Nchamihigo); T. 24 April 2007 p. 56 (Witness ZSA); T. 26 April 2007 pp. 30, 31 (Colette Uwubuheta).
[401] Appellant's Brief, para. 151.
[402] Trial Judgement, para. 45 and fn. 43.
[403] *Muvunyi* Appeal Judgement, para. 144, *citing Simba* Appeal Judgement, para. 152; *Kamuhanda* Appeal Judgement, para. 32; *Kajelijeli* Appeal Judgement, para. 59; *Semanza* Appeal Judgement, paras. 130, 149.
[404] *Karera* Appeal Judgement, para. 20. *See also Musema* Appeal Judgement, para. 18 (noting that the Trial Chamber is not required to articulate every step of its reasoning for each particular finding it makes).
[405] *Karera* Appeal Judgement, para. 20. *See also Limaj et al.* Appeal Judgement, para. 81; *Kvo~ka et al.* Appeal Judgement, para. 23.
[406] *Musema* Appeal Judgement, para. 20.
[407] *Musema* Appeal Judgement, para. 19.

disregarded any particular piece of evidence; such disregard is shown where evidence that is clearly relevant to the findings is not addressed by the Trial Chamber's reasoning.[408]

167. The Appeals Chamber notes that, although the Trial Chamber did not explicitly state its position on the credibility of these witnesses, it did take their evidence into account.[409] Furthermore, these witnesses merely testified that the Appellant never carried a weapon or wore military attire.[410] This evidence is of limited value as it establishes nothing more than the fact that these particular witnesses never saw the Appellant carrying a weapon or wearing military attire. Thus despite this testimony, it was reasonable for the Trial Chamber to conclude that the evidence did not suffice to raise a reasonable doubt as to the Prosecution's evidence that the Appellant publicly exhibited support for the MRND and CDR parties and that he participated in recruiting young Hutu men for militia training. In light of the foregoing, the Appeals Chamber finds that the Trial Chamber provided a reasoned opinion in reaching the impugned conclusion.

D. Alleged Failure to Draw Certain Inferences

168. The Prosecution alleged in the Indictment that the Appellant obtained his post as Deputy Prosecutor on the basis of a forged diploma, and that an investigation into the issue was stopped when Musekura Jean Damascene, a pro-MRND Deputy Prosecutor General took office.[411] However, the Trial Chamber found that no evidence was adduced to show that the Appellant had tendered a forged diploma to his prospective employers or establish any impropriety in his appointment as Deputy Prosecutor.[412] The Appellant argues that the Trial Chamber should have also concluded from these findings that there was no proof of any political connection between him and Deputy Prosecutor General Musekura.[413]

169. Further, the Trial Chamber found that the Prosecution had failed to prove that the Appellant held an official position in the MRND or CDR, that he was a member of the *Tuvindimwe*, or that he was a leader of the *Interahamwe* or *Impuzamugambi*.[414] The Appellant contends that this

[408] *See also Limaj et al.* Appeal Judgement, para. 86, *citing Kvo~ka et al.* Appeal Judgement, para. 23.
[409] Trial Judgement, para. 45, *citing* T. 29 August 2007 p. 21 (Witness SBM); T. 18 September 2007 p. 29 (Siméon Nchamihigo); T. 24 April 2007 p. 56 (Witness ZSA); T. 26 April 2007 pp. 30, 31 (Colette Uwubuheta).
[410] T. 29 August 2007 p. 21 (Witness SBM), T. 18 September 2007 pp. 30, 31 (Siméon Nchamihigo), T. 24 April 2007 p. 56 (Witness ZSA), T. 26 April 2007 pp. 30, 31 (Colette Uwubuheta).
[411] Trial Judgment, para. 38.
[412] Trial Judgment, para. 46.
[413] Notice of Appeal para. 49; Appellant's Brief, para. 137, *referring to* Trial Judgement, para. 46. The Appellant asserts that the Trial Chamber did not address this issue.
[414] Trial Judgment, paras. 46, 47, 53.

contradicts the finding that he publicly exhibited his support for the MRND and CDR and that he participated in the recruitment of militiamen.[415]

170. The Prosecution replies that the Appellant does not demonstrate any error in this regard.[416]

171. The Trial Chamber addressed the issues relating to the Appellant's allegedly forged diploma and his membership in the MRND, CDR, *Tuvindimwe*, *Interahamwe*, and *Impuzamugambi*.[417] The Appellant does not explain how the Trial Chamber's findings contradict its conclusion, based on credible evidence,[418] that he publicly exhibited support for the MRND and the CDR and recruited young Hutus for militia training. Therefore, the Appeals Chamber dismisses this argument.

E. Conclusion

172. For the foregoing reasons, this ground of appeal is dismissed in its entirety.

[415] Notice of Appeal, paras. 50, 51; Appellant's Brief, paras. 138, 139.
[416] Respondent's Brief, para. 78.
[417] Trial Judgement, paras. 38-53.
[418] Trial Judgement, paras. 49-53.

XI. ALLEGED ERRORS RELATING TO ROADBLOCKS IN CYANGUGU (GROUND OF APPEAL 14)

173. Paragraph 21 of the Indictment charged the Appellant, *inter alia*, with ordering or instigating the *Interahamwe* to erect several roadblocks to intercept and kill Tutsis and Hutu opponents and with supervising the effective manning of those roadblocks.[419] It specifically alleged that the Appellant controlled and supervised the roadblocks by inspecting them several times a day, and that he ordered or instigated the *Interahamwe* who manned them to kill Tutsis attempting to pass through. In relation to these allegations, the Trial Chamber found:

> […] that the Prosecution failed to establish beyond reasonable doubt that [the Appellant] ordered or instigated the erection of any roadblocks. However, there was evidence that [the Appellant] visited roadblocks at the Bank of Kigali, Kadashya, Kucyapa, Pendeza, Gatandara, and near Prosecutor Ndorimana's house, and gave instructions to the persons manning them from time to time. The details of these instructions are discussed elsewhere in [the Trial Judgement], in relation to more specific allegations on [the Appellant's] involvement in different killings.[420]

174. The Appellant claims that the Trial Chamber erred in making this finding, as he was not charged with giving "instructions to the persons manning [the roadblocks] from time to time".[421] He contends that the allegations made at paragraph 21 of the Indictment in relation to the manning of roadblocks should be understood in their entirety and that, since they were not all proven, he should have been acquitted of these charges.[422] He claims that a finding of guilt could not be based solely on the factual finding that "he gave instructions to the persons manning Ŧthe roadblocks] from time to time".[423]

175. The Appellant further submits that the Trial Chamber contradicted itself in finding, both that he never ordered or instigated the erection of roadblocks and that the Prosecution failed to prove he held any official position with any political party or that he was a leader of the *Interahamwe* or *Impuzamugambi*, and, also that "several Tutsis were killed by his *Interahamwe*" at the

[419] Indictment, para. 21. In the same paragraph other allegations are made which relate to the killings at Gatandara roadblock of selected Tutsi refugees removed from Kamarampaka stadium and the killing of Father Joseph Boneza at Kucyapa roadblock, which are dealt with separately in the Trial Judgement. *See* Trial Judgement, para. 154 and Sections 1.3 and 3.6. The Trial Chamber's findings related to these allegations have been appealed by the Appellant under Grounds of Appeal 21 and 22 to 26 of this Judgement respectively. The Appeals Chamber notes that, while the Trial Chamber described the events at "Kamarampaka Stadium" and "Kucyapa," the Indictment referred to these same place names respectively as "Karampaka Stadium" and "Cuyapa" or "Cyapa". *See, e.g.*, Indictment, para. 21; Trial Judgement, paras. 162, 244. For the purposes of this Judgement, the Appeals Chamber adopts the spelling used by the Trial Chamber.
[420] Trial Judgement, para. 161.
[421] Appellant's Brief, para. 153; Brief in Reply, paras. 44-46.
[422] Appellant's Brief, para. 152, *citing* Trial Judgment, paras. 153, 161.

roadblocks.[424] He also argues that it is "strange" for the Trial Chamber to find that he did not instigate the erection of roadblocks, "yet conclude that he attended criminal meetings at which [Prefect] Bagambiki allegedly ordered the erection of roadblocks."[425]

176. The Prosecution responds that the Trial Chamber did not err in its findings regarding paragraph 21 of the Indictment and the roadblocks in Cyangugu.[426]

177. The Appeals Chamber dismisses the Appellant's claim that the Trial Chamber erred in stating that "several Tutsis were killed by his *Interahamwe*" at the roadblocks[427] as the impugned phrase "Nchamihigo's *Interahamwe*" was used by the Trial Chamber when summarizing the Prosecution's charges,[428] not in any of its findings.[429]

178. The Appeals Chamber also dismisses the Appellant's submission that it is "strange" for the Trial Chamber to find that he did not instigate the erection of roadblocks, "yet conclude that he attended criminal meetings at which ŦPrefectğ Bagambiki allegedly ordered the erection of roadblocks."[430] The Trial Chamber reasonably found that, although the Appellant was not responsible for erecting the roadblocks, he nonetheless visited the roadblocks and gave instructions to the people manning them.[431] The Appellant has failed to demonstrate any error on the part of the Trial Chamber in reaching these findings.

179. The Appellant further contends that the Trial Chamber cannot find him guilty of genocide on the "sole ground" that he gave instructions to the people manning the roadblocks from time to time.[432] The Appeals Chamber notes that the Trial Chamber stated that there was evidence that the Appellant visited a number of roadblocks and gave instructions to those manning them from time to time and that it would discuss the details of these instructions elsewhere in the Trial Judgement.[433] In various sections of the Trial Judgement, the Trial Chamber indeed discussed the Appellant's

[423] Appellant's Brief, para. 152.
[424] Notice of Appeal, paras. 57, 58; Appellant's Brief, para. 154.
[425] Appellant's Brief, para. 156.
[426] Respondent's Brief, paras. 83-85.
[427] Notice of Appeal, paras. 57, 58 (emphasis in original); Appellant's Brief, para. 154.
[428] Trial Judgement, para. 153.
[429] *See* Trial Judgement, paras. 110, 116, 136, 351 (Bank of Kigali); Trial Judgement, paras. 75, 127, 134, 136-137, 143, 144, 356, 357 (Kucyapa roadblock); Trial Judgement, paras. 125, 353, 354 (Gatandara roadblock). The Appeals Chamber does not need to address any allegation of error in relation to the Appellant's alleged actions at Kadashya and Pendeza roadblocks as the Trial Chamber did not enter any conviction based on them.
[430] Appellant's Brief, para. 156, *referring* to Trial Judgement, paras. 160, 161. The Appeals Chamber notes that in these paragraphs of the Trial Judgement, the Trial Chamber did not reach any conclusion relating to the Appellant's attendance at meetings. Instead, it found that the Appellant was not involved in the process of ordering the erection of roadblocks or in the erections themselves. Trial Judgement, para. 160.
[431] Trial Judgement, para. 161.
[432] Appellant's Brief, para. 152; Brief in Reply, paras. 44-46.
[433] Trial Judgement, para. 161.

alleged actions at the roadblocks near the Bank of Kigali, Kucyapa, and Prosecutor Ndorimana's house at Gatandara.[434] However, the Trial Chamber did not convict the Appellant based on its general finding that he had occasionally given instructions to people manning roadblocks but instead based on the specific instructions which it found the Appellant to have given.[435] The Appeals Chamber consequently finds the Appellant's contention in this regard to be unmeritorious.

180. The Appellant lastly contends that the allegations made in paragraph 21 of the Indictment in relation to the manning of roadblocks should be understood in their entirety and that, since they were not all proven, he should have been acquitted of these charges.[436] However, the Appellant fails to explain how the Trial Chamber failed to read the allegations in their entirety or misunderstood the charges. The Appeals Chamber notes that the Trial Chamber analysed the three different but related allegations made in paragraph 21:

> this paragraph [...] allegeŦsğ that (1) [the Appellant] ordered or instigated the erection of several roadblocks to intercept and kill Tutsi, (2) [the Appellant] supervised the effective manning of those roadblocks, and (3) several Tutsi were killed by [the Appellant's] *Interahamwe* at the roadblocks, sometimes in [the Appellant's] presence.[437]

Contrary to the Appellant's assertion, the Trial Chamber was entitled to make factual findings limited to the allegations that were proven. The fact that only some parts of the Prosecution's allegations were proven at trial does not negate the sufficiency of the pleadings. It was the Trial Chamber's duty to decide which of the Prosecution's allegations were proven and to dismiss those that were not. Accordingly, the Appeals Chamber dismisses this ground of appeal.

[434] *See* Trial Judgement, paras. 110, 116, 136, 351 (Bank of Kigali); Trial Judgement, paras. 75, 127, 134, 136-137, 143, 144, 356, 357 (Kucyapa roadblock); Trial Judgement, paras. 125, 353, 354 (Gatandara roadblock).
[435] Trial Judgement, para. 161. *See, e.g.*, Trial Judgement, paras. 356, 357 (attributing the death of Father Boneza to the Appellant where the Trial Chamber found that the Appellant had asked for an "intelligent Hutu" at the Kucyapa roadblock to kill Father Boneza).
[436] Appellant's Brief, para. 152, *citing* Trial Judgment, paras. 153, 161.
[437] Trial Judgment, para. 153.

XII. ALLEGED ERRORS IN RELATION TO INDIVIDUAL KILLINGS (GROUNDS OF APPEAL 15 TO 19)

181. The Trial Chamber found that, on 7 April 1994, the Appellant instigated people at Kamembe to kill Tutsis and RPF supporters,[438] and that he did so with the intent to destroy, in whole or in part, the Tutsi ethnic group.[439] The Trial Chamber further found that perpetrators, acting at the instigation of the Appellant, killed several civilian Tutsis, including Karangwa, Dr. Nagafizi,[440] Ndayisaba's family, and a prominent Hutu businessman named Kongo who was considered to be an RPF accomplice.[441] The Trial Chamber found that these killings were part of a widespread and systematic attack on the civilian population and convicted the Appellant of genocide and extermination as a crime against humanity.[442]

182. Under Grounds of Appeal 15 to 18, the Appellant claims that the Trial Chamber erred in its factual findings underlying his convictions for these crimes.[443] He specifically submits that the Trial Chamber erred in finding that he ordered the killing of Tutsis,[444] and in reaching its findings in relation to the murders of Dr. Nagafizi, Kongo, Ndayisaba's family, and Karangwa.[445] In his Notice of Appeal, the Appellant challenged these findings under Ground of Appeal 19;[446] however, in his Appellant's Brief, he indicated that he would not pursue this ground of appeal.[447] Accordingly, the Appeals Chamber need not consider it.

A. Alleged Errors Relating to the Appellant's Order to Kill Tutsis (Ground of Appeal 15 and Grounds of Appeal 4 and 5, in part)

183. The Trial Chamber found that the Appellant instigated people at Kamembe to kill Tutsis with the intent to destroy, in whole or in part, the Tutsi ethnic group.[448] In so concluding, it relied

[438] Trial Judgement, para. 346 (finding that the Appellant instigated "ŦWitnessğ LAG and those *Interahamwe* and others to whom he spoke at Kamembe on 7 April 1994 to go and look for and kill Tutsi and other civilians who were RPF supporters.").
[439] Trial Judgement, para. 347.
[440] The Appeals Chamber notes that the Appellant spells Dr. Nagafizi's name as "Nagapfizi" or "Nagapfazi". *See*, *e.g*., Appellant's Brief, para. 227. The Appeals Chamber adopts the Trial Chamber's spelling, which corresponds to the spelling used in the Indictment. *See* Indictment, para. 45.
[441] Trial Judgement, para. 347.
[442] Trial Judgement, paras. 346, 347.
[443] Notice of Appeal, paras. 59-71 (Ground of Appeal 15); Headings 10.1(a), 10.1(b) (Ground of Appeal 16); Headings 10.2(a), 10.2(b) (Ground of Appeal 17); Heading 10.3 (Ground of Appeal 18); Heading 10.4 (Ground of Appeal 19). Appellant's Brief, paras. 157-226 (Ground of Appeal 15); para. 227 (Grounds of Appeal 16, 17); para. 228 (Ground of Appeal 18).
[444] Notice of Appeal, para. 59; Appellant's Brief, paras. 184, 185, 203, 204.
[445] Notice of Appeal, Headings 10.1(a), 10.2(a), 10.3; Appellant's Brief, paras. 227, 228.
[446] Notice of Appeal, para. 72.
[447] Appellant's Brief, para. 229.
[448] Trial Judgement, para. 347.

on its findings that: (1) the Appellant instructed Witness LAG and others to look for and kill Tutsi civilians,[449] and (2) the Appellant shared Witness AOY's intent to eliminate Tutsis, RPF supporters, "and anyone who wanted to take power by force", including the leaders of the PSD political party.[450] The Trial Chamber also concluded on the basis of the same evidence that the Appellant had "*ordered* ŦWitnessğ LAG and those *Interahamwe* and others to whom he spoke at Kamembe on 7 April 1994 to go and look for and kill Tutsi and other civilians who were RPF supporters."[451]

184. The Appellant claims that the Trial Chamber erred in finding that he "ordered" people to kill Tutsi RPF supporters,[452] and contends that, in making this finding, the Trial Chamber erred in assessing: (1) his authority to order others to search for Tutsis;[453] (2) Witness AOY's evidence;[454] and (3) Witness LAG's evidence.[455]

1. Alleged Error Relating to the Appellant's Authority

185. The Appellant claims that the Trial Chamber erred in finding that he "ordered" people to kill Tutsis given the absence of any evidence that he was in a position of authority as he was not a leader of the *Interahamwe* or *Impuzamugambi* and did not hold an official position within the MRND or CDR.[456] He claims that the Trial Chamber erred when it relied on Witness LAG's subjective interpretation that the Appellant possessed "residual authority" as Deputy Public Prosecutor to find that he issued an order to exterminate Tutsis on 7 April 1994.[457] He argues that the Trial Chamber's finding that he ordered the extermination of Tutsis was inconsistent with its previous findings: (1) that there was no proven link between the national political authorities and those of Cyangugu in a conspiracy to commit genocide,[458] and (2) that the Appellant was not a leader of the *Interahamwe* or *Impuzamugambi* and did not hold an official position within the MRND or the CDR.[459]

186. The Prosecution responds that the Trial Chamber did not have to establish the existence of a formal relationship between the Appellant and the political authorities of Cyangugu on the morning

[449] Trial Judgement, para. 346.
[450] Trial Judgement, para. 346.
[451] Trial Judgement, para. 100 (emphasis added).
[452] Notice of Appeal, pp. 13, 14, *referring to* Trial Judgement, para. 100.
[453] Notice of Appeal, paras. 70, 71; Appellant's Brief, paras. 180-184.
[454] Notice of Appeal, paras. 61-63; Appellant's Brief, paras. 187, 193, 199.
[455] Notice of Appeal, fn. 13, para. 69; Appellant's Brief, paras. 161, 162, 166-179, 188, 194, 199, 213. The Appellant makes related arguments challenging the Trial Chamber's assessment of Witness LAG's evidence under Ground of Appeal 4. These arguments will also be addressed in this section.
[456] Appellant's Brief, paras. 180-184.
[457] Appellant's Brief, paras. 180, 184, 185. *See also* Trial Judgement paras. 61, 95, 100.
[458] Appellant's Brief, para. 180.
[459] Notice of Appeal, para. 70; Appellant's Brief, para. 182.

of 7 April 1994 because the *actus reus* of ordering does not require a formal superior-subordinate relationship between the accused and the perpetrator.[460] The Prosecution submits that the evidence clearly established that the Appellant was in a position of authority, and that those gathered in Kamembe on the morning of 7 April 1994 perceived him as compelling them to commit crimes against Tutsis and their supporters.[461]

187. The Appellant replies that the Prosecution's argument that he was in a position of authority on 7 April 1994, and that his audience in Kamembe perceived him as compelling it to commit crimes, is invalid because the Indictment does not allege that he gave the order in his capacity as Deputy Public Prosecutor.[462] He claims that he has been prejudiced by the Prosecution's attempts to adjust the theory of its case to conform to the evidence adduced at trial.[463]

188. The Appeals Chamber recalls that the Appellant's conviction is based on his instigation of others to kill Tutsi victims.[464] The Trial Chamber did not enter any conviction based on ordering as a mode of liability. The Trial Chamber could have been clearer when it concluded in the Factual Findings section of the Trial Judgement that the Appellant had "ordered", and in the Legal Findings section that he "instigated" others to seek out and kill Tutsi civilians.[465] Nonetheless, it was free, in the circumstances of the case, to conclude that the Appellant's words and deeds more accurately corresponded to the mode of liability of instigating. The Appeals Chamber recalls that the *actus reus* of instigating involves prompting another person to commit a crime.[466] Because a position of authority is not a required element under this mode of liability, the Appeals Chamber does not find it necessary to consider the Appellant's arguments in relation to his alleged lack of authority over the people whom he addressed at Kamembe. Accordingly, the Appeals Chamber summarily dismisses this argument.[467]

2. Alleged Errors in Assessing Witness AOY's Evidence

189. Witness AOY, an accomplice, testified that all the participants at the Prefecture Security Council meeting on 11 April 1994, which he and the Appellant attended, had a common objective of exterminating the Tutsi and devised various strategies regarding the implementation of that

[460] Respondent's Brief, para. 94.
[461] Respondent's Brief, para. 95.
[462] Brief in Reply, para. 52.
[463] Brief in Reply, para. 53.
[464] Trial Judgement, para. 347.
[465] *Compare* Trial Judgement, para. 100, *with* Trial Judgement, paras. 346, 347.
[466] *Nahimana et al.* Appeal Judgement, para. 480.
[467] *See Karera* Appeal Judgement, para. 11.

objective.[468] Based in part on Witness AOY's testimony, the Trial Chamber concluded that the Appellant had the requisite specific intent for genocide.[469]

190. The Appellant claims that the Trial Chamber erred in relying on Witness AOY's testimony that he and the Appellant shared a common desire to eliminate the Tutsis in order to find, "solely on the basis of that opinion", that he was criminally liable for the events of the morning of 7 April 1994.[470] The Appellant argues that even if Witness AOY's testimony could be believed, there is no evidence of a common intent "in regard to the morning of 7 April" since Witness AOY's testimony dealt mainly with meetings held after that date.[471]

191. The Prosecution responds that the Trial Chamber permissibly relied on Witness AOY's testimony, which was part of the totality of the evidence, to support its finding that the Appellant possessed the requisite *mens rea* for the crime of genocide.[472]

192. The Appeals Chamber finds that while the Trial Chamber relied on Witness AOY's testimony to find that the Appellant shared his intent to eliminate the Tutsi, it was not the only evidence of the Appellant's genocidal intent taken into account by the Trial Chamber. In finding that the Appellant possessed the requisite specific intent for genocide, the Trial Chamber considered a number of factors, including:[473] (1) the testimony of other Prosecution witnesses regarding statements made by the Appellant;[474] (2) the Appellant's public show of support for both the MRND and CDR political parties;[475] (3) the Appellant's participation in the recruitment of young Hutu men for militia training;[476] and (4) the Appellant's instigation of *Interahamwe* to kill all Tutsis who were removed from Kamarampaka stadium.[477] Thus, contrary to the Appellant's assertion, the Trial Chamber did not base its finding of the Appellant's genocidal intent solely on the evidence of Witness AOY. Moreover, Witness AOY's testimony on the Appellant's conduct after 7 April 1994 does not undermine its probative value for determining the Appellant's specific intent on 7 April

[468] Trial Judgement, paras. 167, 231.
[469] Trial Judgement, paras. 334-336, 346.
[470] Notice of Appeal, paras. 61, 62; Appellant's Brief, para. 193.
[471] Notice of Appeal, paras. 61, 62; Appellant's Brief, para. 193.
[472] Respondent's Brief, para. 93.
[473] Trial Judgement, paras. 332-336.
[474] Trial Judgement, paras. 333, 334. The Trial Chamber noted in particular that Witness LAG had testified that the Appellant had asked him and others to search for Tutsi, including Father Boneza, and kill them. It further noted Witness AOY's testimony on the Appellant's conduct at PSC meetings.
[475] Trial Judgement, paras. 49, 53, 335 (based on the evidence of Witnesses Baziruwiha, LDC and BRJ). *See supra* Section X "Alleged Errors Relating to the Appellant's Political Relationships (Ground of Appeal 13)".
[476] Trial Judgement, paras. 53, 335 (based on the evidence of Witnesses LDC and BRJ). *See supra* Section X "Alleged Errors Relating to the Appellant's Political Relationships (Ground of Appeal 13)".
[477] Trial Judgement, paras. 194-220, 335 (based on the evidence of Witness BRK). *See infra* Section XV(B) "Alleged Errors Related to the Killings at the Gendarmerie (Grounds of Appeal 24 to 26)".

1994.[478] The Trial Chamber permissibly inferred the Appellant's intent on 7 April 1994 based partly on Witness AOY's testimony regarding the Appellant's participation in the Prefecture Security Council meeting on 11 April 1994, a subsequent, but closely related, event. Accordingly, the Appeals Chamber dismisses the Appellant's argument.

3. Alleged Errors in Assessing Witness LAG's Evidence

193. Witness LAG, who lived in the same commune as the Appellant and knew him as Deputy Prosecutor,[479] testified about the events of 7 April 1994, including that the Appellant gave instructions to search for Tutsis, their accomplices, and MRND opponents,[480] as well as to subsequent incidents.[481]

194. The Appellant claims that the Trial Chamber made several errors in relying on Witness LAG's testimony. Specifically, the Appellant asserts that the Trial Chamber erred by: (1) failing to consider Witness LAG's role in the genocide;[482] (2) failing to consider inconsistencies between Witness LAG's testimony and his prior statements about his participation in the genocide;[483] (3) relying on irrelevant evidence to corroborate Witness LAG's testimony;[484] (4) shifting the burden of proof regarding Witness LAG's credibility onto the Defence;[485] (5) failing to consider that Witness LAG demonstrated his unreliability as a witness when he erroneously stated that Karangwa's wife was killed in the genocide;[486] (6) failing to determine whether Witness LAG was an *Interahamwe* by 7 April 1994;[487] (7) preferring Witness LAG's version of events over the Appellant's alibi;[488] and (8) failing to consider that Witness LAG was hostile and evasive when cross-examined about the existence of a curfew that was in effect on the morning of 7 April 1994, despite his knowledge that a curfew had been decreed.[489]

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[478] *See Jelisi}* Appeal Judgement, para. 47 (stating that proof of specific intent may "be inferred from a number of facts and circumstances, such as the general context, the perpetration of other culpable acts systematically directed against the same group, the scale of atrocities committed, the systematic targeting of victims on account of their membership of a particular group, or the repetition of destructive and discriminatory acts.").
[479] Trial Judgment, para. 59.
[480] Trial Judgment, paras. 60-65.
[481] Trial Judgment, paras. 112-113, 116, 136.
[482] Appellant's Brief, paras. 46, 48, 169-174.
[483] Appellant's Brief, para. 47, *citing* Trial Judgement, para. 92.
[484] Notice of Appeal, paras. 9-11; Appellant's Brief, para. 53. *See also* Brief in Reply, para. 51.
[485] Appellant's Brief, para. 220.
[486] Appellant's Brief, para. 188.
[487] Appellant's Brief, paras. 189-192.
[488] Appellant's Brief, paras. 201, 202.
[489] Appellant's Brief, para. 213.

(a) Criminal Role of Witness LAG

195. The Appellant claims that the Trial Chamber erred by giving no weight to the fact that Witness LAG had admitted to participating in some of the crimes charged in the Indictment, had pleaded guilty in the hope of securing a lower sentence, and had not yet completed his sentence at the time of his testimony.[490] He further claims that Witness LAG demonstrated his lack of credibility by misrepresenting facts concerning his and his father's criminal responsibility during the Rwandan genocide.[491]

196. The Prosecution responds that the Trial Chamber did not minimize Witness LAG's criminal record when it stated that he had served his time in prison and that he was not incarcerated at the time of his testimony because there was no evidence before the Trial Chamber of any pending criminal matters relating to Witness LAG in Rwanda or elsewhere.[492] Rather, the Prosecution asserts that the Trial Chamber found that, even if the witness did minimize his role, it would not have had an impact on his credibility because no significant connection existed between his crimes and those of the Appellant.[493]

197. The Appeals Chamber finds that the Trial Chamber took into account Witness LAG's criminal history. In particular, the Trial Chamber expressly considered that: (1) he was an accomplice to some of the crimes charged against the Appellant in the Indictment, and that therefore his testimony had to be viewed with caution; (2) he was arrested in Rwanda in 1995 on charges of complicity in genocide and illegal possession of a weapon; (3) his decision to plead guilty was influenced by his knowledge that, in doing so, he might receive a more lenient sentence; (4) he was ultimately convicted and sentenced to 11 years in prison and was conditionally released after serving eight years; and (5) at the time of his testimony, he was not incarcerated.[494]

198. The Trial Chamber also addressed the Appellant's contention that Witness LAG minimised his role as an accomplice when he testified before the Tribunal.[495] It noted that Witness LAG denied this allegation and explained that there had been many opportunities for other charges to have been brought against him in Rwanda.[496] The Trial Chamber then reasoned that "[e]ven if it were true that

[490] Appellant's Brief, paras. 46, 48.
[491] Appellant's Brief, paras. 168-175. The Appellant merely states that Witness LAG did not give a credible explanation of the circumstances of his father's imprisonment.
[492] Respondent's Brief, para. 91.
[493] Respondent's Brief, para. 91.
[494] Trial Judgement, paras. 90, 91. *See also* Trial Judgement, para. 93, where the Trial Chamber states that Witness LAG "served his time in prison".
[495] Trial Judgement, para. 93.
[496] Trial Judgement, para. 93.

[Witness LAG] minimised his role it would not have a significant impact on the [Trial] Chamber's assessment of his testimony as there was little connection between his culpability and Nchamihigo's."[497] The Trial Chamber concluded that it did not accept that Witness LAG had a motive to falsely implicate the Appellant.[498]

199. The Appellant does not develop his contention that the Trial Chamber erred in reaching these conclusions. He merely asserts that Witness LAG testified that he "shared the culpability of the April 7 killers", and that the Trial Chamber did not exercise caution and only sought to "rehabilitate" the witness.[499] The Appeals Chamber observes that the Trial Chamber duly noted that Witness LAG was an accomplice.[500] It recalled the need to view "his testimony with caution".[501] It carefully considered the witness's criminal past and possible motive to falsely implicate the Appellant.[502] It noted that his testimony that the Appellant gave orders to kill Tutsis in Kamembe was not directly supported by other evidence.[503] Accordingly, the Appellant has failed to demonstrate that no reasonable trier of fact could have reached this conclusion and the Appeals Chamber dismisses this argument.

(b) Inconsistencies with Prior Statements

200. In assessing Witness LAG's credibility, the Trial Chamber found that none of his prior statements contained significant inconsistencies.[504] The Appellant submits that the Trial Chamber failed to recognize all the contradictions when making this finding.[505] The Appellant contends that Exhibit D16F, a Rwandan judicial record, and Exhibit D41, a Rwandan judgement, show that Witness LAG manned several roadblocks which contradicts Witness LAG's trial testimony that he manned only one roadblock.[506]

201. The Appeals Chamber recalls that it is not a legal error *per se* to accept and rely on evidence that deviates from a prior statement or other evidence adduced at trial.[507] However, a Trial Chamber is bound to take into account any explanations offered in respect of inconsistencies when weighing

[497] Trial Judgement, para. 93.
[498] Trial Judgement, para. 93.
[499] Appellant's Brief, para. 48.
[500] Trial Judgement, para. 90.
[501] Trial Judgement, para. 90.
[502] Trial Judgement, para. 93.
[503] Trial Judgement, para. 94.
[504] Trial Judgement, para. 92.
[505] Appellant's Brief, para. 47, *citing* Trial Judgement, para. 92.
[506] Appellant's Brief, paras. 170, 171, 173. The Appeals Chamber notes that the Appellant's Brief seems to contain a typographical error, as the information it claims is present in Exhibit D47 actually appears in Exhibit D41.
[507] *Muhimana* Appeal Judgement, para. 135; *Niyitegeka* Appeal Judgement, para. 96.

the probative value of the evidence.[508] In this case, the Trial Chamber explicitly considered the Appellant's contention at trial that Witness LAG "made some prior inconsistent statements."[509] The Appellant has not articulated either how the Trial Chamber erred in evaluating the prior statements or how the particular inconsistencies raised here could potentially result in the Trial Judgement being reversed or revised.

202. The Appellant also submits that Exhibit D16F provides a clear example of Witness LAG's attempt to downplay his role as an *Interahamwe* leader, even though he later claimed that someone else by the name of Kassim Kanyukiko was the chief of Witness LAG's roadblock.[510] The Appeals Chamber disagrees. According to Exhibit D16F, Witness LAG stated before the Rwandan judiciary that Kassim Kanyukiko was his chief within the *Interahamwe*.[511] This is consistent with Witness LAG's assertion at trial that Kassim Kanyukiko was the chief of the roadblock which he and others manned.[512] Accordingly, this argument is dismissed.

(c) Corroboration of Witness LAG's Testimony with Irrelevant Evidence

203. The Appellant claims that the Trial Chamber erred by finding that Witness LAG's testimony was corroborated by evidence which was irrelevant and inconsistent.[513] Specifically, he contends that the Trial Chamber erred in finding that Witness LAG's evidence was corroborated by: (1) Witness Baziruwiha's testimony;[514] (2) the fact that the Appellant's alibi had been discredited;[515] (3) the context of the death of President Habyarimana on 6 April 1994 and the ensuing insecurity and chaos;[516] (4) the establishment of a link between the testimony of Witnesses LDC and LAG;[517] and (5) indirect evidence such as the Appellant's theft of Karangwa's property and looting of Ndayisaba's house.[518] The Appellant further contends that the Trial Chamber erred in finding that he was present on the roadside in Kamembe solely on the basis of Witness LAG's testimony.[519]

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[508] *Muhimana* Appeal Judgement, para. 135; *Niyitegeka* Appeal Judgement, para. 96, *citing Kupreškić et al.* Appeal Judgement, para. 31.
[509] Trial Judgement, para. 92. The Trial Chamber merely refers, as an example, to the issue of Witness LAG's membership of the Liberal Party.
[510] Appellant's Brief, para. 172.
[511] Exhibit D16F, p. 6.
[512] Exhibit P42, p. 1; T. 17 January 2007 pp. 39, 40.
[513] Notice of Appeal, paras. 9-11; Appellant's Brief, para. 53. *See also* Brief in Reply, para. 51.
[514] Notice of Appeal, paras. 66, 68; Appellant's Brief, paras. 55, 222.
[515] Appellant's Brief, para. 55.
[516] Appellant's Brief, para. 56. The Appellant argues that the fact that people died on 7 April 1994 and the following days does not corroborate an order allegedly given by the Appellant on that day.
[517] Appellant's Brief, para. 57.
[518] Appellant's Brief, paras. 222, 224, 225.
[519] Appellant's Brief, para. 55, *citing* Trial Judgement, para. 94.

204. The Prosecution responds that the Appellant's claims that Witness LAG's evidence was not properly corroborated should be summarily dismissed because he provides no elaboration, and does not identify how the evidence used by the Trial Chamber was irrelevant or inconsistent.[520] The Prosecution asserts that, although corroboration of Witness LAG's testimony was not required,[521] the evidence that the Trial Chamber found to be supportive of Witness LAG's testimony meets the threshold of corroboration set forth in the *Nahimana et al.* and *Karera* Appeal Judgements.[522]

205. With regard to the Appellant's claim that the Trial Chamber erred in finding Witness LAG's evidence corroborated by that of Witness Baziruwiha, the Appeals Chamber considers that the Trial Chamber's finding that their testimonies were consistent[523] was reasonable given that the witnesses both testified that Dr. Nagafizi, Kongo, and Karangwa had been killed on 7 April 1994.[524]

206. With regard to the Appellant's contention that the Trial Chamber erred in finding support for the evidence of Witness LAG in the fact that the Appellant's alibi had been discredited, the Appeals Chamber finds that the Appellant misstates the Trial Chamber's finding. The Trial Chamber merely noted that Witness LAG's testimony contradicted the Appellant's alibi and went on to consider whether there was other evidence consistent with Witness LAG's claim that the Appellant was on the road in Kamembe on 7 April 1994.[525] The Trial Chamber noted that Defence Witnesses SNB and SGA testified to having seen the Appellant outside his office on that day and that Witness LAG's evidence was also supported by circumstantial evidence regarding the Appellant's participation in stealing and looting the property of Karangwa and Ndayisaba.[526]

207. The Appeals Chamber notes that Witness SNB did not testify that he saw the Appellant outside his office on 7 April 1994 as stated in the Trial Judgement.[527] Instead, he merely asserted that, during the period of April to July 1994, the Appellant left his office to carry out investigations.[528] However, the Appellant has not demonstrated how this error led to a miscarriage

[520] Respondent's Brief, para. 41.
[521] Respondent's Brief, paras. 39, 40, 92.
[522] Respondent's Brief, para. 40, *citing Nahimana et al*. Appeal Judgement, para. 428 ("two testimonies corroborate one another when one *prima facie* credible testimony is compatible with the other *prima facie* credible testimony regarding the same fact or a sequence of linked facts. It is not necessary that both testimonies be identical in all aspects or describe the same fact in the same way. Every witness presents what he has seen from his own point of view at the time of the events, or according to how he understood the events recounted by others. It follows that corroboration may exist even when some details differ between testimonies, provided that no credible testimony describes the facts in question in a way which is not compatible with the description given in another credible testimony."); *Karera* Appeal Judgement, para. 173.
[523] Trial Judgement, para. 94.
[524] *See* Trial Judgement, para. 63 (Witness LAG), para. 67 (Witness Baziruwiha).
[525] Trial Judgement, para. 94.
[526] Trial Judgement, para. 94.
[527] *See* Trial Judgement, para. 94.
[528] T. 30 August 2007 p. 44 (closed session).

of justice, as Witness SNB's evidence does not contradict that of Witness LAG and does not support the contention that the Appellant was in his office on 7 April 1994.

208. With regard to the alleged error in finding that Witness LAG's testimony was corroborated by the "context of the death of President Habyarimana and the aftermath of insecurity and chaos",[529] the Appeals Chamber notes that the Trial Chamber used this context to lay the foundation for its conclusion that, on the morning of 7 April 1994, the Appellant must have known that the natural consequence of his speech would be that the audience would kill Tutsis and Tutsi sympathizers.[530] However, there is no indication in the Trial Judgement that the Trial Chamber relied on these facts as corroboration of Witness LAG's testimony.

209. The Appellant also appears to argue that the Trial Chamber erred in finding that Witness LAG's testimony that the Appellant ordered him to search for and kill Tutsis was corroborated by that of Witness LDC.[531] However, the Trial Chamber did not find that Witness LDC's testimony corroborated that of Witness LAG regarding the Appellant's order to kill Tutsis. Instead, it accepted Witness LDC's testimony on the Appellant's looting of Ndayisaba's property and the burning of Ndayisaba's family[532] without stating that it was corroborated by the evidence of Witness LAG in this respect.

210. With regard to the Appellant's contention that the Trial Chamber erred in relying exclusively on Witness LAG's testimony to find that he was at the roadside in Kamembe, the Appeals Chamber recalls its finding above that it is within a Trial Chamber's discretion to rely on uncorroborated evidence of an accomplice[533] and to accept or reject a witness's testimony after seeing the witness, hearing the testimony, and observing him or her under cross-examination.[534] The Appeals Chamber finds that the Appellant has not demonstrated that the Trial Chamber erred in relying solely on Witness LAG's evidence to find that the Appellant was on Kamembe road on 7 April 1994.

211. Accordingly, the Appeals Chamber dismisses the Appellant's arguments with regard to the corroboration of Witness LAG's evidence.

[529] Trial Judgement, para. 95.
[530] Trial Judgement, para. 95.
[531] Notice of Appeal, para. 14; Appellant's Brief, para. 57, *citing* Trial Judgement, paras. 96-99.
[532] Trial Judgement, para. 97.
[533] *Muvunyi* Appeal Judgement, para. 128.
[534] *See supra* para. 47.

(d) Burden of Proof

212. The Appellant claims that the Trial Chamber shifted the burden of proof regarding Witness LAG's credibility onto the Defence when it stated that it "believeŦdğ [Witness] LAG beyond reasonable doubt".[535] He argues that the standard of proof of beyond reasonable doubt should not be applied to the assessment of witness credibility. Rather than employing this standard to review individual pieces of evidence, proof beyond reasonable doubt should be sought only in relation to the ultimate question of guilt.[536]

213. The Appeals Chamber notes that the Trial Chamber correctly stated the applicable burden of proof.[537] However, in its assessment of Witness LAG's testimony it stated that it "believe[d] ŦWitnessğ LAG beyond reasonable doubt".[538] The Appeals Chamber recalls that triers of fact should render reasoned opinions on the basis of the entire body of evidence and without applying the "beyond reasonable doubt" standard in a piecemeal approach.[539] However, the Appeals Chamber finds that, when stating that it believed Witness LAG beyond reasonable doubt, the Trial Chamber was simply expressing that, after having considered Witness LAG's evidence and a number of factors relevant to his credibility, including Defence evidence, no reasonable doubt remained as to the Appellant's involvement in encouraging killings on that day, as testified to by Witness LAG. The Trial Chamber's use of this language does not demonstrate any shift of the burden of proof given that it provided a reasoned opinion based on the entire body of evidence. This argument is accordingly dismissed.

(e) Karangwa's Wife

214. The Appellant contends that Witness LAG demonstrated his unreliability as a witness when he stated that Karangwa's wife had been killed, when in fact she was still alive at the time.[540]

215. The Appeals Chamber notes that Karangwa's wife was indeed alive when Witness LAG testified, a fact that the Trial Chamber learned during the course of the proceedings. The Appeals Chamber further notes that Witness LAG did not claim to have witnessed the death of Karangwa's wife but simply stated that he "was not present Ŧ...ğ when Karangwa's wife was killed."[541] He had

[535] AT. 29 September 2009 pp. 12-13; Appellant's Brief, para. 220, *referring to* Trial Judgement, para. 95.
[536] AT. 29 September 2009 pp. 12-13.
[537] Trial Judgement, para. 12.
[538] Trial Judgement, para. 95. The Trial Chamber used similar language with respect to other witnesses. *See, e.g*., Trial Judgment, paras. 53, 203, 261, 291.
[539] *Mrk{i} and Šljivan~anin* Appeal Judgement, para. 217. *See also Milo{evi}* Appeal Judgement, para. 20.
[540] Appellant's Brief, para. 188.
[541] T. 17 January 2007 p. 57.

no opportunity to explain his statement, as he was not confronted with information to the contrary. The Appeals Chamber finds that the Appellant has not demonstrated that the Trial Chamber erred in relying on Witness LAG despite the fact that he erroneously stated that Karangwa's wife was dead. This fact was not crucial to any conviction and it was within the Trial Chamber's discretion to determine whether Witness LAG's error was sufficient to cast doubt on his credibility.[542]

(f) Witness LAG's Membership in the *Interahamwe*

216. The Trial Chamber found that Witness LAG joined the *Interahamwe* at the start of the genocide in April 1994, based on his testimony that he joined the *Interahamwe* to fight the enemy because he had heard the authorities state on the radio that all Hutus should stand together.[543] The Trial Chamber made this finding in the context of its credibility analysis, which included consideration of Witness LAG's status as an accomplice.

217. The Appellant claims that it is not clear from the Trial Chamber's finding whether Witness LAG had already joined the *Interahamwe* as of 7 April 1994, the date on which the Trial Chamber found he was "ordered" to kill Tutsis in Kamembe.[544] The Appellant submits that Witness LAG's testimony regarding the morning of 7 April 1994 suggests that he had not yet joined the *Interahamwe* because he stated that he was with a group of youths and some friends, which included some *Interahamwe*.[545]

218. The Prosecution responds that this argument merely proposes an alternative interpretation of the evidence, without substantiating an alleged error.[546]

219. The Appeals Chamber notes that the Appellant has not explained how the Trial Chamber erred in failing to provide a more specific date for when Witness LAG joined the *Interahamwe.* Witness LAG's membership in the *Interahamwe* may have been relevant if the Appellant's conviction were based on the mode of liability of ordering. However, the Appeals Chamber has previously noted that the Trial Chamber convicted the Appellant based on his instigation of genocide. As there is no need to establish the Appellant's authority over Witness LAG under this mode of liability, the precise date on which Witness LAG joined the *Interahamwe* is not essential to the Appellant's conviction. The Appeals Chamber accordingly dismisses this argument.

[542] *Karera* Appeal Judgement, para. 225.
[543] Trial Judgement, para. 90.
[544] Appellant's Brief, paras. 189-192, 194.
[545] Appellant's Brief, para. 191.
[546] Respondent's Brief, para. 89.

(g) The Appellant's Alibi

220. The Appellant testified at trial that, on 7 April 1994, his boss collected him from his home around 7.30 a.m. and took him to the office, where he remained the whole day.[547] The Trial Chamber observed that the Appellant's alibi "was in direct contradiction" to Witness LAG's testimony that he saw the Appellant arrive in a Suzuki jeep in Kamembe around 9.00 a.m. that morning.[548] The Trial Chamber accepted Witness LAG's testimony.[549] The Appellant argues that the Trial Chamber erred by preferring Witness LAG's version of the events on 7 April 1994 over his alibi.[550]

221. The Trial Chamber accepted Witness LAG's testimony after observing that evidence of the Appellant's theft of Karangwa's property and looting of Ndayisaba's house provided circumstantial support for Witness LAG's version of events.[551] The Appellant merely asserts that the Trial Chamber failed to give sufficient weight to certain evidence, or should have interpreted evidence in a particular manner, but fails to demonstrate how the Trial Chamber erred. His argument is accordingly dismissed.[552]

(h) Curfew on 7 April 1994

222. The Appeals Chamber also dismisses the Appellant's argument that Witness LAG was hostile and evasive when cross-examined about the existence of a curfew that was in effect on the morning of 7 April 1994, despite knowing that a curfew had been decreed.[553] The Appellant did not develop this submission sufficiently to enable the Appeals Chamber to assess the alleged error.[554]

4. Conclusion

223. Accordingly, Ground of Appeal 15 and Grounds of Appeal 4 and 5, in part are dismissed.

[547] Trial Judgement, para. 76.
[548] Trial Judgement, para. 94.
[549] Trial Judgement, paras. 94, 95.
[550] Appellant's Brief, paras. 201, 202.
[551] Trial Judgement, para. 94. The Trial Chamber implicitly refers to the evidence of Witnesses BOH, LDB, and BOV. *See* Trial Judgement, paras. 71-75.
[552] *See Krajišnik* Appeal Judgement, para. 27 ("As a general rule, mere assertions that the Trial Chamber failed to give sufficient weight to certain evidence, or should have interpreted evidence in a particular manner, are liable to be summarily dismissed.").
[553] Appellant's Brief, para. 213.
[554] *See Karera* Appeal Judgement, para. 150.

B. Alleged Errors Relating to the Murders of Dr. Nagafizi, Trojean Ndayisaba's Family, and Karangwa (Grounds of Appeal 16, 17, and 18)

224. The Appeals Chamber will first address the Appellant's argument concerning the alleged lack of evidence which is common to Grounds of Appeal 16 through 18. It will then consider arguments that relate more specifically to the Trial Chamber's findings on each killing.

1. Alleged Lack of Evidence

225. The Appellant contends that the Trial Chamber erred in convicting him for the deaths of Dr. Nagafizi, Trojean Ndayisaba's family, and Karangwa because there was "no evidence whatsoever" that he was guilty of these killings.[555] The Prosecution responds that this argument should be dismissed because the Appellant does not elaborate on it.[556]

226. The Appellant's conviction for instigating the killing of Dr. Nagafizi, Trojean Ndayisaba's family, and Karangwa is based on the Trial Chamber's finding that, on 7 April 1994, the Appellant instigated people at Kamembe to kill Tutsis, including these victims.[557] This finding was based on Witness LAG's testimony that the Appellant ordered him and *Interahamwe* gathered in Kamembe to search for Tutsis, their accomplices, and MRND opponents,[558] and that these victims were killed by the *Interahamwe* who received these orders from the Appellant.[559] It is also supported by evidence that the Appellant stole Karangwa's property and looted Ndayisaba's house, while the bodies of Ndayisaba's wife, daughter, and domestic worker were burning in a vehicle outside.[560]

227. Accordingly, the Appellant's contention that there is "no evidence whatsoever" that he was responsible for the deaths of Dr. Nagafizi, Trojean Ndayisaba's family, and Karangwa lacks merit and is dismissed.

2. The Killing of Dr. Nagafizi (Ground of Appeal 16)

228. The Appellant contends that the Trial Chamber erred in finding him guilty of genocide and extermination as a crime against humanity for the death of Dr. Nagafizi because there was no

[555] Appellant's Brief, para. 227.
[556] Respondent's Brief, paras. 97, 103, 104.
[557] Trial Judgement, para. 95.
[558] Trial Judgement, para. 60.
[559] Trial Judgement, paras. 61-63.
[560] Trial Judgement, para. 94.

evidence proving that the Appellant led the attack as an *Interahamwe* group leader.[561] He also submits that the Trial Chamber erred when it found that he instigated a group of *Interahamwe*, which included Christophe Nyandwi, to kill Dr. Nagafizi because it failed to consider that there was no evidence regarding the specific identity of the *Interahamwe* group to which Nyandwi belonged.[562]

229. The Prosecution responds that the Appellant's argument concerning Christophe Nyandwi is unmeritorious because the Trial Chamber was not required to specifically find that he was a member of the group of *Interahamwe* that killed Dr. Nagafizi.[563] It submits that there is sufficient evidence to support the Trial Chamber's conclusion that the Appellant instigated others to kill Dr. Nagafizi because the Trial Chamber found that the Appellant ordered or instigated Witness LAG, *Interahamwe*, and others to search for and kill Tutsis and other civilians in Kamembe on 7 April 1994.[564]

230. The Appellant has not sufficiently developed his arguments to enable the Appeals Chamber to assess the alleged error. He fails to show how the lack of evidence that he was an *Interahamwe* leader contradicts the Trial Chamber's findings that he bears responsibility for instigating people to kill Dr. Nagafizi. A determination of whether the Appellant led the attack as an *Interahamwe* group leader or belonged to the same *Interahamwe* group as the perpetrators of the attack is not required under the instigation mode of liability. As previously discussed, the *actus reus* of instigating involves prompting another person to commit a crime.[565] Therefore, the critical issue is not the relationship between the Appellant and the perpetrators—or even the identity of the perpetrators—but whether the Appellant's words substantially contributed to the murder of Dr. Nagafizi.[566] Accordingly, this ground of appeal is dismissed.

3. The Killing of Ndayisaba's Family (Ground of Appeal 17)

231. The Appellant claims that the Trial Chamber erred when it found him guilty of genocide and extermination as a crime against humanity for the death of Trojean Ndayisaba's family because

[561] Notice of Appeal, Heading 10.1(a).
[562] Notice of Appeal, Heading 10.1(b). As it was raised for the first time in the Appellant's Brief in Reply, the Appeals Chamber will not consider the Appellant's argument that the Prosecution's case was ambiguous based on a disparity between paragraphs 22 and 29 of the Indictment. *See* Brief in Reply, para. 54.
[563] Respondent's Brief, para. 100.
[564] Respondent's Brief, para. 98.
[565] *Nahimana et al.* Appeal Judgement, para. 480.
[566] *See Karera* Appeal Judgement, para. 318 (stating that the specific identification of the perpetrators was not required to find that the Appellant instigated a killing when the Trial Chamber found that the Appellant left the victim in the hands of *Interahamwe* and must have understood that the victim would be killed); *Gacumbitsi* Appeal Judgement, para.

there was no evidence that he ordered or instigated Thompson Mubiligi to attack Ndayisaba's house.[567] He also claims that the Trial Chamber erred in relying on Witness LDC's testimony to find that Ndayisaba's domestic worker was killed along with his wife and daughter, because Witness BRQ did not mention this fact in his testimony.[568]

232. The Prosecution responds that this ground of appeal should be summarily dismissed as it is not substantiated.[569] Alternatively, the Prosecution contends that it lacks merit because the Trial Chamber did not convict the Appellant for specifically ordering Thompson Mubiligi to attack Trojean Ndayisaba's house, but rather for giving general orders to Mubiligi and other *Interahamwe* to search for and kill Tutsis, pursuant to which many people were killed, including Ndayisaba's family.[570] Moreover, the Prosecution points out that it is established jurisprudence that Trial Chambers have the discretion to assess the credibility of witnesses, and to determine which testimony to accept.[571]

233. In his Brief in Reply, the Appellant asserts that the Trial Chamber failed to explain why it chose to rely on Witness LDC's testimony despite the fact that it was rendered suspect by Witness BRQ's more accurate testimony.[572] He also claims that the Trial Chamber erred in failing to refer to the testimony of Witness LDD who testified that the Appellant was not responsible for the killings of Karangwa, Dr. Nagafizi, or Trojean Ndayisaba's family.[573] The latter argument was raised for the first time in the Brief in Reply in contravention of Rule 108 of the Rules. The Appeals Chamber finds that this argument does not warrant any consideration to ensure the fairness of the proceedings and accordingly declines to consider it.

234. Contrary to the Appellant's first contention, the fact that the Prosecution's allegation that he ordered or instigated Thompson Mubiligi to attack Trojean Ndayisaba's house was not proven did not prevent the Trial Chamber from finding that the Appellant was responsible for the killing of his family. Indeed, the Trial Chamber's conclusion rests on the evidence of Witness LAG that the young people who were instructed to kill Tutsis by the Appellant on 7 April 1994 at Kamembe

107 (noting that the critical question in determining whether Gacumbitsi had instigated the rape of a victim was whether his words substantially contributed to the commission of the rape).
[567] Notice of Appeal, Heading 10.2(a).
[568] Notice of Appeal, Heading 10.2(b).
[569] Respondent's Brief, para. 97.
[570] Respondent's Brief, para. 101.
[571] Respondent's Brief, para. 102.
[572] Brief in Reply, para. 60.
[573] Brief in Reply, para. 61.

proceeded, in furtherance of these instructions, on the same day and in the same area, to kill several Tutsis, including Ndayisaba's family.[574]

235. The Appellant's contention that the Trial Chamber erred in relying on Witness LDC's testimony to find that Trojean Ndayisaba's domestic worker was killed along with his wife and daughter, even though Witness BRQ's evidence did not corroborate this fact, is dismissed. The Appellant has not demonstrated that the Trial Chamber erred and has failed to explain how the alleged error would impact the Trial Chamber's findings, which rest chiefly on Witness LAG's testimony. Accordingly, this ground of appeal is dismissed.

4. The Killing of Karangwa (Ground of Appeal 18)

236. The Appellant claims that the Trial Chamber erred in finding him guilty of genocide and extermination as a crime against humanity for ordering Witness LAG to kill Karangwa, since he was charged with ordering Joseph Habineza to commit the killing in paragraph 31 of the Indictment.[575]

237. The Prosecution responds that this ground of appeal should be summarily dismissed because the Appellant does not elaborate on it.[576] Alternatively, it asserts that this ground is unmeritorious because the Indictment does not charge the Appellant with giving a specific order to Joseph Habineza.[577] According to the Prosecution, the Indictment charges the Appellant with ordering and instigating a group of *Interahamwe* which included Habineza, among others.[578] Therefore, it argues that the Trial Chamber was not required to make any specific finding that the Appellant ordered Habineza to kill Karangwa.[579]

238. The Appeals Chamber recalls that the Appellant was convicted of the killing of Karangwa based on his instigating a group of people at Kamembe to kill Tutsis on 7 April 1994.[580] The Appellant was on notice of this charge by paragraph 31 of the Indictment which stated:

> On or about 7 or 9 April 1994, [the Appellant] ordered or instigated the *Interahamwe*, including Habineza Joseph, alias Sekuse, to kill Theoneste Karangwa, an influential Tutsi trader and member of the PSD political party in Cyangugu.[581]

[574] Trial Judgement, paras. 61-63; T. 17 January 2007 pp. 34, 35.
[575] Notice of Appeal, Heading 10.3; Appellant's Brief, para. 228.
[576] Respondent's Brief, para. 97.
[577] Respondent's Brief, para. 104.
[578] Respondent's Brief, para. 104.
[579] Respondent's Brief, para. 104.
[580] Trial Judgement, paras. 100, 347.
[581] Indictment, para. 31.

The Indictment did not charge the Appellant *exclusively* with ordering or instigating Joseph Habineza to kill Tutsis, but instead for having ordered or instigated a group of *Interahamwe* to kill Tutsis. Accordingly, this ground of appeal is dismissed.

XIII. ALLEGED ERRORS REGARDING THE ATTACK ON GAKWANDI (GROUND OF APPEAL 20)

239. The Appellant was charged with murder and other inhumane acts as crimes against humanity for ordering or instigating the killing of Jean de Dieu Gakwandi, a Hutu student.[582] Relying primarily on the testimony of Prosecution Witness BRG, an eyewitness, and Witness LDB, an accomplice,[583] the Trial Chamber found that the Appellant ordered the killing of Gakwandi because of his political affiliations.[584] It further found that Gakwandi, who survived, "was hunted down by a group of attackers, clubbed over the head, causing an injury so serious that his attackers left him unconscious, thinking he was dead".[585] As Gakwandi survived, the Trial Chamber declined to consider the charge of murder as a crime against humanity related to his attack.[586] It concluded that this attack occurred "on the basis of Gakwandi's political affiliation" and as part of a widespread or systematic attack against the civilian population on ethnic and political grounds.[587] It accordingly found the Appellant guilty of other inhumane acts as a crime against humanity.[588]

240. The Appellant challenges his conviction[589] and claims that the Trial Chamber erred in fact and law in assessing the evidence related to the order to kill Gakwandi.[590] The Appellant specifically claims that the Trial Chamber erred in: (1) finding that Witness LDB had testified that the Appellant had ordered him to kill Gakwandi;[591] (2) concluding that the testimonies of Witnesses BRG and LDB corroborated each other;[592] (3) failing to consider the testimony of Witness SBS;[593]

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[582] Indictment, paras. 50 (Count 2: murder as a crime against humanity), 69 (Count 4: other inhumane acts as a crime against humanity). *See also* Trial Judgement, para. 101.
[583] Trial Judgement, para. 108.
[584] Trial Judgement, paras. 109, 350. The Trial Chamber also found that the Appellant had ordered the killing of Canisus Kayihura (Trial Judgement, para. 109). However, it refrained from entering any conviction for the related charges (*see* Indictment, paras. 25, 51; Trial Judgement, para. 102) because Kayihura was neither hurt nor killed (Trial Judgement, para. 349). *See also* Trial Judgement, para. 104, *summarizing* Witness LDB's testimony that the attack against Kayihura never occurred.
[585] Trial Judgement, paras. 109, 350.
[586] Trial Judgement, para. 349. *See also* Trial Judgement, para. 109.
[587] Trial Judgement, para. 350.
[588] Trial Judgement, para. 350.
[589] Notice of Appeal, p. 15.
[590] Notice of Appeal, para. 75; Appellant's Brief, paras. 230-235. The Appeals Chamber notes that the Appellant has not developed his arguments, summarily presented in his Notice of Appeal, to the effect that the Trial Chamber erred in law in relation to the *mens rea* (Notice of Appeal, para. 73) and to the level of gravity required for a conviction for other inhumane acts as a crime against humanity (Notice of Appeal, para. 74). In his Appellant's Brief, the Appellant states that he will only raise under this ground the "patently unreasonable nature in paragraph 75 of Ŧhisğ Notice of Appeal" (Appellant's Brief, fn. 196) which claims that the Trial Chamber erred in finding that he had ordered the killing of Gakwandi. The Appeals Chamber will therefore only consider the latter argument.
[591] Appellant's Brief, paras. 232, 233.
[592] Notice of Appeal, para. 75; Appellant's Brief, paras. 232, 234.

and (4) disregarding the fact that Witness LDB and Gakwandi later cooperated in legal matters in Rwanda as described in Exhibits D2 and D3.[594] The Prosecution responds that the Appellant's submissions are without merit and should be dismissed.[595]

241. The Appeals Chamber declines to consider the Appellant's arguments that the Trial Chamber erred in stating that Witness BRG was "close to Gakwandi"[596] and in rejecting the testimony of Witness BRF.[597] The Appellant failed to indicate the substance of these alleged errors in his Notice of Appeal as required by Rule 108 of the Rules. The Appeals Chamber does not find that the interests of justice require it to consider these arguments.

A. Nature of the Order Given to Witness LDB

242. The Appellant contends that the Trial Chamber erred in finding that he ordered Witness LDB to kill Gakwandi because Witness LDB testified that he was merely ordered to arrest Gakwandi.[598] The Appeals Chamber notes that although Witness LDB testified that the Appellant ordered him to arrest Gakwandi,[599] he also testified that the Appellant "sent" him to attack Gakwandi and stated that, because Gakwandi was an accomplice of the RPF, he should be sought out and killed.[600] Accordingly, the Appeals Chamber dismisses this argument.

B. Corroboration of the Testimonies of Witnesses BRG and LDB

243. The Appellant claims that the Trial Chamber erred in finding that the testimonies of Witnesses BRG and LDB corroborated each other to support the conclusion that he gave the order to kill Gakwandi.[601] He asserts that the testimonies of Witnesses BRG and LDB are inconsistent because Witness LDB implied that the attack occurred on 7 April 1994, whereas Witness BRG claimed that it occurred on 15 April 1994.[602] He further asserts that Witness BRG was not in a position to corroborate the testimony of Witness LDB on the events that occurred right after the attack.[603]

[593] Appellant's Brief, para. 236.
[594] Appellant's Brief, para. 235.
[595] Respondent's Brief, para. 108.
[596] Brief in Reply, para. 65; AT. 29 September 2009 p. 9.
[597] Brief in Reply, paras. 69, 70.
[598] Appellant's Brief, para. 233.
[599] T. 12 October 2006 p. 21.
[600] T. 12 October 2006 pp. 21, 22.
[601] Notice of Appeal, para. 75; Appellant's Brief, paras. 232, 234; Brief in Reply, para. 68; AT. 29 September 2009 p. 9.
[602] Appellant's Brief, para. 233.
[603] Brief in Reply, para. 66.

244. The Prosecution responds that the Appellant has failed to demonstrate an inconsistency between the testimonies of Witnesses BRG and LDB because both witnesses agree that the attack on Gakwandi happened on 15 April 1994.[604]

245. The Appeals Chamber notes that, although Witnesses BRG and LDB corroborate each other on the date of the attack on Gakwandi,[605] and to some extent on the manner in which it was carried out,[606] they do not corroborate each other on whether the Appellant was the one who ordered the attackers to kill Gakwandi. Witness LDB stated that the Appellant sent him and others to kill Gakwandi,[607] whereas Witness BRG testified that he had no idea why Gakwandi was attacked.[608] Therefore, the Appeals Chamber finds that the Trial Chamber erred when it stated that it "received direct evidence through Prosecution Witnesses BRG and LDB that Nchamihigo ordered that Gakwandi be killed for being an RPF accomplice."[609]

246. However, this error does not invalidate the Trial Judgement because it leaves undisturbed Witness LDB's eyewitness testimony that the Appellant sent him and others to attack and kill Gakwandi. The Appeals Chamber recalls, as discussed in detail above, that the Trial Chamber is entitled to rely on the evidence of a single witness that it finds credible.[610] Therefore Witness LDB's testimony, which the Trial Chamber found to be credible and reliable, remains a sufficient basis for the Trial Chamber's finding that the Appellant ordered the attack on Gakwandi.[611] Accordingly, the Trial Chamber's error does not lead to a reversal of the conviction on this charge.

C. Failure to Consider the Testimony of Witness SBS

247. Defence Witness SBS, who knew Gakwandi as a neighbour and a student, testified that Gakwandi had come to the Gihundwe school complex with a head injury, explaining to Witness SBS someone other than the Appellant had ordered his attack.[612] Even though this account was "largely corroborated"[613] by Defence Witness SBM, the Trial Chamber concluded that this testimony did not raise a reasonable doubt as to Witness LDB's assertion that it was the Appellant

[604] Respondent's Brief, para. 110.
[605] Witness BRG states that the attack on Gakwandi happened on 15 April 1994. T. 10 January 2007 pp. 37, 51. Witness LDB also states that the attack on Gakwandi happened on that date. T. 12 October 2006 pp. 22, 28.
[606] Witness BRG states that Gakwandi was clubbed on the head, knocked unconscious, and left for dead. T. 10 January 2007 p. 37. Witness LDB confirms that Gakwandi was attacked in this manner. T. 12 October 2006 p. 23.
[607] T. 12 October 2006 p. 22.
[608] T. 10 January 2007 p. 38.
[609] Trial Judgement, para. 108.
[610] *See supra* paras. 42-48.
[611] Trial Judgement, para. 108.
[612] Trial Judgement, para. 107.
[613] Trial Judgement, para. 105.

who ordered that Gakwandi be killed for being an RPF accomplice.[614] The Trial Chamber observed that, even if it were to accept the testimony of Witness SBS, it would not necessarily mean that the information given by Gakwandi was accurate because his own understanding of how he came to be attacked was largely hearsay.[615]

248. The Appellant submits that the Trial Chamber erred by not finding the hearsay testimony of Witness SBS to be reliable.[616] He argues that the Trial Chamber should have believed Witness SBS's testimony, which contradicted Witness LDB's account that the Appellant ordered Gakwandi's attack.[617]

249. The Prosecution responds that, because Trial Chambers enjoy discretion in matters of witness credibility, the Trial Chamber did not err when it relied on Witness LDB's testimony that the Appellant ordered Gakwandi to be killed, and disregarded the testimony of Witnesses SBS, SBM, and the victim himself who said that the order had been issued by someone else.[618]

250. Although Witnesses SBS and SBM testified that Gakwandi had told them that the order to kill him had been given by a person named Pierre Kwitonda, the Appeals Chamber agrees with the Trial Chamber's conclusion that, "[h]aving not been present at the time the order was given, Gakwandi's own understanding of how he came to be attacked is largely hearsay."[619] It recalls that the Trial Chamber has full discretionary power in assessing the appropriate weight and credibility to be accorded to the testimony of a witness.[620] Accordingly, the Appeals Chamber finds that the Trial Chamber did not err by relying on Witness LDB's direct testimony that the Appellant ordered him and others to kill Gakwandi over the hearsay testimony of Witnesses SBS and SBM. The Appeals Chamber therefore dismisses this argument.

D. Failure to Consider that Witness LDB and Gakwandi Cooperated in Legal Matters

251. The Appellant submits that the Trial Chamber erred by disregarding the "incestuous relationship between the executioner and his victim, described in Exhibits D-2, D-3".[621] The

[614] Trial Judgement, paras. 107, 108.
[615] Trial Judgement, paras. 105, 107.
[616] Appellant's Brief, para. 236; AT. 29 September 2009 p. 9.
[617] Appellant's Brief, para. 236.
[618] Respondent's Brief, para. 111.
[619] Trial Judgement, para. 107.
[620] *Nahimana et al.* Appeal Judgement, para. 194; *Ntagerura et al.* Appeal Judgement, para. 388.
[621] Appellant's Brief, para. 235.

Prosecution responds that the Appellant has not demonstrated how the Trial Chamber erred in its assessment of Exhibits D2 and D3.[622]

252. The Appeals Chamber finds no error in the fact that the Trial Chamber did not explicitly address the fact that Witness LDB and Gakwandi cooperated in legal matters in Rwanda, as described in Exhibits D2 and D3. The Appellant does not elaborate how failure to explicitly address these exhibits would have affected the Trial Chamber's finding that he ordered individuals to attack and kill Gakwandi. In any event, the Trial Chamber heard evidence regarding these exhibits in great detail during trial, and there is no reason to doubt that the Trial Chamber considered this evidence.[623] A Trial Chamber does not have to refer to every piece of evidence on the record and its failure to do so does not necessarily indicate lack of consideration.[624]

E. Conclusion

253. Accordingly, this ground of appeal is dismissed.

[622] Respondent's Brief, para. 113.
[623] T. 16 October 2006 p. 19 (closed session) (LDB); T. 10 January 2007 pp. 44-51 (BRG).
[624] *Krajišnik* Appeal Judgement, para. 19.

XIV. ALLEGED ERRORS REGARDING THE KILLING OF FATHER BONEZA (GROUND OF APPEAL 21)

254. Based primarily on the testimony of Prosecution Witness BRF,[625] corroborated in part by the testimony of Witnesses LAG and LDC,[626] the Trial Chamber found that the Appellant instigated people at the Kucyapa roadblock to kill Father Boneza on 19 May 1994.[627] It found that the Appellant desired and planned the death of Father Boneza, a Tutsi priest, and that the Appellant chased Father Boneza to the Kucyapa roadblock on 19 May 1994.[628] The Trial Chamber further found that the Appellant resolved an impasse, created by gendarmes at the roadblock who tried to protect Father Boneza, by asking for an "intelligent Hutu" to kill the priest.[629] It found that Father Boneza was then killed by Nyagatere, assisted by Mutabazi.[630] Partly based on these findings, the Trial Chamber found the Appellant guilty of genocide and murder as a crime against humanity for the killing of Father Boneza.[631]

255. The Appellant submits that the Trial Chamber erred by: (1) improperly assessing the testimony of Witness BRF;[632] (2) improperly assessing Defence evidence;[633] (3) preferring Witness BRF's account of Father Boneza's killing over that of Witness RO1;[634] and (4) relying on Witness LAG's evidence to find that the Appellant planned the killing of Father Boneza.[635]

256. The Prosecution responds that the Appellant does not demonstrate that the Trial Chamber erred in assessing the relevant evidence.[636]

A. Alleged Errors in the Assessment of Witness BRF's Testimony

257. The Trial Chamber accepted Witness BRF's testimony concerning the Appellant's involvement in the killing of Father Boneza.[637] It also found that his testimony was strengthened by the evidence of Witnesses LAG and LDC.[638]

[625] Trial Judgement, paras. 142-144.
[626] Trial Judgement, paras. 136, 137, 142, 143.
[627] Trial Judgement, paras. 356, 357.
[628] Trial Judgement, para. 144.
[629] Trial Judgement, para. 144.
[630] Trial Judgement, para. 144.
[631] Trial Judgement, para. 357.
[632] Notice of Appeal, para. 77; Appellant's Brief, paras. 239-248.
[633] Appellant's Brief, paras. 249, 251, 255.
[634] Appellant's Brief, paras. 252-254.
[635] Appellant's Brief, para. 257.
[636] Respondent's Brief, para. 114; Brief in Reply, paras. 71-78.
[637] Trial Judgement, para. 144.
[638] Trial Judgement, paras. 136, 137, 144.

258. The Appellant claims that the Trial Chamber erred by: (1) failing to consider that Witness BRF was an accomplice;[639] (2) failing to consider the insufficiency of Witness BRF's testimony regarding events at Shangi Parish;[640] and (3) finding that Witness BRF's testimony was corroborated by that of Witnesses LAG and LDC.[641]

1. Failure to Consider Witness BRF an Accomplice

259. The Appellant contends that the Trial Chamber erred by failing to consider that Witness BRF was an accomplice[642] and, consequently, by failing to apply appropriate caution to the assessment of his testimony.[643] He submits that Witness BRF was an accomplice because he was sentenced to life imprisonment by the Tribunal of First Instance of Kigali ("Kigali Tribunal") for genocidal acts, including the killing of Father Boneza.[644] He acknowledges that Witness BRF testified that the Kigali Tribunal Judgement was ultimately overturned,[645] but points out that the Kigali Tribunal Judgement contradicts Witness BRF's statement that he had been wrongfully charged due to being misidentified as the perpetrator.[646] The Appellant argues that no reasonable trier of fact could have failed to find that Witness BRF was an accomplice, because he was at the roadblocks during the events.[647] However, he notes that the Kigali Tribunal Judgement stated that Witness BRF was not involved in Father Boneza's murder as he was not at the scene of the crime.[648]

260. The Prosecution responds that the Trial Chamber did not err by failing to consider Witness BRF to be an accomplice witness because his mere presence at the Kucyapa roadblock does not necessarily make him an accomplice.[649]

261. The Kigali Tribunal convicted Witness BRF for genocide, and other crimes, based in part on his role in manning the Kucyapa roadblock where Father Boneza was killed.[650] The Kigali Tribunal rejected Witness BRF's claim that his identity had been mistaken.[651] During cross-examination in

[639] Appellant's Brief, paras. 239, 240.
[640] Appellant's Brief, para. 240, *referring to* Trial Judgement, para. 243.
[641] Notice of Appeal, para. 77; Appellant's Brief, paras. 241-248.
[642] Appellant's Brief, para. 239.
[643] Appellant's Brief, para. 240.
[644] Appellant's Brief, para. 238, *referring to* Exhibit D6, Kigali Tribunal Judgement convicted Witness BRF for genocide. Exhibit D6, p. 48. *See also* T. 24 January 2007 pp. 4, 5 (closed session).
[645] Appellant's Brief, para. 238.
[646] Appellant's Brief, para. 238.
[647] Appellant's Brief, para. 239.
[648] Appellant's Brief, para. 239.
[649] Respondent's Brief, para. 119, *citing Ntagerura et al*. Appeal Judgement, para. 233.
[650] Exhibit D6, p. 48; T. 24 January 2007 pp. 4, 5 (closed session).
[651] Exhibit D6, p. 44.

this case, Witness BRF was confronted with the Kigali Tribunal Judgement.[652] He testified that, on 18 January 2007, a *Gacaca* court overturned his conviction based on a finding that he had been wrongfully convicted due to a misidentification as the actual perpetrator.[653]

262. The Appeals Chamber considers that, although the Trial Chamber did not explicitly address whether Witness BRF was an accomplice,[654] or expressly discuss the Kigali Tribunal Judgement in relation to him,[655] it considered both of these issues when it assessed his testimony regarding the events at Shangi parish.[656] After finding that Witness BRF was generally credible concerning the massacre at Shangi parish, the Trial Chamber stated that "[h]e spent a long time in prison before being released because his claims that his identity had been mistaken for someone else with the same name were eventually accepted".[657] By accepting Witness BRF's testimony after noting that he had spent a long time in prison, the Trial Chamber implicitly rejected that he was an accomplice involved in the killing of Father Boneza and instead accepted Witness BRF's explanation that he was imprisoned because his identity had been mistaken.[658] The Appellant has not demonstrated that no reasonable trier of fact could have reached this conclusion.

2. Alleged Failure to Consider the Insufficiency of Witness BRF's Testimony Regarding Events at Shangi Parish

263. The Appellant further argues that the Trial Chamber erred by failing to take into account its finding that Witness BRF's testimony was insufficient to prove the Appellant's criminal responsibility in relation to the events at Shangi parish in its consideration of his evidence concerning the killing of Father Boneza.[659]

264. The Appeals Chamber notes that, with regard to the Shangi parish events, the Trial Chamber found Witness BRF's testimony to be generally credible,[660] but refrained from entering a finding that the Appellant went to Shangi parish with Munyakazi's *Interahamwe* because various

[652] T. 24 January 2007 pp. 35-37 (closed session).
[653] T. 24 January 2007 pp. 4, 5, 37 (closed session).
[654] The Trial Chamber did not expressly conclude whether Witness BRF was an accomplice, but nevertheless considered the evidence relating to Witness BRF's criminal behaviour. *See* Trial Judgement, paras. 134-136, 138, 139, 142, 144 (Father Boneza), 234, 235, 243-245, 368 (Shangi parish), 270, 273 (Nyamasheke parish), 279, 280, 282, 286, 287 (Mibilizi parish and hospital), 321 (Bisesero).
[655] *See* Trial Judgement, paras. 134-136, 138, 139, 142, 144 (Father Boneza), 234, 235, 243-245, 368 (Shangi parish), 270, 273 (Nyamasheke parish), 279, 280, 282, 286, 287 (Mibilizi parish and hospital), 321 (Bisesero).
[656] Trial Judgement, para. 244.
[657] Trial Judgement, para. 244.
[658] T. 24 January 2007 pp. 4, 5, 34 (closed session).
[659] Trial Judgement, para. 243.
[660] Trial Judgement, paras. 244, 245.

reasonable inferences were possible on the basis of Witness BRF's testimony.[661] The Appellant does not explain how this finding affects the Trial Chamber's assessment of Witness BRF's testimony on the killing of Father Boneza. The two events were not directly connected. The Trial Chamber's reasoning on the Shangi parish events does not show reservations about Witness BRF's credibility. Instead, the Trial Chamber found that Witness BRF was credible but concluded that his testimony about that particular event was insufficient to sustain a conviction. Consequently, this argument is dismissed.

3. Alleged Error in Finding that Witness BRF's Testimony was Corroborated by that of Witnesses LAG and LDC

265. The Appellant argues that the Trial Chamber erred in finding that Witness BRF's testimony was corroborated by that of Witnesses LAG and LDC.[662] He points out that only Witness LDC testified that the Appellant participated in the chase of Father Boneza's car, while Witness LAG did not testify on this point and Witness BRF did not implicate the Appellant in this pursuit.[663]

266. The Prosecution responds that the Trial Chamber did not err when it stated that Witness BRF's testimony was corroborated by that of Witnesses LAG and LDC because their testimonies supported each other on the events surrounding the car chase and subsequent killing of Father Boneza.[664] It also argues that the Appellant has not shown that the Trial Chamber's finding that all three testimonies corroborate each other is unreasonable.[665]

267. The Trial Chamber considered that Witness BRF's testimony concerning the circumstances surrounding Father Boneza's death was strengthened by the testimony of Witnesses LAG and LDC, both accomplices, "who testified about the car chase that ended in Father Boneza's death at Kucyapa roadblock".[666] It noted Witness LAG's testimony that: (1) the Appellant stated, at a roadblock near the Bank of Kigali, that a priest from Mbilizi parish would arrive at the roadblock in a car and that he should be killed, and (2) he heard that the Appellant had given the same order at other roadblocks.[667] The Trial Chamber also noted Witness LDC's testimony that he saw the Appellant chasing Father Boneza's car.[668] Witness LDC, an accomplice who was found credible by

[661] Trial Judgement, para. 243.
[662] Notice of Appeal, para. 77; Appellant's Brief, paras. 241-248.
[663] Notice of Appeal, para. 77; Appellant's Brief, paras. 241-246.
[664] Respondent's Brief, paras. 116, 117.
[665] Respondent's Brief, para. 117.
[666] Trial Judgement, para. 136.
[667] Trial Judgement, para. 136; T. 17 January 2007 pp. 43, 44.
[668] Trial Judgement, para. 137; T. 10 January 2007 pp. 71, 72.

the Trial Chamber,[669] testified that, while he was manning his roadblock which was on the road from Mibilizi to the Kucyapa roadblock,[670] he saw Father Boneza coming from Mbilizi in a vehicle that was traveling very fast and that the Appellant, accompanied by a sergeant major, was chasing Father Boneza's vehicle.[671] Witnesses LAG and LDC also testified that they heard that Father Boneza had eventually been stopped and killed at the Kucyapa roadblock.[672]

268. The Appeals Chamber notes that Witness BRF testified that Father Boneza was being chased by military vehicles from Mibilizi, and that "Nchamihigo arrived" when Father Boneza arrived at the roadblock.[673] Although this statement was vague, it corroborates Witness LDC's testimony to the extent that both testified that Father Boneza's car was chased and that the Appellant was present during this event. In addition, Witness BRF's evidence that the Appellant arrived and the Sergeant Major "also arrived" at the roadblock and that the priest was chased by a military vehicle is compatible with Witness LDC's testimony that the Appellant was in the car with Sergeant Major Bizimongo. Thus, the Appeals Chamber finds that the testimonies of Witnesses BRF and LDC are consistent with regard to the Appellant's involvement in the car chase of Father Boneza.

269. Moreover, although Witness LAG did not witness the chase of Father Boneza's car, his testimony is that the Appellant requested that a priest from Mibilizi be killed if he passed through roadblocks and that he heard that Father Boneza was eventually stopped and killed at the Kucyapa roadblock after a car chase.[674] This evidence corroborates Witness BRF's testimony that, after Father Boneza's car was stopped at the Kucyapa roadblock, he was killed at the instigation of the Appellant.

270. The Appellant also asserts that the evidence of Witnesses LAG and LDC does not corroborate Witness BRF's testimony that he instigated persons to kill Father Boneza at the Kucyapa roadblock at the time he was killed,[675] because Witness LAG did not implicate him in the instigation and Witness LDC's testimony was based on hearsay.[676]

[669] Trial Judgement, para. 143.
[670] Trial Judgement, para. 143.
[671] Trial Judgement, para. 137; T. 10 January 2007 pp. 71, 72.
[672] Trial Judgement, paras. 136, 137; T. 17 January 2007 p. 44 (LAG); T. 10 January 2007 p. 72 (referring to roadblock mentioned at p. 69) (LDC).
[673] T. 24 January 2007 p. 13.
[674] Trial Judgement, para. 136; T. 17 January 2007 pp. 43, 44.
[675] Appellant's Brief, para. 247.
[676] Appellant's Brief, para. 247.

271. The Trial Chamber did not state that Witnesses LAG or LDC corroborated Witness BRF's testimony that the Appellant instigated others to kill Father Boneza at the Kucyapa roadblock.[677] Instead, the Trial Chamber merely noted that the testimony of Witness BRF on this point was strengthened by the testimonies of Witnesses LAG and LDC "who testified about the car chase that ended in Father Boneza's death at Kucyapa roadblock."[678] Indeed, their testimony strengthened Witness BRF's testimony on the Appellant's instigation of others to kill Father Boneza at the Kucyapa roadblock. Witness LDC's testimony indicated that the Appellant was chasing Father Boneza's car and that the priest was ultimately killed at Kucyapa roadblock, whereas Witness LAG's testimony showed that the Appellant planned to kill Father Boneza, a fact which is consistent with Witness BRF's testimony that the Appellant instigated others to kill Father Boneza at Kucyapa roadblock. In light of the foregoing, the Appeals Chamber finds no merit in the Appellant's submissions on this point and they are accordingly rejected.

B. Alleged Errors in the Assessment of Defence Evidence

1. Alleged Failure to Consider Defence Evidence on Alibi

272. The Appellant contends that the Trial Chamber erred by dismissing the testimony of Defence Witnesses RO1, HDN, and ZSA on the unrelated basis that it did not believe his alibi.[679]

273. Witness HDN testified that he saw a vehicle trying to overtake Father Boneza's jeep but that the Appellant was not in either vehicle.[680] However, he was not an eyewitness to the killing of Father Boneza.[681] Witness ZSA, who was also not an eyewitness to the killing of Father Boneza, testified that he did not hear that the Appellant was involved in this event.[682] However, Witness RO1, who personally witnessed the killing of Father Boneza, denied the Appellant's involvement.[683]

274. Contrary to the Appellant's contention, the Trial Chamber did not dismiss these testimonies simply by reference to the Appellant's alibi. It addressed Witness RO1's testimony and found that his evidence corroborated Witness BRF's testimony, except as it related to the Appellant's presence at the killing of Father Boneza.[684] The Trial Chamber also explicitly stated that it accorded little

[677] *See, e.g.*, Trial Judgement, paras. 136, 137, 142-144.
[678] Trial Judgement, para. 136.
[679] Appellant's Brief, para. 249.
[680] T. 28 August 2007 pp. 7, 8. The heading of this transcript erroneously refers to Witness HMN.
[681] T. 28 August 2007 p. 9.
[682] T. 24 April 2007 pp. 58, 59.
[683] T. 24 April 2007 pp. 16, 17.
[684] Trial Judgement, para. 142.

weight to testimony that the Appellant's name or presence was not mentioned in relation to Father Boneza's killing, because such testimony, even if true, does not necessarily imply that the Appellant was not present.[685] Witnesses ZSA and HDN indeed offered only hearsay statements that they had not heard the Appellant was involved in the killing or that he was present at the roadblock when Father Boneza was killed. The Trial Chamber did note Witness HDN's direct evidence that the Appellant was not one of the people in the vehicle that was chasing Father Boneza's jeep, however, it did not provide any explanation for why it did not rely on this evidence or reconcile it with evidence that the Appellant was in the car.[686] The Appeals Chamber considers that the Trial Chamber should have been more specific in its analysis of this testimony. However, this lack of reasoning did not lead to a miscarriage of justice because Witness HDN's testimony that the Appellant was not in the vehicle that attempted to overtake Father Boneza's jeep does not raise a doubt as to the eyewitness evidence of Witness BRF who testified as to the Appellant's presence and conduct at the roadblock where Father Boneza was killed.[687]

275. The Trial Chamber only recalled the rejection of the Appellant's alibi in connection with the Appellant's own denial that he was present at the Kucyapa roadblock, not in connection with assessing the evidence of Witnesses HDN, ZSA, and RO1.[688] Thus, the Appellant has not demonstrated that the Trial Chamber erred by dismissing the testimony of these witnesses on the basis that it did not believe his alibi. Therefore, the Appeals Chamber dismisses the Appellant's argument.

2. Alleged Error in Finding that Witness RO1's Testimony Corroborated Witness BRF's Evidence

276. The Appellant claims that the Trial Chamber erred by stating that "Witness RO1, although denying that Nchamihigo was present and had participated in the killing, gave evidence which was consistent with Prosecution Witness BRF's in other details."[689]

277. Witnesses BRF and RO1 both testified that Father Boneza's car was chased and that he was forced to stop at the Kucyapa roadblock.[690] Witness BRF testified that the Appellant asked the crowd whether an intelligent Hutu could take Father Boneza and kill him[691] and that he was then killed by Félicien Nyagatere after a person by the name of Mutabazi seized him.[692] Witness RO1

[685] Trial Judgement, para. 142.
[686] Trial Judgement, para. 140.
[687] Trial Judgement, para. 135.
[688] Trial Judgement, para. 142.
[689] Appellant's Brief, paras. 251, 255, *quoting* Trial Judgement, para. 139.
[690] Trial Judgement, paras. 135 (Witness BRF), 139 (Witness RO1).
[691] Trial Judgement, para. 135.
[692] Trial Judgement, para. 135; T. 24 January 2007 p. 13.

testified that Father Boneza was struck by Mutabazi,[693] and that the Appellant was neither present nor involved in the killing.[694] Both witnesses testified that, after Father Boneza's car was stopped at the roadblock, he was pulled out of his car, struck on the head with a club, and buried a short distance away.[695]

278. The Trial Chamber duly noted that their testimonies differed on the issue of the Appellant's presence at the roadblock when it found that Witness RO1's evidence was consistent with that of Witness BRF except in relation to the participation of the Appellant.[696] Indeed, the testimonies of the two witnesses were consistent on other details such as the car chase, the location of the killing, the manner in which Father Boneza was killed, and the location where Father Boneza was buried. However, the Trial Chamber did not specifically note the inconsistencies between the testimonies with regard to the participation of Félicien Nyagatere in the killing and the specific acts of Mutabazi, one of the killers.[697] This lack of reasoning does not invalidate the Trial Chamber's conclusion, as the Trial Chamber chiefly relied on Witness BRF's evidence to convict the Appellant and did not find that corroboration was necessary. In this regard, the Trial Chamber considered that Witness BRF was generally credible and it was "impressed with his demeanour."[698] Furthermore, it found that Witness BRF's evidence on the killing of Father Boneza was strengthened by the evidence of Witnesses LAG and LDC,[699] whom the Trial Chamber believed.[700] Accordingly, the Appellant has not demonstrated that no reasonable Trial Chamber could have found that the testimonies of Witnesses BRF and RO1 were consistent on some details of the event and that its failure to specifically note a few inconsistencies between the two testimonies invalidates the Trial Chamber's conclusion. Accordingly, this argument is dismissed.

C. Alleged Errors in Preferring Witness BRF's Account of the Killing Over that of Witness RO1

279. The Appellant further contends that the Trial Chamber should have relied on Witness RO1's testimony that the Appellant was not present at the Kucyapa roadblock when Father Boneza was killed because Witness RO1 witnessed the incident from a distance of approximately six meters, whereas Witness BRF testified that he witnessed the incident from inside a vehicle that was

[693] Trial Judgement, para. 139; T. 24 April 2007 p. 15.
[694] Trial Judgement, para. 139.
[695] Trial Judgement, paras. 135 (Witness BRF), 139 (Witness RO1).
[696] Trial Judgement, para. 142.
[697] Trial Judgement, paras. 135 (Witness BRF), 139 (Witness RO1).
[698] Trial Judgement, para. 244.
[699] Trial Judgement, para. 136.
[700] Trial Judgement, paras. 143, 144.

approximately 10 meters away.[701] The Appellant also argues that the Trial Chamber erred by failing to explain why it preferred Witness BRF's testimony over that of Witness RO1.[702]

280. The Prosecution responds that the Trial Chamber did not err when it chose to rely on Witness BRF's testimony over that of Witness RO1 because it properly exercised its discretion as the trier of fact.[703]

281. The Appeals Chamber will first address the Appellant's contention that the Trial Chamber failed to explain why it preferred Witness BRF's testimony over that of Witness RO1. The Appeals Chamber recalls that it is settled jurisprudence that every accused has the right to a reasoned opinion under Article 22 of the Statute and Rule 88(C) of the Rules.[704] However, the reasoned opinion requirement relates to the Trial Judgement as a whole rather than to each submission made at trial, and a Trial Chamber does not need to set out in detail why it accepted or rejected a particular testimony.[705]

282. Nonetheless, in deciding which of the two eyewitnesses to Father Boneza's killing it considered credible and reliable, the Trial Chamber simply stated that it believed Witness BRF[706] and that Witness RO1's testimony was otherwise consistent with Witness BRF's testimony[707] without explaining why it preferred Witness BRF's account. In the circumstances, this amounts to a lack of a reasoned opinion. The Trial Chamber should have explained in more detail why it chose to rely on Witness BRF's account instead of that of Witness RO1.

283. In light of the Trial Chamber's failure to provide a reasoned opinion, the Appeals Chamber will now consider whether the Trial Chamber erred in fact by finding that the Appellant was guilty of instigating others to kill Father Boneza at the Kucyapa roadblock.

284. Witness BRF testified that he witnessed Father Boneza's killing from a vehicle that was stopped less than 10 meters from the incident,[708] and that he saw and heard the Appellant at the scene of the crime.[709] Witness RO1 testified that he was present when Father Boneza was killed, that he did not see the Appellant at the scene of the crime,[710] and that there were more than 100

[701] Appellant's Brief, paras. 252-254.
[702] Appellant's Brief, paras. 250-256.
[703] Respondent's Brief, para. 124.
[704] *Karera* Appeal Judgement, para. 20.
[705] *Karera* Appeal Judgement, para. 20. *See also Simba* Appeal Judgement, para. 152.
[706] Trial Judgement, para. 144.
[707] Trial Judgement, paras. 139, 142.
[708] T. 24 January 2007 p. 13.
[709] T. 24 January 2007 pp. 13, 25, 27.
[710] T. 24 April 2007 p. 16.

people present.[711] Both witnesses were close to the place where Father Boneza was killed, and neither of them was apparently in a better position than the other to witness the scene. No other witness provided direct testimony of what happened at the crime scene.

285. The Appeals Chamber concludes that the only determining factor that the Trial Chamber had at its disposal for relying on Witness BRF's evidence regarding the Appellant's presence at the crime scene was his overall credibility and demeanor during his testimony.[712] Indeed, the Trial Chamber expressly observed that it was "impressed" with Witness BRF's demeanour, whereas it made no similar observations about Witness RO1.[713] The Appeals Chamber recalls that the Trial Chamber has full discretionary power in assessing the appropriate weight and credibility to be accorded to the testimony of witnesses.[714] This assessment is based on a number of factors, including the witnesses' demeanour in court, their role in the events in question, the plausibility and clarity of their testimony, whether there are contradictions or inconsistencies in their successive statements or between their testimony and other evidence, any prior examples of false testimony, any motivation to lie, and the witnesses' responses during cross-examination.[715]

286. The Appellant has not demonstrated that no reasonable Trial Chamber could have preferred Witness BRF's testimony over that of Witness RO1, or that this finding is wholly erroneous.[716] Accordingly, the Appeals Chamber finds that the Trial Chamber did not err in concluding that the Appellant was present when Father Boneza was killed.

D. Alleged Error in Relying on Witness LAG's Testimony to Find that the Appellant Issued an Order to Kill Father Boneza

287. The Appellant contends that the Trial Chamber erred in basing its finding that he had planned to cause Father Boneza's death exclusively on Witness LAG's testimony because he was an accomplice witness whose testimony ought to have been analyzed with caution.[717]

288. The Trial Chamber convicted the Appellant for having instigated the murder of Father Boneza based on the testimonies of Witnesses BRF, LAG, and LDC, after observing that "[t]here

[711] T. 24 April 2007 p. 45.
[712] *See* Trial Judgement, para. 244.
[713] Trial Judgement, para. 244.
[714] *Nahimana et al.* Appeal Judgement, para. 194; *Ntagerura et al.* Appeal Judgement, para. 388.
[715] *Nahimana et al.* Appeal Judgement, para. 194.
[716] *Karera* Appeal Judgement, para. 10.
[717] Appellant's Brief, para. 257. The Appellant alleges in the same paragraph that the Trial Chamber erred because, contrary to what is stated in paragraph 333 of the Trial Judgement, Witness LAG did not identify the priest in question as Father Boneza. The Appellant provides no support for this argument aside from this mere assertion. Moreover, the Appeals Chamber does not reach this argument for the reasons stated in its analysis.

was ample evidence that Nchamihigo desired the death of Father Boneza and made plans to effect it".[718] Specifically, it noted that Witness BRF testified that "the gendarmes tried to protect Father Boneza, and that Tourné refused to follow the instructions of ŦSergeant Major Marc Ruberanzizağ."[719] The Trial Chamber further found that an impasse regarding the fate of Father Boneza was resolved when the Appellant asked for an "intelligent Hutu" to kill the priest.[720] Thus, contrary to the Appellant's contention, the Trial Chamber did not rely exclusively on Witness LAG's evidence to find that the Appellant made plans to kill Father Boneza and that he desired his death.[721] Accordingly, the Appeals Chamber finds that the Appellant has not demonstrated that no reasonable trier of fact could have reached the conclusion that the Appellant planned and desired the death of Father Boneza.

E. Conclusion

289. In light of the foregoing, this ground of appeal is dismissed**.**

[718] Trial Judgement, paras. 134-137, 143, 144. Witness BRF testified that the Appellant instigated the crowd at the Kucyapa roadblock to kill Father Boneza by asking whether an intelligent Hutu among them could kill him. T. 24 January 2007 p. 13. Witness LAG testified that the Appellant ordered him to kill a priest coming from Mibilizi if he came across his roadblock. T. 17 January 2007 p. 43. Witness LDC testified that the Appellant was involved in the car chase with Father Boneza, which culminated in his death. Witness LDC further testified that, during the car chase, the Appellant stopped to hand people grenades for killing individuals who were able to speed through roadblocks when being chased. T. 10 January 2007 pp. 71, 72.

[719] Trial Judgement, para. 144. The nature and aim of Bikomago's instructions are not clear. According to Witness BRF, Sergant Major Marc Ruberanziza (alias "Bikomago") arrived at the Kucyapa roadblock (where he used to give orders) about the same time as the Appellant. Bikomago opened the door of Father Boneza's vehicle. Then, as there was a disagreement between the gendarmes and the soldiers with regards to allowing Father Boneza to pass the roadblock, Bikomago called Vincent Mvuyekure (alias "Tourné") who refused to come. At that point, the Appellant said "Can an intelligent Hutu take him and kill him?" *See* Trial Judgement, paras. 134, 135.

[720] Trial Judgement, para. 144.

[721] The Appeals Chamber recalls that the Trial Chamber acknowledged that Witness LAG was an accomplice, and stated that it had viewed his testimony with caution. Trial Judgement, para. 90.

XV. ALLEGED ERRORS RELATING TO KAMARAMPAKA STADIUM (GROUNDS OF APPEAL 22 TO 28)

290. The Trial Chamber convicted the Appellant pursuant to Articles 2(3) and 6(1) of the Statute for genocide, in part, based on the killing at the gendarmerie of Cyangugu on 16 April 1994, of several Tutsi refugees removed from Cyangugu cathedral and Kamarampaka stadium.[722] Specifically, the Trial Chamber concluded that, during two Prefecture Security Council meetings attended by the Appellant on 11 and 14 April 1994, a plan was devised to kill influential Tutsis.[723] The Trial Chamber found that, pursuant to this plan, on 15 April 1994, the Appellant and other members of the Prefecture Security Council participated in the transfer of most of the refugees from the cathedral to the stadium.[724]

291. The Trial Chamber further found that, on 16 April 1994, Prefect Emmanuel Bagambiki instructed Commander Vincent Munyarugerero of the Cyangugu gendarmerie to read out names at Kamarampaka stadium from a list prepared by members of the Prefecture Security Council.[725] The Appellant was also present.[726] Following the reading of the list, approximately 12 people were taken outside the stadium where they joined four others taken from the cathedral.[727] All of these refugees were Tutsi, except Marianne Baziruwiha.[728] The Trial Chamber further determined that the Tutsi refugees were taken to the gendarmerie.[729]

292. The Trial Chamber found that the Appellant arranged for *Interahamwe* and other civilian attackers to go to Kamarampaka stadium where they were then instructed to proceed to the gendarmerie.[730] The Trial Chamber found that the militiamen killed the Tutsi refugees in the presence of the Appellant, Bagambiki, and Lieutenant Samuel Imanishimwe.[731] The Appellant then

[722] Trial Judgement, paras. 359, 360.
[723] Trial Judgement, paras. 219, 359.
[724] Trial Judgement, paras. 208, 219, 359.
[725] Trial Judgement, paras. 219, 359.
[726] Trial Judgement, para. 213.
[727] Trial Judgement, paras. 220, 360.
[728] Trial Judgement, paras. 220, 360.
[729] Trial Judgement, paras. 220, 360.
[730] Trial Judgement, paras. 220, 360.
[731] Trial Judgement, paras. 220, 360.

ordered the killers to bury the corpses in a latrine at the home of one of the victims, Gapfumu.[732] The Trial Chamber concluded that the Appellant instigated the killings.[733]

293. The Appellant submits that the Trial Chamber erred in law and in fact in convicting him for these killings.[734] In particular, he contends that the Trial Chamber erred in failing to require a nexus with a national campaign of genocide[735] and in assessing evidence related to his participation in the Prefecture Security Council meetings,[736] the transfer of the refugees, and the killing of the refugees at the gendarmerie.[737]

294. In view of the Appeals Chamber's findings set out below, it need not address the Appellant's argument in Ground of Appeal 22 that the Trial Chamber erred in failing to require a nexus with a national campaign of genocide.[738] Ground of Appeal 22 is therefore dismissed.

A. Alleged Errors Related to the Prefecture Security Council Meetings and the Transfer of Refugees (Grounds of Appeal 23, 27, and 28)

295. The Appellant submits that the Trial Chamber erred in law and in fact in its assessment of the evidence related to his participation in the Prefecture Security Council meetings on 11 and 14 April 1994.[739] He further challenges the Trial Chamber's assessment of the evidence related to his participation in the transfer of refugees on 15 April 1994 from Cyangugu cathedral to Kamarampaka stadium.[740]

296. The Prosecution responds that the Trial Chamber properly assessed the evidence related to these incidents and that the Appellant has not identified any error warranting appellate intervention.[741]

297. The Appellant has not demonstrated under this ground of appeal that any alleged error on the part of the Trial Chamber invalidated the verdict or resulted in a miscarriage of justice. A close examination of the Trial Judgement reflects that the Appellant's conviction for the deaths of the Tutsi refugees removed from Cyangugu cathedral and Kamarampaka stadium on 16 April 1994 is

[732] Trial Judgement, paras. 220, 360.
[733] Trial Judgement, para. 360.
[734] Notice of Appeal, paras. 80-90; Appellant's Brief, paras. 259-319.
[735] Notice of Appeal, paras. 80, 81; Appellant's Brief, paras. 259-264.
[736] Notice of Appeal, paras. 82, 83; Appellant's Brief, paras. 265-279.
[737] Notice of Appeal, paras. 84-90; Appellant's Brief, paras. 280-303. *See also* AT. 29 September 2009 pp. 10, 11.
[738] Notice of Appeal, paras. 80, 81; Appellant's Brief, paras. 259, 261, 264. *See also infra* fn. 783.
[739] Notice of Appeal, paras. 82, 83; Appellant's Brief, paras. 265-279. In particular, the Appellant challenges the Trial Chamber's assessment of Witness AOY's evidence, and the testimony of Defence Witnesses SNB and SGA and the Appellant.
[740] Notice of Appeal, Heading 13.5; Appellant's Brief, paras. 304-319.

based solely on his role in instigating members of the *Interahamwe*, whom he procured, to kill these individuals at the gendarmerie, and not on his participation in the Prefecture Security Council meetings or in the transfer of refugees on 15 April 1994 from Cyangugu cathedral to Kamarampaka stadium.[742]

298. The Trial Chamber made the relevant factual findings under a section entitled "Killings at the Gendarmerie on 16 April 1994",[743] which is indicative of its focus on the events at the gendarmerie following the selection of 16 refugees from the stadium and the cathedral. The Trial Chamber's summary of the allegations in the Indictment refers to the Appellant's role in the decision to move the refugees from the cathedral to the stadium as well as in the selection of refugees on 16 April 1994.[744] However, when discussing the killing of the refugees, it makes specific reference to the form of responsibility ultimately applied to the Appellant: "[t]hat same day, Nchamihigo allegedly ordered or instigated *Interahamwe* to kill 15 Tutsi[s] removed from the stadium, which they did, and then buried the corpses in pit latrines."[745]

299. While the Trial Chamber extensively examined the evidence concerning the Appellant's participation in the Prefecture Security Council meetings of 11 and 14 April 1994, as well as his role in the transfer of refugees on 15 April 1994, these findings do not underpin his conviction for instigating the *Interahamwe* at the gendarmerie to kill the refugees removed from the stadium and cathedral on 16 April 1994. Instead, in convicting the Appellant for instigating genocide in relation to this event, the Trial Chamber relied on its findings that he instructed *Interahamwe* to go to the gendarmerie where the Tutsi refugees were killed in the Appellant's presence and that he then ordered the killers to bury the corpses in Gapfumu's latrine.[746]

300. Accordingly, the Appeals Chamber dismisses these grounds of appeal.

B. Alleged Errors Related to the Killings at the Gendarmerie (Grounds of Appeal 24 to 26)

301. Prosecution Witness BRK, an accomplice, provided the only direct account of the Appellant's role in the 16 April 1994 killings at the gendarmerie of the Tutsi refugees who were

[741] Respondent's Brief, paras. 132-145, 159-168.
[742] Trial Judgement, para. 360.
[743] Trial Judgement, p. 35 (referring to the title of Section 5.2 of Chapter II of the Trial Judgement).
[744] Trial Judgement, para. 163.
[745] Trial Judgement, para. 163. Paragraph 42 of the Indictment states: "[Siméon Nchamihigo] then ordered or instigated the *Interahamwe* whom he had brought along with him from Mutongo Centre earlier the same day […] to kill the 15 remaining Tutsi. Following [Siméon Nchamihigo's] order or instigation, the *Interahamwe* killed the 15 Tutsi near Cyangugu prison and threw their dead bodies into a latrine in Gapfumu's compound."
[746] Trial Judgement, paras. 220, 360.

removed from Kamarampaka stadium and Cyangugu cathedral.[747] As a confessed participant in the killings, the Trial Chamber recalled that it had to view his evidence with caution, but ultimately concluded that he did not have any motive or incentive to falsely incriminate the Appellant.[748]

302. Furthermore, the Trial Chamber considered that other aspects of Witness BRK's account were corroborated.[749] In particular, it noted the fact that Prosecution Witnesses LM and Marianne Baziruwiha, the only survivor of the selection at the stadium, confirmed that there were *Interahamwe* outside the stadium, the Appellant's acceptance that Witness BRK was listed by Commander Munyarugerero as a suspect in the killings, and the evidence of several witnesses which confirmed that the bodies of the victims were buried in Gapfumu's latrine.[750] The Trial Chamber also noted that Witness Baziruwiha recalled the Appellant's presence a few days after the killings at the gendarmerie when Imanishimwe attempted to persuade her to mislead the refugees at the stadium about their safety as the authorities selected and killed others.[751]

303. The Appellant challenges the Trial Chamber's reliance on Witness BRK, arguing that no reasonable trier of fact could have found Witness BRK credible.[752] In support of this, the Appellant submits that the Trial Chamber erred in its assessment of Witness BRK's credibility by: (1) failing to draw adverse inferences from Witness BRK's late confession, motive for testifying, and exaggeration in his testimony;[753] (2) failing to find that his uncertainty about dates undermined his credibility;[754] (3) failing to consider inconsistencies between Witness BRK's testimony and previous statements and other witnesses' evidence;[755] (4) finding that Witness BRK's testimony was corroborated;[756] and (5) failing to consider other evidence which undermined Witness BRK's evidence.[757]

304. The Prosecution responds that the Trial Chamber's assessment of Witness BRK's credibility is reasonable and that the Appellant's submissions raise matters already considered at trial and present alternative interpretations for evidence without demonstrating the unreasonableness of the

[747] Trial Judgement, para. 218.
[748] Trial Judgement, para. 214.
[749] Trial Judgement, para. 215.
[750] Trial Judgement, paras. 216-218.
[751] Trial Judgement, para. 218. *See also* Trial Judgement, para. 182.
[752] Notice of Appeal, paras. 84-90; Appellant's Brief, paras. 280-303. *See also* AT. 29 September 2009 pp. 10, 11.
[753] Notice of Appeal, para. 85; Appellant's Brief, paras. 281, 286, 287, 294, 295; Brief in Reply, paras. 100, 101. *See also* AT. 29 September 2009 pp. 22, 23.
[754] Appellant's Brief, paras. 283-285; Brief in Reply, para. 103.
[755] Notice of Appeal, para. 84; Appellant's Brief, paras. 288-293. *See also* Notice of Appeal, para. 137; AT. 29 September 2009 p. 19.
[756] Notice of Appeal, paras. 87-90; Appellant's Brief, paras. 297-300; Brief in Reply, paras. 104, 105. *See also* AT. 29 September 2009 pp. 19, 20.
[757] Appellant's Brief, para. 302.

Trial Chamber's reasoning.[758] It submits that the Trial Chamber took into account Witness BRK's accomplice status, his confession, his possible motives for testifying, the deficiencies in his evidence, and the fact that aspects of his testimony were corroborated by other witnesses.[759] In light of this, the Prosecution asserts that the Trial Chamber exercised the appropriate caution in assessing Witness BRK's credibility.[760] The Prosecution further argues that the Appellant fails to show any error in the fact that the Trial Chamber did not consider evidence from the *Ntagerura et al*. case and Exhibit D71,[761] or the Trial Chamber's finding that Witness BRK's testimony was supported by other witnesses.[762]

305. The Appeals Chamber recalls that "accomplice evidence is not *per se* unreliable, especially where an accomplice may be thoroughly cross-examined".[763] However, when weighing the probative value of such evidence, a Chamber is bound to *carefully* consider the totality of the circumstances in which it was tendered.[764] In particular, consideration should be given to circumstances showing that accomplice witnesses may have motives or incentives to implicate the accused person before the Tribunal or to lie.[765]

306. The Trial Chamber acknowledged that Witness BRK was an accomplice witness and that therefore his testimony had to be viewed with caution.[766] The Trial Chamber recalled that the testimony of accomplices "may be tainted by motives or incentives to falsely implicate an accused to gain some benefit or advantage in regard to their own case or sentence."[767] However, the Trial Chamber concluded that the witness did not have "any motive or incentive to falsely incriminate [the Appellant]."[768]

307. The Appeals Chamber, Judge Pocar dissenting, considers that this finding is patently unreasonable in light of the Trial Chamber's other findings. In particular, in the paragraph immediately following the finding that Witness BRK did not have any motive or incentive to falsely incriminate the Appellant, the Trial Chamber stated that portions of Witness BRK's testimony "could have been exaggerated or invented to further implicate [the Appellant]" and that, as such,

[758] Respondent's Brief, paras. 148, 158.
[759] Respondent's Brief, paras. 149-153, 155. *See also* AT. 29 September 2009 pp. 39-44.
[760] AT. 29 September 2009 pp. 43-45.
[761] Respondent's Brief, para. 154.
[762] Respondent's Brief, paras. 156, 157.
[763] *Ntagerura et al.* Appeal Judgement, para. 204.
[764] *Ntagerura et al.* Appeal Judgement, para. 204, *citing Niyitegeka* Appeal Judgement, para. 98.
[765] *Ntagerura et al.* Appeal Judgement, paras. 204, 206.
[766] Trial Judgement, para. 214.
[767] Trial Judgement, paras. 17, 214.
[768] Trial Judgement, para. 214.

they could not be relied upon.[769] The Appeals Chamber, Judge Pocar dissenting, considers that in the absence of any explanation by the Trial Chamber, these apparently contradictory findings suggest that it was unsafe to conclude, as the Trial Chamber did, that the witness had no motive or incentive to falsely implicate the Appellant.

308. Furthermore, the Trial Chamber found that Witness BRK was still awaiting trial for charges as a Category I offender for crimes related to the attacks in Nyakanyinya, Mibilizi, and at Kamarampaka as well as for forging documents.[770] It also observed that Witness BRK believed that he might benefit from leniency if he gave evidence for the Prosecution.[771] These findings further undermine the Trial Chamber's conclusion that Witness BRK had no motive to falsely implicate the Appellant.

309. Additionally, the Appeals Chamber, Judge Pocar dissenting, notes that Witness BRK has demonstrated a willingness to tailor his evidence to serve his own interests. He acknowledged that he did not fully confess his crimes when he first confessed in 1999, and that it was only when confronted with further charges in 2005 that he confessed to his involvement in the attacks at Nyakanyinya, Mibilizi and Kamarampaka.[772] The Trial Chamber took this into account and accepted Witness BRK's explanation that he tailored his statements to conceal his role in the events.[773] It concluded that "[a]n initial failure for a witness to incriminate himself is not a reason to disbelieve a subsequent confession."[774] The Appeals Chamber considers that, on its own, it was not unreasonable for the Trial Chamber to accept Witness BRK's explanation. Nevertheless, given the other troubling aspects of Witness BRK's credibility discussed above, his willingness to conceal relevant information when making official statements should have concerned the Trial Chamber.

310. The Appeals Chamber, Judge Pocar dissenting, also considers that the Trial Chamber's treatment of Witness BRK's evidence regarding the dates of the attacks at Kamarampaka, Mibilizi, and Nyakanyinya shows that the Trial Chamber failed to assess Witness BRK's evidence carefully.

311. More specifically, the Trial Chamber expressly noted that at the time of his testimony, Witness BRK could not recall the exact dates of the relevant events, but considered that this did not

[769] Trial Judgement, para. 215.
[770] Trial Judgement, para. 284.
[771] Trial Judgement, para. 285 and fn. 193, *quoting* T. 22 January 2007 p. 34 (Witness BRK testified: "[m]y position is that by telling the truth, I will be fostering reconciliation in Rwanda and that this might help in the reduction of my sentence.").
[772] Trial Judgement, para. 284.
[773] Trial Judgement, paras. 284, 304.
[774] Trial Judgement, para. 304.

undermine his overall credibility.[775] While he had provided specific dates for the events at Kamarampaka stadium, Mibilizi parish and hospital, and Nyakanyinya school in his 8 March 2006 statement,[776] when testifying at trial he did not accept having provided the dates indicated in that statement.[777] Nonetheless, the Trial Chamber accepted the date of the Mibilizi attack provided in Witness BRK's 8 March 2006 witness statement despite the fact that he had specifically repudiated it.[778] While there is no absolute prohibition on accepting prior statements for the truth of their contents, the Appeals Chamber recalls that Tribunal jurisprudence discourages this practice.[779] In the instant case, the Trial Chamber should have considered more carefully the fact that Witness BRK's testimony at trial suggested that the date of the Mibilizi attack provided in his prior statement was incorrect.[780] The Trial Chamber's failure to explain its preference for Witness BRK's prior statement over his in-court testimony demonstrates a lack of care in considering pertinent evidence.

312. In sum, the Appeals Chamber, Judge Pocar dissenting, concludes that the Trial Chamber erred by failing to apply special caution in the assessment of Witness BRK's testimony that his status as an accomplice witness required. In particular, it failed to properly take into account its own finding that he may have exaggerated or invented evidence to further implicate the Appellant, his belief that his sentence would be reduced if he testified for the Prosecution, his late confession and his willingness to tailor his accounts of the events to serve his interests. The conclusion that the Trial Chamber's analysis was so flawed as to constitute an abuse of discretion is underscored by its lack of care in assessing Witness BRK's testimony regarding dates of particular attacks.

313. In light of the foregoing, the Appeals Chamber, Judge Pocar dissenting, finds that no reasonable trier of fact could have found Witness BRK to be credible. The Appeals Chamber observes that while the Trial Chamber considered that other aspects of Witness BRK's account of

[775] Trial Judgement, paras. 179, 291, 302, 305.
[776] Exhibit D30.
[777] *See, e.g.*, T. 22 January 2007 p. 46.
[778] Trial Judgement, paras. 291, 292.
[779] *See Simba* Appeal Judgement, para. 103, *quoting Akayesu* Appeal Judgement, para. 134. *See also Prosecutor v. Vujadin Popovi} et al*., Case No. IT-05-88-AR73.3, Decision on Appeals Against Decision on Impeachment of a Party's Own Witness, 1 February 2008, which was filed two months after the *Simba* Appeal Judgement and takes a broader view of the Trial Chamber's discretion to rely on witness statements for the truth of their contents (paras. 29-32). This difference in approach between the two cases can be understood in light of Rule 90(A) of the ICTR Rules, no equivalent of which exists in the ICTY Rules of Procedure and Evidence.
[780] Trial Judgement, para. 302. *See also* T. 22 January 2007 p. 23. Although Witness BRK was unable to provide dates for the attacks at Mibilizi, Nyakanyinya and Kamarampaka at trial, he was able to provide a chronology of the events which placed the attack on Mibilizi first, the attack on Nyakanyinya school second, and ended with the attack on the Kamarampaka stadium. The Appeals Chamber notes that the Trial Chamber accepted that the second attack, at Nyakanyina school occurred on 12 April 1994, and that there is no dispute that the third event, at Kamarampaka stadium, occurred on 16 April 1994. Accordingly, the attack on Mibilizi would have had to occur as much as a week

the events at Kamarampaka stadium were corroborated,[781] Witness BRK was the only witness to provide a direct account of the killings at the gendarmerie, and specifically of the Appellant's role in the killings.[782] Accordingly, given the Trial Chamber's erroneous finding on Witness BRK's credibility, its findings on the Appellant's participation in the killings of the refugees taken from Kamarampaka stadium must be overturned.

314. For the foregoing reasons, the Appeals Chamber, Judge Pocar dissenting, grants the Appellant's Grounds of Appeal 24 to 26 relating to the assessment of Witness BRK's evidence and reverses the Appellant's conviction for genocide based on this event. Consequently, there is no need to address the Appellant's remaining arguments regarding the events at Kamarampaka stadium under this or any other ground of appeal.[783]

before the date provided in Witness BRK's 8 March 2006 statement. *See* Trial Judgement, paras. 35, 219, 220, 359, 360.

[781] Trial Judgement, para. 215.

[782] Trial Judgement, para. 218.

[783] In particular, his arguments under Ground of Appeal 22 that the Trial Chamber erred by failing to require a nexus with a national campaign of genocide (Notice of Appeal, paras. 80, 81; Appellant's Brief, paras. 259-264) and Grounds of Appeal 24 to 26 that the Trial Chamber erred by (1) failing to consider inconsistencies between Witness BRK's testimony and previous statements and other witnesses' evidence (Notice of Appeal, para. 84; Appellant's Brief, paras. 288-293. *See also* Notice of Appeal, para. 137; AT. 29 September 2009 p. 19); (2) finding that Witness BRK's testimony was corroborated (Notice of Appeal, paras. 87-90; Appellant's Brief, paras. 297-300; Brief in Reply, paras. 104, 105. *See also* AT. 29 September 2009 pp. 19, 20); and (3) failing to consider other evidence which undermined Witness BRK's evidence (Appellant's Brief, para. 302).

XVI. ALLEGED ERRORS RELATING TO THE ATTACK ON MIBILIZI PARISH AND HOSPITAL (GROUND OF APPEAL 32)

315. The Trial Chamber convicted the Appellant pursuant to Articles 2(3) and 6(1) of the Statute for genocide and pursuant to Articles 3(a) and 6(1) of the Statute for extermination as a crime against humanity, in part, based on his role in the massacre at Mibilizi parish and hospital on 18 April 1994.[784] The Trial Chamber found that, on 18 April 1994, the Appellant and Bikomago went to the town centre in Mutongo sector where the Appellant reproached Conseiller Barati for not having mobilised the people of Mutongo to flush out the Tutsis who had sought refuge at Mibilizi parish and hospital.[785] It further found that the Appellant and Conseiller Barati then distributed arms and that a group went to launch an attack on Mibilizi.[786] The Trial Chamber determined that, at Mibilizi, the Appellant gave instructions on how to conduct the attack and that, after the attack ended, the Appellant ordered the attackers to loot the premises and load the booty into a vehicle in which he subsequently left.[787] The Trial Chamber concluded that the Appellant instigated the massacres at Mibilizi parish and hospital on 18 April 1994 and that his instigation substantially contributed to the commission of the massacres.[788]

316. The Appellant submits that the Trial Chamber erred in fact and in law in convicting him of this event.[789] In particular, he points to material inconsistencies and errors in the Trial Chamber's evaluation of evidence on the date of the attack, which suggests both that it was not the event pleaded in the Indictment and that the Appellant could not have participated in it.[790] In addition, he contends that not all material facts pleaded in the Indictment were proven, including the fact that he led the attack and the involvement of certain alleged collaborators and participants.[791] He further challenges the Trial Chamber's credibility assessment of Prosecution Witnesses BRK, BRF, LDB, and LDC.[792] Finally, he asserts that the Trial Chamber erred by failing to consider the evidence of Witness SNB in relation to the attack.[793]

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[784] Trial Judgement, paras. 373, 374.
[785] Trial Judgement, paras. 292, 373.
[786] Trial Judgement, paras. 292, 373.
[787] Trial Judgement, paras. 292, 373.
[788] Trial Judgement, para. 374.
[789] Notice of Appeal, paras. 102-109; Appellant's Brief, paras. 397-410; Brief in Reply, paras. 135, 136.
[790] Notice of Appeal, paras. 103-104; Appellant's Brief, paras. 400-404.
[791] Notice of Appeal, paras. 102, 105, 106; Appellant's Brief, paras. 397, 405-407.
[792] Notice of Appeal, paras. 107, 108; Appellant's Brief, paras. 408, 409.
[793] Notice of Appeal, para. 109; Appellant's Brief, para. 410. The Appeals Chamber further notes that in Ground of Appeal 35 (Notice of Appeal, para. 144), the Appellant submits that the Trial Chamber failed to consider Annex II of

317. The Prosecution responds that the Appellant merely presents alternative interpretations of the evidence without demonstrating how the Trial Chamber erred in its assessment of the evidence.[794] It further submits that proof that certain named individuals participated in the attacks and that the Appellant was in a leadership position was not required for his conviction.[795] In this respect, the Prosecution contends that ample evidence was adduced establishing the Appellant's involvement as alleged in the Indictment.[796] With regard to the Appellant's challenges to the date of the Mibilizi attack, the Prosecution submits that there is no contradiction between the evidence of Witnesses LDC and BRK.[797] In this respect, it submits that although the Trial Chamber stated that it believed Witness LDC, it did not accept his testimony that the attack occurred on 11 or 12 April 1994.[798]

318. The Appeals Chamber recalls that in Grounds of Appeal 24 to 26, it found, Judge Pocar dissenting, that the Trial Chamber erred in its assessment of Witness BRK's credibility and concluded that no reasonable trier of fact could have found him credible.[799] It further recalls that Witness BRK's evidence formed the main basis of the Trial Chamber's findings on the Appellant's role in the Mibilizi attack.[800] When considering the evidence of the three other Prosecution witnesses who testified about the Mibilizi events, Witnesses BRF, LDB, and LDC, the Trial Chamber noted that their evidence was largely based on hearsay.[801] Furthermore, it appeared to consider their evidence principally as supportive of Witness BRK's rather than capable of sustaining a conviction on their own.[802] The Appeals Chamber agrees that the evidence of Witnesses BRF, LDB, and LDC was only supportive of that of Witness BRK and incapable of sustaining the conviction in the absence of the evidence of Witness BRK.

319. Witness BRF testified that the Appellant often went to Mibilizi with *Interahamwe* and returned with looted property.[803] While this evidence places the Appellant at Mibilizi, it gives no indication of dates he was there, what role he may have played in any attacks or what transpired at Mibilizi while he was there.

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the Defence Final Trial Brief in relation to the Mibilizi attack; however, in light of the fact that the *Ntagerura et al.* Trial Judgement was not admitted as evidence in this case, the Appeals Chamber finds no error in the Trial Chamber's failure to consider it.

[794] Respondent's Brief, paras. 201, 203, 205.
[795] Respondent's Brief, paras. 204, 206.
[796] Respondent's Brief, para. 207.
[797] Respondent's Brief, paras. 208, 209.
[798] AT. 29 September 2009 p. 48.
[799] *See supra* Grounds of Appeal 24 to 26.
[800] Trial Judgement, paras. 276-278, 284-286, 288, 291, 292.
[801] Trial Judgement, paras. 286, 289.
[802] Trial Judgement, paras. 286, 288, 289.
[803] Trial Judgement, para. 279.

320. Witness LDB testified that the Appellant took back an unused grenade he had previously given to the witness, gave it to somebody else, and exclaimed that they were going to launch an attack at Mibilizi.[804] He testified that the Appellant sent a group of attackers to Mibilizi before going there himself.[805] Witness LDB claimed to have stayed behind at the Appellant's house;[806] however, the Trial Chamber did not believe him on this point and found that he also went to Mibilizi.[807] While this evidence indicates that the Appellant intended to launch an attack on Mibilizi and took steps to do so, the Appeals Chamber recalls that Witness LDB also testified that upon arriving at Mibilizi the assailants found that the *Interahamwe* had already killed members of the population.[808] Therefore, Witness LDB's evidence appears to indicate that the perpetrators of Mibilizi attack were not the attackers sent by the Appellant, but rather another group which he referred to as "Bandetse's *Interahamwe*."[809]

321. Witness LDC testified to seeing the Appellant at a roadblock on either 11 or 12 April 1994 with a group of *Interahamwe*.[810] He stated that the Appellant said that they were on their way to attack Mibilizi.[811] He further testified that the Appellant returned from Mibilizi at around 5.00 p.m. in a vehicle which had been looted during the attack.[812] As with the evidence of Witness BRF, while this evidence places the Appellant at Mibilizi, it does not specify what role he may have played in any attacks or what transpired at Mibilizi while he was there.

322. In light of the foregoing, and of the fact that the Appeals Chamber has found that Witness BRK's evidence cannot be relied upon, the Appeals Chamber, Judge Pocar dissenting, finds that the Trial Chamber erred in convicting the Appellant of genocide and extermination in relation to the attack on Mibilizi parish and hospital. In view of this finding, the remainder of the Appellant's arguments under this ground of appeal need not be considered.

[804] Trial Judgement, para. 280.
[805] Trial Judgement, para. 280.
[806] Trial Judgement, para. 280.
[807] Trial Judgement, para. 287.
[808] Trial Judgement, para. 280. *See also* T. 12 October 2006 p. 28.
[809] *See* T. 12 October 2006 p. 28.
[810] Trial Judgement, paras. 281, 289.
[811] Trial Judgement, paras. 281, 289.
[812] Trial Judgement, paras. 281, 289.

XVII. ALLEGED ERRORS RELATING TO THE ATTACK ON NYAKANYINYA SCHOOL (GROUND OF APPEAL 33)

323. The Trial Chamber convicted the Appellant pursuant to Articles 2(3) and 6(1) of the Statute for genocide and Articles 3 and 6(1) of the Statute for extermination as a crime against humanity, in part, based on his role in the attack on the Nyakanyinya school in Cyangugu prefecture.[813] On the basis of the evidence of Witness BRK, an accomplice, the Trial Chamber found that on 12 April 1994, after the Appellant took two Belgian nuns across the border to Bukavu, and either on his way to or from Hanika parish, the Appellant stopped in Mutongo sector, in Mururu commune, where he briefly spoke at a small public meeting and told those in attendance that Tutsi refugees were attacking Hutus at Nyakanyinya school.[814] Immediately after the meeting, an attack was launched on the school and the Appellant, accompanied by Sergeant Major Ruberanziza, provided a carton of grenades that were used to kill the refugees.[815]

324. The Appellant submits that the Trial Chamber erred in law and in fact in convicting him for the attack at Nyakanyinya school.[816] He advances four main arguments relating to the date of the attack,[817] an alleged confusion between two different attacks on Nyakanyinya school,[818] as well as the assessment of the evidence of Prosecution Witness BRK[819] and Defence Witnesses SCJ, ZSC, and SNB.[820]

325. The Appeals Chamber recalls that it allowed, Judge Pocar dissenting, the Appellant's challenge to Witness BRK's credibility in Grounds of Appeal 24 to 26 and concluded that no reasonable trier of fact could have relied upon Witness BRK's evidence.[821] It further recalls that the Appellant's conviction for the attack on Nyakanyinya school was based solely on the evidence of Witness BRK.[822] In light of this, the Appeals Chamber, Judge Pocar dissenting, concludes that the

[813] Trial Judgement, para. 376.
[814] Trial Judgement, paras. 306, 375.
[815] Trial Judgement, paras. 306, 375.
[816] Notice of Appeal, paras. 110-115; Appellant's Brief, paras. 411-420. The Appellant's submissions that he could not have been at all the geographic locations ascribed to him by the Trial Chamber on 12 April 1994 (Bukavu, Mibilizi, Nyakanyinya, and Hanika) (Appellant's Brief, paras. 412, 413; Brief in Reply, para. 139) are addressed under Ground of Appeal 31.
[817] Notice of Appeal, para. 110; Appellant's Brief, para. 411; Brief in Reply, para. 138.
[818] Notice of Appeal, paras. 111, 112; Appellant's Brief, paras. 414, 415.
[819] Notice of Appeal, para. 115; Appellant's Brief, paras. 416, 417, 420; Brief in Reply, para. 140.
[820] Notice of Appeal, paras. 113, 114; Appellant's Brief, paras. 418, 419; Brief in Reply, paras. 140, 141.
[821] *See supra* Grounds of Appeal 24 to 26.
[822] Trial Judgement, paras. 294-306.

Trial Chamber's findings on the Appellant's participation in the attack on Nyakanyinya school must be overturned.

326. For the foregoing reasons, the Appeals Chamber, Judge Pocar dissenting, grants the Appellant's Ground of Appeal 33, in relation to the assessment of Witness BRK's evidence, and reverses the Appellant's convictions for genocide and extermination as a crime against humanity based on this event. Consequently, there is no need to address the Appellant's remaining arguments regarding the events at Nyakanyinya school under this or any other ground of appeal.

XVIII. ALLEGED ERRORS RELATING TO THE ATTACK AT SHANGI PARISH (GROUNDS OF APPEAL 29 AND 30)

327. The Trial Chamber convicted the Appellant pursuant to Articles 2(3) and 6(1) of the Statute for genocide, in part, based on his role in an attack against Tutsi refugees at Shangi parish between 28 and 30 April 1994.[823] Specifically, based on the testimony of Prosecution Witness AOY, an accomplice, the Trial Chamber found that, during a meeting of the Prefecture Security Council on 14 April 1994, the Appellant, who was the zone supervisor for the area including Shangi parish, requested weapons with which to attack the Tutsis at the parish and the assistance of *Interahamwe* in doing so.[824] According to the Trial Judgement, the council then directed Lieutenant Samuel Imanishimwe to make weapons available and decided that Yussuf Munyakazi would provide *Interahamwe* for the attack.[825] The Trial Chamber did not find that Imanishimwe provided weapons, but it accepted the account of Witness BRF that the Appellant "nourished" Yussuf Munyakazi's *Interahamwe* the night before the attack.[826] Based on his call for intervention at the meeting of 14 April 1994 as well as his hospitality and encouragement of the assailants before the attack, the Trial Chamber considered that the Appellant instigated Munyakazi's *Interahamwe* to kill Tutsis at the parish, as pleaded in paragraph 20(a) of the Indictment.[827]

328. The Appellant submits that the Trial Chamber erred in law and in fact in convicting him for the killings at Shangi parish.[828] In his Notice of Appeal, the Appellant submits, under Ground of Appeal 29, that he lacked notice of his alleged role in the attack on Shangi parish based on ambiguities in paragraph 28 of the Indictment[829] and that the Trial Chamber erred by failing to note the absence of a link between the role assigned to the Appellant at the 14 April 1994 meeting and Pima's role as the leader of the attack.[830] In the Appellant's Brief, he additionally submits that the Trial Chamber erred by: (1) failing to note the contradictions in the evidence regarding his attendance at the Prefecture Security Council meeting;[831] (2) failing to consider Exhibit D25, a Rwandan trial judgement related to the events;[832] (3) failing to establish any causal link between his

[823] Trial Judgement, paras. 368, 369.
[824] Trial Judgement, paras. 242, 247.
[825] Trial Judgement, paras. 247, 367.
[826] Trial Judgement, paras. 247, 367, 369.
[827] Trial Judgement, para. 369.
[828] Notice of Appeal, paras. 91-95; Appellant's Brief, paras. 320-360.
[829] Notice of Appeal, para. 91.
[830] Notice of Appeal, para. 92.
[831] Appellant's Brief, paras. 321, 322.
[832] Appellant's Brief, para. 323. *See also* Notice of Appeal, para. 139.

role at the 14 April 1994 meeting, as pleaded in paragraph 20(a) of the Indictment, and the subsequent attack on Shangi parish, particularly in light of the absence of evidence on the supply of weapons pursuant to his request;[833] and (4) convicting him on the basis of feeding Munyakazi and his *Interahamwe* even though this was not pleaded in paragraph 20(a) of the Indictment.[834]

329. In Ground of Appeal 30, the Appellant submits that the Trial Chamber erred in finding that there was in fact a Prefecture Security Council meeting held on 14 April 1994.[835] In this respect, he challenges the Trial Chamber's findings on Witness AOY's credibility.[836]

330. The Prosecution responds that the arguments raised in connection with Ground of Appeal 29 in the Appellant's Brief should be summarily dismissed as they are fundamentally different from those set out in the Notice of Appeal.[837] The Prosecution further submits that, even if considered, the Appellant's arguments under Grounds of Appeal 29 and 30 are without merit.[838]

331. As a preliminary matter, the Appeals Chamber recalls that Rule 108 of the Rules requires that the grounds of appeal and the arguments in an Appellant's Brief must be set out as they are in the Appellant's Notice of Appeal.[839] The Appeals Chamber considers that the Appellant exceeded the Notice of Appeal by advancing new arguments in his Appellant's Brief. Although the Prosecution objected to the consideration of these arguments, it did have the opportunity to respond to them in its Respondent's Brief.[840] In view of this, the Appeals Chamber is not convinced that there is any unfairness to the Prosecution in this respect. In any case, given the Appeals Chamber's findings below, it is unnecessary to consider the Appellant's submissions except in relation to his

[833] Appellant's Brief, paras. 324, 325; Brief in Reply, paras. 120, 121.
[834] Appellant's Brief, para. 326. The Appellant also argues that the Trial Chamber erred in entering a conviction in the absence of evidence of a national campaign and of the Appellant's criminal role therein (Appellant's Brief, para. 320); however, this argument has already been addressed in Ground of Appeal 22. He further submits that the Trial Chamber failed to take into account Annex II of the Defence Final Trial Brief in paragraphs 242 to 247 of the Trial Judgement (Notice of Appeal, para. 140); however, Annex II is simply a list of references to the *Ntagerura et al.* Trial Judgement and as the Appellant did not seek to have the findings of that judgement judicially noticed in this case pursuant Rule 94 of the Rules, it does not form part of the Trial Record and the Trial Chamber was not required to consider it.
[835] Notice of Appeal, paras. 93-95; Appellant's Brief, paras. 327-360.
[836] Appellant's Brief, paras. 330-360. In particular he points to other aspects of Witness AOY's testimony which the Trial Chamber declined to accept, contradictions between his testimony and his prior statements as well as other defence evidence, the improper assessment of Defence evidence, and unreasonable limitations placed by the Trial Chamber on his cross-examination.
[837] Respondent's Brief, para. 169.
[838] Respondent's Brief, paras. 169-188.
[839] *Simba* Appeal Judgement, paras. 319, 325, 326; *Prosecutor v. Ljube Boškoski and Johan Tarčulovski*, Case No. IT-04-82-A, Decision on Johan Tar~ulovski's Motion for Leave to Present Appellate Arguments in Order Different from that Presented in Notice of Appeal, to Amend the Notice of Appeal, and to File Sur-Reply, and on Prosecution Motion to Strike, 26 March 2009, para. 19.
[840] Respondent's Brief, paras. 169-175.

arguments in his Appellant's Brief that his conviction is based on facts that were not pleaded in paragraph 20(a) of the Indictment.[841]

332. At the outset, the Appeals Chamber dismisses the Appellant's arguments regarding ambiguities in paragraph 28 of the Indictment in light of the fact that he was not convicted on the basis of paragraph 28 but rather paragraph 20(a) of the Indictment.[842]

333. The Appellant further submits that it was an error to base his conviction for this event on feeding the *Interahamwe* since this material fact was not pleaded in paragraph 20(a) of the Indictment.[843] In support of this, he asserts that the only material fact pleaded in the Indictment was the distribution of weapons, which the Trial Chamber found had not been proven.[844]

334. The Prosecution responds that finding that the distribution of weapons is not the only material fact pleaded in paragraph 20(a) of the Indictment, which clearly alleges that the Appellant instigated the attack.[845] It submits that there is no requirement that an instigator provide weapons.[846] According to the Prosecution, the Trial Chamber's finding of instigation in relation to this event is properly based on the entirety of the evidence that the Appellant called for intervention at the parish, which was provided, and offered hospitality and encouragement to the assailants.[847]

335. Paragraph 20(a) of the Indictment states:

> On or about 14 April 1994, during meetings called by the Prefect Emmanuel Bakambiki [*sic*] in the MRND office in Cyangugu, all zone supervisors, including **SIMEON NCHAMIHIGO**, were requested to report on the ongoing massacres in their zones. During the meeting, **SIMEON NCHAMIHIGO** reported that he was facing difficulties in attacking the Shangi parish as so many Tutsi had sought refuge there and that, according to him, it was not possible to kill all of them with traditional weapons. He claimed that he needed fire arms, such as rifles and grenades. These were later given to him by Lieutenant Samuel Immanishimwe [*sic*] in Karampo [*sic*] military camp. **SIMEON NCHAMIHIGO** distributed the weapons to the *Interahamwe* and ordered or instigated them to attack the Shangi parish and to kill the Tutsi and they did so some time in April 1994 with Yussuf Munyakazi and others.

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[841] The Appellant's arguments in his Appellant's Brief that his conviction is based on facts that were not pleaded in paragraph 20(a) of the Indictment also was not raised in the Notice of Appeal. The Appeals Chamber has previously allowed challenges to the sufficiency of the Indictment to be raised notwithstanding counsel's inadvertence or negligence in not mentioning them in the Notice of Appeal because such arguments belong to the "limited category of issues considered to be excepted from the waiver doctrine". *See Ferdinand Nahimana et al. v. The Prosecutor*, Case No. ICTR-99-52-A, Decision on the Prosecutor's Motion to Pursue the Oral Request for the Appeals Chamber to Disregard Certain Arguments Made by Counsel for Appellant Barayagwiza at the Appeals Hearing on 17 January 2007, 5 March 2007, para. 15 (allowing Barayagwiza to advance challenges to notice in the Indictment at the appeal hearing even though such arguments were not raised in the notice of appeal or appeals briefs and in the absence of good cause justifying such an amendment).
[842] Trial Judgement, paras. 248, 369.
[843] Appellant's Brief, para. 326.
[844] Appellant's Brief, para. 325; Brief in Reply, paras. 119-122.
[845] Respondent's Brief, para. 175.
[846] Respondent's Brief, para. 175.
[847] Respondent's Brief, para. 175.

336. Based on evidence relating to this allegation, the Trial Chamber found that the Appellant requested weapons during the Prefecture Security Council meeting on 14 April 1994. However, the Trial Chamber "did not find any evidence that the weapons were provided."[848] It also found that at the meeting the Appellant requested the assistance of *Interahamwe* in attacking the parish and that subsequently the *Interahamwe* who attacked Shangi parish arrived in the Appellant's locality where he provided hospitality and encouragement to them by nourishing them the night before the attack.[849]

337. The charges against an accused and the material facts supporting those charges must be pleaded with sufficient precision in an indictment so as to provide notice to the accused.[850] The Prosecution is expected to know its case before proceeding to trial and cannot mould its case against the accused in the course of the trial depending on how the evidence unfolds.[851] Defects in an indictment may come to light during the proceedings because the evidence turns out differently than expected; this calls for the Trial Chamber to consider whether a fair trial requires an amendment of the indictment, an adjournment of proceedings, or the exclusion of evidence outside the scope of the indictment.[852] In reaching its judgement, a Trial Chamber can only convict the accused of crimes that are charged in the indictment.[853]

338. Where it is alleged that the accused planned, instigated, ordered, or aided and abetted in the planning, preparation, or execution of the alleged crimes, the Prosecution is required to identify the "particular acts" or "the particular course of conduct" on the part of the accused which forms the basis for the charges in question.[854] An indictment lacking this precision is defective; however, the defect may be cured if the Prosecution provides the accused with timely, clear, and consistent

[848] Trial Judgement, paras. 247, 367. The Appeals Chamber observes that, in accepting Witness AOY's testimony, the Trial Chamber stated: "Consequently the Chamber finds it established that the attack on Shangi parish occurred as planned in the [Prefectural Security Council] meeting on 14 April 1994, and *weapons were distributed* while Munyakazi and his *Interahamwe* were ordered to conduct the attack." Trial Judgement, para. 242 (emphasis added). This finding conflicts with the Trial Chamber's ultimate conclusion in both the factual and legal findings on Shangi parish that there was no evidence of the weapons distribution.
[849] Trial Judgement, paras. 247, 367, 369.
[850] *Muvunyi* Appeal Judgement, para. 18; *Seromba* Appeal Judgement, paras. 27, 100; *Simba* Appeal Judgement, para. 63; *Muhimana* Appeal Judgement, paras. 76, 167, 195; *Gacumbitsi* Appeal Judgement, para. 49; *Ndindabahizi* Appeal Judgement, para. 16.
[851] *Muvunyi* Appeal Judgement, para. 18; *Ntagerura et al.* Appeal Judgement, para. 27. *See also Kvo~ka et al.* Appeal Judgement, para. 30; *Niyitegeka* Appeal Judgement, para. 194; *Kupre{ki} et al.* Appeal Judgement, para. 92.
[852] *Muvunyi* Appeal Judgement, para. 18; *Ntagerura et al.* Appeal Judgement, para. 27. *See also Kvo~ka et al.* Appeal Judgement, para. 31; *Niyitegeka* Appeal Judgement, para. 194; *Kupre{ki} et al.* Appeal Judgement, para. 92.
[853] *Muvunyi* Appeal Judgement, para. 18; *Nahimana et al.* Appeal Judgement, para. 326; *Ntagerura et al.* Appeal Judgement, para. 28; *Kvo~ka et al.* Appeal Judgement, para. 33.
[854] *Ntagerura et al.* Appeal Judgement, para. 25 (internal citations omitted).

information detailing the factual basis underpinning the charge.[855] Nonetheless, the principle that a defect in an indictment may be cured is not without limits.[856]

339. Bearing these principles in mind, the Appeals Chamber finds that the Appellant could not have known on the basis of paragraph 20(a) of the Indictment that he was being charged with instigating Yussuf Munyakazi's *Interahamwe* to kill Tutsis at Shangi parish by providing them with hospitality and encouragement the night before the attack. Paragraph 20(a) of the Indictment refers only to a request for weapons, which were allegedly provided to the Appellant and then distributed to the *Interahamwe* and makes a general reference to instigating or ordering, without specifying the Appellant's particular acts. The Indictment is therefore defective in this respect.

340. A review of the Prosecution's Pre-Trial Brief, opening statement, and other aspects of the Trial Judgement demonstrates that this defect was not cured by timely, clear, and consistent information detailing the material facts of the charge. For example, the Prosecution's Pre-Trial Brief and the opening statement focus exclusively on the Appellant's unproven role in distributing weapons and ordering the attack.[857] In addition, the summary of Witness BRF's anticipated testimony annexed to the Pre-Trial Brief mentions the Appellant directing an attack at Shangi parish as well as his provision of food to Munyakazi's *Interahamwe*.[858] However, the summary attached to the Pre-Trial Brief does not connect the two events. Instead, it suggests that the hospitality extended by the Appellant was related to an attack in Bisesero in Kibuye Prefecture.[859]

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[855] *Muvunyi* Appeal Judgement, para. 20; *Seromba* Appeal Judgement, para. 100; *Simba* Appeal Judgement, para. 64; *Muhimana* Appeal Judgement, paras. 76, 195, 217; *Gacumbitsi* Appeal Judgement, para. 49. *See also Ntagerura et al.* Appeal Judgement, paras. 28, 65.

[856] *Muvunyi* Appeal Judgement, para. 20, *quoting The Prosecutor v. Théoneste Bagosora et al.*, Case No. ICTR-98-41-AR73, Decision on Aloys Ntabakuze's Interlocutory Appeal on Questions of Law Raised by the 29 June 2006 Trial Chamber I Decision on Motion for Exclusion of Evidence, 18 September 2006, para. 30.

[857] *See The Prosecutor v. Siméon Nchamihigo*, Case No. ICTR-2001-63-I, Prosecutor's Pre-Trial Brief and Other Filings under Rule 73 *bis* of the Rules of Procedure and Evidence of the International Criminal Tribunal for Rwanda as amended on 7 June 2005, 25 August 2006 ("Prosecution Pre-Trial Brief"), p. 10 ("Shangi parish. After a security meeting held on or about 14 April 1994 on the MRND premises the Accused distributed weapons to the *Interhamwe* [sic] and ordered them to attack Shangi parish and kill all the Tutsi that had taken refuge there. During the attack, the *Interahamwe* killed many Tutsis."); T. 25 September 2006 p. 5 ("At Shangi parish, after a security meeting held on the 14th of April 1994 or thereabout in the MRND premises, at the end of the meeting the Accused distributed weapons to the *Interahamwes* and ordered them to attack the Shangi parish and kill all the Tutsis who had taken refuge there. During that attack the *Interahamwe* killed several Tutsi.").

[858] *See* Prosecution Pre-Trial Brief (Annex III), p. 6 ("*BRF dira qu'il a appris que Nchamihigo était parmi ceux qui ont attaqué les paroisses de Mibilizi et Nyamasheke et qu'il a dirigé une attaque contre la paroisse de Shangi pour aider les* Interahamwe *de Bugarama. Il dira encore que quand les* Interahamwe *de Bugarama sont revenus de leur attaque de Kibuye, Nchamihigo a fait une réception en leur honneur au* Groupe Scolaire *de Gihundwe.*").

[859] It is also notable that the Prosecution did not refer to Witness BRF or the provision of food to *Interahamwe* in its submissions related to the attack on Shangi parish in its Final Trial Brief. *See The Prosecutor v. Siméon Nchamihigo*, Case No. ICTR-2001-63-T, Prosecutor's Closing Brief, 11 December 2007 ("Prosecution Final Trial Brief"), paras. 145-164.

341. The Appeals Chamber notes that paragraph 37 of the Indictment does specifically allege that the Appellant provided food and drinks to Munyakazi's *Interahamwe*. However, this paragraph gives notice that this specific event is related to an attack on Bisesero between 20 and 25 June 1994, nearly two months after the attack on Shangi parish. The Prosecution also referred to this incident in its opening statement, placing it at the end of June 1994 and connecting it only to the Bisesero killings.[860] Accordingly, the Appeals Chamber finds that the Appellant did not receive notice of the particular acts amounting to instigating the *Interahamwe* to kill Tutsis at Shangi parish.

342. Turning to the Appellant's request for assistance at the Prefecture Security Council meeting, the Appeals Chamber does not consider that this was pleaded as the *actus reus* of the offence. In this regard, it recalls that the modes of liability pleaded in paragraph 20(a) of the Indictment, ordering or instigating, related to the *Interahamwe* to whom the Appellant was alleged to have distributed weapons after the meeting, not the other members of the Prefecture Security Council.[861] Had the *Interahamwe* been present at the meeting, the Appellant's request for assistance might have amounted to instigating them; however, their presence at the meeting was neither pleaded in the Indictment nor was there any evidence adduced to that effect. Similarly, while the Appellant's request for assistance at the meeting might have amounted to planning, aiding and abetting, or participating in a joint criminal enterprise, these modes of liability were not pleaded in relation to Shangi parish or considered by the Trial Chamber.[862]

343. Therefore, the Appeals Chamber considers that the facts pleaded in relation to the meeting can only be considered as providing context for the allegations of ordering or instigating the *Interahamwe* to kill Tutsis at Shangi parish, not as material facts underpinning the Appellant's conviction. While the distribution of weapons to the *Interahamwe*, whom the Appellant subsequently ordered or instigated to kill Tutsis at Shangi parish, was pleaded in the Indictment as a fact material to the charge of instigating the killings,[863] the Trial Chamber did not find that it was

[860] T. 25 September 2006 p. 7.
[861] Indictment, para. 20(a) ("SIMEON NCHAMIHIGO distributed the weapons to the *Interahamwe* and ordered or instigated them to attack the Shangi parish and to kill the Tutsi […]").
[862] In this respect, the Appeals Chamber notes that, in dismissing the Prosecution's theory of joint criminal enterprise, the Trial Chamber emphasized that the Appellant only had notice of the specific forms of responsibility mentioned in the operative paragraphs related to the events. *See* Trial Judgement, para. 328.
[863] The Appeals Chamber further notes that this was also the Prosecution's position at the outset of trial. In particular, the Prosecution's Pre-Trial Brief and opening statement both focus exclusively on the Appellant's unproven role in distributing weapons and ordering the attack. *See* Prosecution Pre-Trial Brief, p. 10 ("Shangi parish. After a security meeting held on or about 14 April 1994 on the MRND premises the Accused distributed weapons to the *Interhamwe* [sic] and ordered them to attack Shangi parish and kill all the Tutsi that had taken refuge there. During the attack, the *Interahamwe* killed many Tutsis."); T. 25 September 2006 p. 5 ("At Shangi parish, after a security meeting held on the 14th of April 1994 or thereabout in the MRND premises, at the end of the meeting the Accused distributed weapons to the *Interahamwes* and ordered them to attack the Shangi parish and kill all the Tutsis who had taken refuge there. During that attack the *Interahamwe* killed several Tutsi.").

proven. Similarly, there was no evidence of the Appellant instigating the *Interahamwe* apart from him feeding them the night before the attack. Because this was not pleaded in the Indictment in relation to Shangi parish and this defect in the Indictment was not subsequently cured by the Prosecution, the Appeals Chamber finds that the Trial Chamber erred in convicting the Appellant of instigating genocide in relation to the events at Shangi parish on the basis of his call for intervention at the 14 April 1994 meeting and his subsequent provision of hospitality to the *Interahamwe*.

344. For the foregoing reasons, the Appeals Chamber grants this ground of appeal and reverses the Appellant's conviction for genocide based on this event. In light of these findings, the Appeals Chamber does not consider the Appellant's remaining submissions under Grounds of Appeal 29 and 30.

XIX. ALLEGED ERRORS RELATING TO THE ATTACK ON HANIKA PARISH (GROUND OF APPEAL 31)

345. The Trial Chamber convicted the Appellant pursuant to Articles 2(3) and 6(1) of the Statute for genocide, in part, based on his role in a massacre on 12 April 1994 at Hanika parish in Cyangugu prefecture which led to the deaths of approximately 1,500 Tutsi refugees.[864] On the basis of the evidence of Prosecution Witness BRN, an accomplice, the Trial Chamber found that, on the afternoon of 11 April 1994, the Appellant attended a meeting near Hanika parish at which he expressed the need to "drive out" the Tutsis at the parish, which was followed by an unsuccessful attack.[865] The Trial Chamber further found that, the next day, 12 April 1994, the Appellant threatened local civilians, saying that "they would be slaughtered if they did not hurry up and finish the job"[866] at the parish and subsequently distributed four grenades to soldiers present at the attack.[867] Based on this, the Trial Chamber concluded that the Appellant "instigated soldiers and civilians to kill the refugees at Hanika parish on or about 12 April 1994".[868]

346. The Appellant challenges his conviction for instigating the killing of refugees at Hanika parish.[869] He submits that the Trial Chamber erred in its assessment of the evidence regarding the chronology of events on 11 and 12 April 1994 and emphasizes that it would have been impossible for him to be involved in the massacres at Hanika parish, Nyakanyinya school, and Mibilizi.[870] The Appellant contends that it is not possible to reconcile the Trial Chamber's findings that, on 11 April 1994, he was present at the Prefecture Security Council meeting, at a meeting near Hanika parish, and at Mibilizi.[871] In support of this, he points to (1) Witness AOY's testimony that he attended a Prefecture Security Council meeting on 11 April 1994 starting at 8.30 a.m., for which there is no indication of its end time, and that following that meeting he went to Kamarampaka stadium, Karambo camp, and then to a small reception;[872] (2) Witness BRN's testimony that the Appellant attended a meeting at Hanika parish which was in the afternoon or evening on 11 April 1994;[873] and

[864] Trial Judgement, paras. 370, 371.
[865] Trial Judgement, paras. 259, 266, 370.
[866] Trial Judgement, para. 266.
[867] Trial Judgement, paras. 266, 370.
[868] Trial Judgement, para. 371.
[869] Notice of Appeal, paras. 96-101; Appellant's Brief, paras. 361-396.
[870] Notice of Appeal, paras. 97-99; Appellant's Brief, paras. 374-393; Brief in Reply, paras. 130-134.
[871] Appellant's Brief, paras. 375-377.
[872] Appellant's Brief, para. 375.
[873] Appellant's Brief, para. 376.

(3) Witness LDC's testimony that on 11 or 12 April 1994 he left for Mibilizi around 8.00 a.m. and returned around 5.00 p.m. the same day.[874]

347. The Appellant also asserts that it would have been impossible for him to have been at each of the locations accepted by the Trial Chamber on the afternoon of 12 April 1994,[875] in particular: (1) at the Hanika parish meeting around 1.00 p.m.;[876] (2) in Bukavu for about one hour around midday assisting two nuns, coupled with a one and a half to two hour journey to Hanika parish;[877] (3) at Nyakanyinya school, participating in the attack, either on the way to or from Hanika parish;[878] and (4) on 11 or 12 April 1994, traveling to Mibilizi at around 8.00 a.m. and returning around 5.00 p.m.[879] The Appellant also submits that the Trial Chamber should have considered Exhibit D71, which he submits does not mention him as one of those responsible for the massacre at Hanika parish.[880]

348. The Appellant further submits that the Trial Chamber erred in finding that his statements at the 11 April 1994 meeting at Hanika parish significantly contributed to the attack on 12 April 1994 and that the Trial Chamber misstated Witness BRK's testimony that the Appellant spoke of the need to chase the refugees away from the parish at the 11 April 1994 meeting.[881] Finally, he asserts that the Trial Chamber erred in its credibility assessment of Prosecution Witness BRN[882] and Defence Witnesses SCU, SCV, and RNN.[883]

349. The Prosecution responds that the Appellant's arguments reveal no error in the Trial Chamber's evaluation of the evidence or its factual findings.[884] It submits that the Appellant's challenge to the Trial Chamber's assessment of the sequence of events and the possibility of his participation in the Hanika attack is unfounded, especially because these matters were fully litigated before the Trial Chamber.[885] In this regard, it argues that the Trial Chamber acted within its discretion to resolve inconsistencies between testimonies.[886] Further, it submits that Witness LDC's testimony does not contradict the evidence of Witness AOY, regarding the Prefecture Security Council meeting on 11 April 1994, or of Witness BRN, regarding the meeting at Hanika parish on

[874] Appellant's Brief, para. 376.
[875] Appellant's Brief, para. 389.
[876] Appellant's Brief, para. 385.
[877] Appellant's Brief, paras. 380, 387, 388, *citing* Trial Judgement, paras. 263, 264, 266, 379.
[878] Appellant's Brief, paras. 381-384, 386, *citing* Trial Judgement, paras. 295, 306, 375.
[879] Appellant's Brief, para. 386, *citing* Trial Judgement, para. 281.
[880] Appellant's Brief, para. 392. *See also* Notice of Appeal, para. 128.
[881] Appellant's Brief, paras. 378, 379.
[882] Appellant's Brief, paras. 361-373; Brief in Reply, para. 128.
[883] Notice of Appeal, para. 100; Appellant's Brief, paras. 394-396.
[884] Respondent's Brief, paras. 189-200.
[885] Respondent's Brief, paras. 196-198.

the same day.[887] With respect to the credibility of Witness BRN, the Prosecution asserts that the Trial Chamber correctly examined his credibility in light of his accomplice status, his previous statements, and the supporting evidence of other witnesses.[888] Furthermore, the Prosecution submits that the Appellant's challenge to the Trial Chamber's evaluation of the Defence witnesses is erroneous and misguided.[889]

350. With respect to the alleged inconsistency between the Appellant's participation in the meetings of the Prefecture Security Council and at Hanika parish on 11 April 1994, the Trial Chamber expressly considered this issue and found the Appellant's participation in both meetings compatible.[890] The Appeals Chamber further observes that the Trial Chamber did not make any findings on the duration of the Prefecture Security Council meeting, which began on the morning of 11 April 1994, nor did it accept Witness AOY's evidence concerning the Appellant's subsequent activities, given its findings on the compatibility of the two meetings.[891] The Appeals Chamber also notes that the Trial Chamber accepted Witness BRN's testimony that the meeting near Hanika parish occurred "sometime in the afternoon" of 11 April 1994, but made no specific finding as to the exact time.[892] Consequently, as the Trial Chamber found, the Appellant's participation in each of these meetings is not, on its own, incompatible with his participation in the other.

351. However, the Trial Chamber did not attempt to reconcile its findings that the Appellant participated in these meetings with its acceptance of Witness LDC's evidence that the Appellant went to Mibilizi at 8.00 a.m. and returned at 5.00 p.m. on either 11 or 12 April 1994. The Appeals Chamber notes that the Trial Chamber accepted Witness LDC's testimony that he saw the Appellant at a roadblock in Kamembe commune on his way to and from an attack on Mibilizi at 8.00 a.m. and 5.00 p.m. on 11 or 12 April 1994.[893]

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[886] Respondent's Brief, para. 196.
[887] Respondent's Brief, para. 196.
[888] Respondent's Brief, paras. 191-195.
[889] Respondent's Brief, para. 200.
[890] Trial Judgement, para. 264.
[891] Trial Judgement, paras. 166, 167, 203, 219, 247, 264, 359, 367.
[892] Trial Judgement, para. 264.
[893] Trial Judgement, paras. 281, 289. The Appeals Chamber has already found that the Trial Chamber erred in concluding that the attack on Mibilizi occurred on 18 April 1994. *See supra* para. 311, fn. 780. The Appeals Chamber recalls tha the Trial Chamber based its finding on the date provided in Witness BRK's 8 March 2006 statement; however Witness BRK rejected the date provided in that statement. Furthermore, while Witness BRK was unable to provide dates for the attacks at Mibilizi, Nyakanyinya and Kamarampaka at trial, he was able to provide a chronology of the events which placed the attack on Mibilizi first, then the attack on Nyakanyinya school, and ended with the attack on the Kamarampaka stadium. *See* Trial Judgement, para. 302. The Appeals Chamber notes that the Trial Chamber accepted that the second attack, at Nyakanyina school occurred on 12 April 1994, and that there is no dispute that the third event, at Kamarampaka stadium, occurred on 16 April 1994. Accordingly, the attack on Mibilizi would have had to occur as much as a week earlier than 18 April 1994. This makes the date of 11 or 12 April 1994 provided by Witness LDC appear reasonable.

352. In relation to the events of 12 April 1994, the Trial Chamber expressly considered whether it was possible for the Appellant to have taken two nuns to Bukavu, attend a meeting at Hanika parish, and, on his way to or from Hanika, participate in the attack at Nyakanyinya school.[894] The Appeals Chamber notes that the Trial Chamber found that the Appellant assisted the nuns across the border into Bukavu, which took "about one hour around midday".[895] It further found that the meeting at Hanika parish took place in "the afternoon of 12 April 1994".[896] The Trial Chamber expressly considered the compatibility of these two findings bearing in mind that the distance between them was 66 kilometers and would have taken about one and a half to two hours to travel.[897] With respect to Witness BRK's evidence regarding Nyakanyinya school, the Trial Chamber made no finding as to the time of the meeting but found that the Appellant "briefly spoke" at a meeting in Mutongo and "[i]mmediately after the meeting" the attack was launched on the school at which the Appellant distributed grenades.[898] The Trial Chamber further accepted that the attack ended by 5.00 p.m., but made no finding as to whether the Appellant stayed for the duration of the attack.[899]

353. While the Trial Chamber considered whether it was possible for the Appellant to have taken two nuns to Bukavu, attend a meeting at Hanika parish, and, on his way to or from Hanika, participate in the attack at Nyakanyinya school, it failed to consider the feasibility of the Appellant also being present at a roadblock in Kamembe commune on his way to and from an attack on Mibilizi at 8.00 a.m. and 5.00 p.m. on 11 or 12 April 1994, according to the evidence of Witness LDC, which it accepted.[900]

354. While it is within a Trial Chamber's discretion to assess any inconsistencies in the testimony of witnesses, and to determine whether, in the light of the overall evidence, the witnesses were nonetheless reliable and credible, it also has an obligation to provide a reasoned opinion.[901] The absence of discussion in the Trial Judgement reconciling the apparently contradictory evidence of Witness LDC with that of other witnesses as to the Appellant's activities on 11 or 12 April 1994 prevents the Appeals Chamber from determining whether a reasonable trier of fact could have accepted all the accounts of the Appellant's activities that it did. In such circumstances, the Appeals

[894] Trial Judgement, paras. 264, 266, 306, 375.
[895] Trial Judgement, para. 263.
[896] Trial Judgement, para. 264.
[897] Trial Judgement, para. 264.
[898] Trial Judgement, paras. 306, 375.
[899] Trial Judgement, para. 306.
[900] Trial Judgement, paras. 281, 289.
[901] *See, e.g., Muvunyi* Appeal Judgement, para. 144.

Chamber is forced to conclude that the Appellant's conviction for the events at Hanika parish is not safe and, accordingly, quashes it.

355. For the foregoing reasons, the Appeals Chamber allows this ground of appeal and reverses the Appellant's conviction in relation to Hanika parish. In view of this finding, the Appellant's remaining arguments under this ground of appeal need not be considered.

XX. ALLEGED ERRORS RELATING TO THE ATTACKS IN GIHUNDWE SECTOR (GROUND OF APPEAL 34)

356. The Trial Chamber convicted the Appellant pursuant to Articles 2(3) and 6(1) of the Statute for genocide and Articles 3 and 6(1) of the Statute for extermination as a crime against humanity based on his role in attacks against Tutsis in Gihundwe sector in Cyangugu prefecture.[902] On the basis of the testimony of Prosecution Witness LDC, an accomplice,[903] the Trial Chamber found that, on 14 or 15 April 1994, the Appellant instigated civilians, *Interahamwe*, and *Impuzamugambi* to launch attacks against Tutsis who had been hiding in the four cellules of Gihundwe sector by gathering attackers and organising them into four groups.[904] It further found that, at a meeting on 24 April 1994, the Appellant made inquiries into the status of the extermination of the Tutsis in Gihundwe sector and that the nature of his inquiries instigated those present to find more Tutsis in hiding and kill them.[905]

357. The Appellant submits that the Trial Chamber erred in law and in fact in convicting him for these attacks.[906] In particular, he contends that the Trial Chamber: (1) erred in convicting him despite the fact that he was found not to have held any official leadership position in the *Interahamwe*;[907] (2) erred in convicting him in the absence of a nexus between his crimes and a national campaign;[908] (3) erred in its assessment of Witness LDC's credibility;[909] (4) failed to give sufficient weight to the testimony of the Appellant and Defence Witness SCE;[910] (5) erred in convicting him given that the Indictment failed to sufficiently plead the 24 April 1994 meeting;[911] and (6) erred in finding that he could have been at the multiple locations at which he was found to be on 14 and 15 April 1994.[912]

[902] Trial Judgement, para. 378.
[903] *See* Trial Judgement, paras. 308, 309.
[904] Trial Judgement, paras. 317, 377.
[905] Trial Judgement, paras. 310, 318, 377.
[906] Notice of Appeal, paras. 116-127; Appellant's Brief, paras. 421-434.
[907] Notice of Appeal, para. 116; Appellant's Brief, para. 421.
[908] Notice of Appeal, para. 122; Appellant's Brief, para. 428
[909] Notice of Appeal, paras. 117-120, 124, 125, 127; Appellant's Brief, paras. 422-424, 430-432, 434; Brief in Reply, para. 143. *See also* Notice of Appeal, para. 146.
[910] Notice of Appeal, para. 126; Appellant's Brief, para. 433; Brief in Reply, paras. 144, 145.
[911] Notice of Appeal, para. 123; Appellant's Brief, para. 429.
[912] Notice of Appeal, para. 121; Appellant's Brief, paras. 425-427.

358. The Prosecution responds that the Appellant fails to demonstrate any errors on the part of the Trial Chamber in assessing the evidence which would warrant the intervention of the Appeals Chamber.[913]

A. Alleged Error Regarding the Appellant's Leadership Position

359. The Appellant submits that he could not have been convicted of having "led a group of *Interahamwe* and *Impuzamugambi"* to launch attacks against Tutsis who were hiding in Gihundwe sector given that the Trial Chamber found that it had not been proven that he held any official position as a leader of the *Interahamwe* or *Impuzamugambi*.[914]

360. The Appeals Chamber observes that the convictions entered against the Appellant in respect of the events in Gihundwe sector were not premised on any official leadership position held by him. Accordingly, this sub-ground of appeal is dismissed.

B. Alleged Error Concerning Proof of Nexus to National Campaign

361. The Appellant submits that the Trial Chamber erred in fact and in law in convicting him in absence of proof of a nexus between the attack in Gihundwe sector and a national campaign.[915] According to the Appellant, the existence of a national campaign organised and conducted by the Appellant was a material fact pleaded by the Prosecution in paragraph 20 of the Indictment.[916]

362. The Prosecution responds that the Indictment, as well as subsequent Trial Chamber decisions in this case, duly informed the Appellant that the Prosecution was not basing his culpability on a connection between his actions in Cyangugu prefecture and events occurring in other parts of Rwanda.[917] It further submits that, as a matter of law, participation in a national campaign is not an element of the crime of genocide.[918]

363. The Appeals Chamber recalls that proof of the existence of a "high level genocidal plan" is not required in order to convict an accused of genocide[919] or for the mode of liability of instigation

[913] Respondent's Brief, paras. 215-226.
[914] Respondent's Brief, para. 421, *citing* Trial Judgement, para. 53.
[915] Notice of Appeal, para. 122; Appellant's Brief, para. 428. *See also* Notice of Appeal, paras. 80, 81; Appellant's Brief, paras. 259, 261, 264. *See also* AT. 29 September 2009 pp. 7, 8.
[916] Appellant's Brief, para. 428.
[917] Respondent's Brief, 221, *referring to* Respondent's Brief, paras. 127-131 (*citing* Decision of 17 July 2006, para. 16; *The Prosecutor v. Siméon Nchamihigo*, Case No. ICTR-2001-63-T, Decision on the Prosecution Motion for Leave to Amend the Witness List, 9 January 2007, para. 10).
[918] Respondent's Brief, 221, *referring to* Respondent's Brief, paras. 128, 129.
[919] *See Semanza* Appeal Judgement, para. 260. *See also Simba* Appeal Judgement, para. 260.

to commit genocide.[920] Accordingly, the Appeals Chamber finds no error on the part of the Trial Chamber in considering as unnecessary proof of a nexus between the Appellant's crimes and a national campaign.

364. Furthermore, the Appeals Chamber considers that the Appellant was duly informed of the charges upon which he was convicted in connection with the attacks in Gihundwe sector. It notes that while the chapeau of paragraph 20 of the Indictment refers to a national campaign, the Indictment clearly alleges in paragraphs 20(b) and 61 that the Appellant ordered, instigated or aided and abetted the killing of Tutsis who had been hiding in Gihundwe sector and these modes of liability do not require a nexus to a national campaign.[921]

365. Accordingly, the Appeals Chamber dismisses this ground of appeal.

C. Alleged Error in the Assessment of Witness LDC

366. The Appellant submits that the Trial Chamber erred in finding that Witness LDC's testimony was consistent with his testimony before the Rwandan courts and that it failed to state the basis for this finding.[922] He argues that the Trial Chamber failed to consider the Kigali Tribunal Judgement (Exhibit D6)[923] and Exhibits D7 to D9, which are Witness LDC's confessions.[924] He further submits that the Trial Chamber erred in failing to consider Witness LDC's extensive criminal record and that his confessions were given in order to benefit from lenient detention conditions.[925] Finally, the Appellant posits that the Trial Chamber did not exercise appropriate caution in assessing the evidence of Witness LDC.[926]

367. The Appeals Chamber notes that the Kigali Tribunal Judgement was before the Trial Chamber and that, while it did not specifically list which documents it considered in relation to Witness LDC's Rwandan trial, it did find that Witness LDC's "testimony is consistent with that which he gave to the Rwandan courts in his own trial."[927] The Appeals Chamber observes that the Kigali Tribunal Judgement rejected Witness LDC's evidence in regard to the 24 April 1994 meeting in the case before it,[928] whereas the Trial Chamber in this case accepted it. However, the Appeals

[920] *See Nahimana et al*. Appeal Judgement, para. 480.
[921] Paragraph 20(b) of the Indictment refers to instigating and aiding and abetting while paragraph 61 refers to ordering, instigating and aiding and abetting.
[922] Notice of Appeal, paras. 117, 124; Appellant's Brief, para. 422.
[923] Notice of Appeal, paras. 119, 120, 125; Appellant's Brief, paras. 423, 430, 431.
[924] Appellant's Brief, paras. 424, 432.
[925] Appellant's Brief, para. 434.
[926] Brief in Reply, para. 143.
[927] Trial Judgement, para. 315.
[928] Exhibit D6, pp. 39, 40 (under seal).

Chamber also notes that Witness LDC did not appear before the Kigali Tribunal in that case,[929] whereas in the present case Witness LDC was present and was cross-examined upon the Kigali Tribunal Judgement, as well as upon his statements which formed the basis of his evidence before the Kigali Tribunal.[930] This gave the Trial Chamber the opportunity to make its own assessment of Witness LDC's evidence. Furthermore, the Appellant has failed to demonstrate how the Kigali Tribunal Judgement is inconsistent with Witness LDC's evidence at trial.

368. With regard to Witness LDC's previous statements to Rwandan officials and to Ibuka,[931] the Appeals Chamber observes that, although the Trial Chamber did not expressly refer to them in the Gihundwe section of the Trial Judgement, it did consider them in evaluating his credibility in other parts of the Trial Judgement.[932] The Appeals Chamber considers that, in light of the fact that the Trial Chamber clearly considered the circumstances of the witness's confession and his motives for confessing,[933] the Trial Chamber also took into consideration these prior statements in relation to the Gihundwe events. Furthermore, the Appellant has failed to demonstrate how Witness LDC's statements are inconsistent with his evidence at trial.

369. Finally, to substantiate his submission that the Trial Chamber failed to view Witness LDC's evidence with appropriate caution, the Appellant merely refers to various credibility arguments advanced in his Defence Final Trial Brief, without providing further reasoning and without attempting to demonstrate any error on the part of the Trial Chamber. Consequently, the Appeals Chamber will not consider this submission further.[934]

370. Accordingly, the Appeals Chamber dismisses this sub-ground of appeal.

D. Alleged Error Regarding the Evidence of the Appellant and Witness SCE

371. The Appellant submits that the Trial Chamber erred by failing to give sufficient weight and credibility to the testimony of the Appellant and Defence Witness SCE.[935] He also contends that the Trial Chamber reversed the burden of proof by not giving any credit to his evidence that he did not attend a meeting on 8 April 1994.[936]

[929] Exhibit D6, p. 32 (under seal).
[930] T. 11 January 2007 p. 54.
[931] Exhibits D7-D9.
[932] Trial Judgement, paras. 51, 52, fn. 44.
[933] Trial Judgement, paras. 51-53.
[934] *See Muhimana* Appeal Judgement, para. 87; *Br|anin* Appeal Judgement, para. 35 ("Merely referring the Appeals Chamber to one's arguments set out at trial is insufficient as an argument on appeal.").
[935] Notice of Appeal, para. 126; Appellant's Brief, para. 433.
[936] Brief in Reply, paras. 144, 145.

372. The Appeals Chamber is not convinced that the Trial Chamber reversed the burden of proof or failed to give appropriate weight to the Defence evidence, in particular given the general and unsubstantiated nature of the Appellant's submissions. The Appeals Chamber recalls that, when faced with competing versions of events, it is the duty of the Trial Chamber which heard the witnesses to determine which evidence it considers more probative.[937]

373. In finding the Appellant's testimony concerning the events in Gihundwe sector not credible, the Trial Chamber expressly weighed it against the eyewitness testimony of Witness LDC, which it considered to be "truthful".[938] Furthermore, with respect to Witness SCE, the Trial Chamber observed that, even if credible, his evidence carried "little to no weight in Nchamihigo's favour."[939] Notably, the main thrust of the witness's testimony was his suggestion that he would have heard about the meeting of 24 April 1994 if it had occurred.[940] Bearing this in mind, the Appellant has not demonstrated that no reasonable trier of fact could have made the Trial Chamber's findings. Accordingly, the Appellant's argument is dismissed.

E. Alleged Error in the Indictment

374. The Appellant submits that the 24 April 1994 meeting was not specifically charged in the Indictment, which only refers to a meeting "towards the end of April 1994".[941] The Appeals Chamber considers that 24 April is in late April and that this is sufficiently precise to give the Appellant notice of the date of the meeting, particularly in light of the fact that the Indictment described in detail its location and what transpired at the meeting.[942] The Appellant's argument is therefore dismissed.

F. Alleged Error Regarding the Appellant's Presence at Multiple Locations on 14 and 15 April 1994

375. The Appellant submits that he could not have been at the multiple locations the Trial Chamber found him to be on 14 and 15 April 1994.[943] He points to the fact that, in addition to his participation in the searches in Gihundwe sector on 14 or 15 April 1994, the Trial Chamber found

[937] *Muhimana* Appeal Judgement, para. 103; *Gacumbitsi* Appeal Judgement, para. 81; *Rutaganda* Appeal Judgement, para. 29.
[938] Trial Judgement, paras. 315, 316.
[939] Trial Judgement, para. 316.
[940] Trial Judgement, para. 313.
[941] Notice of Appeal, para. 123; Appellant's Brief, para. 429. The Appeals Chamber notes that the Indictment alleges that the meeting took place "[i]n late April 1994" rather than "towards the end of April 1994". *See* Indictment, para. 20(b).
[942] Indictment, para. 20(b). *Cf. Muvunyi* Appeal Judgement, para. 140 (finding "early May 1994" to be a sufficiently precisely pleaded timeframe).

that: (1) he attended a Prefecture Security Council meeting on 14 April 1994;[944] (2) he participated in the transfer of Tutsi refugees from Cyangugu cathedral to Kamarampaka stadium on 15 April 1994;[945] (3) on his orders, a group attacked Jean de Dieu Gakwandi on 15 April 1994;[946] and (4) he went to a roadblock and read out the names of four Tutsis, including Emilien Nsengumuremyi, and ordered that they be killed on or about 15 April 1994.[947]

376. The Trial Chamber found that on 14 or 15 April 1994, the Appellant instigated civilians, *Interahamwe,* and *Impuzamugambi* to launch attacks against Tutsis who had been hiding in Gihundwe sector.[948] The Appeals Chamber will consider whether the Trial Chamber properly assessed the possibility of the Appellant having instigated the searches of Gihundwe sector on either of those two days in light of its findings on his other activities on those two dates.

377. The Appeals Chamber first considers whether it was reasonable for the Trial Chamber to have found that the Appellant could have attended the Prefecture Security Council meeting on 14 April 1994 as well as instigated civilians, *Interahamwe,* and *Impuzamugambi* to launch attacks against Tutsis who had been hiding in Gihundwe sector. Witness LDC testified that the Appellant organized the search of Gihundwe sector which began at 8.00 a.m. and lasted for four hours.[949] However, there was no evidence as to how long the Appellant was personally engaged in the search.[950] In any event, the Trial Chamber did not explicitly accept Witness LDC's evidence as to timing in making its findings on that event.[951] Furthermore, the Trial Chamber made no finding as to the timing of the Prefecture Security Council meeting on 14 April 1994.[952] In addition, the Appellant does not challenge the absence of findings as to the specific times of the events on 14 April 1994. Although the Trial Chamber did not explicitly consider the compatibility of both findings, given the close geographic proximity of the two locations,[953] it was not unreasonable for the Trial Chamber to have concluded that he could have been at both locations on 14 April 1994.

378. The Appeals Chamber turns to consider whether it was also reasonable for the Trial Chamber to have found that the Appellant could have instigated civilians, *Interahamwe,* and *Impuzamugambi* to launch attacks against Tutsis who had been hiding in Gihundwe sector on

[943] Notice of Appeal, para. 121; Appellant's Brief, paras. 425-427.
[944] Appellant's Brief, para. 426.
[945] Appellant's Brief, para. 425, *citing* Trial Judgement, paras. 169, 204, 208.
[946] Appellant's Brief, para. 425, *citing* Trial Judgement, paras. 103, 109.
[947] Appellant's Brief, para. 426.
[948] Trial Judgement, paras. 317, 377.
[949] Trial Judgement, para. 309.
[950] Trial Judgement, paras. 308, 309, 317, 377.
[951] Trial Judgement, paras. 309, 317.
[952] Trial Judgement, paras. 203, 219, 231, 232, 242.

15 April 1994 in addition to being at all the other locations where the Trial Chamber found him to be on that day. As noted above, the Trial Chamber did not make a finding as to the timing of the Gihundwe sector searches or the duration of the Appellant's involvement in them. Similarly, there was no finding as to the timing of his participation in the transfer of Tutsi refugees to Kamarampaka stadium,[954] the attack on Jean de Dieu Gakwandi at Védaste Habimana's house,[955] or his presence at a roadblock near the Bank of Kigali where he ordered the killing of four Tutsis, including Emilien Nsengumuremyi.[956] The Appeals Chamber notes that the Appellant does not challenge the absence of findings as to the specific times of these events. Although the Trial Chamber did not expressly consider the feasibility of the Appellant's presence at all these events, it was not unreasonable to conclude that he could have participated in all of them on 15 April 1994 given the close geographical proximity of the four locations.[957]

379. Finally, the Appellant further points to evidence that he stayed in his office on 14 and 15 April 1994 and that he was looking at three corpses near Paul Ndorimana's house on 14 April 1994.[958] However, the Trial Chamber did not accept the evidence of his alibi for 14 and 15 April 1994,[959] which it found to amount to a "simple denial of everything alleged by [Witness] LDC" and which it did not find credible.[960] In this respect, the Appellant has failed to demonstrate that the Trial Chamber erred in relying on Witness LDC's testimony over that of the Appellant. Furthermore, with respect to the Appellant's argument that Witness LDC testified that the Appellant was at Ndorimana's house on 14 April 1994, the Appeals Chamber finds that the Appellant misrepresents Witness LDC's testimony who at no point testified to that effect.[961] Accordingly, the Appellant's argument is dismissed.

G. Conclusion

380. For the foregoing reasons, the Appeals Chamber dismisses this ground of appeal in its entirety.

[953] *See* Exhibits P2, P4, D52.
[954] Trial Judgement, paras. 204, 219.
[955] Trial Judgement, paras. 103, 109. Witness BRG testified that the Gihundwe school complex was just up a small hill from Védaste Habimana's house (T. 10 January 2007 p. 50).
[956] Trial Judgement, paras. 116, 351.
[957] Exhibits P2, D52.
[958] Appellant's Brief, paras. 425, 427.
[959] Trial Judgement, para. 316.
[960] Trial Judgement, para. 316.
[961] T. 10-12 January 2007.

XXI. ALLEGED ERRORS RELATING TO DOCUMENTARY EVIDENCE (GROUND OF APPEAL 35)

381. In his Notice of Appeal, the Appellant argues that the Trial Chamber erred in law and in fact by failing to consider documentary evidence tendered by the Defence including exhibits, portions of the *Ntagerura et al*. Trial and Appeal Judgements, and Defence submissions.[962] These arguments are not expanded upon in his Appellant's Brief, but are subsumed within other relevant grounds of appeal.[963] Accordingly, the Appeals Chamber does not consider them here but in relation to other grounds of appeal, as appropriate.

[962] Notice of Appeal, paras. 128-146.
[963] Appellant's Brief, para. 435.

XXII. SENTENCING APPEAL (GROUND OF APPEAL 36)

382. The Trial Chamber sentenced the Appellant to life imprisonment for genocide (Count 1), murder as a crime against humanity (Count 2), extermination as a crime against humanity (Count 3), and other inhumane acts as a crime against humanity (Count 4).[964]

383. The Appellant claims that the Trial Chamber erred in law and in fact in imposing a sentence of life imprisonment.[965] He challenges the Trial Chamber's assessment of the gravity of his crimes as well as of the aggravating and mitigating factors.[966] He submits that, if the Appeals Chamber maintains any of his convictions, it should reduce his sentence.[967]

384. The Appeals Chamber considers these arguments in turn, bearing in mind that Trial Chambers are vested with broad discretion in determining an appropriate sentence due to their obligation to individualize penalties to fit the circumstances of the convicted person and the gravity of the crime.[968] As a rule, the Appeals Chamber will revise a sentence only if the appealing party demonstrates that the Trial Chamber committed a discernible error in exercising its sentencing discretion or that it failed to follow the applicable law.[969] However, in light of the reversal of a number of the Appellant's convictions, the Appeals Chamber will also consider whether a revision of the sentence is warranted.

385. The Appeals Chamber summarily dismisses the unsubstantiated submission that the Trial Chamber "gave disproportionate weight to aggravating circumstances".[970]

A. Mitigating Factors

386. The Appellant argues that the Trial Chamber erred by "failing to consider all the circumstances in mitigation presented by witnesses for the Defence."[971] The Prosecution responds

[964] Trial Judgement, paras. 381, 396. *See also* Trial Judgement, para. 395 ("Nchamihigo is convicted of nine (9) charges of Genocide, two (2) charges of Murder as a Crime against Humanity, four (4) charges of Extermination as a Crime against Humanity, and one (1) charge of Other Inhumane Acts as a Crime against Humanity").
[965] Notice of Appeal, para. 148. *See also* AT. 29 September 2009 p. 52.
[966] Notice of Appeal, paras. 147-154; Appellant's Brief, paras. 436-444.
[967] Appellant's Brief, para. 457.
[968] *See Karera* Appeal Judgement, para. 385; *Nahimana et al.* Appeal Judgement, para. 1037; *Simba* Appeal Judgement, para. 306; *Ntagerura et al.* Appeal Judgement, para. 429.
[969] *See Karera* Appeal Judgement, para. 385; *Nahimana et al.* Appeal Judgement, para. 1037; *Simba* Appeal Judgement, para. 306; *Ntagerura et al.* Appeal Judgement, para. 429.
[970] Notice of Appeal, para. 151, *referring to* Trial Judgement, para. 391.
[971] Notice of Appeal, para. 153, *referring to* Trial Judgement, para. 393.

that the Trial Chamber did not err in its assessment of the mitigating factors advanced by the Appellant.[972]

387. Pursuant to Rule 101(B)(ii) of the Rules, a Trial Chamber is required to take into account any mitigating circumstances in determining a sentence.[973] However, Trial Chambers have broad discretion in determining the weight, if any, to be accorded to them.[974]

388. In this case, the Trial Chamber addressed possible mitigating factors.[975] In terms of his career as a public servant, the Trial Chamber concluded that the Appellant failed to demonstrate on the balance of probabilities that this showed "any particular qualities of character", in particular given the evidence that he had previously used violence as a political tool.[976] The Appellant has not challenged these conclusions.

389. Furthermore, the Trial Chamber expressly considered as mitigating factors the Appellant's role as a good father and the fact that he assisted members of his family and others of Tutsi origin, such as nuns, during the conflict.[977] It found that his role as a good father did not have a "high impact" on his sentence and described his assistance to his family, others of Tutsi origin, and the nuns as "limited and selective".[978] The Appeals Chamber has previously determined that "selective assistance" may be given only limited weight as a mitigating factor.[979]

390. The Appellant further claims that the Trial Chamber should have mitigated his sentence based on his role in transferring refugees from Kamarampaka stadium to Nyarushishi camp,[980] and the fact that his sister-in-law was attacked in his home.[981] The Appeals Chamber notes that the Appellant made only general sentencing submissions during closing arguments.[982] In such circumstances, the Trial Chamber was not under an obligation to seek out information that counsel

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[972] Respondent's Brief, paras. 231-235.
[973] *Muhimana* Appeal Judgement, para. 231; *Kamuhanda* Appeal Judgement, para. 354; *Kajelijeli* Appeal Judgement, para. 294.
[974] *Simba* Appeal Judgement, para. 306 ("The Appeals Chamber recalls that the Trial Chamber has considerable discretion in determining an appropriate sentence, which includes the weight given to mitigating and aggravating circumstances.").
[975] Trial Judgement, para. 393.
[976] Trial Judgement, para. 393.
[977] Trial Judgement, para. 393.
[978] Trial Judgement, para. 393.
[979] *See, e.g., Kajelijeli* Appeal Judgement, para. 311; *Kvočka et al.* Appeal Judgement, para. 693; *^elebići* Appeal Judgement, paras. 775, 776.
[980] Appellant's Brief, para. 442.
[981] Appellant's Brief, para. 443.
[982] There are no sentencing submissions in the Defence Final Trial Brief. In the Appellant's closing arguments, he makes general submissions, which include only a passing reference to his sister-in-law. *See* T. 23 January 2008 p. 43 ("Concerning his personal life, his wife, sister-in-law and others, the Trial Chamber had useful information."). There is no mention in his sentencing submissions of the refugee transfer from the stadium to Nyarushishi refugee camp.

did not see fit to put before it at the appropriate time.[983] Rule 86(C) of the Rules clearly indicates that sentencing submissions shall be addressed during closing arguments, and it was therefore the Appellant's prerogative to identify any mitigating circumstances instead of directing the Trial Chamber's attention to the record in general.[984]

391. The Trial Chamber, after weighing the gravity of his crimes against his mitigating and individual circumstances, concluded that no mitigation was warranted.[985] The Appeals Chamber finds that the Trial Chamber did not abuse its discretion in so concluding. The Appeals Chamber recalls that even where mitigating circumstances exist, a Trial Chamber "is not precluded from imposing a sentence of life imprisonment, where the gravity of the offence requires the imposition of the maximum sentence provided for."[986]

B. Expression of Remorse

392. The Appellant claims that the Trial Chamber erred by aggravating his sentence based on his failure to express remorse. The Appellant further claims that he could not express remorse for crimes he did not commit.[987]

393. The Prosecution responds that the Trial Chamber did not aggravate the Appellant's sentence based on his failure to express remorse, but rather determined that the statement he made during closing arguments on 23 January 2008[988] was not a mitigating factor because it did not constitute an expression of remorse.[989]

394. In reply, the Appellant contends that his statement on 11 September 2007 to the effect that there was no genocide in Cyangugu was not remorseful because he was actually responding to a question regarding the existence of genocide in Cyangugu prefecture, and not Rwanda as a whole.[990]

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[983] *Kupre{ki} et al.* Appeal Judgement, para. 414.
[984] *Muhimana* Appeal Judgement, para. 231.
[985] Trial Judgement, para. 394.
[986] *Karera* Appeal Judgement, para. 390; *Niyitegeka* Appeal Judgement, para. 267; *Musema* Appeal Judgement, para. 396.
[987] Notice of Appeal, para. 152; Appellant's Brief, para. 441.
[988] Respondent's Brief, para. 236, *citing* T. 23 January 2008 p. 56 ("Lastly, and to conclude, I regret the tragedy which befell Rwanda following the death of the president of the republic, and the fact that the war broke out again and got Rwandans to kill one another.").
[989] Respondent's Brief, para. 236.
[990] Brief in Reply, para. 151. The Appeals Chamber notes that the Appellant is referring to an answer he gave during cross-examination on 21 September 2007. *See* T. 21 September 2007 p. 36 ("Now, on the question as to whether there was genocide in Cyangugu, now, I would say there were massacres. But then to move from there and say there was genocide, I do not share that view of yours.").

395. Contrary to the Appellant's assertion, the Trial Chamber did not consider the lack of expression of remorse as an aggravating factor.[991] Instead, after concluding its consideration of the aggravating factors in the case and at the outset of its analysis of the mitigating factors, it considered the Prosecution allegation that the Appellant had not expressed any remorse. It noted the Appellant's statement made during the closing arguments but determined that it could not be viewed as an expression of remorse. It further found that the Appellant "did not even admit that genocide was committed in his country in 1994."[992]

396. Furthermore, the Appeals Chamber disagrees with the Appellant's argument that he could not express remorse for crimes he did not commit. It recalls that the ICTY Appeals Chamber held:

> an accused can express sincere regrets without admitting his participation in a crime. In such circumstances, remorse nonetheless requires acceptance of some measure of moral blameworthiness for personal wrongdoing, falling short of the admission of criminal responsibility or guilt. This follows from the ordinary meaning of the term remorse as well as the approach taken in the few cases where expressions of remorse made by accused who maintained their innocence have been accepted in mitigation.
>
> However, beyond such expressions of remorse, an accused might also express sympathy, compassion or sorrow for the victims of the crimes with which he is charged. Although this does not amount to remorse as such, it may nonetheless be considered as a mitigating factor. The Appeals Chamber notes that such expressions of sympathy or compassion have been accepted as mitigating circumstances by Trial Chambers of both the ICTR and this Tribunal.[993]

397. In relation to the Appellant's testimony on 11 September 2007 that no genocide was committed in Cyangugu between April and July 1994, it is true that the Trial Chamber found that he denied the existence of genocide in "his country"[994] whereas he only denied it in relation to Cyangugu.[995] However, the Appeals Chamber finds that this error does not affect the Trial Chamber's finding that he did not express any remorse and has no impact on the sentence in light of the fact that the Trial Chamber did not consider the absence of an expression of remorse to be an aggravating factor.

C. Gravity of the Offence and Impact of the Appeals Chamber's Findings on the Appellant's Sentence

398. The Appellant submits that the Trial Chamber erred in sentencing him to life imprisonment because, in the Tribunal's practice, such a sentence is generally reserved for those who occupied positions of authority, who planned or ordered atrocities, or who acted with particular zeal and

[991] *See* Trial Judgement, para. 392.
[992] Trial Judgement, para. 392.
[993] *Strugar* Appeal Judgement, paras. 365, 366 (footnotes omitted).
[994] Trial Judgement, para. 392.
[995] T. 21 September 2007 p. 36.

sadism.[996] In contrast, the Trial Chamber found that he lacked an official post within a political party, was not a leader of a militia group, and his actual leadership role as Deputy Prosecutor "was at the very bottom of the ladder".[997] Given "the minimal role played by the Appellant", he argues the Trial Chamber should have given him a lower sentence.[998]

399. The Prosecution responds that the Appellant relies on limited findings by the Trial Chamber regarding his authority, which concern specific allegations in the Indictment,[999] and ignores the Trial Chamber's general finding that his position as Deputy Prosecutor was a "prominent position of trust".[1000] The Prosecution claims that the Trial Chamber specifically considered that the Appellant did not play a "minimal role" because it found that he personally ordered, instigated, and aided and abetted several crimes as a principal perpetrator.[1001]

400. The Trial Chamber recalled its obligation "to reflect the gravity of the crimes for which the accused has been convicted."[1002] In this respect, it emphasized that the Appellant instigated the massacre of thousands of Tutsis and Hutu political opponents at places of refuge, and personally ordered, instigated, and aided and abetted systematic killings of influential Tutsis and Hutu political opponents.[1003] It concluded that the Appellant was a principal perpetrator,[1004] which runs contrary to the Appellant's suggestion that his role was minimal. The Appeals Chamber finds that the Appellant has failed to demonstrate that the Trial Chamber erred in this respect.

401. However, as the Appeals Chamber considers that the reversal of a number of the Appellant's convictions calls for a revision of the sentence, the question whether the Trial Chamber erred in imposing a sentence of imprisonment for the remainder of the Appellant's life is moot and need not be considered. Instead, the Appeals Chamber will consider how its findings on the Appellant's convictions impact the sentence.

402. The Appeals Chamber recalls that it has reversed the Appellant's convictions in relation to: aiding and abetting the killing of Joséphine Mukashema, Hélène, and Marie; instigating the killings of refugees taken from Kamarampaka stadium on 16 April 1994; instigating the killings at Shangi

[996] Notice of Appeal, para. 149; Appellant's Brief, paras. 436, 437.
[997] Appellant's Brief, paras. 438, 439, 444, *citing* Trial Judgement, para. 53.
[998] Appellant's Brief, para. 440.
[999] Respondent's Brief, paras. 232, 233.
[1000] Respondent's Brief, para. 233, *quoting* Trial Judgement, para. 395.
[1001] Respondent's Brief, para. 234.
[1002] Trial Judgement, para. 387.
[1003] Trial Judgement, para. 388.
[1004] Trial Judgement, para. 388.

parish; instigating the killings at Hanika parish; instigating the massacre at Mibilizi parish and hospital; and instigating the massacre at Nyakanyinya school.

403. While the reversal of these convictions represents a considerable reduction in the Appellant's culpability, the Appeals Chamber affirms his convictions for instigating the killings of several people including Karangwa, Dr. Nagafizi, and Ndayisaba's family, ordering the attack on Jean de Dieu Gakwandi, instigating the killing of Father Boneza, and instigating the massacre in Gihundwe sector on 14 or 15 April 1994. Thus, the Appellant is guilty of genocide and of extermination, murder, and other inhumane acts as crimes against humanity. These are among the gravest crimes known to mankind.

404. In light of the foregoing, the Appeals Chamber, Judge Pocar dissenting, sets aside the Appellant's sentence of imprisonment for the remainder of his life, and sentences the Appellant to a term of 40 years of imprisonment.

XXIII. DISPOSITION

405. For the foregoing reasons, **THE APPEALS CHAMBER**,

PURSUANT to Article 24 of the Statute and Rule 118 of the Rules;

SITTING in open session;

NOTING the written submissions of the parties and their oral arguments presented at the hearing on 29 September 2009;

GRANTS, Judge Pocar and Judge Liu dissenting, the Appellant's eighth ground of appeal, and **REVERSES** his convictions for genocide and murder as a crime against humanity in relation to aiding and abetting the killing of Joséphine Mukashema, Hélène, and Marie;

GRANTS, Judge Pocar dissenting, the Appellant's twenty-fourth through twenty-sixth grounds of appeal, and **REVERSES** his conviction for genocide in relation to instigating the killings of refugees taken from Kamarampaka stadium on 16 April 1994;

GRANTS the Appellant's twenty-ninth ground of appeal, and **REVERSES** his conviction for genocide in relation to instigating the killings at Shangi parish;

GRANTS the Appellant's thirty-first ground of appeal, and **REVERSES** his conviction for genocide in relation to instigating the killings at Hanika parish;

GRANTS, Judge Pocar dissenting, the Appellant's thirty-second ground of appeal, and **REVERSES** his convictions for genocide and extermination as a crime against humanity in relation to instigating the massacre at Mibilizi parish and hospital;

GRANTS, Judge Pocar dissenting, the Appellant's thirty-third ground of appeal, and **REVERSES** his convictions for genocide and extermination as a crime against humanity in relation to instigating the massacre at Nyakanyinya school;

DISMISSES the Appellant's appeal in all other respects;

AFFIRMS the Appellant's convictions for genocide and extermination as a crime against humanity in relation to instigating the killings of people including Karangwa, Dr. Nagafizi, and Ndayisaba's family on or about 7 April 1994;

AFFIRMS the Appellant's conviction for other inhumane acts as a crime against humanity in relation to ordering the attack on Jean de Dieu Gakwandi;

AFFIRMS the Appellant's convictions for genocide and murder as a crime against humanity for instigating the killing of Father Boneza;

AFFIRMS the Appellant's convictions for genocide and extermination for instigating the massacre in Gihundwe sector on 14 or 15 April 1994;

SETS ASIDE, Judge Pocar dissenting, the sentence imposed by the Trial Chamber and **SENTENCES** the Appellant to forty (40) years of imprisonment to run as of this day, subject to credit being given under Rules 101(C) and 107 of the Rules for the period the Appellant has already spent in detention since his arrest on 19 May 2001;

RULES that this Judgement shall be enforced immediately pursuant to Rule 119 of the Rules; and

ORDERS that, in accordance with Rule 103(C) and Rule 107 of the Rules, the Appellant is to remain in the custody of the Tribunal pending the finalisation of arrangements for his transfer to the State where his sentence will be served.

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

Judge Patrick Robinson, Presiding	Judge Fausto Pocar	Judge Liu Daqun
Judge Theodor Meron	Judge Carmel Agius	

Judges Pocar and Liu append a joint partially dissenting opinion.

Judge Pocar appends a partially dissenting opinion.

Done this eighteenth day of March 2010 at Arusha, Tanzania.

[Seal of the Tribunal]

XXIV. JOINT PARTLY DISSENTING OPINION OF JUDGES POCAR AND LIU

1. In this Judgement, the Appeals Chamber allows the Appellant's eighth ground of appeal, reversing the Appellant's conviction for genocide and murder as a crime against humanity for aiding and abetting the killing of three Tutsi girls.[1] While we concur with the Majority that the Trial Chamber erred in finding that the Appellant threatened Witness BRD, for the reasons expressed below we are unable to agree with the rest of the Majority reasoning and the consequent reversal of the Trial Chamber's verdict under this ground.

2. Although we consider that there was no evidence to support the Trial Chamber's finding that the Appellant threatened Witness BRD, in our view this error was immaterial to the relevant convictions for his role in facilitating the killings of Joséphine Mukashema, Hélène and Marie. Significantly, we note that "threats" were not assessed by the Trial Chamber in the context of the killings of the three girls; rather they were considered in an unrelated section of the Trial Judgement.[2] In convicting the Appellant for aiding and abetting the killing of the three girls, the Trial Chamber did not rely or indeed consider the threats themselves.[3]

3. In relying on the evidence of Witness BRD, the Trial Chamber noted that there was no testimony to corroborate Witness BRD's account and, despite his conviction for forgery,[4] he "impressed the Chamber".[5] We recall that the Trial Chamber has full discretionary power in assessing the appropriate weight and credibility to be accorded to the testimony of a witness.[6] This assessment is based on a number of factors, including the witness' demeanour in court, his role in the event in question, the plausibility and the clarity of his testimony, whether there are contradictions or inconsistencies in his successive statements or between his testimony and other evidence, any prior examples of false testimony, any motivation to lie and the witness' responses during cross-examination.[7] In the present case, the Trial Chamber considered that Witness BRD

[1] Appeal Judgement, para. 83. *See* also Appeal Judgement, paras. 73-82.
[2] Trial Judgement, paras. 125, 353, 354. *Cf.* Trial Judgement, para. 132.
[3] Trial Judgement, paras. 118-125, 353, 354.
[4] In the circumstances, we consider that this constituted a minor misdemeanour and note that it was a factor which the Trial Chamber took into account in its assessment of Witness BRD's credibility. In our view, rejecting the testimony of a witness solely on the basis that he has committed a minor domestic offence is incompatible with the Tribunal's established jurisprudence which allows Trial Chambers to rely on the testimony of a single, uncorroborated accomplice witness. *See* Appeal Judgement, paras. 42-48.
[5] Trial Judgement, para. 125.
[6] *Nahimana et al.* Appeal Judgement, para. 194; *Ntagerura et al.* Appeal Judgement, para. 388.
[7] *Nahimana et al.* Appeal Judgement, para. 194.

testified in "a forthright manner" and "stood firm under cross-examination".[8] As a result, it found his story to be persuasive.[9] Therefore, we consider that the Trial Chamber carefully assessed Witness BRD's credibility. In these circumstances, deference must be accorded to the Trial Chamber's assessment of Witness BRD's credibility.

4. Under his eighth ground of appeal, the Appellant also challenges the Trial Chamber's assessment of Defence evidence relating to the school records. According to the Appellant, these records confirm that, contrary to the evidence of Witness BRD, neither he nor the three girls attended the Nyalukemba Institute. In our view, the Appellant is attempting to relitigate a matter that was raised at trial. We note that the Trial Chamber considered this evidence[10] but "in light of RDCB's testimony that the records were compiled at the end of the year, the chaotic times of 1994, and the significant difference in the numbers of students on the records between the two years, the Chamber [did] not rely on the records to establish whether these students attended that school or not."[11] We find no error in this approach.

5. Furthermore, we observe that Trial Chamber noted that Witness BRD had no opportunity to comment on the school records as they were not put to him during his testimony.[12] In our view, the Trial Chamber did not "blame" the Appellant for failing to raise the issue of the school records with Witness BRD, rather, this was a factor that the Trial Chamber took into account when examining the impact of the attendance records on its assessment of Witness BRD's credibility. Therefore we cannot agree that the Trial Chamber reversed the burden of proof, as suggested by the Appellant.[13] Furthermore, we consider that the cross-examination of a Prosecution witness is a matter of defence strategy, which rests squarely within the discretion of the defence. It is not for the Trial Chamber to dictate to a party how to conduct its case[14] and the defence cannot itself blame the Trial Chamber for its own failing.

6. In convicting the Appellant for aiding and abetting the killing of the three girls, the Trial Chamber accepted the evidence of Witness BRD which confirmed that: (i) the Appellant knew that the girls were Tutsi; (ii) the Appellant accompanied a member of the *Interahamwe* to seek out the girls at BRD's abode; (iii) the girls were subsequently killed; and (iv) the Appellant told Witness

[8] Trial Judgement, para. 125.
[9] Trial Judgement, para. 125.
[10] Trial Judgement, paras. 121
[11] Trial Judgement, paras. 123.
[12] Trial Judgement, para. 123.
[13] Appellant's Brief, para. 90. We consider that the Appellant's related submissions with respect to the alleged reversal of the burden of proof should be similarly dismissed (*See* Appellant's Brief, para. 87).
[14] *Kraji{nik* Appeal Judgement, para. 42.

BRD that they had been killed because they were *Inkotanyi*.[15] Having considered these factors, the Trial Chamber concluded that the "only reasonable inference to be drawn from [Witness BRD's] testimony [was] that Nchamihigo took the girls to the roadblock for the purpose of having them killed because they were *Inkotanyi*."[16] In the context of the Rwandan genocide and the combination of all these factors, we consider that the Appellant has not demonstrated that a reasonable Trial Chamber could not have concluded that the only conclusion from the evidence on the record was that he aided and abetted the killings of the three girls. Accordingly, we consider that the Appellant's eighth ground of appeal should have been dismissed and his conviction under this ground upheld.

Done in English and French, the English text being authoritative

Judge Fausto Pocar

Judge Liu Daqun

Dated this eighteenth day of March 2010,
At Arusha,
Tanzania.

Seal of the Tribunal

[15] Trial Judgement, paras. 119, 120. *See* also T. 24 January 2007 pp. 49-50.
[16] Trial Judgement, para. 125.

XXV. PARTLY DISSENTING OPINION OF JUDGE POCAR

1. In this Judgement, based on the Trial Chamber's erroneous assessment of Witness BRK's credibility, the Appeals Chamber allows the Appellant's 24th to 26th, 32nd and 33rd grounds of appeal, reversing the Appellant's conviction for: (i) genocide for instigating the killings of several Tutsi refugees at the Gendarmerie of Cyangugu on 16 April 1994;[1] (ii) genocide and extermination as a crime against humanity for instigating the massacres perpetrated against the Tutsi refugees at Mibilizi parish and hospital on 18 April 1994;[2] and (iii) genocide and extermination as a crime against humanity for instigating the massacre of Tutsi refugees at Nyakanyinya school on 12 April 1994.[3] To my regret, for the reasons expressed below, I respectfully disagree with both the reasoning and the conclusions of the Majority of the Appeals Chamber and the consequent reversal of the Appellant's convictions for these events based on the lack of credibility of Witness BRK. Without prejudice to further grounds for dissent, I will confine myself here to one question that appears to me to be of particular significance – the extent to which the Appeals Chamber must give deference to a Trial Chamber's assessment of witnesses' credibility. In the present case, this is a question with regard to which I radically disagree with the Majority's reasoning and, therefore, wish to set out my approach to the matter.

2. I recall that the Trial Chamber has full discretionary power in assessing the appropriate weight and credibility to be accorded to the testimony of a witness.[4] Furthermore, as already stated in this Judgement,[5] a Trial Chamber also has full discretion to rely on uncorroborated, but otherwise credible, accomplice witness testimony, provided it assesses such testimony with caution. In its analysis, under the Appellant's 4th and part of 5th grounds of appeal, the Appeal Chamber correctly states that:

> In so doing, a Trial Chamber has to consider relevant factors on a case-by-case basis, including the witness's demeanour in court; his role in the events in question; the plausibility and clarity of his testimony; whether there are contradictions or inconsistencies in his successive statements or between his testimony and other evidence; any prior examples of false testimony; any motivation to lie; and the witness's responses during cross-examination. Some factors are particularly relevant for the assessment of accomplice witnesses, including: the extent to which discrepancies in the testimony were explained; whether the accomplice witness has made a plea agreement with the Prosecution; whether he has already been tried and, if applicable, sentenced for his own crimes or

[1] Appeal Judgement, paras. 313-314. *See* also Appeal Judgement, paras. 301-314.
[2] Appeal Judgement, para. 322. *See* also Appeal Judgement, paras. 315-322.
[3] Appeal Judgement, para. 326. *See* also Appeal Judgement, paras. 323-326.
[4] *Nahimana et al.* Appeal Judgement, para. 194; *Ntagerura et al.* Appeal Judgement, para. 388.
[5] Appeal Judgement, paras. 42-48.

> is still awaiting the completion of his trial; and whether the witness may have any other reason for holding a grudge against the accused.[6]

It is in light of this standard that the Trial Chamber's assessment of the evidence has to be considered.

3. In the present case, the Trial Chamber considered with prudence the above-mentioned relevant factors. More specifically, in relying on the evidence of Witness BRK, the Trial Chamber considered Witness's BRK demeanour in court and his responses during cross-examination. The Trial Chamber found that: (i) "[Witness] BRK's testimony was direct and forthright";[7] (ii) he "provided detailed evidence";[8] and (iii) he "responded fully" when asked the relevant questions by the Defence.[9]

4. Similarly, the Trial Chamber further examined Witness BRK's role in the events in question, and whether there were any prior examples of false testimony and any motivation to lie. In particular, the Trial Chamber noted that he was "an accomplice"[10] and "an active participant in the massacre".[11] It further considered in detail that:

> BRK was arrested in 1994 on charges relating to burning houses during the genocide, to which he pleaded guilty in 1999. He received a 9-year prison sentence. Having been released provisionally in 2003 he subsequently pleaded guilty in 2005 before the Gacaca courts to further crimes during attacks in Nyakanyinya, Mibilizi and at Kamarampaka Stadium after being confronted by witnesses who had accused him. He has been charged as a Category I offender and his case is still pending. He is also charged with forgery. He explained that he had initially pleaded guilty to the offences in relation to which he had been charged and did not volunteer confessions for other crimes. When he was confronted with further charges, he decided to tell the truth. It is in relation to the events about which he confessed in 2005 that he testified against Nchamihigo.[12]

Consequently, in accordance with established jurisprudence, the Trial Chamber "cautiously considered the circumstances under which [Witness BRK testified] in this case and his evidence".[13] The Trial Chamber also considered the Appellant's submission that "[Witness] BRK's failure to

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[6] Appeal Judgement, para. 47 (*referring* to *Nahimana et al.* Appeal Judgement, para. 194; *Simba* Appeal Judgement, para. 129; *Kajelijeli* Trial Judgement, para. 151; *Kordi} and ^erkez* Appeal Judgement, para. 266; *Blagojevi} and Joki}* Trial Judgement, para. 24).
[7] Trial Judgement, para. 285.
[8] Trial Judgement, para. 285.
[9] Trial Judgement, para. 304.
[10] Trial Judgement, paras. 214, 302. *See* also Trial Judgement, para. 181, where the Trial Chamber found that Witness BRK participated in killings at Gendarmerie of Cyangugu. *See* also, Trial Judgement, para. 305, where the Trial Chamber stated that Witness "BRK participated in the attack on the [Nyakanyinya] school".
[11] Trial Judgement, para. 285.
[12] Trial Judgement, para. 284 (footnote omitted). *See* also T. 22 January 2007 pp. 4, 5.
[13] Trial Judgement, para. 214. *See* also Trial Judgement, para. 285, where the Trial Chamber states that it "cautiously evaluated the totality of [Witness BRK] evidence and the circumstances in which it was tendered when weighing its probative value".

have confessed fully to his crimes earlier than he did […] was […] affecting his credibility",[14] but rejected this argument. In doing so, the Trial Chamber explained that "[a]n initial failure for a witness to incriminate himself is not a reason to disbelieve a subsequent confession".[15] In addition to exercising caution when examining Witness BRK's evidence, the Trial Chamber was "mindful of [Witness] BRK's thought that he could benefit from lenienc[y] if he gives evidence for the Prosecution".[16] While the Trial Chamber conceded that part of Witness BRK testimony "could have been exaggerated or invented to further implicate [the Appellant]"[17], it ultimately concluded that Witness BRK "[did] not have any motive or incentive to falsely incriminate [the Appellant]".[18] In addition, the Trial Chamber found that Witness "BRK did not minimise his own responsibility and openly testified about events for which he will suffer penal consequences".[19] The Trial Chamber concluded that it "believes [Witness] BRK's account of the killings at the Gendarmerie on16 April 1994".[20] Similarly, with regard to the massacres at Mibilizi Parish and Hospital and the attack on Nyakanyinya school, the Trial Chamber explicitly states that it "believes" Witness BRK.[21] Finally, when weighing the probative value of Witness BRK's evidence, the Trial Chamber stressed that it "cautiously evaluated the totality of his evidence and the circumstances in which it was tendered".[22] In sum, the Trial Chamber examined Witness BRK's testimony "with great care"[23] and provided thoughtful reasoning. I find no error in this approach.

5. With similar prudence, the Trial Chamber carefully assessed whether there were any discrepancies with prior statements, especially with regard to the exact dates of the events in question. Despite Witness BRK's uncertainty about dates, the Trial Chamber clearly explained why, in these circumstances, it accepted Witness BRK's testimony.[24] The Trial Chamber concluded that it "[did] not view [Witness] BRK's uncertainty with dates as indicating any lack of credibility or reliability".[25] In my view, it was not unreasonable for the Trial Chamber to find Witness BRK's evidence credible notwithstanding his inability to recall dates. More importantly, the Trial Chamber

[14] Trial Judgement, para. 304.
[15] Trial Judgement, para. 304.
[16] Trial Judgement, para. 285.
[17] Trial Judgement, para. 215.
[18] Trial Judgement, para. 214.
[19] Trial Judgement, para. 285. *See* also Trial Judgement, para. 218, where the Trial Chamber found that "BRK had confessed to the judicial authorities in Rwanda that he was one of th[e] killers [at the Gendarmerie of Cyangugu], quite independently of any prosecution against Nchamihigo, and accepts the penal consequences of his conduct".
[20] Trial Judgement, para. 218.
[21] Trial Judgement, paras. 285, 305.
[22] Trial Judgement, para. 285.
[23] Trial Judgement, para. 302.
[24] Trial Judgement, paras. 179, 291, 302, 305.
[25] Trial Judgement, para. 291.

was satisfied from Witness BRK's description of the sequence of events, when viewed in context with other evidence.

6. In addition, with regard to the events at the Gendarmerie of Cyangugu on 16 April 1994, while there were no other witnesses to the actual killings, the Trial Chamber found that Witness "BRK's evidence was supported in several aspects".[26] The Trial Chamber made similar findings with regards to the massacres at Mibilizi parish and hospital.[27]

7. In other words, the Trial Chamber fulfilled its obligations to carefully assess Witness BRK's credibility in light of his status as an accomplice. In these circumstances, deference must be accorded to the Trial Chamber's assessment of Witness BRK's credibility.

8. A Trial Chamber, as the primary trier of fact, is better placed than the Appeals Chamber to evaluate the probative value of witnesses' testimonies. In my view, the Appeals Chamber should not overturn or reassess Trial Chamber's findings regarding witnesses' credibility unless the Trial Chamber did not treat such evidence with caution and/or failed to consider the relevant factors in the case of uncorroborated accomplice witness testimony. In the present case, the Trial Chamber exercised extreme prudence in relying on Witness BRK and, therefore, correctly applied the legal standard. In contrast, the Majority is *de novo* assessing Witness BRK's credibility without having heard his testimony and partly bases its reasoning on discrepancies in Witness BRK's testimony. I believe this is an incorrect intrusion in the assessment correctly made by the Trial Chamber and is in violation of the applicable standard of review on appeal. According to such standard, deference must be accorded to the Trial Chamber's assessment of witnesses' credibility. While, as a matter of first impression, Witness BRK could reasonably be discredited, I am convinced that, given our deferential standard of review, we cannot conclude that the Trial Chamber acted unreasonably in crediting Witness BRK's testimony. I also find the Majority's reasoning difficult to reconcile with the general conclusions in paragraphs 42 to 48 of this Judgement, which emphasize that the Trial Chamber has discretionary power to rely on uncorroborated witness testimony.

9. In light of the above, I also dissent on the reduction in the sentence decided by the Appeals Chamber. I would leave the sentence imposed by the Trial Chamber undisturbed.

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[26] Trial Judgement, para. 218. *See* also Trial Judgement, para. 215.

[27] Trial Judgement, para. 286, where the Trial Chamber states that "[Witness] BRF said he often saw Nchamihigo go towards Mibilizi with *Interahamwe* who would boast about where they were going and where they had been. The Chamber believes BRF and views his evidence as supporting BRK's". *See* also Trial Judgement, para. 288, where the Trial Chamber found that "[Witness] LDB's knowledge of detail allows a clear inference that he was present at the attack. LDB's testimony supports BRK's". *See* also Trial Judgement, para. 289, where the Trial Chamber further relied on Witness LDC.

Done in English and French, the English text being authoritative

Judge Fausto Pocar

Dated this eighteenth day of March 2010,
At Arusha,
Tanzania.

Seal of the Tribunal

XXVI. ANNEX A – PROCEDURAL HISTORY

1. The main aspects of the appeal proceedings are summarized below.

A. Notices of Appeal and Briefs

2. Trial Chamber III pronounced the judgement in this case on 24 September 2008 and issued the written Trial Judgement on 12 November 2008.

3. The Appeals Chamber granted the Prosecution and the Appellant's requests for extensions of time to file their Notices of Appeal, ordering the Prosecution to file its notice no more than 30 days from the date of the filing of the written Trial Judgement and the Appellant to file his notice no more than 30 days from the date of the filing of the French translation of the written Trial Judgement.[1] The Prosecution did not ultimately file a notice of appeal.

4. The Appellant filed a confidential Notice of Appeal on 6 March 2009.[2] On 30 March 2009, the Appeals Chamber granted the Prosecution's request for an order to the Appellant to file a public version of his Notice of Appeal[3] and ordered the Appellant to file a public version within 10 days.[4] The Appellant filed a Revised Notice of Appeal on 14 April 2009.[5] On 29 April 2009, the Appeals Chamber ordered the Appellant to file a further revised version of his Notice of Appeal publicly within 10 days.[6] The Appellant filed a Second Revised Notice of Appeal on 11 May 2009.[7]

5. The Appeals Chamber dismissed the Appellant's motion to extend the word limit of his Appellant's Brief on 12 May 2009.[8] The Appellant filed his Appellant's Brief on 20 May 2009.[9]

6. On 15 May 2009, the Appeals Chamber dismissed a Prosecution motion requesting an extension of time to file its Respondent's Brief.[10] The Prosecution filed its Respondent's Brief on

[1] Decision on Motions for Extension of Time for Filing Notices of Appeal, 11 November 2008. *See also* Prosecutor's Motion for an Extension of Time to File a Notice of Appeal, 20 October 2008.
[2] *Acte d'Appel de la Défense*, 6 March 2009.
[3] Prosecution Motion on the Filing of the Defence Notice of Appeal, 12 March 2009. *See also Réponse de Siméon Nchamihigo à la* «Prosecution Motion on the Filing of the Defence Notice of Appeal», 20 March 2009.
[4] Decision on Prosecution Motion on the Filing of the Defence Notice of Appeal, 30 March 2009.
[5] *Acte d'Appel de la Défense, Révisé*, 14 April 2009.
[6] Decision on Prosecution Motion on the Filing of the Defence Revised Notice of Appeal, 29 April 2009.
[7] *Acte d'Appel de la Défense, Révisé*, 11 May 2009 ("Notice of Appeal").
[8] Decision on Defence Motion for Leave to Exceed the Word Limit, 12 May 2009.
[9] *Mémoire d'appel de la Défense*, filed confidentially on 20 May 2009 ("Appellant's Brief"); *Corrigendum au Mémoire d'appel de la Défense*, filed confidentially on 02 June 2009. Pursuant to the Order on Appellant's Submissions, 10 June 2009, the Appellant filed public versions of the Appellant's Brief and the *Corrigendum* on 25 June 2009 and 26 June 2009, respectively.

29 June 2009.[11] Subsequently, the Appellant filed a Motion for the French Translation of the Prosecutor's Respondent's Brief.[12] On 8 July 2009, the Appeals Chamber denied the Appellant's request for a 15-day extension of time to file his Reply Brief from the French translation of the Respondent's brief.[13] The Appellant filed his Reply Brief on 15 July 2009.[14]

B. Assignment of Judges

7. On 21 October 2008, the Presiding Judge of the Appeals Chamber assigned the following Judges to hear the appeal: Judge Fausto Pocar (Presiding), Judge Mohamed Shahabuddeen, Judge Liu Daqun, Judge Theodor Meron, and Judge Wolfgang Schomburg.[15] On 13 November 2008, Judge Carmel Agius was designated to replace Judge Wolfgang Schomburg in this case.[16] On 29 April 2009, Judge Fausto Pocar designated himself as the Pre-Appeal Judge.[17]

8. On 6 May 2009, the current Presiding Judge of the Appeals Chamber, Judge Patrick Robinson, designated himself to replace Judge Mohamed Shahabuddeen, and the composition of the Bench became as follows: Judge Patrick Robinson (Presiding), Judge Fausto Pocar, Judge Liu Daqun, Judge Theodor Meron, and Judge Carmel Agius.[18]

C. Other Motions

9. The Appellant filed a Complementary Annex and Corrigendum on 21 May 2009 and 2 June 2009, respectively.[19] On 9 June 2009, the Appeals Chamber rejected the Complementary Annex as invalid under paragraph 4 of the Practice Direction.[20]

10. On 14 August 2009, the Appellant filed two motions requesting permission to present additional evidence on appeal pursuant to Rule 115 of the Rules.[21] On 28 September 2009, the Appeals Chamber dismissed both motions.[22]

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[10] Decision on Prosecution Motion Requesting Extension of Time to File Respondent's Brief, 15 May 2009.
[11] Prosecution Response Brief, 29 June 2009 ("Respondent's Brief").
[12] *Requête demandant la traduction Française du mémoire du* [*Procureur*], 3 July 2009.
[13] Decision on Defence Motion for a French Translation of the Prosecutor's Respondent's Brief and for Extension of Time for the Filing of the Reply Brief, 8 July 2009.
[14] *Mémoire en Réplique de l'Appelant*, filed confidentially on 15 July 2009 ("Brief in Reply"). The Appellant filed a public version on 31 July 2009.
[15] Order Assigning Judges to a Case before the Appeals Chamber, 21 October 2008.
[16] Order Replacing a Judge in a Case before the Appeals Chamber, 13 November 2008.
[17] Order Designating a Pre-Appeal Judge, 29 April 2009.
[18] Order Replacing a Judge in a Case before the Appeals Chamber, 6 May 2009.
[19] *Annexe Complémentaire au Mémoire d'appel de la Défense (Art. 4 de la Directive pratique relative à la longueur des mémoires et des requêtes en appel)*, 21 May 2009; *Corrigendum au Mémoire d'appel de la Défense*, 2 June 2009. The Complementary Annex contains Annex 6 to the Appellant's Brief.
[20] Order on Appellant's Submissions, 10 June 2009.

D. Hearing of the Appeals

11. On 29 September 2009, the parties presented their oral arguments at a hearing held in Arusha, Tanzania, in accordance with the Scheduling Order of 22 July 2009.[23] On 5 March 2010 the Appeals Chamber granted in part the Appellant's request for correction of the transcripts of the appeal hearing.[24] Corrected versions of the appeal hearing transcripts were filed in French and English on 10 and 11 March 2010, respectively.

[21] *Requête de l'appelant demandant la permission de présenter devant la chambre d'appel des moyens de preuve supplémentaires*, filed confidentially and publicly on 14 August 2009; *Seconde requête de l'appelant demandant la permission de présenter des moyens de preuve supplémentaires*, 14 August 2009.
[22] Decision on Siméon Nchamihigo's First Motion for Leave to Present Additional Evidence on Appeal, filed confidentially on 28 September 2009; Decision on Siméon Nchamihigo's Second Motion for Leave to Present Additional Evidence on Appeal, 28 September 2009.
[23] Scheduling Order, 22 July 2009.
[24] Decision on Request for Correction of the Appeal Hearing Transcripts, 5 March 2010. *See also Requête de l'Appelant Siméon Nchamihigo afin de faire rectifier les transcripts de l'audience du 29 septembre 2009*, 15 February 2010.

XXVII. ANNEX B: CITED MATERIALS AND DEFINED TERMS

A. Jurisprudence

1. ICTR

Akayesu

The Prosecutor v. Jean-Paul Akayesu, Case No. ICTR-96-4-T, Judgement, 2 September 1998 ("*Akayesu* Trial Judgement")

The Prosecutor v. Jean-Paul Akayesu, Case No. ICTR-96-4-A, Judgement, 1 June 2001 ("*Akayesu* Appeal Judgement")

Bagilishema

The Prosecutor v. Ignace Bagilishema, Case No. ICTR-95-1A-A, Judgement, 3 July 2002 ("*Bagilishema* Appeal Judgement")

Bagosora *et al.*

The Prosecutor v. Théoneste Bagosora et al., Case No. ICTR-98-41-AR73, Decision on Aloys Ntabakuze's Interlocutory Appeal on Questions of Law Raised by the 29 June 2006 Trial Chamber I Decision on Motion for Exclusion of Evidence, 18 September 2006

Gacumbitsi

Sylvestre Gacumbitsi v. The Prosecutor, Case No. ICTR-2001-64-A, Judgement, 7 July 2006 ("*Gacumbitsi* Appeal Judgement")

Kajelijeli

The Prosecutor v. Juvénal Kajelijeli, Case No. ICTR-98-44A-T, Judgement and Sentence, 1 December 2003 ("*Kajelijeli* Trial Judgement")

Juvénal Kajelijeli v. The Prosecutor, Case No. ICTR-98-44A-A, Judgement, 23 May 2005 ("*Kajelijeli* Appeal Judgement")

Kamuhanda

The Prosecutor v. Jean de Dieu Kamuhanda, Case No. ICTR-95-54A-T, Judgement, 22 January 2004 ("*Kamuhanda* Trial Judgement")

Jean de Dieu Kamuhanda v. The Prosecutor, Case No. ICTR-95-54A-A, Judgement, 19 September 2005 ("*Kamuhanda* Appeal Judgement")

Karemera *et al.*

Édouard Karemera et al. v. The Prosecutor, Case ICTR-98-44-AR73, Decision on Prosecutor's Interlocutory Appeal Against Trial Chamber III Decision of 8 October 2003 Denying Leave to File an Amended Indictment, 19 December 2003 ("*Karemera et al.* Decision of 19 December 2003")

The Prosecutor v. Édouard Karemera et al., Case No. ICTR-98-44-AR73.6, Decision on Joseph Nzirorera's Interlocutory Appeal, 28 April 2006

Karera

François Karera v. The Prosecutor, Case No. ICTR-01-74-A, Judgement, 2 February 2009 ("*Karera* Appeal Judgement")

Kayishema and Ruzindana

The Prosecutor v. Clément Kayishema and Obed Ruzindana, Case No. ICTR-95-1-T, Judgement, 21 May 1999 ("*Kayishema and Ruzindana* Trial Judgement")

The Prosecutor v. Clément Kayishema and Obed Ruzindana, Case No. ICTR-95-1-A, Judgement (Reasons), 1 June 2001 ("*Kayishema and Ruzindana* Appeal Judgement")

Muhimana

Mikaeli Muhimana v. The Prosecutor, Case No. ICTR-95-1B-A, Judgement, 21 May 2007 ("*Muhimana* Appeal Judgement")

Musema

The Prosecutor v. Alfred Musema, Case No. ICTR-96-13-T, Judgement and Sentence, 27 January 2000 ("*Musema* Trial Judgement")

Alfred Musema v. The Prosecutor, Case No. ICTR-96-13-A, Judgement, 16 November 2001 ("*Musema* Appeal Judgement")

Muvunyi

Tharcisse Muvunyi v. The Prosecutor, Case No. ICTR-00-55A-A, Judgement, 29 August 2008 ("*Muvunyi* Appeal Judgement")

Nahimana *et al.*

Ferdinand Nahimana et al. v. The Prosecutor, Case No. ICTR-99-52-A, Public Redacted Version of the Decision on Motions Relating to the Appellant Hassan Ngeze's and the Prosecution's Request for Leave to Present Additional Evidence of Witnesses ABC1 and EB, 27 November 2006

Ferdinand Nahimana et al. v. The Prosecutor, Case No. ICTR-99-52-A, Decision on Appellant Jean-Bosco Barayagwiza's Motions for Leave to Present Additional Evidence pursuant to Rule 115 of the Rules of Procedure and Evidence, 8 December 2006

Ferdinand Nahimana et al. v. The Prosecutor, Case No. ICTR-99-52-A, Decision on the Prosecutor's Motion to Pursue the Oral Request for the Appeals Chamber to Disregard Certain Arguments Made by Counsel for Appellant Barayagwiza at the Appeals Hearing on 17 January 2007, 5 March 2007

Ferdinand Nahimana et al. v. The Prosecutor, Case No. ICTR-99-52-A, Judgement, 28 November 2007 ("*Nahimana et al.* Appeal Judgement")

Ndindabahizi

Emmanuel Ndindabahizi v. The Prosecutor, Case No. ICTR-01-71-A, Judgement, 16 January 2007 ("*Ndindabahizi* Appeal Judgement")

Ngirabatware

Augustin Ngirabatware v. The Prosecutor, Case No. ICTR-99-54-A, Decision on Augustin Ngirabatware's Appeal of Decisions Denying Motions to Vary Trial Date, 12 May 2009 ("*Ngirabatware* Decision of 12 May 2009")

Niyitegeka

The Prosecutor v. Eliézer Niyitegeka, Case No. ICTR-96-14-T, Judgement and Sentence, 16 May 2003 ("*Niyitegeka* Trial Judgement")

Eliézer Niyitegeka v. The Prosecutor, Case No. ICTR-96-14-A, Judgement, 9 July 2004 ("*Niyitegeka* Appeal Judgement")

Ntagerura *et al.*

The Prosecutor v. André Ntagerura et al., Case No. ICTR-99-46-T, Judgement and Sentence, 25 February 2004 ("*Ntagerura et al.* Trial Judgement")

The Prosecutor v. André Ntagerura et al., Case No. ICTR-99-46-A, Judgement, 7 July 2006 ("*Ntagerura et al.* Appeal Judgement")

Ntakirutimana

The Prosecutor v. Elizaphan Ntakirutimana and Gérard Ntakirutimana, Case Nos. ICTR-96-10-A and ICTR-96-17-A, Judgement, 13 December 2004 ("*Ntakirutimana* Appeal Judgement")

Rukundo

The Prosecutor v. Emmanuel Rukundo, Case No. ICTR-2001-70-T, Judgement, 27 February 2009 ("*Rukundo* Trial Judgement")

Rutaganda

The Prosecutor v. Georges Anderson Nderubumwe Rutaganda, Case No. ICTR-96-3-T, Judgement, 6 December 1999 ("*Rutaganda* Trial Judgement")

Georges Anderson Nderubumwe Rutaganda v. The Prosecutor, Case No. ICTR-96-3-A, Judgement, 26 May 2003 ("*Rutaganda* Appeal Judgement")

Georges Anderson Nderubumwe Rutaganda v. The Prosecutor, Case No. ICTR-96-03-R, Decision on Reconsideration, Review, Assignment of Counsel, Disclosure, and Clarification, 8 December 2006

Semanza

The Prosecutor v. Laurent Semanza, Case No. ICTR-97-20-T, Judgement and Sentence, 15 May 2003 ("*Semanza* Trial Judgement")

Laurent Semanza v. The Prosecutor, Case No. ICTR-97-20-A, Judgement, 20 May 2005 ("*Semanza* Appeal Judgement")

Seromba

The Prosecutor v. Athanase Seromba, Case No. ICTR-2001-66-A, Judgement, 12 March 2008 ("*Seromba* Appeal Judgement")

Simba

Aloys Simba v. The Prosecutor, Case No. ICTR-01-76-A, Judgement, 27 November 2007 ("*Simba* Appeal Judgement")

Zigiranyirazo

Protais Zigiranyirazo v. The Prosecutor, Case No. ICTR-01-73-A, Judgement, 16 November 2009 ("*Zigiranyirazo* Appeal Judgement")

2. ICTY

Aleksovski

Prosecutor v. Zlatko Aleksovski, Case No. IT-95-14/1-A, Judgement, 24 March 2000 ("*Aleksovski* Appeal Judgement")

Blagojević and Jokić

The Prosecutor v. Vidoje Blagojevi} and Dragan Jokić, Case No. IT-02-60-PT, Joint Decision on Motions Related to the Production of Evidence, 12 December 2002

Prosecutor v. Vidoje Blagojević and Dragan Jokić, Case No. IT-02-60-A, Judgement, 9 May 2007 ("*Blagojević and Jokić* Appeal Judgement")

Blaški}

Prosecutor v. Tihomir Bla{ki}, Case No. IT-95-14-A, Judgement, 29 July 2004 ("*Blaški}* Appeal Judgement")

Boškoski and Tarčulovski

Prosecutor v. Ljube Boškoski and Johan Tarčulovski, Case No. IT-04-82-A, Decision on Johan Tar~ulovski's Motion for Leave to Present Appellate Arguments in Order Different from that Presented in Notice of Appeal, to Amend the Notice of Appeal, and to File Sur-Reply, and on Prosecution Motion to Strike, 26 March 2009

Brđanin

Prosecutor v. Radoslav Brđanin, Case No. IT-99-36-A, Judgement, 3 April 2007 ("*Brđanin* Appeal Judgement")

Čelebići

Prosecutor v. Zejnil Delalić et al., Case No. IT-96-21-A, Judgement, 20 February 2001 ("*Čelebići* Appeal Judgement")

Gali}

Prosecutor v. Stanislav Gali}, Case No. IT-98-29-A, Judgement, 30 November 2006 ("*Gali}* Appeal Judgement")

Jelisić

Prosecutor v Goran Jelisić, Case No. IT-95-10-A, Judgement, 5 July 2001 ("*Jelisić* Appeal Judgement")

Kordić and ^erkez

Prosecutor v. Dario Kordić and Mario ^erkez, Case No. IT-95-14/2-A, Judgement, 17 December 2004 ("*Kordić and ^erkez* Appeal Judgement")

Krajišnik

Prosecutor v. Momčilo Krajišnik, Case No. IT-00-39-A, Judgement, 17 March 2009, ("*Krajišnik* Appeal Judgement")

Krsti}

Prosecutor v. Radislav Krsti}, Case No. IT-98-33-A, Judgement, 19 April 2004 ("*Krsti}* Appeal Judgement")

Kunarac

Prosecutor v. Dragoljub Kunarac et al., Case Nos. IT-96-23 & IT-96-23/1-A, Judgement, 12 June 2002 ("*Kunarac et al.* Appeal Judgement")

Kupreškić *et al.*

Prosecutor v. Zoran Kupreškić et al., Case No. IT-95-16-A, Judgement, 23 October 2001 ("*Kupreškić et al*. Appeal Judgement")

Kvo~ka *et al.*

Prosecutor v. Miroslav Kvo~ka et al., Case No. IT-98-30/1-A, Judgement, 28 February 2005 ("*Kvo~ka et al*. Appeal Judgement")

Limaj *et al.*

Prosecutor v. Fatmir Limaj et al., Case No. IT-03-66-A, Judgement, 27 September 2007 ("*Limaj et al.* Appeal Judgement")

Martić

Prosecutor v. Milan Marti}, Case No. IT-95-11-A, Judgement, 8 October 2008 ("*Marti}* Appeal Judgement")

Milošević

Prosecutor v. Dragomir Milošević, Case No. IT-98-29/1-A, Judgement, 12 November 2009 ("*Milošević* Appeal Judgement")

Mrk{i} and [ljivan~anin

Prosecutor v. Mile Mrk{i} and Veselin [ljivan~anin, Case No. IT-95-13/1-A, Judgement, 5 May 2009 ("*Mrk{i} and [ljivan~anin* Appeal Judgement")

Naletili} and Martinovi}

Prosecutor v. Mladen Naletili} and Vinko Martinovi}, Case No. IT-98-34-A, Judgement, 3 May 2006 ("*Naletili} and Martinovi}* Appeal Judgement")

Orić

Prosecutor v. Naser Orić, Case No. IT-03-68-A, Judgement, 3 July 2008 ("*Orić* Appeal Judgement")

Popovi} *et al.*

Prosecutor v. Vujadin Popovi} et al., Case No. IT-05-88-AR73.3, Decision on Appeals Against Decision on Impeachment of a Party's Own Witness, 1 February 2008

Simić

Prosecutor v. Blagoje Simić, Case No. IT-95-9-A, Judgement, 28 November 2006 ("*Simić* Appeal Judgement")

Staki}

Prosecutor v. Milomir Staki}, Case No. IT-97-24-A, Judgement, 22 March 2006 ("*Staki}* Appeal Judgement")

Strugar

Prosecutor v Pavle Strugar, Case No. IT-01-42-A, Judgement, 17 July 2008, ("*Strugar* Appeal Judgement")

Tadić

Prosecutor v. Duško Tadić, Case No. IT-94-1-T, Judgement, 7 May 1997 ("*Tadić* Trial Judgment")

Prosecutor v. Duško Tadić, Case No. IT-94-1-A, Judgement, 15 July 1999, ("*Tadić* Appeal Judgment")

Vasiljević

Prosecutor v. Mitar Vasiljevi}, Case No. IT-98-32-A, Judgement, 25 February 2004 ("*Vasiljevi}* Appeal Judgement")

B. Defined Terms and Abbreviations

Amended Indictment	*The Prosecutor v. Siméon Nchamihigo*, Case No. ICTR-2001-63-I, Amended Indictment (in Conformity with the Confirming Judge's Order Dated 23 June 2001), filed on 26 June 2001
Appellant	*Siméon Nchamihigo*
Appellant's Brief	*Siméon Nchamihigo v. The Prosecutor*, Case No. ICTR-2001-63-A, Appellant's Brief (Article 24 of the Statute of the Tribunal and Rule 111 of the Rules of Procedure and Evidence), filed in French on 20 May 2008 (*Mémoire d'appel de la défense*), re-field publically on 25 June 2009.
AT.	Transcript page from Appeal hearings held on 29 September 2009 in *Siméon Nchamihigo v. The Prosecutor*, Case No. ICTR-2001-63-A. All references are to the official English transcript, unless otherwise indicated
Black's Law Dictionary	Black's Law Dictionary, 7th Edition (St. Paul, West Group, 1999), Legal Maxims
Brief in Reply	*Siméon Nchamihigo v. The Prosecutor*, Case No. ICTR-2001-63-A, Appellant's Brief in Reply, filed confidentially in French on 15 July 2009 (*Mémoire en réplique de l'appelant*), re-filed publically on 31 July 2009.
CDR	*Coalition pour la défense de la république*
cf.	[Latin: *confer*] (Compare)
Exhibit D / Exhibit P	Defence Exhibit / Prosecution Exhibit
FAR	Rwandan Armed Forces
fn.	footnote
Defence Final Trial Brief	*The Prosecutor v. Siméon Nchamihigo*, Case No. ICTR-2001-63-T, Final Defence Brief, pursuant to Rule 86A) of the Rules of Procedure and Evidence, filed in French on 11 December 2008 (*Mémoire final de la defense conformément à l'article 86A) du réglement de procédure et de preuve*)
ICTR	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
ICTY	International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991
Indictment	*The Prosecutor v. Siméon Nchamihigo*, Case No. ICTR-2001-63-T, Second Revised Amended Indictment (In conformity with Trial Chamber III Decision dated 7 December 2006), filed 11 December 2006
Initial Indictment	*The Prosecutor v. Siméon Nchamihigo*, Case No. ICTR-2001-63-I, Indictment, filed 21 June 2001
Motion of 29 August 2006	*The Prosecutor v. Siméon Nchamihigo*, Case No. ICTR-2001-63-I, *Requête de la Défense en Exception Préjudicielle pour vices de forme de l'Acte d'accusation (Art. 50 C) du Règlement de Procédure et de Preuve)*, filed in French on 29 August 2006
MRND	*Mouvement révolutionnaire national pour le développement* (before July 1991) *Mouvement républicain national pour la démocratie et le développement* (after July 1991)
Notice of Appeal	*Siméon Nchamihigo v. The Prosecutor*, Case No. ICTR-2001-63-A, Revised Defence Notice of Appeal (Article 24 of the Statute of the Tribunal and Rule 111 of the Rules of Procedure and Evidence), filed in French on 11 May 2009 (*Acte d'appel de la défense révisé*)
para. (paras.)	paragraph (paragraphs)
Practice Direction on Formal Requirements for Appeals from Judgement	Practice Direction on Formal Requirements for Appeals from Judgement, International Criminal Tribunal for Rwanda, 15 June 2007
Prosecution	Office of the Prosecutor
Prosecution Final Trial Brief	*The Prosecutor v. Siméon Nchamihigo*, Case No. ICTR-2001-63-T, Prosecutor's Closing Brief, filed 11 December 2007
Prosecution Pre-Trial Brief	*The Prosecutor v. Siméon Nchamihigo*, Case No. ICTR-2001-63-I, Prosecutor's Pre-Trial Brief and Other Filings under Rule 73 *bis* of the Rules of Procedure and Evidence of the International Criminal Tribunal for Rwanda as amended on 7 June 2005, filed on 25 August 2006
PSC	Prefecture Security Council
Respondent's Brief	*Siméon Nchamihigo v. The Prosecutor*, Case No. ICTR-2001-63-A, The Prosecutor's Respondent Brief, filed on 29 June 2009

Revised Amended Indictment	*The Prosecutor v. Siméon Nchamihigo*, Case No. ICTR-2001-63-T, Revised Amended Indictment (In conformity with Trial Chamber III Decision dated 27 September 2006), filed on 29 September 2006
Rules	Rules of Procedure and Evidence of the International Criminal Tribunal for Rwanda
RPF	Rwandan Patriotic Front
Second Amended Indictment	*The Prosecutor v. Siméon Nchamihigo*, Case No. ICTR-2001-63-I, Amended Indictment (In conformity with Trial Chamber I Decision dated 14 July 2006), filed on 18 July 2006
Statute	Statute of the International Tribunal for Rwanda established by Security Council Resolution 955 (1994)
T.	Trial Transcript page from hearings in *The Prosecutor v. Siméon Nchamihigo*, Case No. ICTR-2001-63-T. All references are to the official English transcript, unless otherwise indicated.
Trial Judgement	*The Prosecutor v. Siméon Nchamihigo*, Case No. ICTR-2001-63-T, Judgement and Sentence, 12 November 2008
Tribunal	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
UN	United Nations

C. Cited Decisions and Orders in the *Nchamihigo* Case

1. Pre-Trial (*The Prosecutor v. Siméon Nchamihigo*, Case Nos. ICTR-2001-63-I and ICTR-2001-63-PT)

Decision on Request for Leave to Amend the Indictment, signed on 14 July 2006, filed on 17 July 2006 ("Decision of 17 July 2006")

Scheduling Order, 10 August 2006

Decision on Request for Certification of Appeal on Trial Chamber I's Decision Granting Leave to Amend the Indictment, Rule 73 (B) of the Rules of Procedure and Evidence, 13 September 2006 ("Decision of 13 September 2006")

2. Trial (*The Prosecutor v. Siméon Nchamihigo*, Case No. ICTR-2001-63-T)

Decision on Defence Motion on Defects in the Form of the Indictment, 27 September 2006

Decision on Defence Motion for Non-Conformity of the Indictment with the Trial Chamber's Decision on Defects in the Form of the Indictment, 7 December 2006

Decision on the Prosecution Motion for Leave to Amend the Witness List, 9 January 2007

Decision on Defence Motion in Order to Admit Into Evidence the Certified Copy Conform to the Original of the Extrajudicial Declaration of Prosecution Witness Marianne Baziruwiha, Dated 5 November 1994, 14 August 2007 ("Decision to Admit Extrajudicial Declaration of Witness Baziruwiha")

Decision on Defence Motion on Defects in the Form of the Amended Indictment, 27 August 2006

3. Appeal (*Siméon Nchamihigo v. The Prosecutor*, Case No. ICTR-2001-63-A)

Order Assigning Judges to a Case before the Appeals Chamber, 21 October 2008

Decision on Motions for Extension of Time for Filing Notices of Appeal, 11 November 2008

Order Replacing a Judge in a Case before the Appeals Chamber, 13 November 2008

Decision on Prosecution Motion on the Filing of the Defence Notice of Appeal, 30 March 2009

Decision on Prosecution Motion on the Filing of the Defence Revised Notice of Appeal, 29 April 2009

Order Designating a Pre-Appeal Judge, 29 April 2009

Order Replacing a Judge in a Case before the Appeals Chamber, 6 May 2009

Decision on Defence Motion for Leave to Exceed the Word Limit, 12 May 2009

Decision on Prosecution Motion Requesting Extension of Time to File Respondent's Brief, 15 May 2009

Order on Appellant's Submissions, 10 June 2009

Decision on Defence Motion for a French Translation of the Prosecutor's Respondent's Brief and for Extension of Time for the Filing of the Reply Brief, 8 July 2009

Scheduling Order, 22 July 2009

Decision on Siméon Nchamihigo's First Motion for Leave to Present Additional Evidence on Appeal, 28 September 2009 (confidential)

Decision on Siméon Nchamihigo's Second Motion for Leave to Present Additional Evidence on Appeal, 28 September 2009

Decision on Request for Correction of the Appeal Hearing Transcripts, 5 March 2010