UNITED NATIONS
NATIONS UNIES

Tribunal Pénal International pour le Rwanda
International Criminal Tribunal for Rwanda

IN THE APPEALS CHAMBER

Before:	**Judge Theodor Meron, Presiding** **Judge Fausto Pocar** **Judge Arlette Ramaroson** **Judge Bakhtiyar Tuzmukhamedov** **Judge Koffi Kumelio A. Afanđe**
Registrar:	**Mr. Bongani Majola**
Judgement of:	**29 September 2014**

ÉDOUARD KAREMERA
MATTHIEU NGIRUMPATSE

v.

THE PROSECUTOR

Case No. ICTR-98-44-A

JUDGEMENT

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I. INTRODUCTION

A. Background

2. Karemera was born on 1 September 1951 in Mwendo Commune, Kibuye Prefecture, Rwanda.[2] Beginning in 1977, Karemera held various positions in the Rwandan civil service and government.[3] He also served as, *inter alia*, National Secretary, First Vice President, and Executive Bureau member of the MRND party (*Mouvement révolutionnaire national pour le développement*, later *Mouvement républicain national pour la démocratie et le développement*).[4] On 25 May 1994, Karemera became Minister of the Interior and Communal Development for the Interim Government.[5]

3. Ngirumpatse was born on 12 December 1939 in Tare Commune, Kigali Prefecture, Rwanda.[6] Ngirumpatse worked as a prosecutor, in various diplomatic capacities, as general manager of the national insurance corporation, and served as Minister of Justice from 1991 to 1992.[7] In 1991, he was appointed chairman of the MRND in Kigali-ville Prefecture, and, in 1992, he was elected National Secretary of the MRND.[8] He became National Party Chairman and chairman of the MRND Executive Bureau in 1993, and held these positions in 1994.[9]

[1] *The Prosecutor v. Édouard Karemera and Matthieu Ngirumpatse*, Case No. ICTR-98-44-T, Judgement and Sentence, delivered in public on 21 December 2011, filed on 2 February 2012 ("Trial Judgement"). For ease of reference, two annexes are appended: Annex A – Procedural History and Annex B – Jurisprudence and Defined Terms and Abbreviations.
[2] Trial Judgement, para. 1.
[3] Trial Judgement, paras. 2-4.
[4] Trial Judgement, para. 4.
[5] Trial Judgement, para. 4.
[6] Trial Judgement, para. 6. *See also* Ngirumpatse, T. 17 January 2011 p. 3.
[7] Trial Judgement, paras. 6-8, 10.
[8] Trial Judgement, para. 10.
[9] Trial Judgement, para. 10.

4. The Trial Chamber convicted Karemera and Ngirumpatse, pursuant to Article 6(1) of the Statute, of direct and public incitement to commit genocide in relation to: (i) a meeting attended by members of the Interim Government held on 3 May 1994 at the Kibuye Prefecture Office;[10] and (ii) a meeting attended by President Sindikubwabo in Kibuye on 16 May 1994.[11]

5. The Trial Chamber also convicted Karemera and Ngirumpatse, pursuant to Article 6(1) of the Statute, of genocide for: (i) committing, through their participation in a joint criminal enterprise, the killings at Bisesero from about 13 May 1994;[12] (ii) the "mopping-up" operations in Bisesero Hills around 18 May 1994, Ngirumpatse for committing through his participation in a joint criminal enterprise and Karemera for ordering the operation;[13] (iii) aiding and abetting and committing, through their participation in a joint criminal enterprise, the killings of Tutsis in Gitarama that followed a meeting at Murambi Training School on 18 April 1994;[14] (iv) committing, through their participation in a joint criminal enterprise, the killings in Butare prefecture which followed the speech of President Théodore Sindikubwabo at the installation on 19 April 1994 of Sylvain Nsabimana as the Prefect of Butare Prefecture;[15] (v) committing, through their participation in a joint criminal enterprise, the continued killings that resulted from Kambanda's letter of 27 April 1994 and directive of 25 May 1994;[16] (vi) the further killings of Tutsis that resulted from Karemera's letter of 25 May 1994, Karemera for aiding and abetting and instigating the killings, and Ngirumpatse for committing through his participation in a joint criminal enterprise;[17] (vii) the further killings of Tutsis that resulted from Karemera's instructions for the use of funds of mid-June 1994, Karemera for aiding and abetting and instigating the killings, and Ngirumpatse for committing through his participation in a joint criminal enterprise;[18] (viii) committing, through their participation in a joint criminal enterprise, the continued killings of Tutsis that resulted from the creation of the national defence fund;[19] and (ix) committing, through their participation in a joint criminal enterprise, the rapes and sexual assaults that were perpetrated throughout Rwanda after 11 April 1994.[20]

[10] Trial Judgement, paras. 1599, 1600, 1714-1716. The Trial Chamber convicted Karemera of committing in relation to this meeting and Ngirumpatse of committing through his participation in the basic form of a joint criminal enterprise.
[11] Trial Judgement, paras. 1604, 1714-1716. The Trial Chamber convicted Karemera and Ngirumpatse of committing through their participation in a joint criminal enterprise.
[12] Trial Judgement, paras. 1649, 1653.
[13] Trial Judgement, paras. 1655, 1657, 1658.
[14] Trial Judgement, paras. 1619, 1621, 1623.
[15] Trial Judgement, paras. 1625, 1626, 1628.
[16] Trial Judgement, para. 1634.
[17] Trial judgement, paras. 1635, 1636, 1638, 1639.
[18] Trial Judgement, paras. 1640, 1641, 1643, 1644.
[19] Trial Judgement, para. 1648.
[20] Trial Judgement, para. 1670.

6. Additionally, the Trial Chamber convicted Karemera, pursuant to Article 6(3) of the Statute, and Ngirumpatse, pursuant to Article 6(1) of the Statute, of genocide for: (i) the killings at roadblocks in Kigali by 12 April 1994 through the distribution of weapons on 11 and 12 April 1994, Ngirumpatse for aiding and abetting the killings and for committing them through his participation in a joint criminal enterprise;[21] and (ii) the killings in Kigali by 12 April 1994 by Kigali *Interahamwe*, Ngirumpatse for aiding and abetting the killings.[22]

7. The Trial Chamber convicted Karemera and Ngirumpatse of rape as a crime against humanity for committing, through their participation in the extended form of a joint criminal enterprise, rapes and sexual assaults committed against Tutsi women in Ruhengeri prefecture during early-mid April 1994, Kigali-*ville* prefecture during April 1994, Butare prefecture during mid-late April 1994, Kibuye prefecture during May-June 1994, Gitarama prefecture during April and May 1994, and elsewhere throughout Rwanda.[23]

8. The Trial Chamber also convicted Karemera and Ngirumpatse of extermination as a crime against humanity and murder as a serious violation of Article 3 common to the Geneva Conventions and of Additional Protocol II[24] based on the same events and forms of responsibility that underpin their respective convictions for genocide.[25]

9. In addition, the Trial Chamber found Karemera and Ngirumpatse guilty of conspiracy to commit genocide by at least 25 May 1994, but did not enter a conviction for this crime on the basis

[21] Trial Judgement, paras. 1613, 1616-1618.
[22] Trial Judgement, paras. 1663, 1664.
[23] Trial Judgement, paras. 1682, 1684.
[24] For the sake of simplicity, the Appeals Chamber refers to Karemera's and Ngirumpatse's convictions under Count 7 of the Indictment as "murder".
[25] Trial Judgement, paras. 1691, 1692, 1704-1706, 1714, 1715. *See supra* paras. 4, 5. The Appeals Chamber recalls that, in its legal findings in relation to serious violations of Article 3 common to the Geneva Conventions and of Additional Protocol II, the Trial Chamber indicates that Karemera is liable for this crime under Article 6(1) of the Statute for the killings committed from 17 April 1994. *See* Trial Judgement, paras. 1704, 1706. The Appeals Chamber considers, however, that Karemera can only be held responsible under Article 6(1) of the Statute for crimes committed from 18 April 1994, which is the date when he joined the joint criminal enterprise. *See* Trial Judgement, paras. 1450(3), 1457, 1460. In addition, the Appeals Chamber observes that the Trial Chamber utilized different formulations when incorporating its superior responsibility findings made in relation to genocide into its findings on extermination as a crime against humanity and murder as a serious violation of Article 3 common to the Geneva Conventions and of Additional Protocol II. In particular, for extermination, the Trial Chamber stated that "Karemera and Ngirumpatse are also liable as superiors for the same reasons stated in the legal findings for genocide". *See* Trial Judgement, para. 1692. However, in relation to murder, the Trial Chamber stated that "[t]hey are responsible as superiors under Article 6(3) for all killings throughout Rwanda that were committed by the Kigali and Gisenyi *Interahamwe* from 12 April 1994 to mid-July 1994, including those at Bisesero Hills". *See* Trial Judgement, para. 1706. This language suggests that Karemera and Ngirumpatse were held responsible as superiors on a more expansive basis for murder than for genocide and extermination. The Appeals Chamber notes, however, that in its deliberations on murder the Trial Chamber inaccurately recalled its earlier findings on genocide and extermination and described them in a more expansive way. *See* Trial Judgement, para. 1704. Given the Trial Chamber's clear intention to incorporate its earlier findings and the fact that the more expansive description of their liability is not supported by the factual findings in the Trial Judgement, the Appeals Chamber understands that Karemera's and Ngirumpatse's convictions for murder only encompass those killings for which they were held responsible as superiors under the charge of genocide.

of the principles relating to cumulative convictions.[26] The Trial Chamber sentenced Karemera and Ngirumpatse to life imprisonment.[27]

B. The Appeals

10. Karemera has advanced 38 grounds of appeal challenging his convictions and sentence.[28] Ngirumpatse has advanced 50 grounds of appeal challenging his convictions and sentence.[29] Both appellants request the Appeals Chamber to vacate all of their convictions or, in the alternative, to reduce their respective sentences.[30] The Prosecution responds that Karemera's and Ngirumpatse's appeals should be dismissed.[31]

11. The Prosecution has advanced four grounds of appeal and requests the Appeals Chamber to enter an additional conviction against Karemera and Ngirumpatse or expand the scope of their respective convictions in relation to certain events.[32] Karemera and Ngirumpatse respond that the Prosecution's appeal should be dismissed.[33]

12. The Appeals Chamber heard oral submissions regarding these appeals on 10 and 11 February 2014.

[26] Trial Judgement, paras. 1591, 1713-1716.
[27] Trial Judgement, paras. 1762, 1763.
[28] Karemera Notice of Appeal; Karemera Appeal Brief, pp. 115-120. The Karemera Notice of Appeal contains 43 grounds of appeal. The Appeals Chamber observes that the Karemera Appeal Brief states that he has withdrawn Ground 26 (*see* Karemera Appeal Brief, p. 64) and contains no submissions on Ground 24. The Appeals Chamber therefore considers that Karemera has abandoned these two grounds and will not consider them. The Appeals Chamber further notes that Karemera Appeal Brief states that he has merged Grounds 11 and 41 into Ground 28 (*see* Karemera Appeal Brief, pp. 68, 112) and Ground 25 into Ground 30 (*see* Karemera Appeal Brief, p. 64). The Appeals Chamber will therefore only address Karemera's Grounds 28 and 30.
[29] Ngirumpatse Notice of Appeal; Ngirumpatse Appeal Brief, pp. 2, 3. The Appeals Chamber notes that Ngirumpatse Notice of Appeal contains 51 grounds of appeal but that his appeal brief makes no submissions under Ground 9. Consequently, the Appeals Chamber understands that Ngirumpatse has abandoned this ground of appeal, which will not be considered.
[30] Karemera Notice of Appeal, para. 168; Karemera Appeal Brief, para. 412; Ngirumpatse Notice of Appeal, paras. 379, 380; Ngirumpatse Appeal Brief, paras. 775, 776, 788.
[31] Prosecution Response Brief (Karemera), paras. 2-5, 262; Prosecution Response Brief (Ngirumpatse), paras. 2-8, 379.
[32] Prosecution Notice of Appeal, paras. 1-16; Prosecution Appeal Brief, paras. 2-5.
[33] Karemera Response Brief, para. 88; Ngirumpatse Response Brief, paras. 2, 3, 248.

II. STANDARDS OF APPELLATE REVIEW

13. The Appeals Chamber recalls the applicable standards of appellate review pursuant to Article 24 of the Statute. The Appeals Chamber reviews only errors of law which have the potential to invalidate the decision of a trial chamber and errors of fact which have occasioned a miscarriage of justice.[34]

14. 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.[35]

15. 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.[36] In so doing, the Appeals Chamber not only corrects the legal error, but, where 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.[37]

16. 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.[38]

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[34] *See*, *e.g.*, *Ndindiliyimana et al.* Appeal Judgement, para. 8; *Ndahimana* Appeal Judgement, para. 7; *Mugenzi and Mugiraneza* Appeal Judgement, para. 11. *See also Đordević* Appeal Judgement, para. 13.
[35] *Ntakirutimana* Appeal Judgement, para. 11 (reference omitted). *See also*, *e.g.*, *Mugenzi and Mugiraneza* Appeal Judgement, para. 12; *Gatete* Appeal Judgement, para. 8; *Hategekimana* Appeal Judgement, para. 7. *See also Đordević* Appeal Judgement, para. 14.
[36] *See*, *e.g.*, *Ndindiliyimana et al.* Appeal Judgement, para. 10; *Ndahimana* Appeal Judgement, para. 9; *Mugenzi and Mugiraneza* Appeal Judgement, para. 13. *See also Đordević* Appeal Judgement, para. 14.
[37] *See*, *e.g.*, *Ndindiliyimana et al.* Appeal Judgement, para. 10; *Ndahimana* Appeal Judgement, para. 9; *Mugenzi and Mugiraneza* Appeal Judgement, para. 13. *See also Đordević* Appeal Judgement, para. 14.
[38] *Krstić* Appeal Judgement, para. 40 (references omitted). *See also*, *e.g.*, *Mugenzi and Mugiraneza* Appeal Judgement para. 14; *Gatete* Appeal Judgement, para. 10; *Hategekimana* Appeal Judgement, para. 9; *Đordević* Appeal Judgement, para. 16.

The same standard of reasonableness and the same deference to factual findings of a trial chamber apply where the Prosecution appeals against an acquittal.[39] The Appeals Chamber will only hold that an error of fact was committed when it determines that no reasonable trier of fact could have made the impugned finding.[40] However, considering that it is the Prosecution that bears the burden at trial of proving the guilt of the accused beyond reasonable doubt, the significance of an error of fact occasioning a miscarriage of justice is somewhat different for a Prosecution appeal against acquittal than for a defence appeal against conviction.[41] A convicted person must show that the trial chamber's factual errors create a reasonable doubt as to his guilt.[42] The Prosecution must show that, where account is taken of the errors of fact committed by the trial chamber, all reasonable doubt of the convicted person's guilt has been eliminated.[43]

17. 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.[44] Arguments which do not have the potential to cause the impugned decision to be reversed or revised may be immediately dismissed by the Appeals Chamber and need not be considered on the merits.[45]

18. 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.[46] Moreover, 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.[47] Finally, the Appeals Chamber has inherent discretion in selecting

[39] *Mrkšić and Šljivančanin* Appeal Judgement, para. 15; *Seromba* Appeal Judgement, para. 11; *Strugar* Appeal Judgement, para. 13; *Rutaganda* Appeal Judgement, para. 24.
[40] *Mrkšić and Šljivančanin* Appeal Judgement, para. 15; *Seromba* Appeal Judgement, para. 11; *Strugar* Appeal Judgement, para. 13; *Rutaganda* Appeal Judgement, para. 24.
[41] *Mrkšić and Šljivančanin* Appeal Judgement, para. 15; *Seromba* Appeal Judgement, para. 11; *Strugar* Appeal Judgement, para. 13; *Rutaganda* Appeal Judgement, para. 24.
[42] *Mrkšić and Šljivančanin* Appeal Judgement, para. 15; *Seromba* Appeal Judgement, para. 11; *Strugar* Appeal Judgement, para. 13; *Rutaganda* Appeal Judgement, para. 24.
[43] *Mrkšić and Šljivančanin* Appeal Judgement, para. 15; *Seromba* Appeal Judgement, para. 11; *Strugar* Appeal Judgement, para. 13; *Rutaganda* Appeal Judgement, para. 24.
[44] *See*, *e.g.*, *Ndindiliyimana et al.* Appeal Judgement, para. 12; *Ndahimana* Appeal Judgement, para. 11; *Mugenzi and Mugiraneza* Appeal Judgement, para. 15. *See also Đordević* Appeal Judgement, para. 20.
[45] *See*, *e.g.*, *Ndindiliyimana et al.* Appeal Judgement, para. 12; *Ndahimana* Appeal Judgement, para. 11; *Mugenzi and Mugiraneza* Appeal Judgement, para. 15; *Gatete* Appeal Judgement, para. 11. *See also Đordević* Appeal Judgement, para. 20.
[46] Practice Direction on Formal Requirements for Appeals from Judgement, 15 June 2007, para. 4(b). *See also*, *e.g.*, *Ndindiliyimana et al.* Appeal Judgement, para. 13; *Ndahimana* Appeal Judgement, para. 12; *Mugenzi and Mugiraneza* Appeal Judgement, para. 16. *See also Đordević* Appeal Judgement, para. 20.
[47] *See*, *e.g.*, *Ndindiliyimana et al.* Appeal Judgement, para. 13; *Ndahimana* Appeal Judgement, para. 12; *Mugenzi and Mugiraneza* Appeal Judgement, para. 16. *See also Đordević* Appeal Judgement, para. 20.

which submissions merit a detailed reasoned opinion in writing, and it will dismiss arguments which are evidently unfounded without providing detailed reasoning.[48]

[48] *See*, *e.g.*, *Ndindiliyimana et al.* Appeal Judgement, para. 13; *Ndahimana* Appeal Judgement, para. 12; *Mugenzi and Mugiraneza* Appeal Judgement, para. 16. *See also Đorđević* Appeal Judgement, para. 20.

III. APPEALS OF ÉDOUARD KAREMERA AND MATTHIEU NGIRUMPATSE

A. Fairness of the Proceedings (Karemera Grounds 23 and 28, in Part; Ngirumpatse Grounds 1-5, 7, 8, and 10-12)

19. Karemera and Ngirumpatse submit that their fair trial rights were violated.[49] In this section, the Appeals Chamber considers whether: (i) the Trial Chamber's conduct of the proceedings shows bias against Ngirumpatse; (ii) the Trial Chamber's approach to the collection, presentation, and assessment of evidence shows bias; (iii) Ngirumpatse's right to equality before the law was violated; (iv) Ngirumpatse's rights to be promptly informed of the charges against him and to not provide any information that may be used against him were violated; (v) Ngirumpatse's right to trial without undue delay was violated; (vi) the Trial Chamber erred in rejecting Ngirumpatse's argument that a conflict of interest arose from the Prosecution's employment of his former legal assistant; and (vii) the Trial Chamber failed to remedy any prejudice caused to Karemera by the Prosecution's disclosure violations.

1. Trial Chamber's Conduct of the Proceedings

20. Ngirumpatse submits that the conduct of the proceedings, as well as the lack of a reasoned opinion in the Trial Judgement, demonstrate the violation of his right to be tried by an impartial tribunal.[50] More specifically, Ngirumpatse asserts that judicial bias is shown through the Trial Chamber's failure to provide reasoned decisions, as demonstrated by the Appeal Decision of 16 June 2006.[51] He also submits that the Trial Chamber had a preconceived opinion before the start of the defence case because it rejected his motions for judgement of acquittal and admission of evidence, and because its deliberations on these matters were unusually fast.[52]

[49] Karemera Notice of Appeal, paras. 104, 105, 118, 160-162; Karemera Appeal Brief, paras. 227-243, 261, 262, 264, 265, 267-269; Ngirumpatse Notice of Appeal, paras. 7-34, 40-45, 48-59; Ngirumpatse Appeal Brief, paras. 6-52, 67-204. The Appeals Chamber will not consider Karemera's Ground 41 in this section, since it was merged into Karemera's Ground 28 (*see supra* fn. 28). The Appeals Chamber will also not consider Ngirumpatse's Ground 9 related to the credibility of Prosecution Witness BTH since his appeal brief does not contain any submissions on this ground (*see supra* fn. 29). The Appeals Chamber further observes that the Trial Chamber did not rely on Witness BTH in the Trial Judgement. *See* Trial Judgement, para. 117. Although Ngirumpatse refers to Witness BTH elsewhere in his appeal brief, he seemingly does so in relation to the credibility of other witnesses. *See* Ngirumpatse Appeal Brief, paras. 184-190. These arguments are taken into account when addressing Ngirumpatse's Ground 10 in this section.
[50] Ngirumpatse Notice of Appeal, paras. 8-13; Ngirumpatse Appeal Brief, paras. 6-25.
[51] Ngirumpatse Appeal Brief. para. 19, *referring to The Prosecutor v. Édouard Karemera et al.*, Case No. ICTR-98-44-AR73(C), Decision on Prosecutor's Interlocutory Appeal of Decision on Judicial Notice, 16 June 2006 ("Appeal Decision of 16 June 2006"), para. 15, fn. 21.
[52] Ngirumpatse Appeal Brief, para. 24.

21. Moreover, Ngirumpatse claims that the Trial Chamber exhibited bias by imposing unnecessary restrictions on the Defence by, *inter alia*, delaying the delivery of the Trial Judgement to invite the parties to file submissions on the validity of prior admissions of evidence, thus forcing the Defence to devote a substantial part of its closing brief to discussing evidence relevant to former co-accused Joseph Nzirorera.[53] He claims that the Trial Chamber unfairly blamed him for not developing his arguments while it simultaneously limited the length of his closing brief.[54] He finally argues that the Prosecution received an advantage in the organization of the final oral arguments.[55]

22. The Prosecution responds that Ngirumpatse fails to substantiate his claims that the Trial Chamber was biased and partial, and failed in its duty as a trier of fact.[56] Specifically, the Prosecution submits that Ngirumpatse's "[s]weeping, abstract or unsubstantiated allegations" are insufficient to rebut the presumption of impartiality attached to the judges of the Tribunal.[57] It also notes that Ngirumpatse repeats the same alleged errors in other grounds of appeal, and argues that they are all unmeritorious.[58]

23. The Appeals Chamber recalls that it 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.[59] The Appeals Chamber finds that certain of Ngirumpatse's arguments are vague or otherwise insufficiently presented and it will therefore not address them. In particular, the Appeals Chamber will not address vague challenges that refer generally to annexes, whole sections of Ngirumpatse's closing brief, or isolated quotations of the Trial Judgement, and which fail to identify any errors, precise evidence, or specific parts of the trial record.[60] In addition, the Appeals

[53] Ngirumpatse Appeal Brief, para. 22.
[54] Ngirumpatse Appeal Brief, para. 23.
[55] Ngirumpatse Appeal Brief, para. 24. Specifically, Ngirumpatse submits that the Prosecution was entitled to a full day of break before its reply and was allotted one hour and 40 minutes to reply while each accused only had 20 minutes to reply. Ngirumpatse states that this unequal treatment was maintained despite objections from the Defence. *See* Ngirumpatse Appeal Brief, para. 24.
[56] Prosecution Response Brief (Ngirumpatse), para. 16.
[57] Prosecution Response Brief (Ngirumpatse), para. 17.
[58] Prosecution Response Brief (Ngirumpatse), para. 18.
[59] *See supra* para. 18. *See also Kvočka et al.* Appeal Judgement, para. 15 ("If an argument is clearly without foundation, the Appeals Chamber is not required to provide a detailed written explanation of its position with regard to that argument.").
[60] Ngirumpatse claims that paragraphs 118 to 1571 of the Trial Judgement lack reasoning and references to challenges raised by the Defence. *See* Ngirumpatse Appeal Brief, paras. 10, 15, 17, 18. He also argues that the Trial Chamber often "clarified" the Prosecution's allegations by erroneously determining some facts to be undisputed and misleadingly interpreting exhibits to evade exculpatory interpretations. *See* Ngirumpatse Appeal Brief, para. 11. He adds that the Trial Chamber summarized only examination-in-chief testimonies of Prosecution witnesses and ignored their contradictions, and considered Defence evidence solely for the purpose of rejecting or misinterpreting it. *See* Ngirumpatse Appeal Brief, paras. 12, 13, 24. According to Ngirumpatse, the Trial Chamber applied caution mainly to Defence witnesses and almost never to Prosecution witnesses. *See* Ngirumpatse Appeal Brief, para. 14. The Appeals Chamber notes that Ngirumpatse refers to Annex 4 attached to the Ngirumpatse Appeal Brief to support his allegations. *See* Ngirumpatse Appeal Brief, paras. 10-14. In the Appeals Chamber's view, this annex merely classifies different charges according to the way they were considered within the Trial Judgement. Aside from listing the relevant witnesses and paragraphs of the Trial Judgement, the annex does not enlighten the Appeals Chamber with regard to the

Chamber notes that many of Ngirumpatse's arguments have also been made in other parts of his appeal brief and the Appeals Chamber will therefore not address them in detail in this section.[61]

24. Article 20(3) of the Statute provides that an accused person shall be presumed innocent until proven guilty. The Appeals Chamber recalls that the Statute and the Rules guarantee an accused's right to be tried by impartial judges.[62] The Appeals Chamber also recalls that there is a presumption of impartiality which attaches to any judge of the Tribunal and which cannot be easily rebutted.[63] Accordingly, it is for the appealing party alleging bias to adduce reliable and sufficient evidence to rebut that presumption.[64] The Appeals Chamber cannot entertain sweeping or abstract allegations that are neither substantiated nor detailed to rebut the presumption of impartiality.[65]

25. The Appeal Decision of 16 June 2006 addressed the Trial Chamber's decision to take judicial notice of two of the six purported "facts of common knowledge" that the Prosecution had submitted. Ngirumpatse alludes to the following sentence to substantiate his claim that the Trial Chamber rendered decisions that lacked reasoning:

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allegations Ngirumpatse raises on appeal. Ngirumpatse also refers to the "Annex Geneva" to support his allegation that the Defence was excluded from a conference held in closed session and attended by Prosecution Expert André Guichaoua and the Presiding Judge of Trial Chamber III. *See* Ngirumpatse Appeal Brief, para. 24. However, the Ngirumpatse Appeal Brief contains no such annex. In any event, Ngirumpatse fails to put forward a basis to rebut the presumption of impartiality for judges. The Appeals Chamber further notes that Ngirumpatse also refers to paragraphs 141 to 850 of his closing brief. *See* Ngirumpatse Appeal Brief, paras. 17, 18. The Appeals Chamber understands that Ngirumpatse is challenging the Trial Chamber's credibility assessment of the Prosecution witnesses but observes that Ngirumpatse's allegations are general and do not point to any particular instance or any particular witness. Finally, the Appeals Chamber notes that Ngirumpatse refers to quotations from the Trial Judgement but does not attempt to establish how the Trial Chamber committed legal or factual errors. *See* Ngirumpatse Appeal Brief, paras. 15, 24. Therefore, the Appeals Chamber will not further consider these arguments.

[61] Ngirumpatse raises arguments related to notice. *See* Ngirumpatse Appeal Brief, para. 20. Ngirumpatse submits that the Trial Chamber failed to sufficiently remedy the Prosecution's violation in relation to Prosecution Witness FH. *See* Ngirumpatse Appeal Brief, para. 24. Ngirumpatse submits that the Trial Chamber was more permissive toward the Prosecution than toward the Defence in its admission of Rule 92*bis* written statements; reference is made notably to Defence Witness BU's written statement in which, according to Ngirumpatse, the Trial Chamber ordered the suppression of a paragraph judging that it was too exculpatory. *See* Ngirumpatse Appeal Brief, para. 24. He also raises arguments relevant to his submissions on sentencing and to the excessive nature of the sentence imposed on him. *See* Ngirumpatse Appeal Brief, paras. 21, 24. Ngirumpatse further submits that judicial bias is also illustrated through the Trial Chamber's consideration of the Prosecution's employment of Ngirumpatse's former legal assistant. *See* Ngirumpatse Appeal Brief, para. 24. The Appeals Chamber considers these arguments elsewhere in this Judgement. *See infra* Sections III.B, III.A.6, III.H.1, III.O.2.

[62] *Hategekimana* Appeal Judgement, para. 16; *Édouard Karemera et al. v. The Prosecutor*, Case No. ICTR-98-44-AR73.15, Decision on Joseph Nzirorera's Appeal Against a Decision of Trial Chamber III Denying the Disclosure of a Copy of the Presiding Judge's Written Assessment of a Member of the Prosecution Team, 5 May 2009, para. 9. *See also Nahimana et al.* Appeal Judgement, para. 47.

[63] *Hategekimana* Appeal Judgement, para. 16; *Renzaho* Appeal Judgement, paras. 21, 23. *See also Akayesu* Appeal Judgement, para. 91; *Furundžija* Appeal Judgement, paras. 196, 197.

[64] *Hategekimana* Appeal Judgement, para. 16; *Renzaho* Appeal Judgement, para. 23. *See also Akayesu* Appeal Judgement, para. 91; *Furundžija* Appeal Judgement, para. 197.

[65] *Hategekimana* Appeal Judgement, para. 16; *Renzaho* Appeal Judgement, para. 23. *See also Akayesu* Appeal Judgement, paras. 92, 100.

> had the Trial Chamber intended simply to deny certification on the other issues, for it to do so simply by omitting discussion of those issues, without a word of explanation, might have run afoul of the requirement that it provide a reasoned basis for its decision.[66]

26. Contrary to Ngirumpatse's claim, in its Appeal Decision of 16 June 2006, the Appeals Chamber did not find that the Trial Chamber failed to provide a reasoned opinion. Rather, it made the statement in the context of its determination on the scope of the Trial Chamber's certification to appeal.[67] The Appeals Chamber recalls that fair trial requirements under Article 22(2) of the Statute and Rule 98(C) of the Rules mandate the trial chamber to provide a reasoned opinion. This requirement, however, relates to a trial chamber's judgement as a whole rather than to each and every submission made at trial.[68] Accordingly, Ngirumpatse has failed to demonstrate how his reference to the Appeal Decision of 16 June 2006 supports the allegation of the Trial Chamber's general lack of reasoning in its decisions and, more specifically, how it substantiates his claim of judicial bias. In addition, Ngirumpatse's submission that bias is shown by the Trial Chamber's decisions on requests for acquittal and requests for admission of evidence amounts to mere speculation incapable of rebutting the presumption of impartiality, and is therefore dismissed.

27. Turning to Ngirumpatse's arguments on the conduct of trial proceedings, the Appeals Chamber observes that his challenges pertain to the closing phase of the case and notably to the length and content of his closing brief as well as to the organization of the closing arguments. The Appeals Chamber recalls the well-established principle that trial chambers exercise discretion in relation to the conduct of proceedings before them.[69] In particular, a trial chamber has the authority, pursuant to Rule 90(F) of the Rules, to exercise control over the presentation of evidence.[70] Ngirumpatse has failed to demonstrate that the Trial Chamber abused this authority.

28. Finally, Ngirumpatse submits that the Trial Chamber placed an unfair burden on him to discuss evidence related to Nzirorera in his closing brief. However, he does not identify any section of his closing brief to support this assertion. He has further failed to demonstrate how the Prosecution's decision to implicate the three accused, including Nzirorera, in a joint criminal enterprise shows bias on the part of the Trial Chamber. The Appeals Chamber therefore rejects these arguments as unfounded.

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[66] Appeal Decision of 16 June 2006, para. 15.
[67] *See*, *e.g.*, Appeal Decision of 16 June 2006, paras. 14-17.
[68] *Krajišnik* Appeal Judgement, para. 139; *Limaj et al.* Appeal Judgement, para. 81. *See also Gatete* Appeal Judgement, para. 65; *Hadžihasanović and Kubura* Appeal Judgement, para. 13.
[69] *The Prosecution v. Édouard Karemera et al.*, Case No. ICTR-98-44-AR73.14, Decision on Matthieu Ngirumpatse's Appeal from Trial Chamber Decision of 17 September 2008, 30 January 2009 ("Appeal Decision of 30 January 2009"), para. 17.
[70] Appeal Decision of 30 January 2009, para. 17.

2. Trial Chamber's Approach Towards the Evidence

29. The Trial Chamber dismissed Ngirumpatse's claim that many of his witnesses were intimidated before, during, or after their testimony before the Tribunal, as well as his claim that the Indictment shifted the burden of proof from the Prosecution to the Defence.[71] The Trial Chamber also recalled the principles regarding the standard of proof and the assessment of oral and documentary evidence, including evidence of accomplice witnesses.[72]

30. The Appeals Chamber considers, in turn, whether the Trial Chamber erred in: (i) dismissing Ngirumpatse's claim that many of his witnesses were intimidated; (ii) its assessment of the oral evidence; and (iii) its assessment of the documentary evidence.

(a) Intimidation of Witnesses

31. Ngirumpatse submits that the Trial Chamber erred in dismissing his arguments regarding the intimidation and duress imposed on witnesses, based on the fact that the "impediments were not placed by the Prosecutor".[73] He contends that the Prosecution investigation team placed potential Defence Witnesses TB and FRZ in danger in order to exert pressure on them and prevent them from testifying.[74]

32. The Trial Chamber expressly addressed Ngirumpatse's submissions in regard to the intimidation of witnesses in the Trial Judgement:

> Ngirumpatse claims that many of his witnesses were threatened, arrested, and scared before, during, or after their testimony before the Tribunal. He adds that the Tribunal cannot guarantee reliable protection for witnesses […]. Ngirumpatse has not demonstrated how the threats, arrests, and fear allegedly experienced by his witnesses and Defence team are attributable to the Tribunal. In fact, many of Ngirumpatse's witnesses opted to waive their protective measures and testify under their own names. Ultimately, only six of Ngirumpatse's 38 witnesses testified under a pseudonym. […] Accordingly, the [Trial] Chamber dismisses his claims in these regards.[75]

33. The Appeals Chamber finds that Ngirumpatse attempts to re-litigate issues that he unsuccessfully raised at trial,[76] without demonstrating any error as to how the Trial Chamber addressed his claims. Accordingly, the Appeals Chamber dismisses Ngirumpatse's argument in this regard.

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[71] Trial Judgement, paras. 96-98.
[72] Trial Judgement, paras. 99, 100, 107, 108.
[73] Ngirumpatse Notice of Appeal, paras. 43-45; Ngirumpatse Appeal Brief, paras. 74, 75. Ngirumpatse refers specifically to: (i) Defence Witness François-Xavier Byuma's arrest following his meeting with the Ngirumpatse Defence team; (ii) the dissuasion of potential Defence Witnesses TB and FRZ from testifying for Ngirumpatse; and (iii) the pressure exerted on Defence Witness XZY. *See also* Ngirumpatse Appeal Brief, para. 167 (in relation to Prosecution Witness BDX).
[74] Ngirumpatse Appeal Brief, para. 76.
[75] Trial Judgement, paras. 96, 97 (references omitted).
[76] *See* Ngirumpatse Closing Brief, paras. 982-984, 986.

(b) Oral Evidence

34. Karemera and Ngirumpatse challenge the Trial Chamber's assessment of the evidence, and submit that the Trial Chamber failed to give a reasoned opinion in relation to this assessment.[77] Karemera alleges that the Trial Chamber merely stated that it would consider some Prosecution witnesses with caution but failed to do so, and provided no reasoning as to why it accepted their evidence.[78] Ngirumpatse also submits that the Trial Chamber failed to provide a reasoned opinion as to why it relied on several Prosecution witnesses.[79] He further contends that the Trial Chamber "arbitrarily" admitted Prosecution evidence,[80] "arbitrarily" rejected Defence evidence,[81] and systematically interpreted the evidence in an inculpatory manner.[82]

35. Karemera and Ngirumpatse further submit that the Trial Chamber erred in its acceptance of the testimony of accomplice witnesses.[83] Karemera maintains that the Trial Chamber erroneously found that none of the Prosecution witnesses was an accomplice because, in his view, the finding of a joint criminal enterprise was necessarily predicated upon the connection of Prosecution witnesses who testified about it.[84] Ngirumpatse asserts that the Trial Chamber failed to carefully scrutinise the evidence of accomplice witnesses, considering that he and Karemera were charged as superiors for "all the crimes committed by everyone all over Rwanda" and pursuant to a joint criminal enterprise in which all Rwandans were their subordinates.[85] Ngirumpatse further challenges the credibility of Prosecution witnesses in general,[86] and contends that several Prosecution witnesses were untrustworthy and uncorroborated.[87]

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[77] Karemera Appeal Brief, paras. 227-232; Ngirumpatse Appeal Brief, paras. 26-31, 83-97, 105-107, 111-118, 129-188, 194.
[78] Karemera Appeal Brief, paras. 227-229, 231, 232. *See also* Karemera Reply Brief, paras. 55, 56. The Appeals Chamber notes that, in addition to his general observations, Karemera also develops specific arguments related to the credibility of witnesses relevant to his conviction for the distribution of weapons on 12 April 1994, and to his conviction for the 3 May 1994 Meeting in Kibuye. These contentions are considered elsewhere in this Judgement where Karemera provides the required specifications. *See* Karemera Appeal Brief, paras. 233-236, *referring to* Prosecution Witnesses G and T. *See infra* Section III.F.3. *See also* Karemera Appeal Brief, paras. 237-243, *referring to* Prosecution Witness GK. *See infra* Section III.I.1.
[79] Ngirumpatse Appeal Brief, para. 30.
[80] Ngirumpatse Appeal Brief, para. 26.
[81] Ngirumpatse Appeal Brief, para. 26.
[82] Ngirumpatse Appeal Brief, para. 193. Ngirumpatse refers to his submissions under Grounds 13 to 41.
[83] Karemera Appeal Brief, para. 230; Ngirumpatse Appeal Brief, para. 103.
[84] Karemera Appeal Brief, para. 230.
[85] Ngirumpatse Appeal Brief, paras. 103, 104. *See also* Ngirumpatse Reply Brief, para. 49.
[86] Ngirumpatse Appeal Brief, paras. 78-192. *See also* Ngirumpatse Appeal Brief, para. 26; Ngirumpatse Reply Brief, paras. 47, 49. Ngirumpatse also recalls the challenges he raised in his closing brief to the credibility of many of the Prosecution witnesses. *See* Ngirumpatse Appeal Brief, paras. 111-118 (pertaining to Witness Ahmed Napoléon Mbonyunkiza), 129-135 (Witness HH), 136-141 (Witness UB), 142, 143 (Witness AWD), 144-147 (Witness ALG), 148 (Witness AWE), 149-152 (Witness ZF), 153-160 (Witness XBM), 161-165 (Witness GOB), 166-169 (Witness BDX), 174-181 (Witnesses G and T), 182-188 (Witnesses GBU and BTH).
[87] Ngirumpatse Appeal Brief, paras. 105-107.

36. Ngirumpatse also claims that no statement of a Prosecution witness incriminated him prior to his arrest and that only four witnesses "vaguely mentioned him" prior to the commencement of his trial in October 2003 and the issuance of the February 2004 Indictment.[88] He alleges that the Prosecution coached, corrupted, or bribed some of its witnesses,[89] and that Rwandan authorities conditioned, punished, or threatened Prosecution witnesses.[90]

37. Finally, Ngirumpatse submits that the Trial Chamber erroneously considered that Georges Rutaganda called him as a Defence witness in the *Rutaganda* case. This error, in Ngirumpatse's view, led the Trial Chamber to give insufficient weight to Defence Witness Rutaganda's evidence, thereby occasioning a miscarriage of justice with respect to findings concerning his evidence.[91]

38. The Prosecution responds that the Trial Chamber properly assessed witnesses and exercised caution with respect to accomplice witnesses.[92] The Prosecution further submits that Ngirumpatse makes unsupported claims or merely repeats arguments he raised at trial, which should be summarily dismissed.[93]

39. The Prosecution concedes that the Trial Chamber's statement about Ngirumpatse testifying in the *Rutaganda* case "may be inaccurate", but maintains that this did not entail a miscarriage of justice as the Trial Chamber did not rely on this fact when determining whether to accept Witness Rutaganda's evidence.[94] According to the Prosecution, the Trial Chamber's rejection of parts of Witness Rutaganda's testimony was rather based on his conviction.[95]

40. The Appeals Chamber considers that many of Karemera's and Ngirumpatse's contentions are unsubstantiated or fail to identify any error on the part of the Trial Chamber and will therefore not address them. In particular, Karemera merely refers to 27 paragraphs of the Trial Judgement to support his claim that the Trial Chamber failed to consider the Prosecution's evidence with sufficient caution,[96] and Ngirumpatse simply refers to other aspects of his appeal in support of his general allegations regarding the exclusion of exculpatory and Defence evidence.[97] The Appeals

[88] Ngirumpatse Appeal Brief, para. 83.
[89] Ngirumpatse Appeal Brief, paras. 84-90.
[90] Ngirumpatse Appeal Brief, paras. 91-97.
[91] Ngirumpatse Appeal Brief, para. 194. Ngirumpatse further submits that the Trial Chamber relied on Rutaganda's testimony to establish that the exculpatory evidence had low probative value as compared to the Prosecution evidence, except where the Trial Chamber interpreted the Defence evidence to corroborate Prosecution evidence. *See* Ngirumpatse Reply Brief, paras. 53, 54. Ngirumpatse also asserts that the Trial Chamber should not have considered that Rutaganda's testimony complemented Ngirumpatse's testimony. *See* Ngirumpatse Reply Brief, para. 55.
[92] Prosecution Response Brief (Karemera), paras. 128-136, 138-143; Prosecution Response Brief (Ngirumpatse), paras. 61, 74. *See also* Prosecution Response Brief (Ngirumpatse), paras. 62-64.
[93] Prosecution Response Brief (Ngirumpatse), paras. 17, 18, 61-75.
[94] Prosecution Response Brief (Ngirumpatse), para. 75.
[95] Prosecution Response Brief (Ngirumpatse), para. 75.
[96] Karemera Appeal Brief, para. 226.
[97] Ngirumpatse Appeal Brief, paras. 193, 195.

Chamber cannot be expected to consider a party's submissions in detail if they are obscure, contradictory, vague, or if they suffer from other formal and obvious insufficiencies.[98] In light of this observation, the Appeals Chamber finds that these arguments amount to mere assertions without demonstrating how the Trial Chamber erred.

41. The Appeals Chamber notes that the Trial Chamber expressly recalled the applicable jurisprudence with regard to oral evidence.[99] The Trial Chamber further stated that it would treat certain witnesses' testimony with caution for various reasons, including their criminal convictions and detention, receipt of benefits from the Prosecution, relationship to Ngirumpatse, the passage of time, and the lack of satisfactory responses to discrepancies between their testimony and prior statements.[100] Ngirumpatse has failed to identify any additional factors which, in his view, should have been considered by the Trial Chamber when assessing the credibility of witness testimony. His submissions are therefore dismissed.

42. Turning to the issue of accomplice witnesses, the Appeals Chamber has stated that the ordinary meaning of the term "accomplice" is "an association in guilt, a partner in crime".[101] An exercise of caution in assessing a witness is most appropriate where a witness "is charged with the same criminal acts as the accused".[102] The Appeals Chamber observes that the Trial Chamber was aware of the general standards for the assessment of witnesses' credibility and of those concerning accomplice witnesses.[103] Indeed, the Trial Chamber repeatedly noted that the majority of detained or convicted witnesses were not "direct accomplices of the Accused" and applied "the requisite degree of caution to each when assessing their credibility and the weight of their evidence".[104] The Appeals Chamber considers that the Trial Chamber made clear that, although these witnesses were not "direct" accomplices of Karemera and Ngirumpatse, their implication in the genocide necessitated that their evidence be assessed with the requisite degree of caution.[105] The Appeals Chamber further observes that the Trial Chamber did not rely on accomplice witnesses without

[98] *See supra* para. 18.
[99] Trial Judgement, paras. 103, 104.
[100] *See*, *e.g.*, Trial Judgement, paras. 116, 117, 160, 194, 195, 249, 250, 341, 342, 437, 438, 470, 471, 495, 496, 498, 530, 531, 547, 548, 591, 592, 623, 624, 643, 644, 701, 702, 734-736, 831, 832, 878, 879, 936, 937, 980, 981, 1004, 1005, 1035, 1036, 1050, 1194, 1195, 1281, 1282, 1331, 1332, 1352, 1353, 1369, 1370, 1388.
[101] *Munyakazi* Appeal Judgement, para. 93; *Ntagerura et al.* Appeal Judgement, para. 203, *quoting Niyitegeka* Appeal Judgement, para. 98.
[102] *Munyakazi* Appeal Judgement, para. 93; *Ntagerura et al.* Appeal Judgement, para. 234.
[103] Trial Judgement, paras. 106-110.
[104] *See*, *e.g.*, Trial Judgement, paras. 195, 250, 342, 438, 471, 496, 531, 548, 592, 624, 644, 702, 736, 879, 937, 981, 1005, 1036, 1050, 1195, 1282, 1332, 1353, 1369, 1388.
[105] *See*, *e.g.*, Trial Judgement, paras. 195, 250, 342, 438, 471, 496, 531, 548, 592, 624, 644, 702, 736, 879, 937, 981, 1005, 1036, 1050, 1195, 1282, 1332, 1353, 1369, 1388.

corroboration.[106] Karemera and Ngirumpatse have failed to demonstrate that the Trial Chamber erred in assessing the credibility of these witnesses.

43. Turning to Ngirumpatse's claim that the Prosecution generated evidence against him only after his arrest and interfered with witnesses, the Appeals Chamber recalls that the mere repetition, almost verbatim, of arguments previously raised at trial[107] cannot be considered as a valid argument on appeal. The Appeals Chamber further recalls that appellate proceedings are not intended as a trial *de novo*.[108] Ngirumpatse's challenges are therefore dismissed.

44. As for Ngirumpatse's final submission, the Appeals Chamber observes that, according to the Trial Judgement, "Rutaganda called Ngirumpatse as a Defence witness in his own trial".[109] As the Prosecution concedes, Ngirumpatse did not testify in the *Rutaganda* trial. However, the Appeals Chamber is not convinced that the Trial Chamber's misstatement of the record results in a miscarriage of justice. The Appeals Chamber observes that, despite this misstatement, the Trial Chamber accepted Witness Rutaganda's evidence in numerous instances.[110] Moreover, where the Trial Chamber was not convinced by Witness Rutaganda's evidence, its reasoning was based on factors other than its misstatement that Ngirumpatse had testified in the *Rutaganda* case.[111] The Appeals Chamber therefore dismisses this aspect of Ngirumpatse's appeal.

(c) Documentary Evidence

45. Ngirumpatse asserts that the Trial Chamber accepted "draft, truncated or inaccurate translations" and documents which were "discernibly fake".[112] Ngirumpatse further contends that the Trial Chamber erred in failing to admit Defence documents into evidence, while admitting Prosecution documents without caution.[113]

46. The Prosecution responds that the Trial Chamber correctly considered all the documentary evidence before it and that Ngirumpatse's submissions are vague and undeveloped.[114]

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[106] *See*, *e.g.*, Trial Judgement, paras. 738, 739, 741, 1284, 1289, 1389.
[107] *See* Ngirumpatse Appeal Brief, para. 110, *referring to* Ngirumpatse Closing Brief, paras. 140-306. *See also* Ngirumpatse Closing Brief, paras. 261, 262, 273-296.
[108] *See*, *e.g.*, *Akayesu* Appeal Judgement, para. 232; *Tadić* Appeal Judgement, para. 64. *See also Delalić et al.* Appeal Judgement, para. 435.
[109] Trial Judgement, paras. 194, 249, 341, 437, 470, 1281, 1331.
[110] Trial Judgement, paras. 198, 252, 255, 452, 454, 472, 473, 1286-1289, 1291, 1292.
[111] Trial Judgement, paras. 201 (based on his conviction and a failure to rebut the Prosecution evidence), 266 (failure to rebut the Prosecution evidence or the Trial Chamber's prior findings on that point), 267 (not believed based on the evidence at hand), 348 (based on his conviction), 443 (failure to rebut the Prosecution evidence).
[112] Ngirumpatse Notice of Appeal, paras. 57-59; Ngirumpatse Appeal Brief, paras. 196-199, 203.
[113] Ngirumpatse Appeal Brief, paras. 200, 201, 203. Ngirumpatse refers to his submissions in Grounds 1 and 13 through 41. *See also* Ngirumpatse Appeal Brief, para. 202.
[114] Prosecution Response Brief (Ngirumpatse), paras. 76-81.

47. The Appeals Chamber considers that Ngirumpatse merely repeats arguments which did not succeed at trial,[115] and that he has failed to demonstrate any error warranting appellate intervention.[116] Since Ngirumpatse has not established that the Trial Chamber abused its discretion in admitting, authenticating, and considering documentary evidence in the Trial Judgement,[117] the Appeals Chamber dismisses his challenges.

3. Right to Equality Before the Tribunal

48. Ngirumpatse alleges that his right to equality before the Tribunal was infringed because the Trial Chamber ruled differently than other trial chambers in similar situations.[118] In support of this allegation, Ngirumpatse contends that the Trial Chamber admitted without discussion information related to Jean-Pierre Turatsinze, while other trial chambers considered that "the 'Turatsinze' case might have been stage-managed".[119] He further submits that he was convicted for the meeting on 18 April 1994 at the Murambi Training School, while Trial Chamber II in the *Bizimungu et al.* case disregarded this particular event because the Prosecution had violated its disclosure obligations.[120]

49. Ngirumpatse further contends that his right to equality was also violated by the Prosecution inconsistently charging some accused and not others for their alleged crimes.[121] In particular, Ngirumpatse submits that he was convicted for the distribution of weapons by Théoneste Bagosora on 11 April 1994, while Bagosora himself was not charged in connection with this allegation.[122] Finally, Ngirumpatse refers to the Trial Chamber's reliance on his links with the Interim Government in order to conclude that he was part of a joint criminal enterprise, whereas other

[115] *See*, *e.g.*, Ngirumpatse Closing Brief, paras. 310-315.
[116] *See also Hategekimana* Appeal Judgement, para. 10; *Kanyarukiga* Appeal Judgement, para. 11; *Ntabakuze* Appeal Judgement, para. 14; *Munyakazi* Appeal Judgement, para. 9; *Haradinaj et al.* Appeal Judgement, para. 13; *Kupreškić et al.* Appeal Judgement, para. 27.
[117] Trial Judgement, para. 105.
[118] Ngirumpatse Notice of Appeal, paras. 18-20, 22-24; Ngirumpatse Appeal Brief, paras. 32-34, 38, 40.
[119] Ngirumpatse Appeal Brief, para. 38, *referring to Ndindiliyimana et al.* Trial Judgement, paras. 352, 357; *Bagosora et al.* Trial Judgement, paras. 184, 522. *See also* Ngirumpatse Reply Brief, para. 23.
[120] Ngirumpatse Appeal Brief, para. 36, *referring to Bizimungu et al.* Trial Judgement, paras. 155-177, 1192. Ngirumpatse also alleges that a "significant part of the documentary evidence was interpreted" by the Trial Chamber differently than the "interpretation before the other Chambers". *See* Ngirumpatse Appeal Brief, para. 37. Ngirumpatse, however, does not identify what documentary evidence he refers to, nor does he refer to any "interpretation" given by the Trial Chamber. The Appeals Chamber therefore dismisses this contention as unfounded.
[121] Ngirumpatse Notice of Appeal, paras. 21, 25; Ngirumpatse Appeal Brief, paras. 35, 39, 40.
[122] Ngirumpatse Appeal Brief, para. 35. *See also* Ngirumpatse Reply Brief, para. 24. Ngirumpatse adds that the difference in treatment is further evidenced by the fact that Callixte Nzabonimana was not indicted for his role in this distribution of weapons, despite the fact that his indictment was filed three years after Prosecution Witness HH testified about Nzabonimana's role. *See* Ngirumpatse Reply Brief, para. 25. Because Ngirumpatse raised this contention for the first time in his reply brief, and thereby deprived the Prosecution from responding to it, the Appeals Chamber will not address it. *See Martić* Appeal Judgement, para. 229.

Interim Government ministers were not charged or not convicted as part of a joint criminal enterprise.[123]

50. The Prosecution responds that Ngirumpatse fails to substantiate his allegations of unequal treatment, and that the Trial Chamber exercised its discretion appropriately.[124] The Prosecution submits that a trial chamber is not bound by decisions of other trial chambers,[125] and that, in any event, the Trial Chamber's findings were largely consistent with the findings in the *Bagosora et al.* and *Ndindiliyimana et al.* cases.[126] The Prosecution also submits that Ngirumpatse's arguments concerning the remedy for disclosure violations for the 18 April 1994 meeting should be dismissed.[127] With respect to Bagosora's involvement in the weapons distribution on 11 April 1994, the Prosecution responds that the fact that Bagosora was not charged with this allegation is irrelevant.[128]

51. Article 20(1) of the Statute provides that "[a]ll persons shall be equal before the [Tribunal]". The Appeals Chamber recalls that this provision encompasses the requirement that there be no discrimination in the enforcement or application of the law.[129]

52. The Appeals Chamber further recalls that decisions of individual trial chambers have no binding force on other trial chambers.[130] A trial chamber must make its own final assessment of the evidence on the basis of the totality of the evidence presented in the case before it.[131] Consequently, two reasonable triers of facts may reach different but equally reasonable conclusions when determining the probative value of the evidence presented at trial.[132] Likewise, the Appeals Chamber considers that an assessment as to whether the defence has been prejudiced by the Prosecution's disclosure violations and whether a remedy is appropriate depends on the particular

[123] Ngirumpatse Appeal Brief, para. 39.
[124] Prosecution Response Brief (Ngirumpatse), para. 20.
[125] Prosecution Response Brief (Ngirumpatse), para. 21.
[126] Prosecution Response Brief (Ngirumpatse), para. 22.
[127] Prosecution Response Brief (Ngirumpatse), paras. 24, 180.
[128] Prosecution Response Brief (Ngirumpatse), para. 23.
[129] *See Delalić et al.* Appeal Judgement, para. 605 (addressing a mirror provision in Article 21 of the ICTY Statute), *referring to* Article 7 of the Universal Declaration of Human Rights; Article 14 of the International Covenant on Civil and Political Rights; Article 75 of the Additional Protocol I to the Geneva Conventions; Article 29 of the Rome Statute of the International Criminal Court.
[130] *Lukić and Lukić* Appeal Judgement, para. 260; *Aleksovski* Appeal Judgement, para. 114. *See also The Prosecutor v. Théoneste Bagosora et al.*, Case Nos. ICTR-98-41-AR73 and ICTR-98-41-AR73(B), Decision on Interlocutory Appeals of Decision on Witness Protection Orders, 6 October 2005, para. 33.
[131] *Lukić and Lukić* Appeal Judgement, para. 260; *Stakić* Appeal Judgement, para. 346.
[132] *Lukić* and *Lukić* Appeal Judgement, para. 396; *Krnojelac* Appeal Judgement, paras. 11, 12.

circumstances of the case.[133] An error cannot be established by simply demonstrating that other trial chambers have exercised their discretion in a different way.[134]

53. Turning first to Ngirumpatse's claim that information related to Jean-Pierre Turatsinze was assessed differently by the Trial Chamber than other trial chambers, the Appeals Chamber considers that this is insufficient to substantiate that Ngirumpatse was unequally treated in violation of the Statute.

54. Likewise, the Appeals Chamber considers that the Trial Chamber was entitled to remedy the Prosecution's disclosure violation differently than the *Bizimungu et al.* trial chamber.[135] Ngirumpatse's challenge does not demonstrate any error in the Trial Chamber's exercise of its discretion in this regard.[136]

55. With respect to Ngirumpatse's arguments related to unequal treatment in charges made by the Prosecution, the Appeals Chamber recalls that "[i]t is beyond question that the Prosecutor has a broad discretion in relation to the initiation of investigations and in the preparation of indictments".[137] This discretion is not unlimited, but must be exercised within the restrictions imposed by the Statute and the Rules.[138]

56. The Appeals Chamber observes that the Prosecution alleged that Ngirumpatse made arrangements with Bagosora to obtain weapons for the *Interahamwe* on 11 April 1994,[139] and that Bagosora was not charged for this particular event.[140] However, the Appeals Chamber rejects Ngirumpatse's contention that this fact alone could substantiate an allegation of unequal treatment. Ngirumpatse does not advance any argument to demonstrate that the Prosecution abused its discretion or breached the principle of equality before the law. Nor does he substantiate his allegations of unequal treatment arising out of his conviction based on his membership in a joint criminal enterprise. Ngirumpatse's arguments in this respect are dismissed.

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[133] *See*, *e.g.*, *Mugenzi and Mugiraneza* Appeal Judgement, paras. 39, 43-46, 54, 55; *Kalimanzira* Appeal Judgement, paras. 18-22.
[134] *Lukić* and *Lukić* Appeal Judgement, para. 396. *See also Krnojelac* Appeal Judgement, para. 12.
[135] *Compare* Trial Judgement, paras. 815-830, *with Bizimungu et al.* Trial Judgement, paras. 148-174.
[136] In addition to his allegation of error by way of comparison to other trial chambers, Ngirumpatse alleges an error in the fashioning of an appropriate remedy for disclosure violations. *See* Ngirumpatse Notice of Appeal, para. 126; Ngirumpatse Appeal Brief, paras. 422-425. The Appeals Chamber addresses these further arguments below. *See infra* Section III.H.1.
[137] *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-AR73.4, Decision on Karadžić's Appeal of Trial Chamber's Decision on Alleged Holbrooke Agreement, 12 October 2009 ("*Karadžić* Appeal Decision of 12 October 2009"), para. 41; *Akayesu* Appeal Judgement, para. 94; *Delalić et al.* Appeal Judgement, para. 602.
[138] *Karadžić* Appeal Decision of 12 October 2009, para. 41; *Delalić et al.* Appeal Judgement, paras. 602, 603.
[139] *See* Indictment, paras. 38, 39. *See also* Trial Judgement, paras. 716, 739, 740, 1450(1). The Appeals Chamber addresses elsewhere Ngirumpatse's contention that this allegation was placed "[o]n or about 10 April 1994", and that

4. Arrest and Interrogation without Charges

57. Ngirumpatse was arrested in Bamako, Mali on 5 June 1998,[141] in response to a letter dated 27 May 1998 from the Tribunal's Deputy Prosecutor, requesting the Ministry of Justice of Mali to arrest and provisionally detain Ngirumpatse pursuant to Rule 40(A) of the Rules.[142] Ngirumpatse was questioned by the Prosecution on 15, 16, and 17 June 1998.[143] On 30 June 1998, Judge Laïty Kama granted a Prosecution request pursuant to Rule 40*bis* of the Rules, and ordered Ngirumpatse's transfer to the Tribunal.[144] Ngirumpatse was transferred to the custody of the Tribunal on 11 July 1998.[145] On 16 July 1998, Ngirumpatse appeared before Judge Kama, who granted the Prosecution until 9 August 1998 to prepare an indictment.[146] On 10 August 1998, Judge Kama granted a Prosecution's motion to extend the provisional detention of Ngirumpatse for a period of 20 days.[147] Judge Navanethem Pillay confirmed the initial indictment on 29 August 1998, and the initial indictment was filed on 31 August 1998 and served on Ngirumpatse on 1 September 1998.[148]

58. On 10 December 1999, the Trial Chamber dismissed Ngirumpatse's motion arguing, *inter alia*, that his detention violated Rule 40 of the Rules as the Prosecution did not file an indictment against him in a timely manner.[149] The Trial Chamber also found that there was no undue delay in the service of an unredacted indictment upon Ngirumpatse, but it did not address the timeliness of Ngirumpatse's notification of the charges against him.[150] In his closing brief, Ngirumpatse argued

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this was inconsistent with the Trial Chamber's finding that the distribution of weapons took place on 11 April 1994. *See infra* para. 366.

[140] *See generally Bagosora et al.* Trial Judgement.

[141] Trial Judgement, para. 11; *The Prosecutor v. Matthieu Ngirumpatse*, Case No. ICTR-97-44-I, Decision on the Defence Motion Challenging the Lawfulness of the Arrest and Detention and Seeking Return or Inspection of Seized Items, 10 December 1999 ("Trial Decision of 10 December 1999"), para. 3. *See also The Prosecutor v. Édouard Karemera et al.*, Case No. ICTR-98-44-I, *Requête aux fins d'arrestation et de mise en garde à vue provisoire d'un suspect*, 16 June 1998 ("Request for Arrest"). An English translation was filed on 24 November 1999.

[142] Trial Judgement, para. 11; Trial Decision of 10 December 1999, paras. 2, 3.

[143] *The Prosecutor v. Édouard Karemera et al.*, Case No. ICTR-98-44-T, Decision on the Prosecution Motion for Admission Into Evidence of Post-Arrest Interviews with Joseph Nzirorera and Mat[t]hieu Ngirumpatse, 3 November 2007 ("Trial Decision of 3 November 2007"), para. 1. *See also The Prosecutor v. Édouard Karemera and Matthieu Ngirumpatse*, Case No. ICTR-98-44-T, Decision on Prosecutor's Request for Clarification of Trial Chamber's "Decision on the Prosecution Motion for Admission into Evidence of Post-Arrest Interviews with Joseph Nzirorera and Mat[t]hieu Ngirumpatse", 6 December 2010, para. 1.

[144] *The Prosecutor v. Matthieu Ngirumpatse*, Case No. ICTR-97-28-DP, Order for Transfer and Provisional Detention (Under Rule 40*bis* of the Rules), 15 July 1998, p. 4. *See also* Trial Decision of 10 December 1999, para. 6.

[145] Trial Decision of 10 December 1999, para. 7.

[146] Trial Decision of 10 December 1999, para. 8.

[147] T. 10 August 1998 p. 20. *See also* Trial Decision of 10 December 1999, para. 9.

[148] Trial Decision of 10 December 1999, paras. 11-14. *See also The Prosecutor v. Édouard Karemera et al.*, Case No. ICTR-98-44-I, Amended Indictment, 28 August 1998; *The Prosecutor v. Édouard Karemera et al.*, Case No. ICTR-98-44-T, Confirmation and Non Disclosure of the Indictment, 31 August 1998.

[149] Trial Decision of 10 December 1999, paras. 36, 58, 78.

[150] Trial Decision of 10 December 1999, para. 72.

that the fairness of his trial was prejudiced by his "arrest without prior charges".[151] The Trial Chamber dismissed this argument in the Trial Judgement.[152]

59. Ngirumpatse submits that following his arrest, he was interrogated for days by the Prosecution without prior notification of the charges against him and argues that at the time of his arrest neither the charges nor an indictment existed.[153] He contends that the first indictment was drafted based on the interrogation conducted subsequent to his arrest and that, as a result, the Prosecution used his interrogation in Bamako to fabricate evidence against him.[154] Ngirumpatse argues that his rights to be initially informed of the charges against him and to not provide any information that may be used against him were breached.[155] In his view, the Trial Chamber erred in rejecting his arguments to this effect in order to assist the Prosecution to build a case and to fabricate evidence against him.[156]

60. The Prosecution responds that Ngirumpatse demonstrates no error in the Trial Chamber's findings, as the notification of charges is required at the time of arrest pursuant to the Statute and the Rules.[157]

61. A suspect arrested by the Tribunal has the right to be informed promptly of the reasons for his or her arrest.[158] In the *Semanza* case, the Appeals Chamber concluded that a reference to the accused being provisionally detained "for serious violations of international humanitarian law and crimes within the jurisdiction of the Tribunal" adequately described the substance of the charges to satisfy the requirement of notice at that stage.[159] The Appeals Chamber notes that the Prosecution's Request for Arrest made pursuant to Rule 40(A) of the Rules to the Malian authorities avers that the Prosecution possesses information implicating Ngirumpatse in crimes within the competence of the Tribunal, including genocide, crimes against humanity, and other serious violations of international humanitarian law.[160]

62. The Appeals Chamber notes, however, that there is no indication that this document was provided to Ngirumpatse at the time of his arrest. Indeed, in rejecting the Prosecution's request to admit the statement that Ngirumpatse gave to the Tribunal's investigators shortly after his arrest, the

[151] Ngirumpatse Closing Brief, para. 960.
[152] Trial Judgement, para. 23.
[153] Ngirumpatse Appeal Brief, para. 42.
[154] Ngirumpatse Appeal Brief, paras. 43-45.
[155] Ngirumpatse Appeal Brief, paras. 46, 47.
[156] Ngirumpatse Appeal Brief, para. 48.
[157] Prosecution Response Brief (Ngirumpatse), para. 26. Ngirumpatse replies that the Prosecution does not bring any arguments based on fact or law. *See* Ngirumpatse Reply Brief, para. 27.
[158] *Laurent Semanza v. The Prosecutor*, Case No. ICTR-97-20-A, Decision, 31 May 2000 ("*Semanza* Appeal Decision"), para. 78 and fns. 104, 106. An English translation was filed on 4 July 2001.
[159] *Semanza* Appeal Decision, paras. 83-85.

Trial Chamber considered that "there is substantive doubt as to whether Mat[t]hieu Ngirumpatse was informed in detail of the nature and cause of the charges against him, according to Article 20(4)(a) of the Statute, be it promptly, before or during the interview."[161] Accordingly, the Appeals Chamber finds that the Prosecution violated Ngirumpatse's right to be promptly informed of the reasons for his arrest.

63. The Appeals Chamber recalls, however, that the Trial Chamber already accorded Ngirumpatse with a remedy for this violation in refusing to admit into evidence the statement that he provided to the Tribunal investigators.[162] The Appeals Chamber is not satisfied that Ngirumpatse has demonstrated that any further remedy is warranted. In this respect, the Appeals Chamber considers that Ngirumpatse's assertion that his interview was used to generate fabricated evidence is unsubstantiated. Moreover, Ngirumpatse simply lists particular pieces of allegedly tainted evidence without identifying how it implicates any of his convictions.

64. Accordingly, although the Appeals Chamber finds that Ngirumpatse's right to be promptly informed of the reasons for his arrest was violated, the Appeals Chamber further finds that the Trial Chamber provided an adequate remedy in refusing to admit the statement of his interview into evidence.

5. Right to be Tried Without Undue Delay

65. Ngirumpatse was arrested in Mali on 5 June 1998 and transferred to the custody of the Tribunal on 11 July 1998.[163] At his initial appearance on 7 and 8 April 1999, Ngirumpatse entered a plea of not guilty to all charges against him.[164] The trial started on 27 November 2003[165] but one of the Judges withdrew from the case on 14 May 2004,[166] and the Appeals Chamber quashed the Trial

[160] Request for Arrest.
[161] *The Prosecutor v. Édouard Karemera et al.*, Case No. ICTR-98-44-T, Decision on the Prosecution Motion for the Admission into Evidence of Post-Arrest Interviews with Joseph Nzirorera and Mat[t]hieu Ngirumpatse, 2 November 2007 ("Trial Decision of 2 November 2007"), para. 42. *See also* Trial Decision of 2 November 2007, para. 41.
[162] *See* Trial Decision of 2 November 2007, paras. 42, 47. As a corollary of this decision, the Appeals Chamber can identify no violation of Ngirumpatse's right to not be compelled to testify against himself.
[163] Trial Judgement, para. 11; Trial Decision of 10 December 1999, paras. 3, 7.
[164] T. 7 April 1999; T. 8 April 1999 pp. 113-117. On 10 March 1999, Ngirumpatse appeared before the Trial Chamber but his initial appearance was interrupted and postponed in order to rectify inconsistencies in the redaction of the Indictment. *See* Trial Decision of 10 December 1999, para. 16; T. 10 March 1999 pp. 26-29.
[165] T. 27 November 2003; *The Prosecutor v. Édouard Karemera et al.*, Case No. ICTR-98-44-AR15*bis*.2, Decision on Interlocutory Appeals Regarding the Continuation of the Proceedings with a Substitute Judge and on Nzirorera's Motion for Leave to Consider New Material, 28 September 2004 ("Appeal Decision of 28 September 2004"), para. 2.
[166] Appeal Decision of 28 September 2004, para. 2; *The Prosecutor v. Édouard Karemera et al.*, Case No. ICTR-98-44-T, Decision on Motions by Nzirorera and Rwamakuba for Disqualification of Judge Vaz, 17 May 2004, para. 6. On 27 April 2004, Joseph Nzirorera requested the disqualification of Judge Vaz on the basis of her alleged association with Prosecution counsel taking part in the case. *See* T. 27 April 2004 p. 28. The Trial Chamber orally dismissed this request. *See* T. 27 April 2004 pp. 29, 30.

Chamber's decision to continue the proceedings with a substitute Judge on 28 September 2004.[167] The rehearing of the trial before a newly composed Bench started on 19 September 2005 and ended on 25 August 2011.[168] The Trial Judgement was pronounced on 21 December 2011 and delivered in writing on 2 February 2012.[169]

66. The Trial Chamber acknowledged that the proceedings had been lengthy but considered that this could be explained by the size and the particular complexity of the case.[170] The Trial Chamber also pointed to the joinder and severance of the cases at the initial stage of the proceedings and noted that, although some individual cases could have started earlier if the Prosecution had not requested amendment of the indictments and joinder, these procedures are provided for in the Rules and were warranted in the interests of justice.[171] The Trial Chamber further stated that some delays could be explained by: (i) the necessary rehearing of the case that resulted in a two-year setback;[172] (ii) Ngirumpatse's continued ill-health leading to a 13-month stay of the proceedings and subsequent limitation of court hearings to the equivalent of two or three days a week;[173] and (iii) the death of former co-accused Joseph Nzirorera on 1 July 2010 that delayed the proceedings for two months.[174] Comparing the particular circumstances of this case with the *Nahimana et al.* and the *Bagosora et al.* cases, the Trial Chamber concluded that no undue delay had occurred.[175] The Trial

[167] Appeal Decision of 28 September 2004, para. 8. Ngirumpatse and the other co-Accused withheld their consent to continue the proceedings with a substitute Judge. On 24 May 2004, the two remaining Judges in this case issued a decision to continue the proceedings with a substitute Judge, pursuant to Rule 15*bis*(D) of the Rules. *See The Prosecutor v. Édouard Karemera et al.*, Case No. ICTR-98-44-T, *Décision relative à la continuation du procès*, 24 May 2004, p. 5. On 21 June 2004, the Appeals Chamber directed the remaining Judges to reconsider their decision after giving the parties an opportunity to be heard on the matter. *See The Prosecutor v. Édouard Karemera et al.*, Case No. ICTR-98-44-A15*bis*, Decision in the Matter of Proceedings under Rule 15*bis*(D), 21 June 2004, para. 13. On 16 July 2004, the remaining Judges decided that it would be in the interests of justice to continue the trial with a substitute Judge pursuant to Rule 15*bis*(D) of the Rules. *See The Prosecutor v. Édouard Karemera et al.*, Case No. ICTR-98-44-T, Decision on Continuation of the Trial, 16 July 2004, p. 25.
[168] Trial Judgement, fn. 45; T. 25 August 2011; T. 19 September 2005.
[169] Trial Judgement; T. 21 December 2011.
[170] Trial Judgement, paras. 35, 42. In particular, the Trial Chamber noted that the Indictment charged Ngirumpatse with participation in a joint criminal enterprise comprising over 65 persons encompassing the entire country of Rwanda, and with the evidence ranging from 1992 to July 1994. *See* Trial Judgement, para. 35. The Trial Chamber also stressed that "the Prosecution asserts that the [a]ccused are individually criminally responsible for all rapes and sexual assaults that occurred in Rwanda from early to mid-April 1994 to June 1994 as genocide or, alternatively, complicity in genocide. It also charges the rapes and sexual assaults as genocide and crimes against humanity under the theory of extended joint criminal enterprise – the first charge of its kind in the history of international criminal law." *See* Trial Judgement, para. 36. Furthermore, the Trial Chamber noted that, during the retrial and over the course of 374 trial days, it heard 153 witnesses, admitted 114 witness statements under Rule 92*bis* of the Rules, received over 1,400 exhibits, and issued nearly 900 written decisions. *See* Trial Judgement, para. 38.
[171] Trial Judgement, paras. 35, 41.
[172] Trial Judgement, para. 37. The Trial Chamber noted that the first trial started on 27 November 2003 and the rehearing began on 19 September 2005. *See* Trial Judgement, fn. 45.
[173] Trial Judgement, para. 38.
[174] Trial Judgement, para. 38.
[175] Trial Judgement, paras. 39-42.

Chamber also rejected Ngirumpatse's contention that he was prejudiced as a result of his lengthy pre-trial detention, noting that he had not presented any specific allegations supporting this claim.[176]

67. Ngirumpatse submits that the Trial Chamber erred by rejecting his arguments related to the right to be tried without undue delay and the "abnormal" length of his pre-trial detention.[177] Ngirumpatse contends that the purpose of his pre-judgement detention was to provide the Prosecution an opportunity to "fabricate" evidence against him,[178] and that the Prosecution deliberately complicated the proceedings to prejudice him.[179]

68. The Prosecution responds that the Trial Chamber correctly found that, while the proceedings in this case were lengthy, the 12 years that elapsed from the arrest to the Trial Judgement did not constitute undue delay.[180] The Prosecution contends that the Trial Chamber correctly considered all relevant factors and properly assessed them in light of the particular circumstances of this case.[181] The Prosecution submits that Ngirumpatse does not offer any evidence to support his contention that the Prosecution deliberately complicated the proceedings.[182] Finally, it argues that Ngirumpatse fails to demonstrate how his defence was prejudiced by the length of the proceedings.[183]

69. The Appeals Chamber recalls that the right to be tried without undue delay is enshrined in Article 20(4)(c) of the Statute and protects an accused against *undue* delay, which is determined on a case-by-case basis.[184] A number of factors are relevant to this assessment, including: (i) the length of the delay; (ii) the complexity of the proceedings; (iii) the conduct of the parties; (iv) the conduct of the relevant authorities; and (v) the prejudice to the accused, if any.[185]

70. The Appeals Chamber observes that the Trial Chamber assessed numerous considerations in deciding that Ngirumpatse's right to be tried without undue delay had not been violated. These considerations included: (i) the length of the delay; (ii) the number of indictments; (iii) the joinder and severance of the case at the initial stage of the proceedings and the conduct of the Prosecution in this context; (iv) the number of accused; (v) the scope and the number of crimes charged in the

[176] Trial Judgement, para. 43.
[177] Ngirumpatse Notice of Appeal, paras. 7, 30; Ngirumpatse Appeal Brief, para. 50.
[178] Ngirumpatse Notice of Appeal, para. 31; Ngirumpatse Appeal Brief, para. 50. *See also* Ngirumpatse Reply Brief, para. 29.
[179] Ngirumpatse Appeal Brief, para. 51. *See also* Ngirumpatse Reply Brief, para. 30.
[180] Prosecution Response Brief (Ngirumpatse), para. 27.
[181] Prosecution Response Brief (Ngirumpatse), paras. 28, 29.
[182] Prosecution Response Brief (Ngirumpatse), para. 30.
[183] Prosecution Response Brief (Ngirumpatse), para. 31.
[184] *Gatete* Appeal Judgement, para. 18; *Renzaho* Appeal Judgement, para. 238; *Nahimana et al.* Appeal Judgement, para. 1074.
[185] *Gatete* Appeal Judgement, para. 18; *Renzaho* Appeal Judgement, para. 238; *Nahimana et al.* Appeal Judgement, para. 1074; *The Prosecutor v. Prosper Mugiraneza*, Case No. ICTR-99-50-AR73, Decision on Prosper Mugiraneza's Interlocutory Appeal from Trial Chamber II Decision of 2 October 2003 Denying the Motion to Dismiss the Indictment, Demand Speedy Trial and for Appropriate Relief, 27 February 2004, pp. 1, 2.

Indictment; (vi) the amount of evidence; and (vii) the complexity of the facts and the law.[186] The Trial Chamber also noted that some delays could be explained by the rehearing of the case, by Ngirumpatse's health condition, and by the death of former co-accused Nzirorera.[187] Except for a general allegation that his case was not complex, Ngirumpatse merely claims that the Trial Chamber erred in dismissing his challenges to the length of the proceedings but has failed to discuss any of these factors, or to challenge their assessment by the Trial Chamber.

71. The Appeals Chamber recalls that "because of the Tribunal's mandate and of the inherent complexity of the cases before the Tribunal, it is not unreasonable to expect that the judicial process will not always be as expeditious as before domestic courts".[188] In the circumstances of this case, which is among the largest ever heard by the Tribunal, the period of time which elapsed during these proceedings can be reasonably explained by the size and complexity of the case. The pace of the trial was not dissimilar from that of other multi-accused trials, where no undue delay has been identified.[189]

72. The Appeals Chamber finds no merit in Ngirumpatse's unsubstantiated allegations that the Prosecution deliberately complicated the proceedings and that the length of the proceedings was intended to allow the Prosecution to "fabricate" evidence against him. Therefore, his arguments in these respects are dismissed.

6. Alleged Conflict of Interest

73. From November 2003 until March 2005, "MB" was a legal assistant to Ngirumpatse's lead counsel.[190] When Ngirumpatse's lead counsel was withdrawn from his position at Ngirumpatse's

[186] Trial Judgement, paras. 35-38, 41.
[187] Trial Judgement, paras. 37, 38.
[188] *Mugenzi and Mugiraneza* Appeal Judgement, para. 32; *Nahimana et al.* Appeal Judgement, para. 1076.
[189] In the *Bagosora et al.* case, involving the trial of four senior military officers, the trial chamber heard 242 witnesses over the course of 408 trial days in proceedings which lasted 11 years. *See Bagosora et al.* Trial Judgement, paras. 76, 78, 84. *See also Bagosora and Nsengiyumva* Appeal Judgement, para. 38 (dismissing Anatole Nsengiyumva's challenge regarding undue delay in the proceedings). In the *Mugenzi and Mugiraneza* case, involving the trial of four senior government officials, the Trial Chamber heard171 witnesses over the course of 399 trial days in proceedings which lasted 11 years. *See Bizimungu et al.* Trial Judgement, paras. 74-77. *See also Mugenzi and Mugiraneza* Appeal Judgement, para. 37 (dismissing Justin Mugenzi's and Prosper Mugiraneza's challenges regarding undue delay in the proceedings). In the *Nahimana et al.* case, the Appeals Chamber held that a period of seven years and eight months between the arrest of Jean-Bosco Barayagwiza and the issuance of the trial chamber's judgement did not constitute undue delay, with the exception of some initial delays which violated his fundamental rights. In particular, the Appeals Chamber reasoned that Barayagwiza's case was particularly complex due to the multiplicity of counts, the number of accused, witnesses, and exhibits, as well as the complexity of the facts and law. *See Nahimana et al.* Appeal Judgement, paras. 1072-1077. This case is larger than the *Nahimana et al.* case. *Compare Nahimana et al.* Trial Judgement, paras. 50, 94 (93 witnesses over the course of 238 trial days) *with* Trial Judgement, para. 38 (153 witnesses over the course of 374 trial days).
[190] *The Prosecutor v. Édouard Karemera and Matthieu Ngirumpatse*, Case No. ICTR-98-44-T, *Décision sur la requête urgente pour Matthieu Ngirumpatse aux fins d'annulation de la poursuite et aux fins de mise en liberté immédiate*, 11 April 2011 ("Trial Decision of 11 April 2011"), paras. 1, 6, fn. 13. An English translation was filed on 6 October 2011. In this decision, the legal assistant was designated as "MB". *See* Trial Decision of 11 April 2011,

request in March 2005,[191] MB resigned.[192] In December 2010, the Prosecution hired MB.[193] In responding to Ngirumpatse's challenge to this hiring, the Trial Chamber found in its Trial Decision of 11 April 2011 that MB in his new position with the Prosecution "dealt exclusively with general policy issues and the Tribunal's judicial legacy, particularly the implementation of the completion strategy and the transition to the residual mechanism".[194] The Trial Chamber therefore denied Ngirumpatse's request to dismiss his case and to sanction the Prosecution.[195]

74. In the Trial Judgement, the Trial Chamber noted Ngirumpatse's claim that the matter should not have been decided without taking into account MB's *curriculum vitae*.[196] The Trial Chamber observed that Ngirumpatse failed to address the substance of this document or how it might have affected the outcome of the Trial Decision of 11 April 2011, and consequently dismissed his challenge.[197]

75. Ngirumpatse argues that the Trial Chamber erred in law and fact in finding no conflict of interest and in ignoring relevant evidence on this issue.[198] According to Ngirumpatse, MB's *curriculum vitae* contains a personal recommendation from the Prosecutor.[199] He alleges that this shows the Prosecution's knowledge of MB's involvement in Ngirumpatse's Defence team and appears to be a reward to MB by the Prosecution for possible assistance that MB would have rendered to the Prosecution to introduce new evidence against Ngirumpatse.[200] Ngirumpatse claims that the Trial Chamber ignored the circumstances surrounding MB's "suspicious" recruitment by the Prosecution.[201] Further, Ngirumpatse argues that the Trial Chamber erred by not ordering the Prosecution to disclose MB's *curriculum vitae*.[202] Ngirumpatse finally submits that the *curriculum vitae* highlights inaccurate and inconsistent versions provided by the Chief of Prosecution, MB, and the Prosecution's senior trial attorney on the case concerning MB's recruitment, and that the Trial Chamber should have sanctioned the Prosecution and MB.[203]

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paras. 1, 3. Although Ngirumpatse refers to the assistant as "CB", the Appeals Chamber understands this to mean "MB".

[191] *The Prosecutor v. Édouard Karemera et al.*, Case No. ICTR-98-44-PT, [Registrar's] Decision of Denial of Mr. Charles C. Roach's Request for Withdrawal of Co-Counsel Mr. Frederic Weyl and of Withdrawal of Mr. Roach as Lead Counsel for the Accused Mat[t]hieu Ngirumpatse, 22 March 2005, pp. 2, 5.

[192] Trial Decision of 11 April 2011, fn. 13.

[193] Trial Decision of 11 April 2011, para. 6.

[194] Trial Decision of 11 April 2011, paras. 1, 6.

[195] Trial Decision of 11 April 2011, para. 1.

[196] Trial Judgement, para. 92.

[197] Trial Judgement, para. 92.

[198] Ngirumpatse Notice of Appeal, paras. 40-42; Ngirumpatse Appeal Brief, paras. 67-73; Ngirumpatse Reply Brief, paras. 38-41.

[199] Ngirumpatse Appeal Brief, paras. 68, 70.

[200] Ngirumpatse Appeal Brief, paras. 68, 70.

[201] Ngirumpatse Appeal Brief, paras. 69, 72. *See also* Ngirumpatse Appeal Brief, para. 71.

[202] Ngirumpatse Appeal Brief, paras. 68, 72.

[203] Ngirumpatse Appeal Brief, paras. 68, 72; Ngirumpatse Reply Brief, para. 40.

76. The Prosecution responds that there was no conflict of interest or fabrication of evidence against Ngirumpatse.[204] According to the Prosecution, Ngirumpatse fails to establish that MB's *curriculum vitae* or a prior association with his Defence team created a "real possibility of conflict of interest".[205] Specifically, the Prosecution notes that MB stopped working for Ngirumpatse's Defence team six years prior to his recruitment by the Prosecution. It further submits that MB did not discuss Ngirumpatse's case with anyone, including the Prosecution, and that upon his recruitment by the Prosecution, MB dealt exclusively with policy and legacy issues in relation to the MICT.[206] The Prosecution submits that, during MB's tenure with the Prosecution, he had no contact with members of the Prosecution team in this case and that there was no overlap between his work on Ngirumpatse's Defence team and his duties with the Prosecution.[207]

77. The Prosecution further responds that MB's *curriculum vitae* is insufficient to show a fabrication of evidence and a possible reward.[208] The Prosecution argues that the *curriculum vitae* does not include a recommendation *per se*, but merely lists the Prosecutor as one of the referees.[209] The Prosecution also notes that MB, as a member of a recognized bar association, is bound by a duty of confidentiality.[210]

78. In the Trial Decision of 11 April 2011, the Trial Chamber considered that, in order to determine whether a "real possibility of a conflict of interest" exists, it had to assess whether: (i) there is a conflict of interest that affects, or is likely to affect, the integrity of the proceedings before the chamber; and (ii) there is an undue advantage arising from the assignment of the counsel which undermines the integrity of the proceedings before the chamber.[211] It further stated that a trial chamber is required to act only where it finds a real possibility of conflict, and not merely an artificial or a theoretical one.[212] It noted that the party alleging the conflict bears the burden of proof.[213] The Appeals Chamber finds no error in this reasoning. Other than repeating arguments that were raised in his closing brief, Ngirumpatse provides no explanation on how the employment of MB by the Prosecution would have affected his case.[214] In addition, contrary to Ngirumpatse's

[204] Prosecution Response Brief (Ngirumpatse), paras. 47-54.
[205] Prosecution Response Brief (Ngirumpatse), paras. 47-49.
[206] Prosecution Response Brief (Ngirumpatse), para. 49.
[207] Prosecution Response Brief (Ngirumpatse), paras. 49, 54.
[208] Prosecution Response Brief (Ngirumpatse), para. 52.
[209] Prosecution Response Brief (Ngirumpatse), para. 52.
[210] Prosecution Response Brief (Ngirumpatse), para. 53.
[211] Trial Decision of 11 April 2011, para. 4, *referring to Prosecutor v. Enver Hadžihasanović et al.*, Case No. IT-01-47-PT, Decision on the Prosecution's Motion for Review of the Decision of the Registrar to Assign Mr. Rodney Dixon as Co-Counsel to the Accused Kabura, 26 March 2002 ("*Hadžihasanović et al.* Trial Decision of 26 March 2002"), para. 30.
[212] Trial Decision of 11 April 2011, para. 4, *referring to Hadžihasanović et al.* Trial Decision of 26 March 2002, para. 46.
[213] Trial Decision of 11 April 2011, para. 4, *referring to Hadžihasanović et al.* Trial Decision of 26 March 2002, para. 4.
[214] *See* Prosecution Response Brief (Ngirumpatse), paras. 49, 54.

argument, the fact that the Prosecution did not inform the Trial Chamber that it hired MB does not raise suspicion, in the circumstances of this case, about the purpose of the employment of MB in the Office of the Prosecutor.

79. Moreover, the Appeals Chamber observes that MB's *curriculum vitae* is not part of the record in this case. The Appeals Chamber recalls that it can summarily dismiss arguments and allegations when materials at issue are not part of the trial record and have not been admitted on appeal pursuant to Rule 115 of the Rules.[215] Consequently, the Appeals Chamber dismisses Ngirumpatse's submissions in this regard.

7. Rules 66 and 68 Violations

80. Karemera submits that the Trial Chamber failed to remedy the prejudice caused to him by the Prosecution's systematic and deliberate violations of its disclosure obligations under Rules 66 and 68 of the Rules.[216] He argues that these violations affected his ability to prepare his Defence case and prevented him from conducting a complete cross-examination of Prosecution Witnesses G, UB, T, HH, GK, AWE, FH, Fidèle Uwizeye, AMB, AWD, AXA, and BDW.[217] Karemera adds that the Trial Chamber exacerbated the situation by dismissing the majority of Defence submissions in this regard or, where prejudice was found, by not granting appropriate remedies.[218]

81. The Prosecution responds that Karemera demonstrates no discernible error on the part of the Trial Chamber resulting in prejudice in relation to the above-mentioned Prosecution witnesses.[219] The Prosecution asserts that Nzirorera filed several requests for remedy in this regard and that the Trial Chamber addressed them in an appropriate manner.[220]

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[215] *Krajišnik* Appeal Judgement, para. 25; *Galić* Appeal Judgement, paras. 311-313.
[216] Karemera Appeal Brief, paras. 261, 264, 265, 267, 268. Furthermore, Karemera asserts that the Trial Chamber erred in convicting him for the 18 April 1994 meeting at Murambi, Gitarama Prefecture, despite the Prosecution's failure to disclose potentially exculpatory material. *See* Karemera Notice of Appeal, paras. 62-64; Karemera Appeal Brief, paras. 260, 265, 270, 271, 276, 295; Karemera Reply Brief, paras. 61, 63, 64. The Appeals Chamber considers Karemera's submissions on Rule 68 alleged violations and the Murambi Training School meeting elsewhere in this Judgement. *See infra* Section III.H.1.
[217] Karemera Notice of Appeal, para. 160; Karemera Appeal Brief, paras. 243, 261-264. The Appeals Chamber notes Karemera's argument that the Prosecution's violation concerned "most of the witnesses who testified at Trial", and that in his notice of appeal he names Prosecution Witnesses Ahmed Mbonyunkiza, T, UB, ZF, HH, XBM, AWB, ALG, GBU, GK, AMB, ANU, AWD, AWE, FH, Fidèle Uwizeye, BDX, AXA, BDW, and AMO. *See* Karemera Notice of Appeal, para. 160. However, in his Appeal Brief, Karemera's submissions only pertain to the following witnesses: Prosecution Witnesses G, UB, T, HH, GK, AWE, FH, Fidèle Uwizeye, AMB, AWD, AXA, and BDW. *See* Karemera Appeal Brief, para. 264. Therefore the Appeals Chamber will limit its analysis to these witnesses.
[218] Karemera Appeal Brief, paras. 262, 264. *See* in particular Karemera's submissions on Prosecution Witnesses G, UB, T, GK, FH, Fidèle Uwizeye, AWD, and AXA. *See also* Karemera Reply Brief, paras. 58-60.
[219] Prosecution Response Brief (Karemera), paras. 4, 146-154.
[220] Prosecution Response Brief (Karemera), paras. 147, 150, 154.

82. Karemera replies that the difficulties encountered by Nzirorera equally concerned the other accused as a consequence of the Prosecution's decision to jointly charge them and to seek their conviction under a joint criminal enterprise.[221]

83. A review of the trial record shows that Karemera concurrently raised arguments with Nzirorera specifically in relation to Witnesses UB, T, HH, AWE, FH, and AXA, but that Karemera failed to raise any submissions in relation to Witnesses G, GK, AMB, AWD, Uwizeye, and BDW.[222]

84. Karemera appears to suggest that Nzirorera's timely objections before the Trial Chamber were to the benefit of all the accused.[223] He fails to appreciate however that the Defence must exhaust all available means to remedy a problem arising at trial, including by raising the matter before the trial chamber.[224] The burden is specifically on the Defence to satisfy the trial chamber of a Rule 68 disclosure violation, before the trial chamber considers whether a remedy is appropriate.[225] The party cannot remain silent on the matter only to return on appeal to seek a remedy, as Karemera seeks to do in this case.[226]

85. The Appeals Chamber recalls that, as decisions concerning Rules 66 and 68 of the Rules relate to the general conduct of trial proceedings, they fall within the discretion of the trial chamber.[227] A trial chamber's discretionary decision will be reversed only if it was based on an incorrect interpretation of governing law or on a patently incorrect conclusion of fact, or was so unfair or unreasonable as to constitute an abuse of the trial chamber's discretion.[228]

86. The Appeals Chambers observes that the Trial Chamber ruled on each of the alleged disclosure violations brought before it and in many instances provided a remedy, adjourning proceedings or postponing cross-examination in order to allow the accused to conduct further

[221] Karemera Reply Brief, para. 62.
[222] *See* T. 21 February 2006 pp. 21, 22 (in relation to Witness UB); T. 2 June 2006 pp. 9, 10, 16, 17; T. 5 June 2006 pp. 2, 43, 44 (in relation to Witnesses T and HH); T. 3 July 2007 p. 3 (in relation to Witness AWE); T. 16 July 2007 pp. 3, 4 (in relation to Witness FH); T. 21 November 2007 pp. 5-8 (in relation to Witness AXA). The Appeals Chamber notes that it was Nzirorera who made specific submissions in relation to Witnesses G, AMB, AWD, Fidèle Uwizeye, and BDW. *See* T. 10 October 2005 pp. 7, 8; T. 1 October 2007 pp. 18, 47; T. 8 November 2007 p. 30; T. 12 November 2007 p. 27; *The Prosecutor v. Édouard Karemera et al.*, Case No. ICTR-98-44-T, Decision on Defence Motions to Exclude the Testimony of Witness QBG, 11 July 2007 ("Trial Decision of 11 July 2007"), fn. 2; T. 29 November 2007 pp. 34, 37, 38. The Appeals Chamber further notes that, in his closing argument, Karemera only referred briefly to the fact that Prosecution Witness G "received substantial amounts of money and other benefits." *See* T. 23 August 2011 p. 14; Karemera Appeal Brief, para. 264.
[223] Karemera Reply Brief, para. 62.
[224] *See Renzaho* Appeal Judgement, para. 216; *Simba* Appeal Judgement, para. 41; *Tadić* Appeal Judgement, para. 55.
[225] *See*, *e.g.*, *Kalimanzira* Appeal Judgement, para. 18.
[226] *Tadić* Appeal Judgement, para. 55.
[227] *The Prosecutor v. Théoneste Bagosora et al.*, Case No. ICTR-98-41-AR73, Decision on Interlocutory Appeal Relating to Disclosure Under Rule 66(B) of the Tribunal's Rules of Procedure and Evidence, 25 September 2006 ("*Bagosora et al.* Appeal Decision of 25 September 2006"), para. 6.

investigations. Where a remedy was not provided, the Trial Chamber offered clear and reasoned justifications.[229]

87. The Appeals Chamber observes that Karemera refers to various decisions of the Trial Chamber in relation to alleged Rules 66 and 68 disclosure violations.[230] In this regard, the Appeals Chamber notes that the Trial Chamber qualified as "completely unacceptable" the Prosecution's conduct regarding its disclosure obligations pursuant to Rule 68 of the Rules.[231] However, Karemera has failed to specifically demonstrate how he was prejudiced, and does not elaborate upon his cursory assertions that the ability to prepare his Defence case was materially impaired, or that he was prevented from conducting a complete cross-examination of Prosecution witnesses.

88. In light of the foregoing, the Appeals Chamber finds that Karemera has failed to demonstrate that he was prejudiced by the Trial Chamber's decisions relating to alleged violations of Rules 66 and 68 of the Rules. His submissions in this regard are therefore dismissed.

8. Conclusion

89. Based on the foregoing, the Appeals Chamber dismisses Karemera's Twenty-Third Ground of Appeal, in part, and Twenty-Eighth Ground of Appeal, in part, as well as Ngirumpatse's First through Fifth Grounds of Appeal, Seventh Ground of Appeal and Eighth Ground of Appeal, and Tenth through Twelfth Grounds of Appeal.

[228] *Bagosora et al.* Appeal Decision of 25 September 2006, para. 6.
[229] *See*, *e.g.*, T. 22 February 2006 pp. 7, 8; T. 2 June 2006 pp. 20, 21; *The Prosecutor v. Édouard Karemera et al.*, Case No. ICTR-98-44-T, Decision on Motions to Disclose a Prosecution Witness Statement and to Unseal Confidential Documents, 25 October 2006; T. 3 July 2007 pp. 6, 7; T. 16 July 2007 p. 57; T. 17 July 2007 p. 20; Trial Decision of 11 July 2007; T. 19 July 2007 pp. 5, 6; T. 1 October 2007 p. 72; T. 21 November 2007 p. 11; T. 29 November 2007 pp. 38, 39.
[230] *See*, *e.g.*, Karemera Appeal Brief, para. 264.
[231] T. 24 May 2006 p. 36 (Oral Trial Decision).

B. Notice (Karemera Grounds 1, 2-4, in Part, 5-10; Ngirumpatse Ground 6)

90. Karemera and Ngirumpatse submit that the Trial Chamber erred in assessing the sufficiency of the notice that was provided to them in relation to: (i) the pre-8 April 1994 allegations and certain terminology; (ii) the joint criminal enterprise; (iii) their superior responsibility; and (iv) the cumulative effect of the curing of the defects in the Indictment.[232]

1. Pre-8 April 1994 Allegations and Terminology

91. Paragraph 24 of the Indictment contains an introduction and eight subparagraphs relating to Karemera's and Ngirumpatse's roles in the formation and expansion of the *Interahamwe*. Specifically, the introduction to paragraph 24 of the Indictment states that, "[o]ver the course of 1993 and 1994", Karemera, Ngirumpatse, and others agreed and undertook initiatives intended to create and extend their personal control and that of the "MRND Steering Committee" over a "corps of militiamen", who would respond to their calls to kill Tutsi civilians. In the various subparagraphs, the Indictment refers to this "corps of militiamen" as "*Interahamwe*" or "MRND-*Interahamwe*".[233] In addition, paragraph 24.1 of the Indictment mentions that, "[s]ometime during 1992", Ngirumpatse initiated or proposed the creation of the *Interahamwe* as the "youth wing" of the MRND party.

92. Prior to assessing evidence related to these allegations, the Trial Chamber observed some differences in the terminology and dates used in the introduction to paragraph 24 and its subsequent eight subparagraphs.[234] In particular, the Trial Chamber noted that the introduction used the term "corps of militiamen", whereas the subparagraphs referred to the *Interahamwe* of the MRND party.[235] The Trial Chamber expressed its understanding that the general reference to "corps of militiamen" related to the *Interahamwe*.[236] In addition, the Trial Chamber noted that, while the introduction referred to actions in 1993 and 1994, paragraph 24.1 of the Indictment also mentioned the creation of the *Interahamwe* in 1992.[237] The Trial Chamber considered that the allegation in paragraph 24.1 of the Indictment referred to the initial formation of the *Interahamwe* which was

[232] Karemera Notice of Appeal, paras. 8-61; Karemera Appeal Brief, paras. 9-121; Ngirumpatse Notice of Appeal, paras. 35-39; Ngirumpatse Appeal Brief, paras. 53-66. Other notice challenges advanced by Karemera and Ngirumpatse are addressed elsewhere in this Judgement. *See* Sections III.G.1, III.H.2, III.J.1, and III.L.1.
[233] Indictment, paras. 24.1-24.8.
[234] Trial Judgement, paras. 163-167.
[235] Trial Judgement, para. 164.
[236] Trial Judgement, para. 164.
[237] Trial Judgement, para. 165. The Appeals Chamber notes that the Trial Chamber referred to paragraph 28.1 of the Indictment but, given the context, the Appeals Chamber considers it clear that the Trial Chamber intended to refer instead to paragraph 24.1 of the Indictment.

then, as alleged in the introduction, brought under Karemera's and Ngirumpatse's control in 1993 and 1994.[238]

93. The Trial Chamber also observed that several paragraphs in the Indictment referred to the "MRND Steering Committee", whereas the Prosecution in its various briefs referred to the "Executive Bureau".[239] The Trial Chamber decided to use the latter term in the Trial Judgement.[240] In addition, the Trial Chamber opted to use the terms "MRND National Committee" and "MRND Political Bureau", rather than the term "MRND Central Committee" as mentioned in the Indictment.[241] In doing so, the Trial Chamber noted that the "MRND Central Committee" was the term used in the "old MRND structure", which was subsequently replaced by the aforementioned bodies.[242]

94. Finally, the Trial Chamber observed that the Prosecution frequently employed the term "Hutu Power" throughout the Indictment, pre-trial brief, and closing brief in relation to public rallies, without fully explaining what the term meant.[243] After considering the context in which the term was used, the Trial Chamber explained that, in its understanding, the notion meant "opposition to power-sharing with the RPF and, thus, a general opposition to the Arusha Accords".[244] The Trial Chamber was not convinced that the term was synonymous with the genocidal ideology to massacre Tutsis.[245]

95. Karemera and Ngirumpatse submit that the Trial Chamber erred in clarifying the above-mentioned terms of the Indictment.[246] In particular, Ngirumpatse submits that the Trial Chamber engaged in *de facto* amendments of the Indictment and did so only after the close of the proceedings, which prejudiced him by allowing for the improper admission of evidence and preventing him from rebutting the Prosecution's case.[247] Ngirumpatse also contends that the Trial Chamber erred by making findings on events falling outside the temporal jurisdiction of the Tribunal.[248]

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[238] Trial Judgement, para. 165.
[239] Trial Judgement, para. 166.
[240] Trial Judgement, para. 166.
[241] Trial Judgement, para. 167.
[242] Trial Judgement, para. 167.
[243] Trial Judgement, para. 513.
[244] Trial Judgement, para. 514.
[245] Trial Judgement, para. 514.
[246] Karemera Appeal Brief, paras. 81, 92-94; Ngirumpatse Appeal Brief, paras. 59, 60, 63, 65, 231, 232, 238, 242, 313-317. *See also* Ngirumpatse Reply Brief, paras. 33-35.
[247] Ngirumpatse Appeal Brief, paras. 59, 60, 63, 65, 231, 232, 238, 242, 313-317. *See also* Ngirumpatse Reply Brief, paras. 33-35.
[248] Ngirumpatse Appeal Brief, para. 61. *See also* Ngirumpatse Appeal Brief, para. 242.

96. The Prosecution responds that the Trial Chamber did not err in its assessment of the relevant provisions of the Indictment.[249]

97. The Appeals Chamber can identify no error in the Trial Chamber's observation that the general term "corps of militiamen" referred to the *Interahamwe* of the MRND party. The Appeals Chamber recalls that an indictment must be read as a whole.[250] It clearly follows from the heading preceding paragraph 24 of the Indictment and the consistent usage of the more specific term "MRND-*Interahamwe*" in the various subparagraphs of paragraph 24 that "corps of militiamen" did indeed refer to the *Interahamwe* of the MRND party.[251] The Trial Chamber's clarification therefore did not amount to an amendment of the Indictment. In a similar vein, the Trial Chamber's observation that the Indictment alleged that the *Interahamwe* were formed in 1992 and that Karemera and Ngirumpatse established their control over it in 1993 and 1994 is an accurate reading of the plain language of the Indictment, and not a *de facto* amendment. There is also no merit in Ngirumpatse's contention that the Trial Chamber erred in assessing evidence related to allegations prior to January 1994. As previously held, such evidence may be admitted to clarify context, to establish by inference elements of criminal conduct occurring in 1994, and to demonstrate a pattern of conduct.[252] In any case, the Appeals Chamber notes that none of these allegations was a material fact underpinning the convictions in this case.[253]

98. The Appeals Chamber is further satisfied that differences in the terminology of certain MRND party structures used in the Indictment and employed by the Trial Chamber are simply minor variances between the evidence and pleading of the allegations, which do not render the Indictment defective.[254] Finally, Karemera and Ngirumpatse have not shown that the Trial Chamber's understanding of "Hutu Power" was an unreasonable interpretation of that term when read in context. In any event, the Trial Chamber's understanding indicated that the concept of "Hutu Power", prior to April 1994 was not inherently criminal,[255] and therefore no conviction rests thereon.

99. Accordingly, Karemera and Ngirumpatse have not demonstrated that the Trial Chamber erred in offering various "clarifications" of certain terms in the Indictment.

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[249] Prosecution Response Brief (Ngirumpatse), paras. 38-42.
[250] *See*, *e.g.*, *Mugenzi and Mugiraneza* Appeal Judgement, para. 71; *Ntabakuze* Appeal Judgement, para. 65.
[251] The heading preceding paragraph 24 of the Indictment states, in part "Formation of the *Interahamwe*". *See* Indictment, p. 7.
[252] *Nahimana et al.* Appeal Judgement, para. 315. *See also* Trial Judgement, para. 165.
[253] Trial Judgement, para. 1446.
[254] *Muvunyi II* Appeal Judgement, para. 29.
[255] Trial Judgement, para. 514. *See also* Trial Judgement, para. 1016.

2. Joint Criminal Enterprise

100. The Indictment charges Karemera and Ngirumpatse with genocide, direct and public incitement to commit genocide, crimes against humanity, and serious violations of Article 3 common to the Geneva Conventions and of Additional Protocol II through their participation in a joint criminal enterprise.[256] According to the Indictment, "[t]he purpose of this joint criminal enterprise was the destruction of the Tutsi population in Rwanda through the commission of crimes in violation of Articles 2, 3, and 4 of the Statute of the Tribunal".[257] The Indictment specifies the time frame of the joint criminal enterprise as before January 1994 to July 1994.[258] The Indictment identifies 69 named participants including military authorities, political authorities at the national and regional level, influential businessmen, members of "the akazu", and political party leaders affiliated with "Hutu Power" as well as leaders of the *Interahamwe* and the Civil Defense programme.[259] The Indictment also describes the manner in which Karemera and Ngirumpatse contributed to the joint criminal enterprise through various actions related to their functions and authority as leaders of the MRND political party and, in the case of Karemera, as Minister of the Interior from 25 May 1994.[260] Finally, the Indictment alleges that Karemera and Ngirumpatse shared the intent of the other participants in the joint criminal enterprise or were aware of the foreseeable consequences of their actions.[261]

101. In the Trial Judgement, the Trial Chamber assessed and dismissed a number of challenges raised by Karemera and Ngirumpatse to the pleading in the Indictment of their criminal responsibility, including joint criminal enterprise.[262]

102. Karemera submits that the Trial Chamber erred in assessing the notice he received of the material facts underpinning his responsibility for participating in the joint criminal enterprise.[263] In particular, he contends that the Indictment failed to properly inform him of the purpose of the joint criminal enterprise, the nature of his participation, and his *mens rea*.[264] Karemera further argues that he cannot be held liable in relation to allegations in which his name was not mentioned and that he was improperly held responsible by mere association with the MRND political party and the

[256] Indictment, paras. 4-16. The Appeals Chamber notes that the Trial Chamber found that the Prosecution could not charge Karemera and Ngirumpatse with complicity in genocide through a joint criminal enterprise, but stated that the Prosecution did not have to amend the Indictment to reflect this. *See* Trial Judgement, fn. 97.
[257] Indictment, para. 5.
[258] Indictment, para. 6.
[259] Indictment, para. 6.
[260] Indictment, paras. 9-14.
[261] Indictment, paras. 15, 16.
[262] Trial Judgement, paras. 61-76.
[263] Karemera Appeal Brief, paras. 16-27, 30-42, 46-55.
[264] Karemera Appeal Brief, paras. 25, 26, 30-34, 42, 47-55.

Interim Government.[265] Relying on jurisprudence from the Extraordinary Chambers in the Courts of Cambodia and the International Criminal Court, Karemera also asserts that the extended form of joint criminal enterprise has no basis in customary international law.[266]

103. Ngirumpatse generally argues that the Trial Chamber erred in dismissing his challenges to the Indictment, cross-referencing submissions he made in his closing arguments at trial.[267]

104. The Prosecution responds that Karemera's claims are unsubstantiated and distort the Trial Chamber's findings.[268] The Prosecution contends that Karemera demonstrates no error in the Trial Chamber's finding that the Indictment pleaded all the requisite elements of the joint criminal enterprise and that it did not have to refer to the accused by name in every relevant paragraph.[269] The Prosecution adds that paragraphs 4 to 16 of the Indictment properly pleaded the categories of joint criminal enterprise, the contribution made by each of the members, as well as the *mens rea* element for the respective categories.[270] The Prosecution finally argues that Karemera does not offer any cogent reason to justify a departure from the established jurisprudence that the extended form of joint criminal enterprise has the status of customary international law.[271] The Prosecution responds that Ngirumpatse fails to support his claim and that, in any event, the joint criminal enterprise is clearly pleaded in the Indictment.[272]

105. The Appeals Chamber recalls that, in cases where the Prosecution intends to rely on joint criminal enterprise, it must plead the purpose of the enterprise, the identity of its participants, the nature of the accused's participation in the enterprise, and the period of the enterprise.[273] Failure to specifically plead the joint criminal enterprise, including the supporting material facts and the category, constitutes a defect in the indictment.[274]

106. The Appeals Chamber is not convinced that Karemera and Ngirumpatse have identified any error in the pleading of the joint criminal enterprise in the Indictment or the Trial Chamber's assessment of it that would invalidate the verdict. Paragraphs 4 to 16 of the Indictment clearly place Karemera and Ngirumpatse on notice that the Prosecution sought to hold them responsible based on

[265] Karemera Appeal Brief, paras. 21-25.
[266] Karemera Appeal Brief, paras. 35-41.
[267] Ngirumpatse Appeal Brief, paras. 55-58.
[268] Prosecution Response Brief (Karemera), paras. 17, 33.
[269] Prosecution Response Brief (Karemera), paras. 18-21, 24-26, 28-32.
[270] Prosecution Response Brief (Karemera), paras. 33-44. The Prosecution notably refers to the *Simba* case with regard to the pleading of the *mens rea* for the basic and the extended form of joint criminal enterprise. *See* Prosecution Response Brief (Karemera), paras. 35, 36.
[271] Prosecution Response Brief (Karemera), paras. 45-53.
[272] Prosecution Response Brief (Ngirumpatse), para. 43.
[273] *Mugenzi and Mugiraneza* Appeal Judgement, para. 116; *Hategekimana* Appeal Judgement, para. 258; *Munyakazi* Appeal Judgement, para. 161; *Simba* Appeal Judgement, para. 63.

participating in a joint criminal enterprise. As noted above, these paragraphs outline the purpose of the joint criminal enterprise, its time-frame, the participants, the nature of Karemera's and Ngirumpatse's contributions to it, and their *mens rea*. Although some of the allegations in this portion of the Indictment are stated in general terms, the Trial Chamber correctly noted that the Indictment must be read as a whole.[275] The Trial Chamber observed that the Indictment provided greater specificity of the particular criminal acts and the nature of Karemera's and Ngirumpatse's contributions to the common purpose in allegations pleaded in support of the various counts charging the crimes.[276]

107. Karemera's challenge to the material facts is focused principally on the general allegations set forth in paragraphs 4 to 16 of the Indictment and fails to take into account the greater specificity afforded in the remaining allegations in the Indictment, which, as the Trial Chamber noted, "[contain] 58 paragraphs replete with the material facts Karemera contends are missing".[277] Moreover, the Appeals Chamber observes that the Trial Chamber found that Karemera significantly contributed to the joint criminal enterprise by virtue of his participation in meetings at the Murambi Training School on 18 April 1994 and in Kibuye Prefecture on 3 May 1994, his role in the issuance of documents related to the creation of the Civil Defence programme, and his order of 18 June 1994 in relation to the "mopping-up" operation in Bisesero.[278] Karemera has not challenged the nature of the notice he received for these specific contributions.

108. The Indictment specifically pleads that the purpose of the joint criminal enterprise was the destruction of the Tutsi population in Rwanda by virtue of the commission of crimes in violation of Articles 2, 3, and 4 of the Statute and that the criminal acts pleaded in support of Counts 2 to 4, 6, and 7 of the Indictment were within the object of the common purpose.[279] Those counts are replete

[274] *Mugenzi and Mugiraneza* Appeal Judgement, para. 116; *Hategekimana* Appeal Judgement, para. 258; *Munyakazi* Appeal Judgement, para. 161; *Simba* Appeal Judgement, para. 63.
[275] Trial Judgement, para. 71. *See also Mugenzi and Mugiraneza* Appeal Judgement, para. 71; *Ntabakuze* Appeal Judgement, para. 65.
[276] Trial Judgement, paras. 71, 72.
[277] Trial Judgement, para. 72.
[278] Trial Judgement, paras. 1450, 1457.
[279] Indictment, paras. 5, 7, 16. The Appeals Chamber observes that paragraph 7 of the Indictment reads as follows: "The crimes enumerated in Counts 2, 3, 4, 6, and 7 of the indictment were within the object of the joint criminal enterprise. The crimes enumerated in Counts 3, 4, and 5 were the natural and foreseeable consequences of the execution of the object of the joint criminal enterprise and the accused were aware that such crimes where the possible outcome of the execution of the joint criminal enterprise". The Appeals Chamber finds that paragraph 7 of the Indictment seems unclear as to whether genocide (Count 3) and complicity in genocide (Count 4) entail Karemera's and Ngirumpatse's liability for: (i) the basic form of joint criminal enterprise; (ii) the extended form of joint criminal enterprise; or (iii) both. With respect to complicity in genocide (Count 4), the Appeals Chamber, however, notes that the Trial Chamber concluded that the Prosecution could not charge the Accused with participation in a joint criminal enterprise to be complicit in genocide (Count 4). Nonetheless, the Trial Chamber informed the Prosecution that it did not need to amend the Indictment in this regard. The Trial Chamber stated that this explains why paragraph 7 of the Indictment still mentions Count 4. *See* Trial Judgement, fn. 97 and reference cited therein. With respect to genocide (Count 3), the Appeals Chamber, however, understands that genocide (Count 3) was charged under *both* the *basic* and *extended* forms

with allegations of criminal conduct aimed at destroying the Tutsi population in an open and notorious way. The Trial Chamber inferred both the purpose of the joint criminal enterprise and that the participants in the joint criminal enterprise, including Karemera, shared the common purpose from the evidence of the massive scale of the killings which systematically and publicly targeted Tutsi civilians in Rwanda.[280] In this context, the Appeals Chamber is satisfied that the general allegations in the Indictment concerning the purpose of the joint criminal enterprise and the intent of its participants, coupled with the more specific allegations concerning the scale of the violence in Rwanda, provided notice to Karemera of the allegations for which he was ultimately held responsible.[281]

109. In addition, the Appeals Chamber can identify no error in the Trial Chamber's dismissal of Karemera's challenge to paragraphs of the Indictment which do not mention his name.[282] Karemera fails to appreciate that the Trial Chamber was not required to find that he personally contributed to each criminal act, but rather that he made a significant contribution to the common purpose and that each of the criminal acts for which he was held responsible formed part of that purpose.[283] Karemera has not shown that the Indictment fails to plead that he significantly contributed to the common purpose and that the crimes for which he was held responsible were committed as part of the common purpose.

110. The Appeals Chamber also finds no merit in Karemera's challenge to the pleading of his responsibility pursuant to the extended form of joint criminal enterprise on the basis that it does not form part of customary international law. The Appeals Chamber has already determined in this case that there is a basis in customary international law for both the joint criminal enterprise in general, and for the extended form of joint criminal enterprise in particular.[284] The Appeals Chamber sees no cogent reason to depart from this jurisprudence.

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of joint criminal enterprise. Indeed, the Prosecution charged both Karemera and Ngirumpatse for: (i) killings constituting genocide under the basic form of joint criminal enterprise (*see* Indictment, paras. 7, 34-65. *See also* Trial Judgement, para. 1441); and (ii) rapes and sexual assaults constituting genocide under the extended form of joint criminal enterprise (*see* Indictment, paras. 7, 66. *See also* Trial Judgement, para. 1465).

[280] Trial Judgement, para. 1454.

[281] *See*, *e.g.*, *Muvunyi I* Appeal Judgement, para. 62.

[282] Trial Judgement, paras. 61-63.

[283] *Gotovina and Markač* Appeal Judgement, para. 89; *Brdanin* Appeal Judgement, para. 418.

[284] *Édouard Karemera et al. v. The Prosecutor*, Case Nos. ICTR-98-44-AR72.5 and ICTR-98-44-AR72.6, Decision on Jurisdictional Appeals: Joint Criminal Enterprise, 12 April 2006 ("Appeal Decision of 12 April 2006"), para. 16. *See also Đordević* Appeal Judgement, paras. 48-53; *Martić* Appeal Judgement, paras. 68, 79-81; *Brdanin* Appeal Judgement, paras. 363-365, 431; *Stakić* Appeal Judgement, paras. 62, 99-101; *Ntakirutimana* Appeal Judgement, paras. 461-465, 468; *Vasiljević* Appeal Judgement, paras. 95-99.

111. Finally, the Appeals Chamber dismisses Ngirumpatse's challenges to the pleading of joint criminal enterprise, recalling that merely referring to arguments set out at trial is insufficient as an argument on appeal.[285]

112. Accordingly, Karemera and Ngirumpatse have not demonstrated that the Trial Chamber erred in finding that they had adequate notice of the allegation that they participated in a joint criminal enterprise.

3. Superior Responsibility

113. According to the Indictment, Karemera and Ngirumpatse exercised effective control over MRND party officials, the leadership and members of the *Interahamwe*, commanders of the Civil Defence programme, regional and local officials who were members of the MRND party, and administrative personnel in MRND-controlled ministries.[286] The Indictment specifies that Karemera and Ngirumpatse knew or had reason to know that these subordinates were about to commit crimes or had committed them based on the organized structure of the MRND party and the government as well as on the widespread and open commission of the crimes.[287]

114. The Indictment also alleges that Karemera and Ngirumpatse had the material ability to prevent and punish the crimes based on the decision-making structures of the MRND party and the government, which allowed them to call on authorities to halt the killings or, failing that, denounce the crimes.[288] Finally, the Indictment alleges that Karemera and Ngirumpatse failed to take the necessary and reasonable measures to prevent or punish the crimes and instead actively sought to conceal them.[289]

115. The Appeals Chamber notes that, elsewhere in this Judgement, it has concluded that the Trial Chamber erred in holding Karemera and Ngirumpatse responsible as superiors for the actions of Théoneste Bagosora in relation to the distribution of weapons to the *Interahamwe*.[290] In this section, the Appeals Chamber examines Karemera's and Ngirumpatse's remaining challenges to the pleading of superior responsibility in the Indictment.

116. Karemera submits that the Trial Chamber erred in dismissing his challenges to the pleading of the material facts underpinning his superior responsibility.[291] In particular, Karemera maintains

[285] *Haraqija and Morina* Appeal Judgement, para. 26; *Brdanin* Appeal Judgement, para. 35.
[286] Indictment, para. 18.
[287] Indictment, para. 19.
[288] Indictment, para. 20.
[289] Indictment, para. 21.
[290] *See infra* paras. 367-376, 388.
[291] Karemera Appeal Brief, paras. 56-67.

that in the Indictment, the Prosecution referred to all the crimes without specifying which form of responsibility was alleged in relation to which crime.[292] In addition, he argues that the Prosecution did not plead that he knew or had reason to know that his subordinates had the requisite intent, or that he failed to take the necessary and reasonable measures to prevent the crimes or to punish the perpetrators.[293]

117. Ngirumpatse argues that the Trial Chamber erred in dismissing his challenges at trial that the Indictment is defective in relation to the pleading of superior responsibility, including in relation to the relationship between him and Jean-Pierre Turatsinze.[294]

118. The Prosecution responds that the Indictment sufficiently notified Karemera and Ngirumpatse that they were charged pursuant to Article 6(3) of the Statute with regard to all of the incidents for which they were convicted and provided adequate notice of all underlying material facts supporting their responsibility as superiors.[295]

119. The Appeals Chamber recalls that, if the Prosecution intends to rely on the theory of superior responsibility to hold an accused criminally responsible for a crime under Article 6(3) of the Statute, the Indictment should plead the following: (i) that the accused is the superior of subordinates sufficiently identified, over whom he had effective control – in the sense of a material ability to prevent or punish criminal conduct – and for whose acts he is alleged to be responsible; (ii) the criminal conduct of those others for whom he is alleged to be responsible; (iii) the conduct of the accused by which he may be found to have known or had reason to know that the crimes were about to be committed or had been committed by his subordinates; and (iv) the conduct of the accused by which he may be found to have failed to take the necessary and reasonable measures to prevent such acts or to punish the persons who committed them.[296]

120. In the Trial Judgement, the Trial Chamber assessed Karemera's challenges to the notice provided by paragraphs 17 to 20 of the Indictment which plead superior responsibility.[297] The Trial Chamber noted that these paragraphs set out the parameters of the allegations and that paragraph 19 of the Indictment in particular pleads that Karemera was responsible for the crimes committed by his subordinates as charged in the Indictment.[298] The Trial Chamber dismissed the challenges,

[292] Karemera Appeal Brief, para. 59.
[293] Karemera Appeal Brief, paras. 61, 71-79. *See also* Karemera Reply Brief, paras. 24-29.
[294] Ngirumpatse Appeal Brief, paras. 55, 275. *See also* Ngirumpatse Appeal Brief, paras. 242, 253.
[295] Prosecution Response Brief (Karemera), paras. 54-76; Prosecution Response Brief (Ngirumpatse), paras. 44, 45.
[296] *See*, *e.g.*, *Ntabakuze* Appeal Judgement, para. 100; *Bagosora and Nsengiyumva* Appeal Judgement, para. 191; *Muvunyi I* Appeal Judgement, para. 19.
[297] Trial Judgement, paras. 77, 78.
[298] Trial Judgement, para. 78.

noting that "the section of the Indictment entitled 'Charges' contains 58 paragraphs replete with the material facts Karemera contends are missing".[299]

121. A review of the Indictment reflects that the counts charging the crimes of direct and public incitement to commit genocide, genocide, crimes against humanity, serious violations of Article 3 common to the Geneva Conventions and of Additional Protocol II all clearly indicated that the Prosecution sought to hold Karemera responsible for these crimes on the basis of superior responsibility.[300] Each of these counts provides a description of the actions of various named subordinates or classes of subordinates listed in paragraph 18 of the Indictment and describes how they contributed to the crime in question. Karemera has not identified any error in the specific description of his alleged subordinates' actions, which are detailed in the allegations listed under the relevant counts of the Indictment. Accordingly, he has not shown that the Trial Chamber erred in rejecting his challenge to the pleading of the criminal conduct of his subordinates and the nature of their crimes.

122. The Appeals Chamber also finds no merit in Karemera's contention that the Indictment failed to properly plead that he knew or had reason to know that the crimes were about to be committed or had been committed by his subordinates or that he failed to take reasonable measures to prevent or punish them. The widespread nature of the killings is specifically pleaded in paragraph 19 of the Indictment and follows from a reading of the Indictment as a whole. In addition, the Indictment also pleads Karemera's direct participation in the crimes.[301] Such allegations are clearly relevant to establishing the superior's knowledge of the subordinate's crimes and intent, and the superior's failure to prevent or punish the crimes.[302] Accordingly, the Appeals Chamber is not convinced that Karemera has demonstrated that he lacked notice of the material facts underpinning these elements of superior responsibility.[303]

123. Finally, the Appeals Chamber dismisses Ngirumpatse's challenges to the pleading of superior responsibility, including in relation to his relationship with Jean-Pierre Turatsinze, as he simply points to arguments he made at trial which the Trial Chamber considered and dismissed without showing how the Trial Chamber erred. The Appeals Chamber recalls that merely referring to arguments set out at trial is insufficient as an argument on appeal.[304]

[299] Trial Judgement, para. 78.
[300] Indictment, pp. 11, 14, 22, 23.
[301] *See*, *e.g.*, Indictment, paras. 33.1, 60.
[302] *See infra* Sections III.D.2, III.D.3, III.L.3.
[303] *Muvunyi I* Appeal Judgement, para. 62.
[304] *Haraqija and Morina* Appeal Judgement, para. 26; *Brdanin* Appeal Judgement, para. 35.

124. Accordingly, Karemera and Ngirumpatse have not demonstrated that the Trial Chamber erred in finding that they had adequate notice of the allegations related to their superior responsibility.

4. Cumulative Effect of Curing

125. In its preliminary assessment of the notice of the charges, the Trial Chamber considered whether Karemera and Ngirumpatse suffered any prejudice as a result of the cumulative effect of defects in the Indictment having been cured.[305] The Trial Chamber noted that the Prosecution had failed to plead a number of material facts in the Indictment.[306] The Trial Chamber was not convinced however that this resulted in material prejudice since any facts provided to cure these defects did not change the substance of the allegations or add new elements to the case.[307] Notably, the Trial Chamber observed that "[t]he Indictment gave the Defence adequate notice of the essence of the Prosecution's case, namely that [the] Accused played a key role in planning and carrying out the Rwandan genocide".[308] In addition, the Trial Chamber observed that the lack of material prejudice was demonstrated by Karemera's and Ngirumpatse's ability to cross-examine the Prosecution witnesses and the fact that they were afforded four months after the close of the Prosecution case to investigate and further rebut new elements.[309]

126. Karemera and Ngirumpatse submit that the Trial Chamber erred in assessing the prejudice they suffered as a result of the cumulative curing of the defects in the Indictment.[310] Specifically, Karemera contends that the Trial Chamber erred in finding that he had a sufficient basis for preparing his defence because the Indictment alleged that he and Ngirumpatse played "a key role in planning and carrying out the Rwandan genocide".[311] According to Karemera, the Trial Chamber erred in focusing solely on whether the defects were cured and failed to actually evaluate the impact on his fair trial rights.[312] Moreover, Karemera adds that the Trial Chamber's finding is too general and fails to identify what are the defects and how they were remedied.[313] Karemera also argues that the Trial Chamber did not explain its finding that the new material facts were not substantial and did not prejudice him.[314]

[305] Trial Judgement, paras. 79, 80.
[306] Trial Judgement, para. 80.
[307] Trial Judgement, para. 79.
[308] Trial Judgement, para. 79.
[309] Trial Judgement, paras. 79, 80.
[310] Karemera Appeal Brief, paras. 18-20, 87-89, 91, 97-121; Ngirumpatse Appeal Brief, para. 55.
[311] Karemera Appeal Brief, para. 18.
[312] Karemera Appeal Brief, paras. 19, 20.
[313] Karemera Appeal Brief, paras. 89, 90.
[314] Karemera Appeal Brief, para. 90.

127. Karemera further submits that the Trial Chamber wrongly delayed the assessment of the prejudice to the end of the trial rather than at the time an objection was made to the Prosecution's introduction of new material facts.[315] Relying on the *Bagosora et al.* Appeal Decision of 18 September 2006, he submits that the Trial Chamber's failure to evaluate the prejudice in a timely manner deprived him of the opportunity to seek an appropriate remedy during the course of the trial.[316] Finally, Karemera submits that, because he objected at trial, the Prosecution bears the burden of showing that he was not prejudiced by the defects in the Indictment and that the Trial Chamber shifted the burden of proof from the Prosecution to the Defence.[317]

128. The Prosecution responds that Karemera and Ngirumpatse fail to substantiate their claims that the Trial Chamber erred in evaluating the prejudice they suffered as a result of any possible defect in the Indictment.[318]

129. The Appeals Chamber observes that on appeal Karemera and Ngirumpatse have not identified any defect in the Indictment in relation to the material facts underpinning their convictions other than in relation to the Trial Chamber's findings on their superior responsibility over Théoneste Bagosora. These material facts, as pleaded in the Indictment, detail their specific contribution to the crimes for which they were convicted. It is therefore clear that they had more detailed notice of the charges to prepare their defence than the Trial Chamber's general statement that they were aware of their "key role in planning and carrying out the Rwandan genocide".[319] This statement can only be interpreted in conjunction with the specifically pleaded allegations of their conduct as alleged in the Indictment.

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[315] Karemera Appeal Brief, paras. 87, 88, 91, 97-121. *See also* Karemera Reply Brief, paras. 30, 31. Karemera also refers to the Trial Chamber's order dated 18 February 2011 inviting the parties to file submissions on the appropriateness of reconsidering 23 prior decisions allowing evidence on allegations not pleaded in the Indictment. *See The Prosecutor v. Édouard Karemera and Matthieu Ngirumpatse*, Case No. ICTR-98-44-T, Order, 18 February 2011. Karemera also refers to the Trial Chamber's decision dated 24 June 2011 denying Karemera's and Ngirumpatse's request to file submissions on the appropriateness of reconsidering 47 prior decisions in addition to the 23 decisions initially identified by the Trial Chamber. *See The Prosecutor v. Édouard Karemera and Matthieu Ngirumpatse*, Case No. ICTR-98-44-T, *Décision sur la requête d'Édouard Karemera aux fins de reconsidération de l'ordonnance du 18 février 2011*, 24 June 2011. According to Karemera, when the Trial Chamber realized the large amount of decisions relevant to that matter as well as the impact their reconsideration could have on the trial, it "decided against" its order dated 18 February 2011. *See* Karemera Appeal Brief, paras. 88, 97, 98. The Appeals Chamber observes that Karemera's argument is cursory and unsubstantiated and that, in any event, he has not been convicted in relation to the evidence contained in the 23 decisions referred above. Consequently, Karemera has not demonstrated any error on the part of the Trial Chamber that resulted in a miscarriage of justice or invalidated the verdict. *See*, *e.g.*, *Munyakazi* Appeal Judgement, para. 129. *See also* Prosecution Response Brief (Karemera), para. 83, *referring to* Annexe B(v) (Table E).

[316] Karemera Appeal Brief, paras. 103-111, *referring to 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 ("*Bagosora et al.* Appeal Decision of 18 September 2006"). *See also* Ngirumpatse Reply Brief, para. 36.

[317] Karemera Appeal Brief, paras. 18, 116-119.

[318] Prosecution Response Brief (Karemera), paras. 79-82; Prosecution Response Brief (Ngirumpatse), para. 42.

[319] Trial Judgement, para. 79.

130. Moreover, in assessing the prejudice suffered by Karemera and Ngirumpatse as a result of various defects in the Indictment, the Trial Chamber considered a variety of factors, including the fact that the curing did not change the substance of the case, the ability of Karemera and Ngirumpatse to effectively cross-examine witnesses, and the additional time afforded to investigate any new elements in the allegations.[320] Therefore, contrary to Karemera's contention, the Trial Chamber did not only focus on the curing of defects, but also on other factors illustrating the overall fairness of the proceedings in light of the defects. Moreover, nothing in the Trial Chamber's assessment suggests that it placed any burden on Karemera or Ngirumpatse to show prejudice.

131. The Appeals Chamber is not convinced that the Trial Chamber was required to detail every instance where it found that a defect had been cured in assessing the prejudice. These findings form part of the trial record and it is presumed that the Trial Chamber was aware of each instance in making its findings. Contrary to Karemera's submission, the Trial Chamber did explain why it found that the defects were not substantial in stating that, as a general matter, any new material facts simply added to already pleaded allegations.[321] In the absence of a showing by Karemera that this was not the case, the Appeals Chamber finds that the Trial Chamber accurately described the nature of the defects and the curing.

132. The Appeals Chamber is also not convinced that the Trial Chamber erred in deferring its assessment of the cumulative effect of any curing until the conclusion of the case. Indeed, the Appeals Chamber considers that it is reasonable to do so in order to allow the Trial Chamber an opportunity to consider the totality of the defects in the context of the overall presentation of the parties' cases and its own factual and legal findings.

133. Finally, the Appeals Chamber considers that Ngirumpatse's mere assertion that the Trial Chamber improperly evaluated the prejudice has failed to demonstrate any error on the part of the Trial Chamber.

134. Accordingly, the Appeals Chamber is not convinced that Karemera and Ngirumpatse have identified any error in the Trial Chamber's assessment of the prejudice they suffered.

5. Conclusion

135. For the foregoing reasons, the Appeals Chamber dismisses Karemera's First through Tenth Grounds of Appeal and Ngirumpatse's Sixth Ground of Appeal.

[320] Trial Judgement, paras. 79, 80.
[321] Trial Judgement, para. 79.

C. Joint Criminal Enterprise (Karemera Ground 35; Ngirumpatse Ground 42, in Part)

136. The Trial Chamber convicted Karemera and Ngirumpatse of genocide, direct and public incitement to commit genocide, extermination as a crime against humanity, and murder as a serious violation of Article 3 common to the Geneva Conventions and of Additional Protocol II, in part, based on the basic form of joint criminal enterprise.[322] The Trial Chamber held that the joint criminal enterprise materialized on 11 April 1994 when Ngirumpatse, Joseph Nzirorera, and Théoneste Bagosora agreed to distribute weapons to the *Interahamwe* in Kigali and that it was consolidated after the Interim Government's flight to Gitarama Prefecture.[323] The Trial Chamber concluded that the joint criminal enterprise included political leaders such as Karemera and Ngirumpatse, authorities within the military, the *Interahamwe*, and the territorial administration, and businessmen such as Félicien Kabuga, Obed Ruzindana, and Alfred Musema.[324]

137. The Trial Chamber found that the purpose of the joint criminal enterprise was the destruction of the Tutsi population in Rwanda.[325] After considering the massive scale of the killings, systematically and publicly targeting Tutsi civilians, the Trial Chamber was convinced that the members of the joint criminal enterprise shared this purpose and possessed genocidal intent.[326] The Trial Chamber concluded that Ngirumpatse made a significant contribution to the common purpose based on his consent to the distribution of weapons to *Interahamwe* by Bagosora at the *Hôtel des Diplomates* in Kigali on 11 April 1994 and on his intimidation of local officials to stop protecting Tutsis during a meeting at the Murambi Training School in Gitarama Prefecture on 18 April 1994.[327]

138. The Trial Chamber further concluded that Karemera significantly contributed to the common purpose of the joint criminal enterprise based on: (i) his intimidation of local officials to stop protecting Tutsis during the meeting at Murambi Training School in Gitarama Prefecture on 18 April 1994 to stop protecting Tutsis;[328] (ii) his incitement to physically attack and destroy Tutsis as a group during a meeting of Interim Government officials in Kibuye Prefecture on 3 and

[322] Trial Judgement, paras. 1450, 1453, 1454, 1457, 1458, 1600, 1604, 1616, 1617, 1623, 1628, 1634, 1639, 1644, 1648, 1653, 1657, 1691, 1706. The Appeals Chamber sets out in detail the specific incidents underpinning Karemera's and Ngirumpatse's convictions based on joint criminal enterprise above. *See supra* paras. 4-9. The Trial Chamber also convicted Ngirumpatse of genocide for rapes and sexual assaults and rape as a crime against humanity pursuant to the third category or extended form of joint criminal enterprise. *See* Trial Judgement, paras. 1670, 1682, 1684. The Appeals Chamber discusses his challenges against these convictions and this form of liability in Section III.L.
[323] Trial Judgement, para. 1453.
[324] Trial Judgement, para. 1453.
[325] Trial Judgement, para. 1454.
[326] Trial Judgement, para. 1454.
[327] Trial Judgement, paras. 745, 860, 1450(1, 3), 1458.
[328] Trial Judgement, paras. 860, 1450(3), 1457.

16 May 1994;[329] (iii) the letters he issued on 25 May 1994 and mid-June 1994 related to the Civil Defence programme, which manifested an agreement to mobilize extremist militiamen and armed civilians to attack, kill, and destroy Rwanda's Tutsi population;[330] and (iv) his involvement in ordering a "mopping-up" operation against the Tutsis in Bisesero Hills around 18 June 1994, which resulted in the death of scores of Tutsi civilians.[331]

139. Karemera submits that the Trial Chamber erred in holding him responsible as a participant in a joint criminal enterprise.[332] Specifically, Karemera contends that the Trial Chamber erroneously inferred from the evidence that a joint criminal enterprise existed, which had as common purpose the destruction of the Tutsi population.[333] According to Karemera, the Trial Chamber failed to consider other reasonable inferences, including the overall context of the war against the RPF.[334] Moreover, Karemera asserts that, in assessing the existence of a common purpose, the Trial Chamber failed to take into account that he did not participate in the distribution of weapons on 11 April 1994, and that his speeches and letters were unequivocally aimed at distinguishing Tutsis from the enemy.[335]

140. Ngirumpatse submits that the Trial Chamber erred in holding him responsible as a participant in a joint criminal enterprise.[336] Ngirumpatse also contends that there was no evidence that he participated in the criminal acts or acted with the requisite *mens rea* with the other joint criminal enterprise members in perpetrating them.[337] In this respect, Ngirumpatse further emphasizes his significant absence from Rwanda during the relevant period.[338]

141. In addition, Ngirumpatse submits that the Trial Chamber failed to adequately define the members of the joint criminal enterprise, referring to many simply by category.[339] Ngirumpatse further faults the Trial Chamber for holding the entire government responsible and failing to consider that many of the members of the alleged joint criminal enterprise, including government

[329] Trial Judgement, paras. 992, 1450(5), 1457.
[330] Trial Judgement, paras. 1024, 1450(7), 1457.
[331] Trial Judgement, paras. 1234, 1450(9), 1457.
[332] Karemera Notice of Appeal, paras. 146-148; Karemera Appeal Brief, paras. 381-384. *See also* AT. 10 February 2014 pp. 15-19; AT. 11 February 2014 pp. 1-3, 6.
[333] Karemera Appeal Brief, paras. 382, 383.
[334] Karemera Appeal Brief, paras. 382, 383.
[335] Karemera Appeal Brief, paras. 382, 383.
[336] Ngirumpatse Notice of Appeal, paras. 204-222; Ngirumpatse Appeal Brief, paras. 643-667. *See also* AT. 10 February 2014 pp. 22-24; AT. 11 February 2014 pp. 7, 8. Ngirumpatse also submits that the errors he identified in his grounds of appeal relating to the distribution of weapons and the meeting at the Murambi Training School preclude his responsibility for the criminal acts committed by members of the joint criminal enterprise. *See* Ngirumpatse Appeal Brief, paras. 644, 646, *referring to* Ngirumpatse Grounds 24 and 26. *See also* Ngirumpatse Appeal Brief, para. 656. The Appeals Chamber addresses these arguments elsewhere in this Judgement. *See infra* Sections III.F, III.H.
[337] Ngirumpatse Appeal Brief, paras. 645, 647, 664.
[338] Ngirumpatse Appeal Brief, para. 658.
[339] Ngirumpatse Appeal Brief, para. 648.

ministers, were acquitted in their trials before the Tribunal.[340] In addition, Ngirumpatse submits that the Trial Chamber failed to establish that the crimes were committed by *Interahamwe* affiliated with the MRND party and erred in finding that he had authority over the perpetrators of the killings, including soldiers and civilians.[341]

142. Furthermore, Ngirumpatse submits that the Trial Chamber based its findings on the common purpose of the joint criminal enterprise on judicial notice of killings in Rwanda and failed to show how he and the members shared the common purpose and how the criminal acts flowed from the common purpose.[342]

143. The Prosecution responds that Karemera fails to demonstrate that the Trial Chamber erred in concluding that a common purpose for the destruction of the Tutsi population existed and that Karemera shared this common purpose together with other members of the joint criminal enterprise.[343]

144. The Prosecution further contends that the Trial Chamber committed no error in evaluating Ngirumpatse's contribution to the joint criminal enterprise.[344] It submits that Ngirumpatse fails to substantiate his allegations concerning the concerted action, time period, and identity of members of the joint criminal enterprise.[345] The Prosecution also maintains that Ngirumpatse has not demonstrated any error concerning the existence of a common purpose or *mens rea*.[346]

145. The Appeals Chamber recalls that in order to find an individual liable for commission of a crime through the basic form of joint criminal enterprise:

> [a] trier of fact must find beyond reasonable doubt that a plurality of persons shared the common criminal purpose; that the accused made a contribution to this common criminal purpose; and that the commonly intended crime […] did in fact take place. Where the principal perpetrator is not shown to belong to the [joint criminal enterprise], the trier of fact must further establish that the crime can be imputed to at least one member of the joint criminal enterprise, and that this member – when using the principal perpetrator – acted in accordance with the common plan. In establishing these elements, the [Trial] Chamber must, among other things: identify the plurality of persons belonging to the [joint criminal enterprise] (even if it is not necessary to identify by name each of the persons involved); specify the common criminal purpose in terms of both the criminal goal intended and its scope (for example, the temporal and geographic limits of this goal, and the general identities of the intended victims); make a finding that this criminal purpose is not merely the same, but also common to all of the persons acting together within a joint criminal enterprise; and characterize the contribution of the accused in this common plan. On this last point, the

[340] Ngirumpatse Appeal Brief, paras. 648, 649. Ngirumpatse also argues that in holding the entire government responsible the Trial Chamber violated the Statute of the Tribunal which does not provide for convictions against legal entities. *See* Ngirumpatse Appeal Brief, para. 649.
[341] Ngirumpatse Appeal Brief, paras. 615, 616, 660-662.
[342] Ngirumpatse Appeal Brief, paras. 652, 654, 655, 664, 665.
[343] Prosecution Response Brief (Karemera), paras. 225-227. *See also* AT. 10 February 2014 pp. 49-52, 58, 61-67.
[344] Prosecution Response Brief (Ngirumpatse), paras. 297-317. *See also* AT. 10 February 2014 pp. 52, 58, 61-67.
[345] Prosecution Response Brief (Ngirumpatse), paras. 318-324.
[346] Prosecution Response Brief (Ngirumpatse), paras. 325-328.

> Appeals Chamber observes that, although the contribution need not be necessary or substantial, it should at least be a significant contribution to the crimes for which the accused is to be found responsible.[347]

146. The Appeals Chamber further recalls that the common criminal purpose need not be express and may be inferred from the facts.[348] In addition, the Appeals Chamber recalls that a trial chamber may infer the existence of a particular fact upon which the guilt of the accused depends from circumstantial evidence if it is the only reasonable conclusion that could be drawn from the evidence presented.[349]

147. Contrary to Karemera's submission, the Trial Judgement reflects that the Trial Chamber did consider whether other reasonable inferences could be drawn from the evidence when considering the common purpose of the joint criminal enterprise, including the context of the war against the RPF.[350] Similarly, the Trial Chamber expressly analysed the content and intended message of Karemera's speeches and communications and concluded that, placed in their proper context, Karemera's condemnations of killings and calls for peace amounted to abstract rhetoric.[351] The Appeals Chamber has elsewhere upheld the Trial Chamber's findings in this regard.[352]

148. The Appeals Chamber finds unconvincing Karemera's contention that his lack of participation in the distribution of weapons on 11 April 1994 somehow impacts the Trial Chamber's conclusion that a common criminal purpose was formed as of that date or that he shared that common purpose. It was not necessary for Karemera to have been a member of the joint criminal enterprise from its inception: what is important is that the Trial Chamber found that he manifested his shared intent and significantly contributed to the joint criminal enterprise as of 18 April 1994.[353] Accordingly, the Appeals Chamber dismisses Karemera's submissions in this regard.

149. Elsewhere, the Appeals Chamber has determined that the Trial Chamber did not err in concluding that Karemera: (i) intimidated local officials to stop protecting Tutsis during the meeting at the Murambi Training School in Gitarama Prefecture on 18 April 1994;[354] (ii) incited the audience to physically attack and destroy Tutsis as a group during a meeting of Interim Government

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[347] *Gotovina and Markač* Appeal Judgement, para. 89, *quoting Brdanin* Appeal Judgement, para. 430 (references omitted). *See also Krajišnik* Appeal Judgement, para. 662.
[348] *See Kvočka et al.* Appeal Judgement, para.117; *Ntakirutimana* Appeal Judgement, para. 466.
[349] *Bagosora and Nsengiyumva* Appeal Judgement, para. 515; *Nchamihigo* Appeal Judgement, para. 80, *citing Stakić* Appeal Judgement, para. 219. *See also Karera* Appeal Judgement, para. 34; *Ntagerura et al.* Appeal Judgement, para. 306.
[350] *See*, *e.g.*, Trial Judgement, paras. 856, 985, 1064, 1075-1078, 1232, 1233.
[351] *See*, *e.g.*, Trial Judgement, paras. 987-991, 1063-1067, 1074-1078
[352] *See infra* paras. 484-487, 536-541, 545, 548, 576-578.
[353] *Cf. Simba* Appeal Judgement, para. 250 ("It is well-established that in a [joint criminal enterprise], it is not necessary for a participant to have participated in its planning. All that is required is the participation of an accused in the common design involving the perpetration of one of the crimes provided for in the Statute.").
[354] *See infra* Section III.H.4.

officials in Kibuye Prefecture on 3 and 16 May 1994;[355] (iii) issued letters on 25 May 1994 and mid-June 1994, which set an agreement to mobilize extremist militiamen and armed civilians to attack, kill, and destroy the Tutsi population of Rwanda;[356] and (iv) ordered a "mopping-up" operation against the Tutsis in Bisesero Hills, which resulted in the death of scores of Tutsi civilians.[357] Therefore, Karemera's remaining arguments are summarily dismissed.

150. Turning to Ngirumpatse's arguments, the Appeals Chamber finds no merit in Ngirumpatse's claim that the Trial Chamber erred in holding him responsible as a participant in a joint criminal enterprise. In accordance with established jurisprudence, the Trial Chamber identified a plurality of persons that shared the common criminal purpose.[358] The Appeals Chamber finds no error in the Trial Chamber's description of members of the joint criminal enterprise as "political leaders", "persons of authority within the military, the *Interahamwe*, and the territorial administration", and "influential businessmen".[359] Ngirumpatse fails to appreciate that, in addition to these general descriptions, the Trial Chamber specifically identified some members of these groups by name in its other findings.[360] In any case, the Appeals Chamber recalls that there is no requirement to specifically identify each of the persons involved in a joint criminal enterprise.[361]

151. The Appeals Chamber also finds no merit in Ngirumpatse's contention that the Trial Chamber held the entire government responsible. The Trial Judgement reflects that Ngirumpatse was convicted as an individual on the basis of his own conduct. Moreover, the fact that the Trial Chamber held him responsible for actions of individuals who were acquitted by the Tribunal in separate proceedings does not demonstrate an error. The Appeals Chamber has previously held that "two judges, both acting reasonably, can come to different conclusions on the basis of the same evidence".[362] Additionally, Ngirumpatse's cursory submissions fail to identify any similarities between his case and those concerning the acquitted persons to whom he refers.

152. The Appeals Chamber observes that the Trial Chamber defined the common purpose as the destruction of the Tutsi population in Rwanda.[363] The Trial Chamber's factual and legal findings based on the evidence clearly demonstrate that the killing of Tutsi civilians occurred on a massive

[355] *See infra* Sections III.I.1, III.I.2.
[356] *See infra* Sections III.J.2, III.J.4.
[357] *See infra* Section III.K.
[358] Trial Judgement, para. 1453.
[359] Trial Judgement, para. 1453.
[360] In particular, the Trial Chamber identified Ngirumpatse, Karemera, President Théodore Sindikubwabo, Prime Minister Jean Kambanda, Prefect Clément Kayishema, Joseph Nzirorera, Minister Eliézer Niyitegeka, Bourgmestre Aloys Ndimbati, Bourgmestre Charles Sikubwabo, Théoneste Bagosora, Félicien Kabuga, Obed Ruzindana, and Alfred Musema. *See*, *e.g.*, Trial Judgement, paras. 1600, 1616, 1627, 1648, 1649, 1653.
[361] *Gotovina and Markač* Appeal Judgement, para. 89.
[362] *Kayishema and Ruzindana* Appeal Judgement, para. 143.
[363] Trial Judgement, para. 1454.

scale in Rwanda[364] and that members of the joint criminal enterprise directly and publicly incited the killings of Tutsi civilians.[365] Moreover, the Trial Chamber's legal findings reflect that the specific killings and other crimes which furthered the common purpose were aimed at destroying the Tutsi population and were attributable to at least one member of the joint criminal enterprise.[366] Accordingly, Ngirumpatse has not demonstrated that the Trial Chamber erred in finding the existence of a joint criminal enterprise and in finding that the criminal acts for which he was held responsible formed part of it.

153. The Appeals Chamber also finds no merit in Ngirumpatse's contention that the Trial Chamber failed to establish any connection between him and the various criminal acts or other participants in the joint criminal enterprise. In this respect, the Appeals Chamber notes that the Trial Chamber was not required to find that Ngirumpatse contributed to each criminal act, but rather that he made a significant contribution to the common purpose and that each of the crimes for which he was held responsible formed part of that purpose.[367] It is immaterial whether Ngirumpatse was out of the country while some of the criminal acts were perpetrated. A participant in a joint criminal enterprise is not required to be physically present when and where the crime is being committed.[368] Ngirumpatse's connection to the crimes for which he was held responsible is reflected in his participation in the meeting at the Murambi Training School on 18 April 1994, which demonstrated his concerted action with government officials and members of the joint criminal enterprise to intimidate local officials into supporting the government's policy and to not interfere with the killing of Tutsis by *Interahamwe*.[369]

154. The Appeals Chamber is also not satisfied that Ngirumpatse has identified any error in the Trial Chamber's findings that he and the other members of the joint criminal enterprise acted with the requisite *mens rea*. The Trial Chamber considered that the members of the joint criminal enterprise acted with the intent to destroy the Tutsi population after expressly considering the massive scale of the killings, systematically and publicly targeting Tutsi civilians.[370]

[364] Trial Judgement, paras. 1294, 1295.
[365] Trial Judgement, paras. 1596-1604.
[366] Trial Judgement, paras. 1451, 1454, 1455, 1459, 1460. *See also* Trial Judgement, paras. 1600, 1604, 1615, 1623, 1627, 1634, 1639, 1644, 1648, 1657.
[367] *Gotovina and Markač* Appeal Judgement, para. 89; *Brdanin* Appeal Judgement, para. 418. The Appeals Chamber has previously held that responsibility for a joint criminal enterprise can in fact involve a "nation wide government-organized system of cruelty and injustice". *See The Prosecutor v. André Rwamakuba*, Case No. ICTR-98-44-AR72.4, Decision on Interlocutory Appeal Regarding Application of Joint Criminal Enterprise to the Crime of Genocide, 22 October 2004, para. 25. *See also Brdanin* Appeal Judgement, para. 423.
[368] *See Kvočka et al.* Appeal Judgement, para. 112.
[369] Trial Judgement, paras. 852, 860.
[370] Trial Judgement, para. 1454.

155. Elsewhere, the Appeals Chamber has rejected Ngirumpatse's claims that he lacked authority over the MRND party and the *Interahamwe* affiliated with it.[371] In any case, this issue has no bearing on Ngirumpatse's responsibility for the perpetrators' actions based on his participation in a joint criminal enterprise. Rather, his conviction rests on his contribution during the meeting at the Murambi Training School on 18 April 1994 and his shared intent with other members of the joint criminal enterprise, not his superior responsibility. As a corollary, it is likewise immaterial for his responsibility under joint criminal enterprise whether the Trial Chamber identified his subordinates, namely the Kigali and Gisenyi *Interahamwe*, as principal perpetrators of the various attacks.

156. The Appeals Chamber therefore finds that Karemera and Ngirumpatse have not demonstrated that the Trial Chamber erred in holding them responsible based on the basic form of joint criminal enterprise for crimes committed after 18 April 1994.

157. For the foregoing reasons, Karemera's Thirty-Fifth Ground of Appeal and Ngirumpatse's Forty-Second Ground of Appeal, in part, are dismissed. Judge Tuzmukhamedov dissents in relation to the Appeals Chamber's finding that the Trial Chamber did not err in holding Ngirumpatse responsible as a member of the joint criminal enterprise for the crime of direct and public incitement to commit genocide resulting from the 16 May 1994 Meeting in Kibuye Prefecture and in relation to Karemera's and Ngirumpatse's responsibility for the killings which followed President Théodore Sindikubwabo's speech on 19 April 1994.

[371] *See infra* Sections III.D.1, III.D.4.

D. Superior Responsibility (Karemera Grounds 15, in Part, 30, 31, in Part, 32, 33, and 38, in Part; Ngirumpatse Grounds 13-20, 39, in Part, 40, 44, and 47, in Part)

158. The Trial Chamber held Karemera and Ngirumpatse responsible as superiors pursuant to Article 6(3) of the Statute for: (i) the killings committed by the Kigali *Interahamwe* in Kigali by 12 April 1994[372] and following the meeting at the Murambi Training School on 18 April 1994;[373] and (ii) the rapes and sexual assaults committed by the Kigali and Gisenyi *Interahamwe* throughout Rwanda from April to June 1994.[374] In addition, the Trial Chamber found Karemera responsible as a superior for: (i) the killings committed by the Gisenyi *Interahamwe* during the "mopping-up" operation in Bisesero around 18 June 1994; [375] and (ii) the killings committed in Bisesero as of 25 May 1994 by both the civilian participants in the Civil Defence programme and the local authorities who were part of the territorial administration.[376]

159. The Trial Chamber convicted Karemera pursuant to Article 6(3) of the Statute of genocide and extermination as a crime against humanity for the killings in Kigali by 12 April 1994.[377] The Trial Chamber took the remainder of its findings on superior responsibility in relation to Karemera and Ngirumpatse into account as aggravating circumstances in sentencing.[378]

160. Karemera and Ngirumpatse challenge the Trial Chamber's findings in relation to their superior responsibility under Article 6(3) of the Statute.[379] In this section, the Appeals Chamber

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[372] Trial Judgement, paras. 1664, 1692, 1706. *See also supra* fn. 25.
[373] Trial Judgement, paras. 1624, 1692, 1706.
[374] Trial Judgement, paras. 1671, 1683.
[375] Trial Judgement, paras. 1654, 1692, 1706.
[376] Trial Judgement, paras. 1654, 1692. The Appeals Chamber recalls that the Trial Chamber also held Karemera and Ngirumpatse responsible as superiors for Théoneste Bagosora's contribution to the distribution of weapons on 11 and 12 April 1994, given his role in an MRND-controlled ministry. The Trial Chamber convicted Karemera pursuant to Article 6(3) of the Statute of genocide and took its findings on superior responsibility in relation to Ngirumpatse into account as aggravating circumstances in sentencing. *See* Trial Judgement, para. 1618. However, the Appeals Chamber has found, for reasons detailed elsewhere in this Judgement, that Karemera and Ngirumpatse did not receive proper notice that they were charged with superior responsibility for Bagosora's offences. The Appeals Chamber therefore reversed the Trial Chamber's finding in this respect. *See infra* paras. 368-376, 388. Consequently, Karemera's and Ngirumpatse's remaining arguments with respect to their responsibility as superiors of Bagosora are moot.
[377] Trial Judgement, paras. 1664, 1688, 1691, 1692.
[378] Trial Judgement, paras. 1624, 1654, 1659, 1664, 1671, 1684, 1692, 1704, 1706, 1747, 1758.
[379] Karemera Notice of Appeal, paras. 79-81, 107-109, 125-139, 154-156; Karemera Appeal Brief, paras. 169-178, 300-369; Ngirumpatse Notice of Appeal, paras. 60-95, 187-190, 237-271, 299, 312, 316, 337, 338; Ngirumpatse Appeal Brief, paras. 205-312, 612-619, 686-721, 751, 753. *See also* AT. 10 February 2014 pp. 19, 20, 31-43; AT. 11 February 2014 pp. 3-7, 11-16, 46. The Appeals Chamber notes that Karemera's arguments in respect of the appointment of Nteziryayo are made in relation to the joint criminal enterprise. *See* Karemera Notice of Appeal, paras. 79-81; Karemera Appeal Brief, paras. 169-178. However, since the Trial Chamber did not consider Nteziryayo's appointment in relation to the joint criminal enterprise but rather in relation to Karemera's superior responsibility (*see* Trial Judgement, paras. 1521, 1526), the Appeals Chamber will consider these arguments in this section. The Appeals Chamber will further not consider Karemera's Ground of Appeal 24, since he makes no submissions pursuant to it in his appeal brief, and Karemera's Ground of Appeal 25, which was merged into Ground of Appeal 30 (*see supra* fn. 28).The Appeals Chamber also observes that it has already addressed Ngirumpatse's challenge to the notice of elements of superior responsibility (*see* Ngirumpatse Notice of Appeal, para. 299; Ngirumpatse Appeal Brief, paras. 715, 718, 751) elsewhere in this Judgement (*see supra* Section III.B.3). The Appeals Chamber finally notes that

considers whether the Trial Chamber erred with respect to: (i) Karemera's and Ngirumpatse's superior position and effective control; (ii) the subordinates' criminal conduct; (iii) Karemera's and Ngirumpatse's knowledge; (iv) Karemera's and Ngirumpatse's failure to prevent or punish the crimes; and (v) the cumulative convictions under Articles 6(1) and 6(3) of the Statute.

1. Superior Position and Effective Control

161. The Trial Chamber found that Karemera and Ngirumpatse had *de facto* authority and effective control throughout the genocide over the Kigali and Gisenyi *Interahamwe*.[380] The Trial Chamber also found that Karemera had *de jure* and *de facto* authority, as well as effective control as of 25 May 1994, over civilian participants in the Civil Defence programme and local officials of the territorial administration.[381]

162. In this section, the Appeals Chamber considers whether the Trial Chamber erred in assessing Karemera's and Ngirumpatse's authority and effective control over each category of subordinates.

(a) The Kigali and Gisenyi *Interahamwe*

163. The Appeals Chamber will consider in turn Karemera's and Ngirumpatse's arguments that the Trial Chamber erred in relying on the following factors in establishing their authority and effective control over the Kigali and Gisenyi *Interahamwe*: (i) Karemera's and Ngirumpatse's influence, which the Trial Chamber allegedly confused with *de facto* authority and effective control; (ii) the establishment of the *Interahamwe* along MRND structures; (iii) Ngirumpatse's pivotal role in the formation and expansion of the *Interahamwe*; (iv) Karemera's and Ngirumpatse's positions in the MRND Executive Bureau; (v) Ngirumpatse's liaison with the *Interahamwe* through Jean-Pierre Turatsinze; (vi) activities demonstrating Karemera's and Ngirumpatse's authority before 6 April 1994; (vii) activities demonstrating Karemera's and Ngirumpatse's authority after 6 April 1994; and (viii) Karemera's and Ngirumpatse's ability to prevent crimes or punish subordinates.[382]

Ngirumpatse generally contends in the introduction of his Ground of Appeal 44 that the Trial Chamber confused the forms of responsibility under Articles 6(1) and 6(3) of the Statute. *See* Ngirumpatse Notice of Appeal, para. 239; Ngirumpatse Appeal Brief, para. 687. Since he does not expand on it, the Appeals Chamber summarily dismisses this argument.

[380] Trial Judgement, paras. 1522, 1528, 1529, 1550, 1556, 1557.

[381] Trial Judgement, paras. 1515, 1522, 1528, 1529.

[382] Ngirumpatse also challenges his notice of various findings supporting the Trial Chamber's conclusion on his superior responsibility over the *Interahamwe*. *See* Ngirumpatse Notice of Appeal, para. 82; Ngirumpatse Appeal Brief,

(i) Confusion of Influence with *De Facto* Authority and Effective Control

164. In reaching the conclusion that Karemera and Ngirumpatse had superior positions over the Kigali and Gisenyi *Interahamwe*, the Trial Chamber took into consideration that they were "influential [people] with [considerable or substantial] *de facto* authority",[383] and that they were "well-known figure[s] in Rwanda".[384] The Trial Chamber further found that Karemera and Ngirumpatse had effective control over the Kigali and Gisenyi *Interahamwe* "on account of [their] status and authority",[385] since they were amongst the "most respected and powerful leaders of a civilian political organization".[386]

165. Karemera avers that the Trial Chamber erred in finding political influence sufficient to prove effective control.[387]

166. Ngirumpatse submits that the Trial Chamber confused influence with *de facto* authority[388] and that mere influence is insufficient to characterize effective control.[389] In Ngirumpatse's view, his influence before 6 April 1994 or influence on the Interim Government's decisions could not have been equivalent to a *de facto* authority over subordinates.[390] Ngirumpatse further argues that the Trial Chamber erred in finding in general terms that he was an "influential" person with "substantial *de facto* authority in Rwanda after 6 April 1994", without providing a reasoned opinion.[391]

167. The Prosecution responds that, in line with the jurisprudence, the Trial Chamber correctly considered the totality of relevant factors.[392] The Prosecution submits that the Trial Chamber did not err in finding that Karemera and Ngirumpatse did not have mere influence, but rather substantial *de jure* and *de facto* authority and effective control over the *Interahamwe*.[393]

168. The Appeals Chamber finds Karemera's and Ngirumpatse's arguments that the Trial Chamber confused political influence with *de facto* authority and effective control unconvincing.

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paras. 242, 253, 275. The Appeals Chamber addresses these arguments elsewhere in this Judgement. *See supra* Section III.B.3.

[383] Trial Judgement, paras. 1522, 1550.

[384] Trial Judgement, paras. 1517, 1547.

[385] Trial Judgement, paras. 1524, 1553.

[386] Trial Judgement, paras. 1523, 1551.

[387] Karemera Notice of Appeal, para. 107; Karemera Appeal Brief, para. 304. *See also* Karemera Appeal Brief, paras. 307, 308, *referring to Krajišnik* Trial Judgement, para. 1121, *Bizimungu et al.* Trial Judgement, para. 1891.

[388] Ngirumpatse Notice of Appeal, para. 242.

[389] Ngirumpatse Appeal Brief, para. 702. *See also* Ngirumpatse Reply Brief, para. 153.

[390] Ngirumpatse Appeal Brief, paras. 691, 698.

[391] Ngirumpatse Notice of Appeal, para. 250; Ngirumpatse Appeal Brief, para. 699.

[392] Prosecution Response Brief (Karemera), para. 183; Prosecution Response Brief (Ngirumpatse), para. 264.

[393] Prosecution Response Brief (Karemera), paras. 180, 187, 192, 193; Prosecution Response Brief (Ngirumpatse), para. 264.

The Trial Chamber correctly stated that the requirement of proving effective control "is not satisfied by a showing of general influence on the part of the accused".[394] Moreover, as explained below, the factors relied on by the Trial Chamber in finding that Karemera and Ngirumpatse had *de facto* authority and effective control were not merely indicators of general influence. The Trial Chamber relied on, *inter alia*: (i) Karemera's national positions in the MRND and the Interim Government;[395] (ii) Ngirumpatse's national positions in the MRND[396] and in the Interim Government as an international envoy;[397] (iii) the "defined hierarchy" of the MRND and the establishment of the *Interahamwe* along party structures;[398] (iv) Karemera's and Ngirumpatse's numerous activities carried out before and during the genocide "that furthered [their] status, influence, and *de facto* authority in Rwanda";[399] (v) their roles in the facilitation of the provision of training and weapons to the *Interahamwe*;[400] (vi) their intervention with the Minister of Defence to assist Bagosora;[401] (vii) their speeches as national political leaders during the 18 April 1994 meeting in Gitarama;[402] (viii) Karemera's speech during the 3 May 1994 meeting in Kibuye;[403] and (ix) Karemera's involvement in the preparation of MRND *communiqués* that were broadcast on the radio and read in public.[404] These indicators of authority and effective control, considered as a whole, were not examples of mere influence but concrete instances of Karemera's and Ngirumpatse's involvement in key actions taken by the MRND and the Interim Government.[405]

169. Accordingly, the Appeals Chamber finds that Karemera and Ngirumpatse have failed to demonstrate that the Trial Chamber confused influence with effective control. Similarly, the Appeals Chamber finds that Ngirumpatse has failed to demonstrate that the Trial Chamber did not provide a reasoned opinion as to his *de facto* authority after 6 April 1994.

[394] Trial Judgement, para. 1495.
[395] Trial Judgement, paras. 1517, 1523.
[396] Trial Judgement, paras. 1547, 1551.
[397] Trial Judgement, para. 1549.
[398] Trial Judgement, paras. 1523, 1551.
[399] Trial Judgement, paras. 1517, 1547.
[400] Trial Judgement, paras. 1518, 1548, *referring to* Sections IV.1.4 and IV.1.5 of the Trial Judgement.
[401] Trial Judgement, paras. 1518, 1548, *referring to* Defence Witness Théoneste Bagosora, T. 29 June 2010 pp. 17-19.
[402] Trial Judgement, paras. 1519, 1549, *referring to* Section IV.2.1 of the Trial Judgement.
[403] Trial Judgement, para. 1519, *referring to* Section V.3.2 of the Trial Judgement.
[404] Trial Judgement, para. 1519.
[405] The Trial Chamber also relied on Karemera's and Ngirumpatse's influence as MRND leaders on the Interim Government's decisions. *See* Trial Judgement, paras. 1519, 1549, *referring to* Section V.3.4 of the Trial Judgement. The Appeals Chamber is not convinced that this factor is indicative of authority and effective control. Moreover, the Appeals Chamber has concluded that the Trial Chamber's conclusion that MRND leaders, as a general matter, influenced the Interim Government's decisions lacks a sufficient evidentiary basis. *See infra* para. 649. However, the Appeals Chamber is not satisfied that the Trial Chamber's error in relying on this factor as part of its analysis resulted in a miscarriage of justice in view of its overall consideration of the factors listed above.

(ii) Establishment of the *Interahamwe* along MRND Structures

170. The Trial Chamber found that the *Interahamwe* were established "according to" MRND party structures in Kigali and Gisenyi Prefectures,[406] a factor which it took into account in concluding that Karemera and Ngirumpatse had effective control over the *Interahamwe*.[407]

171. The Trial Chamber found that the *Interahamwe* movement was initially established in Kigali Prefecture,[408] to be set up throughout Rwanda,[409] and eventually incorporated unemployed youth who often engaged in illegal activity.[410] It found undisputed that the *Interahamwe* were founded to counter other parties' youth wings and recruit MRND members.[411] While the Trial Chamber found no evidence of a formal affiliation between the *Interahamwe* movement and the MRND,[412] it nonetheless concluded that the *Interahamwe* expanded and were well organized along MRND party structures, at least in Kigali and Gisenyi Prefectures.[413] Noting the centralized structure of the MRND, the Trial Chamber also excluded that the *Interahamwe*'s Provisional National Committee in Kigali-ville or self-appointed local leaders in other prefectures could have had the ultimate authority over the *Interahamwe*.[414] While the Trial Chamber did not exclude that local *Interahamwe* cells not under the MRND leadership's control may have existed, it considered that the fact that Ngirumpatse may have come into conflict with individual *Interahamwe* was not inconsistent with the existence of an authority at the national level.[415]

172. Ngirumpatse submits that the Trial Chamber erred in finding that the *Interahamwe* were established in Kigali and Gisenyi Prefectures according to MRND party structures.[416] He contends that, in reaching this conclusion, the Trial Chamber disregarded its own findings that the *Interahamwe* were not formally affiliated with the MRND or endowed with a statute.[417] Ngirumpatse maintains that the initiative to create the *Interahamwe* came from outside the MRND and that the *Interahamwe* remained in the hands of leaders outside the party.[418] Ngirumpatse thus argues that the Trial Chamber speculated that he had authority over an unstructured group, which

[406] Trial Judgement, para. 270.
[407] Trial Judgement, paras. 1523, 1528, 1551, 1556.
[408] Trial Judgement, para. 251.
[409] Trial Judgement, paras. 252-258.
[410] Trial Judgement, paras. 204, 205.
[411] Trial Judgement, paras. 196, 205.
[412] Trial Judgement, para. 259.
[413] Trial Judgement, paras. 269, 270. *See also* Trial Judgement, para. 258.
[414] Trial Judgement, paras. 266, 267. *See also* Trial Judgement, para. 263. According to the Trial Chamber, the Provisional National Committee was created as the Steering Committee of the *Interahamwe* around 1 November 1991. *See* Trial Judgement, paras. 198, 200.
[415] Trial Judgement, para. 268.
[416] Ngirumpatse Notice of Appeal, paras. 78, 79. *See also* Ngirumpatse Notice of Appeal, para. 259.
[417] Ngirumpatse Appeal Brief, para. 255.
[418] Ngirumpatse Appeal Brief, para. 265.

had no statute and was not affiliated with the MRND.[419] Ngirumpatse further challenges the Trial Chamber's reliance on the centralized structure of the MRND to exclude the possibility that the *Interahamwe* in prefectures other than Kigali could have had their own self-appointed leaders since, according to Ngirumpatse, the leadership of the *Interahamwe* was not an essential MRND party function.[420]

173. Ngirumpatse further submits that there was no credible evidence that the *Interahamwe* were set up along MRND structures in Kigali and Gisenyi Prefectures.[421] He contends that the Trial Chamber relied on the non-credible evidence of Prosecution Witnesses HH, ALG, UB, AWD, T, G, and AXA,[422] disregarded irreconcilable contradictions in Witnesses G's and T's evidence,[423] and disregarded witness statements which were incompatible with its reasoning.[424] In particular, Ngirumpatse asserts that the Trial Chamber erred in finding that Witness HH was a local *Interahamwe* leader in Kigali since there was contradictory evidence as to his function.[425]

174. Ngirumpatse also contends that the Trial Chamber reversed the burden of proof by attaching "little weight" to the Defence evidence, which demonstrated the absence of MRND structural relationships and control over the *Interahamwe*.[426] Ngirumpatse claims that the Trial Chamber disregarded his testimony and that of Defence Witnesses Georges Rutaganda and PR that the *Interahamwe* movement was created and developed autonomously.[427] Ngirumpatse avers that the Prosecution witnesses themselves contradicted the finding that the *Interahamwe* were established along party structures.[428] Ngirumpatse underlines that the *Interahamwe* who testified never received orders from him[429] and that *Interahamwe* leaders held several meetings with Roméo Dallaire but had no contact with the MRND.[430]

175. With regard to the expansion of the *Interahamwe*, Ngirumpatse submits that the Trial Chamber erred in finding that the *Interahamwe* had been set up in other prefectures.[431] In particular, Ngirumpatse avers that the Trial Chamber misinterpreted his testimony in relation to the

[419] Ngirumpatse Appeal Brief, para. 260.
[420] Ngirumpatse Appeal Brief, para. 263.
[421] Ngirumpatse Notice of Appeal, paras. 253, 259.
[422] Ngirumpatse Appeal Brief, para. 257. *See also* Ngirumpatse Appeal Brief, para. 260.
[423] Ngirumpatse Appeal Brief, para. 258. In particular, Ngirumpatse argues that Witnesses G and T contradicted each other regarding the setting up of committees along MRND party structures and the existence of a statute.
[424] Ngirumpatse Appeal Brief, para. 257.
[425] Ngirumpatse Appeal Brief, para. 260.
[426] Ngirumpatse Appeal Brief, para. 266.
[427] Ngirumpatse Appeal Brief, para. 263.
[428] Ngirumpatse Appeal Brief, para. 264, *referring to* Prosecution Witnesses AWD, UB, ALG, and GOB.
[429] Ngirumpatse Appeal Brief, para. 267.
[430] Ngirumpatse Appeal Brief, para. 268, *referring to* Prosecution Exhibits 575, 577; Witness T, T. 26 May 2006 p. 13; Witness HH, T. 9 November 2006 pp. 13 *et seq*.
[431] Ngirumpatse Notice of Appeal, paras. 78, 79.

establishment of the *Interahamwe* in Gisenyi Prefecture.[432] Ngirumpatse points to the evidence of Prosecution Witness T and of Defence Witnesses Rutaganda and PR that the organization was in an embryonic stage in Gisenyi.[433] Ngirumpatse further contends that the April 1992 MRND National Congress did not "decide" that the *Interahamwe* would be established throughout the country, but only expressed a wish which was not followed.[434] Ngirumpatse also submits that the Trial Chamber misrepresented Defence Witness Jean Mpambara's testimony as to the organization of the *Interahamwe* in Kibungo Prefecture.[435]

176. Ngirumpatse further contends that the Trial Chamber erred in concluding that the *Interahamwe* incorporated "unemployed, delinquent youth who often engaged in illegal activity"[436] whereas it was not established that it was a choice made at the outset.[437]

177. The Prosecution responds that the Trial Chamber correctly considered all relevant factors,[438] including that the *Interahamwe* were hierarchically subordinated to the MRND political party.[439] The Prosecution avers that Ngirumpatse's claim that the Prosecution evidence was not credible is unsubstantiated.[440] It maintains that the Trial Chamber carefully assessed the evidence to conclude that the *Interahamwe* were set up following MRND structures in Kigali-ville,[441] Gisenyi,[442] and Kibuye Prefectures.[443] In particular, the Prosecution refers to Ngirumpatse's own admission that a structured organ of the *Interahamwe* was created and existed in Gisenyi Prefecture and that its members followed the directives of the party.[444] The Prosecution further submits that Ngirumpatse impermissibly introduces arguments by reference to his closing brief.[445]

178. The Prosecution also asserts that the fact that the Trial Chamber attached little weight to the Defence witnesses' evidence, which concerned isolated events, does not amount to a shifting of the burden of proof but rather reflects a reasonable assessment of the evidence.[446] It maintains that the Trial Chamber placed the burden of proof solely on the Prosecution.[447]

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[432] Ngirumpatse Notice of Appeal, para. 77; Ngirumpatse Appeal Brief, para. 256.
[433] Ngirumpatse Appeal Brief, para. 256, *referring to* Trial Judgement, para. 234; Witness T, T. 26 May 2006 p. 47; Witness PR, T. 19 November 2010 pp. 35, 36 (closed session).
[434] Ngirumpatse Appeal Brief, para. 260.
[435] Ngirumpatse Appeal Brief, para. 260.
[436] Ngirumpatse Notice of Appeal, para. 73; Ngirumpatse Appeal Brief, para. 240.
[437] Ngirumpatse Appeal Brief, para. 243.
[438] Prosecution Response Brief (Ngirumpatse), para. 264.
[439] Prosecution Response Brief (Ngirumpatse), para. 265.
[440] Prosecution Response Brief (Ngirumpatse), paras. 108, 109.
[441] Prosecution Response Brief (Ngirumpatse), para. 109.
[442] Prosecution Response Brief (Ngirumpatse), para. 111.
[443] Prosecution Response Brief (Ngirumpatse), para. 112.
[444] Prosecution Response Brief (Ngirumpatse), para. 111, *referring to* Ngirumpatse, T. 24 January 2011 pp. 3, 4.
[445] Prosecution Response Brief (Ngirumpatse), para. 90.
[446] Prosecution Response Brief (Ngirumpatse), paras. 113, 114.
[447] Prosecution Response Brief (Ngirumpatse), para. 114, *referring to* Trial Judgement, para. 99.

179. The Appeals Chamber recalls that trial chambers enjoy broad discretion in choosing which witness testimony to prefer, and in assessing the impact on witness credibility of inconsistencies within or between witnesses' testimonies and prior statements.[448] The Appeals Chamber further 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.[449]

180. The Appeals Chamber sees no contradiction between the Trial Chamber's findings that the *Interahamwe* were established in accordance with MRND party structures but not formally affiliated or endowed with a statute. The Appeals Chamber notes that the Trial Chamber expressly found that the establishment of the *Interahamwe* throughout Rwanda was decided during the April 1992 MRND National Congress and took place in Kigali and Gisenyi Prefectures.[450] The Trial Chamber therefore acted within the bounds of its discretion in concluding that the *Interahamwe* were organized in accordance with MRND party structures in those prefectures,[451] despite the absence of evidence of a formal affiliation.[452] Similarly, having noted how the *Interahamwe* expanded throughout the country, including by sending members to Butare and Gisenyi Prefectures to set up the *Interahamwe* there,[453] and having found that the *Interahamwe* were ultimately well organized in at least Kigali and Gisenyi Prefectures,[454] the Trial Chamber reasonably concluded that the MRND centralized structure would not have allowed for a self-appointed *Interahamwe* leadership in these prefectures.[455]

181. The Appeals Chamber notes that the Trial Chamber relied on the evidence of Prosecution Witnesses HH, ALG, G, and T, as well as that of Ngirumpatse and Defence Witness Rutaganda, to conclude that the *Interahamwe* were initially established in Kigali Prefecture and expanded at least to Gisenyi Prefecture, where they were well organized.[456] Ngirumpatse has failed to demonstrate how any discrepancy in the evidence with respect to Witness HH's particular functions within the *Interahamwe* would impact the Trial Chamber's analysis.[457] With respect to the remainder of Ngirumpatse's challenges, the Appeals Chamber considers that his mere assertion that the evidence

[448] *Kalimanzira* Appeal Judgement, para. 105. *See also Muvunyi I* Appeal Judgement, para. 144.
[449] *Nchamihigo* Appeal Judgement, para. 157; *Krajišnik* Appeal Judgement, para. 27.
[450] Trial Judgement, paras. 251, 252, 255, 258.
[451] Trial Judgement, para. 270.
[452] Trial Judgement, para. 259.
[453] Trial Judgement, paras. 251-254.
[454] Trial Judgement, para. 258.
[455] Trial Judgement, para. 267.
[456] Trial Judgement, paras. 251, 252, 254-256.
[457] In particular, the Appeals Chamber observes that the Trial Chamber mentioned Witness HH's leadership role in the *Interahamwe* in Kigali in the context of limiting the scope of his evidence to what was occurring in that prefecture. *See* Trial Judgement, para. 256 ("The Chamber notes that Witness HH was a local *Interahamwe* leader in Kigali and that the

was contradictory or not credible does not demonstrate any error in the Trial Chamber's approach. The Appeals Chamber therefore finds that Ngirumpatse has failed to demonstrate that the Trial Chamber unreasonably relied on the evidence related to the expansion of the *Interahamwe* to Gisenyi Prefecture.

182. The Appeals Chamber further dismisses Ngirumpatse's argument that the Trial Chamber erred in disregarding contradictory evidence and attaching little weight to the Defence evidence.[458] The Appeals Chamber notes that, contrary to Ngirumpatse's assertion, which does not point to any specific evidence,[459] the Trial Chamber was seised of his evidence[460] and that of Witnesses PR[461] and Rutaganda[462] that the *Interahamwe* were autonomous of the MRND and not developed nationwide. It nonetheless exercised its discretion to disbelieve this evidence[463] and to rely on Prosecution evidence showing that the *Interahamwe* were set up according to MRND party structures in Kigali and Gisenyi Prefectures. Ngirumpatse's mere assertion that the Trial Chamber should have given more weight to certain evidence therefore does not demonstrate any error in the Trial Chamber's approach. The Appeals Chamber further finds that the evidence of meetings of *Interahamwe* leaders with Dallaire[464] does not undermine the Trial Chamber's finding that the *Interahamwe* were set up according to MRND party structures. The Appeals Chamber finally dismisses Ngirumpatse's contention that he never gave any order to the *Interahamwe* who appeared as witnesses,[465] since he has failed to specify which evidence was disregarded and how it would render unreasonable the Trial Chamber's findings.

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functions of Witness G within the *Interahamwe* movement were basically related to Kigali, wherefore these witnesses may not have been aware of the situation in all *préfectures*.").

[458] Ngirumpatse Notice of Appeal, para. 65; Ngirumpatse Appeal Brief, paras. 218, 263, 264, 266-268.

[459] Ngirumpatse Appeal Brief, para. 263.

[460] Trial Judgement, paras. 243 ("Ngirumpatse stated that the *Interahamwe* was autonomous and those who initiated the movement were not answerable to him. The *Interahamwe* did not obey instructions from any organ of the MRND. He was not the coordinator of the *Interahamwe*."), 244 ("The *Interahamwe* did not have any statutes or a constitution and existed in Kigali, but not across the country. While one or two members of the committee went to Gisenyi to choose a propaganda official, there was no development or organization of the *Interahamwe* nationwide."), 245 ("There was no integration between the *Interahamwe* and the MRND."), 246-248.

[461] Trial Judgement, para. 232 ("He cautioned, however, that the *Interahamwe* did not constitute an organ of the MRND.").

[462] Trial Judgement, paras. 233 ("There was no hierarchical relationship among the *Interahamwe* groups in the *préfectures* because they were completely independent. The *Interahamwe* groups in the *secteurs* were also independent. Everyone acted independently at their own convenience and as they deemed fit."), 234 ("The project of extending the *Interahamwe* structure to all *préfectures* was never implemented. The *Interahamwe* never had a statute and was never formally affiliated with the MRND."), 235 ("The National Committee had no role to play in choosing sectoral presidents.").

[463] *See*, *e.g.*, Trial Judgement, paras. 253, 267.

[464] Ngirumpatse Appeal Brief, para. 268, *referring to* Prosecution Exhibits 575, 577; Witness T, T. 26 May 2006 p. 13; Witness HH, T. 9 November 2006 pp. 13 *et seq*.

[465] Ngirumpatse Appeal Brief, para. 267.

183. The Appeals Chamber also cannot identify any misinterpretation of the Defence evidence in relation to the expansion of the *Interahamwe* throughout Rwanda.[466] As correctly noted by the Trial Chamber, Ngirumpatse's testimony confirmed that members of the Provisional National Committee were sent to Gisenyi Prefecture to choose a propaganda official.[467] In the Appeals Chamber's view, the fact that Ngirumpatse stated that only one person was ultimately installed in Gisenyi Prefecture[468] does not undermine the Trial Chamber's reliance on his evidence in support of its finding that members of the Provisional National Committee were sent to Gisenyi Prefecture to set up an *Interahamwe* organization.[469] This is particularly so given that Ngirumpatse also testified that members of the Provisional National Committee were sent to Gisenyi Prefecture to create an *Interahamwe* organ following the April 1992 MRND National Congress.[470] The Appeals Chamber thus finds that the Trial Chamber did not err in determining that this part of Ngirumpatse's testimony corroborated the evidence of Witnesses ALG, HH, G, and Rutaganda that the *Interahamwe* were established in Gisenyi Prefecture.[471]

184. As to the Trial Chamber's alleged misinterpretation of Witness Mpambara's testimony,[472] the Appeals Chamber observes that the establishment of the *Interahamwe* in Kibungo Prefecture is not directly relevant to Ngirumpatse's superior responsibility over the Kigali and Gisenyi *Interahamwe*.[473] The Appeals Chamber further finds that Ngirumpatse has failed to demonstrate, in light of documentary evidence that MRND National Congress members "commended" and "requested" that the *Interahamwe* should be established in all prefectures and communes,[474] that the

[466] Ngirumpatse Notice of Appeal, para. 77; Ngirumpatse Appeal Brief, paras. 256, 260.
[467] Trial Judgement, paras. 244, 254. *See also* Ngirumpatse, T. 21 January 2011 pp. 19 ("What I know is that one or two members of the committee went to Gisenyi, and they chose an official to carry out some propaganda work, some sensitisation work in Gisenyi *préfecture*. But I am not aware of whether they went somewhere else to canvass for new members."), 20 ("The only case I am aware of is that of two members who went to Gisenyi to choose an official or a leader of the youth in Gisenyi.").
[468] Ngirumpatse, T. 21 January 2011 p. 20.
[469] Trial Judgement, para. 254. Specifically, the Trial Chamber noted that Ngirumpatse testified that one or two members of the Provisional National Committee were sent to Gisenyi Prefecture to choose a propaganda official. *See* Trial Judgement, para. 244.
[470] Ngirumpatse, T. 24 January 2011 pp. 3 ("The only structure or organ they had within the country was their organ in Gisenyi. I was not the one who created it. It was the national provisional committee of the *Interahamwe* which went to Gisenyi, at least some of them, and they set up that organ there."), 19 ("Q. Mr. Ngirumpatse, according to Witness T, you asked members of the national committee to envisage extending the movement to other *préfectures*, and that – that is how it happened that around the end of January/early February – I do not know which year – three people, on your instructions, went to Gisenyi *préfecture* for the purpose of creating a youth movement of *Interahamwe za* MRND in Gisenyi *préfecture*. What do you say to that allegation? A. Off the [cuff], I already said that they went there to create that [organ]. But that recommendation was not my recommendation. It was amongst the recommendations of 28th of April – 28th of April 1992, which recommendations were made during a congress, and during that congress I was elected national secretary.").
[471] Trial Judgement, para. 252.
[472] Ngirumpatse Appeal Brief, para. 260.
[473] Trial Judgement, para. 253, *referring to*, *inter alia*, Witness Mpambara, T. 20 September 2010 p. 32. The Appeals Chamber notes that the Trial Chamber also erroneously referred to Witness Habyarimana, T. 16 September 2010 p. 6. *See* Trial Judgement, fn. 352.
[474] Trial Judgement, para. 207. *See also* Nzirorera Defence Exhibit 6B (Transcript of the April 1992 MRND National Congress), p. K0356692.

Trial Chamber acted unreasonably in finding that it was "decided" during the April 1992 MRND National Congress that the *Interahamwe* should be established throughout the country.[475]

185. The Appeals Chamber also finds no error in the Trial Chamber's finding that some unemployed, delinquent youth were eventually incorporated into the *Interahamwe*.[476] The Appeals Chamber finds that whether this was a choice made at the outset[477] has no bearing on the counts for which Ngirumpatse was eventually found guilty.

186. Accordingly, Ngirumpatse's arguments are dismissed.

(iii) Ngirumpatse's Role in the Formation and Expansion of the *Interahamwe*

187. In the factual findings section of the Trial Judgement, the Trial Chamber noted Ngirumpatse's "pivotal role in the formation of the *Interahamwe* in Kigali-ville *préfecture* and its expansion to the rest of the country".[478] The Trial Chamber also found that the fact that Ngirumpatse supported the proposal to establish an MRND youth wing in 1992[479] was relevant to the assessment of his later control over the *Interahamwe*, even if at the time of its establishment the *Interahamwe* served a legitimate purpose and Ngirumpatse's involvement was not in itself incriminating.[480]

188. In particular, the Trial Chamber found that Ngirumpatse chaired Kigali-ville prefectural committee meetings in 1991, at which the establishment of an MRND youth wing and its expansion were discussed.[481] The Trial Chamber further found that Ngirumpatse attended an MRND meeting in 1992 at which *Interahamwe* Provisional National Committee members were introduced.[482] The Trial Chamber considered that there was "strong evidence" that Ngirumpatse supported the *Interahamwe* Provisional National Committee and the implementation of the *Interahamwe* in Kigali-ville.[483]

189. Ngirumpatse submits that the Trial Chamber erred in relying on his alleged support for a proposal to establish the *Interahamwe* to conclude that he later exercised control over them.[484]

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[475] Trial Judgement, para. 255.
[476] Trial Judgement, paras. 204, 205.
[477] Ngirumpatse Appeal Brief, para. 243.
[478] Trial Judgement, para. 265, *referring to* Section IV.1.2 of the Trial Judgement.
[479] Trial Judgement, para. 205.
[480] Trial Judgement, para. 201.
[481] Trial Judgement, paras. 197, 199.
[482] Trial Judgement, paras. 200, 202.
[483] Trial Judgement, para. 200.
[484] Ngirumpatse Appeal Brief, para. 241. The Appeals Chamber notes Ngirumpatse's submission that the Trial Chamber contradicted itself when it found, elsewhere in the Trial Judgement, that it was not proven beyond reasonable doubt that Ngirumpatse participated in prefectural meetings in 1993 and early 1994. *See* Ngirumpatse Notice of Appeal, para. 79.

Ngirumpatse contends that intellectual support given to a proposal should not be confused with excesses in its implementation or used to infer control later on.[485] He underscores that the creation of the *Interahamwe* served a legitimate purpose at the time.[486]

190. Ngirumpatse further submits that the Trial Chamber erred in concluding that he supported a proposal to establish the *Interahamwe*.[487] Ngirumpatse asserts that the Trial Chamber's finding that he chaired prefectural committee meetings in 1991 which "would have deliberated on how to counter the youth wings of other political parties" amounts to speculation.[488] Ngirumpatse points to the absence of evidence of a proposal to establish the *Interahamwe*.[489] He also generally challenges the credibility of Prosecution Witnesses HH, ALG, G, T, GOB, UB, and Ahmed Napoléon Mbonyunkiza, who, according to him, randomly named different organs or persons as being behind the creation of the *Interahamwe*.[490]

191. Ngirumpatse further avers that no reasonable trier of fact could have inferred from his presence at a single MRND meeting in 1992, where members of the *Interahamwe* Provisional National Committee were introduced, that he supported a proposal to establish the *Interahamwe*.[491] Ngirumpatse submits that the Trial Chamber should have rejected the Prosecution evidence in relation to this meeting because of the discrepancies in the witnesses' testimonies.[492] Ngirumpatse finally argues that the Trial Chamber should have relied on Defence Witness Rutaganda, rather than on Witnesses G and T who had an interest in placing responsibility on Ngirumpatse since they were involved in the *Interahamwe* Provisional National Committee.[493]

192. The Prosecution responds that Ngirumpatse's submissions are vague and impermissibly refer to submissions made in his closing brief.[494] The Prosecution submits that the Trial Chamber carefully assessed the testimonies of Witnesses HH, G, GOB, T, and Mbonyunkiza, including their inconsistencies, and concluded that Ngirumpatse attended MRND meetings where *Interahamwe* Provisional National Committee members were introduced.[495] The Prosecution further avers that,

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Since Ngirumpatse does address this submission in his appeal brief, the Appeals Chamber summarily dismisses this argument.

[485] Ngirumpatse Appeal Brief, para. 243.
[486] Ngirumpatse Appeal Brief, para. 241.
[487] Ngirumpatse Notice of Appeal, para. 73; Ngirumpatse Appeal Brief, para. 240.
[488] Ngirumpatse Appeal Brief, para. 247, *quoting* Trial Judgement, para. 199.
[489] Ngirumpatse Appeal Brief, para. 249.
[490] Ngirumpatse Notice of Appeal, para. 74; Ngirumpatse Appeal Brief, para. 244, *referring to*, *inter alia*, Ngirumpatse Closing Brief, paras. 325-345.
[491] Ngirumpatse Notice of Appeal, para. 74; Ngirumpatse Appeal Brief, para. 250.
[492] Ngirumpatse Appeal Brief, paras. 245, 246. Ngirumpatse submits that the Trial Chamber shifted the burden of proof in not according him a fair chance to defend himself against this allegation.
[493] Ngirumpatse Notice of Appeal, para. 74; Ngirumpatse Appeal Brief, para. 248, *referring to* Trial Judgement, para. 201.
[494] Prosecution Response Brief (Ngirumpatse), paras. 102, 103.
[495] Prosecution Response Brief (Ngirumpatse), para. 104.

contrary to Ngirumpatse's claim, there were no contradictions in the testimonies of Witnesses UB, AWD, and T which undermine the Prosecution case.[496]

193. The Appeals Chamber finds that Ngirumpatse has failed to show that no reasonable trier of fact could have relied on his role in the creation of the *Interahamwe* as relevant circumstantial evidence supporting the inference that he had effective control over members of this organization during the genocide even if this was insufficient, on its own, to establish such a finding.

194. The Appeals Chamber dismisses Ngirumpatse's claim that it was speculative to find that the MRND Kigali-ville prefectural committee meetings in 1991 deliberated upon how to counter other political parties' youth wings. The Trial Chamber explicitly relied on Witness GOB's first-hand evidence, which it believed,[497] that the MRND Kigali-ville prefectural committee meetings chaired by Ngirumpatse discussed the establishment of an MRND youth wing and its expansion to the rest of Rwanda.[498]

195. The Appeals Chamber also finds that Ngirumpatse has failed to demonstrate any error in the Trial Chamber's conclusion that his presence at an MRND meeting in 1992 further indicated that he supported the proposal to establish the *Interahamwe*.[499] In this context, the Trial Chamber considered direct evidence that Ngirumpatse "attended a meeting regarding the establishment of the *Interahamwe*, which he encouraged",[500] "presented the *Interahamwe* leaders to those at the meeting",[501] and "mentioned that he had created the *Interahamwe* so they could work on behalf of the MRND to raise awareness".[502]

196. The Appeals Chamber further finds no merit in Ngirumpatse's contentions that the Trial Chamber disregarded discrepancies in the evidence and that it should have relied on Witness Rutaganda's testimony rather than on the Prosecution evidence. The Trial Chamber considered the discrepancies to which Ngirumpatse refers but concluded that the testimonies of Witnesses HH and Mbonyunkiza were not incompatible.[503] Ngirumpatse has failed to demonstrate any error on the part of the Trial Chamber in this respect.[504] The Appeals Chamber further rejects Ngirumpatse's challenge to the credibility of Prosecution witnesses concerning the identification of who was behind the creation of the *Interahamwe*. In this regard, Ngirumpatse merely repeats

[496] Prosecution Response Brief (Ngirumpatse), para. 105.
[497] Trial Judgement, para. 199.
[498] Trial Judgement, para. 197. *See also* Trial Judgement, paras. 181, 182, *referring to* Witness GOB, T. 22 October 2007 pp. 25-27.
[499] Trial Judgement, para. 205.
[500] Trial Judgement, para. 176, *referring to* Witness G, T. 10 October 2005 p. 70.
[501] Trial Judgement, para. 171, *referring to* Witness HH, T. 8 November 2006 p. 25.
[502] Trial Judgement, para. 185, *referring to* Witness Mbonyunkiza, T. 20 September 2005 pp. 45, 46.
[503] Trial Judgement, para. 202.

arguments made at trial[505] without demonstrating the unreasonableness of the Trial Chamber's findings. Finally, in the Appeals Chamber's view, the fact that the Trial Chamber found that the witnesses testified about the same meeting, despite minor discrepancies, does not constitute a reversal of the burden of proof.

197. Accordingly, Ngirumpatse's arguments are dismissed.

(iv) Karemera's and Ngirumpatse's Positions in the MRND Executive Bureau

198. The Trial Chamber relied on Karemera's and Ngirumpatse's membership in the MRND Executive Bureau to conclude that they had *de facto* authority and effective control over the Kigali and Gisenyi *Interahamwe*.[506] In the factual findings section of the Trial Judgement, the Trial Chamber found that the Executive Bureau of the MRND, including Ngirumpatse and Karemera, represented the ultimate authority over the *Interahamwe* movement in Kigali-ville and Gisenyi Prefectures.[507] It referred to this observation when assessing Karemera's and Ngirumpatse's superior responsibility.[508] The Trial Chamber also found that the MRND Executive Bureau, which was comprised of the national president, two vice-presidents, and the national secretary,[509] exercised decisive power and control over the MRND generally, even after the introduction of the multi-party system.[510]

199. Karemera submits that the Trial Chamber erred in holding him responsible by virtue of his position within the MRND.[511] He maintains that holding leaders of a political party accountable for all acts committed by party members would impermissibly expand the scope of Article 6(3) of the Statute.[512]

200. Ngirumpatse contends that the Trial Chamber erred in finding that, as a member of the MRND Executive Bureau, he had *de facto* authority and effective control over the Kigali and Gisenyi *Interahamwe*.[513] In this respect, he submits that the Trial Chamber erred in relying on Prosecution Witnesses UB and ALG to find that the MRND had four organs, which included a

[504] *Nchamihigo* Appeal Judgement, para. 157; *Krajišnik* Appeal Judgement, para. 27.
[505] Ngirumpatse Closing Brief, paras. 325-345.
[506] Trial Judgement, paras. 1516, 1523, 1546, 1551.
[507] Trial Judgement, para. 271. *See also* Trial Judgement, para. 1334.
[508] Trial Judgement, paras. 1523, 1551.
[509] Trial Judgement, para. 149.
[510] Trial Judgement, para. 162.
[511] Karemera Notice of Appeal, paras. 107-109; Karemera Appeal Brief, para. 304. *See also* Karemera Reply Brief, paras. 65, 66.
[512] Karemera Appeal Brief, paras. 311, 312, *referring to*, *inter alia*, *Nahimana et al.* Appeal Judgement, para. 882.
[513] Ngirumpatse Notice of Appeal, paras. 78, 79, 191, 243, 256, 259; Ngirumpatse Appeal Brief, paras. 692, 703, 709, 710. *See also* AT. 10 February 2014 pp. 30, 31.

National Executive Bureau.[514] According to Ngirumpatse, apart from the National Secretariat, the MRND had only three organs, and no National Executive Bureau.[515] Ngirumpatse further argues that MRND policies were adopted by the National Congress and that the National Committee and party leaders were only responsible for executing them in a collective manner.[516]

201. Ngirumpatse also contends that the Trial Chamber erred in assessing his powers as MRND President and in inferring from these powers that he had *de facto* authority over the Kigali and Gisenyi *Interahamwe*.[517] In particular, Ngirumpatse claims that the MRND Statute did not confer on him authority over the MRND and affiliated organizations, and *a fortiori* not over the *Interahamwe*.[518] He avers that the Trial Chamber erred in enumerating his purported powers and distorted the MRND Statute by reading its Article 51 in isolation because the MRND President's powers were actually limited to the implementation of collective decisions and the coordination and administration of the party.[519]

202. Ngirumpatse further contends that the Trial Chamber erred in assessing the evidence on the structure of the MRND and, in particular, in relying on the non-credible evidence of Witnesses HH, ALG, UB, AWD, T, G, and AXA, and by excusing discrepancies in the evidence of witnesses who claimed to be experts on the MRND.[520] In particular, Ngirumpatse claims that Witness UB admitted that he was not qualified to testify about the MRND party structure.[521] Ngirumpatse also submits that the Trial Chamber erred in relying, without corroboration, on Witness UB's evidence that he remained the actual leader of the party when President Habyarimana was replaced.[522] Ngirumpatse finally argues that the Trial Chamber failed to discuss the relevant Defence arguments.[523]

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[514] Ngirumpatse Appeal Brief, paras. 218-228.
[515] Ngirumpatse Appeal Brief, paras. 220-224.
[516] Ngirumpatse Appeal Brief, paras. 225, 228.
[517] Ngirumpatse Notice of Appeal, paras. 60-63; Ngirumpatse Appeal Brief, paras. 205-215. The Appeals Chamber notes Ngirumpatse's argument that the Trial Chamber erred in inferring from his MRND President's powers that he had *de jure* authority over the MRND and MRND militants. *See* Ngirumpatse Notice of Appeal, para. 61; Ngirumpatse Appeal Brief, paras. 206, 207, 210-212. Since this argument does not relate to any conviction or finding of responsibility, the Appeals Chamber summarily dismissed it.
[518] Ngirumpatse Appeal Brief, para. 260, *referring to* Ngirumpatse Defence Exhibit 2 (MRND Statute), Articles 61 and 62. *See also* Ngirumpatse Notice of Appeal, paras. 64-68; Ngirumpatse Appeal Brief, paras. 216-229.
[519] Ngirumpatse Notice of Appeal, para. 60; Ngirumpatse Appeal Brief, paras. 205, 208, 209, 213, 218, 695, *referring to* Ngirumpatse Defence Exhibit 2 (MRND Statute), Articles 48-51, 53, 54, 71. *See also* Ngirumpatse Reply Brief, paras. 57, 58.
[520] Ngirumpatse Appeal Brief, paras. 257, 259. *See also* Ngirumpatse Notice of Appeal, para. 65; Ngirumpatse Reply Brief, paras. 62, 71, 72. In particular, Ngirumpatse submits that Witnesses UB and ALG were not qualified to testify about the MRND and were confused about the party's organs. *See* Ngirumpatse Appeal Brief, paras. 218, 219, *referring to*, *inter alia*, Ngirumpatse Ground 10, Ngirumpatse Closing Brief, paras. 51-54, 58, 59. Ngirumpatse also argues that Witnesses T and G gave contradictory evidence about the existence of a statute. *See* Ngirumpatse Appeal Brief, para. 258.
[521] Ngirumpatse Appeal Brief, fn. 519, *referring to* Witness UB, T. 22 February 2006 pp. 22, 23.
[522] Ngirumpatse Appeal Brief, para. 221.
[523] Ngirumpatse Notice of Appeal, para. 65; Ngirumpatse Appeal Brief, para. 218, *referring to* Ngirumpatse Closing Brief, paras. 84 *et seq*.

203. The Prosecution responds that the Trial Chamber correctly considered all relevant factors in their totality, including Karemera's and Ngirumpatse's positions within the MRND.[524] It avers that, as Vice-President and President of the MRND Executive Bureau, Karemera and Ngirumpatse were at the pinnacle of the MRND and possessed ultimate authority over MRND party members, including the *Interahamwe* youth wing.[525] The Prosecution submits that a trial chamber may rely upon the position of authority within an institution to find effective control.[526] The Prosecution further argues that, contrary to Ngirumpatse's submission, the Trial Chamber did not distort Article 51 of the MRND Statute or ignore statutory provisions limiting the powers of the MRND President to the implementation of decisions collectively taken.[527]

204. The Appeals Chamber finds that Karemera and Ngirumpatse have failed to demonstrate that no reasonable trier of fact could have relied on their positions within the MRND as indicators of their *de facto* authority and effective control over the Kigali and Gisenyi *Interahamwe*. While Karemera's and Ngirumpatse's positions in the MRND could not, on their own, have supported such a finding, the Appeals Chamber observes that this was only one of a number of indicators taken into account by the Trial Chamber.[528]

205. The Appeals Chamber also finds that, contrary to Karemera's argument, the Trial Chamber's findings did not expand the scope of Article 6(3) of the Statute to guilt by association. The Appeals Chamber notes that the Trial Judgement expressly limited the scope of Karemera's responsibility to specific crimes,[529] committed by certain groups of persons over whom he was found to have had superior authority, including the Kigali and Gisenyi *Interahamwe*.[530]

206. In addition, the Appeals Chamber finds that a reasonable trier of fact could have relied on the evidence of Witnesses UB and ALG, which the Trial Chamber found consistent and reliable,[531] in setting forth the structure of the MRND, its various organs, such as the National Executive Bureau, and the manner in which decisions were taken in the MRND.[532] Furthermore, while Ngirumpatse testified that the decisions of the Executive Bureau needed the approval of the

[524] Prosecution Response Brief (Karemera), paras. 183, 184; Prosecution Response Brief (Ngirumpatse), para. 265. *See also* AT. 10 February 2014 pp. 60, 70-81.
[525] Prosecution Response Brief (Karemera), para. 184; Prosecution Response Brief (Ngirumpatse), para. 265.
[526] Prosecution Response Brief (Karemera), para. 182, *referring to Nahimana et al.* Appeal Judgement, paras. 606, 626.
[527] Prosecution Response Brief (Ngirumpatse), paras. 83-86.
[528] Trial Judgement, paras. 1508-1528, 1543-1556.
[529] Trial Judgement, paras. 1618, 1624, 1654, 1659, 1664, 1671, 1683, 1692, 1706.
[530] Trial Judgement, para. 1542.
[531] Trial Judgement, para. 161.
[532] Trial Judgement, paras. 155, 156, 158, 161. The Appeals Chamber further notes that Ngirumpatse himself mentioned the existence of an Executive Bureau. *See* Trial Judgement, para. 159, *referring to* Ngirumpatse, T. 19 January 2011 p. 10; Ngirumpatse, T. 24 January 2011 p. 12. *See also* Ngirumpatse Appeal Brief, para. 220 ("an amendment of the Statute in April 1992 added 'the Executive Bureau'.").

Political Bureau, National Committee, or National Congress,[533] the Trial Chamber reasonably found that this was not incompatible with the evidence of Witnesses UB and ALG.[534] In this regard, the Trial Chamber noted their evidence that "the Political Bureau could give instructions to the Executive Bureau"[535] and that "the Party Congress was the party's highest organ".[536] Ngirumpatse's mere disagreement with the Trial Chamber's findings is insufficient to call into question the Trial Chamber's findings on his effective control.

207. The Appeals Chamber further finds no error in the Trial Chamber's enumeration of Ngirumpatse's statutory powers as the President of the MRND.[537] In particular, the Appeals Chamber rejects Ngirumpatse's assertion that the Trial Chamber read Article 51 of the MRND Statute in isolation from Articles 48 to 50, 53, 54, and 71 of the MRND Statute, which set out the organization, duties, and responsibilities of the National Congress and National Committee, as well as the arbitration procedure within the party.[538] The Trial Chamber noted that the National Congress was the "supreme organ and sole deliberative organ"[539] and that the National Committee had extensive powers, including in installing the various organs of the party.[540] The Trial Chamber further observed that the MRND President directed the movement "in line with the programme and directives adopted by the national congress".[541] The Trial Chamber was therefore properly seised of the fact that the MRND President's powers were limited by those of the National Committee and National Congress. Nonetheless, the Trial Chamber found that the MRND President retained significant powers within the party, as enumerated in Article 51 of the MRND Statute.[542] The Appeals Chamber thus considers that Ngirumpatse has failed to demonstrate that no reasonable trier of fact could have relied on his powers as MRND President, among other indicators, to find that he had *de facto* authority over the *Interahamwe*.

208. The Appeals Chamber also rejects Ngirumpatse's contention that the Trial Chamber relied on evidence despite discrepancies and contradictory evidence. The Appeals Chamber notes that the Trial Chamber expressly found Witnesses UB and ALG "consistent and reliable" as to the MRND Executive Bureau's control over the MRND.[543] In particular, the Appeals Chamber finds no merit in Ngirumpatse's assertion that Witnesses UB and ALG were not qualified to testify about the

[533] Trial Judgement, para. 159, *referring to* Ngirumpatse, T. 19 January 2011 p. 10; T. 24 January 2011 p. 12.
[534] Trial Judgement, para. 161.
[535] Trial Judgement, para. 156.
[536] Trial Judgement, para. 158.
[537] Trial Judgement, paras. 146, 1544. *See also* Ngirumpatse Defence Exhibit 2 (MRND Statute), Article 51.
[538] Ngirumpatse Defence Exhibit 2 (MRND Statute).
[539] Trial Judgement, para. 144. *See also* Ngirumpatse Defence Exhibit 2 (MRND Statute), Article 48.
[540] Trial Judgement, para. 145. *See also* Ngirumpatse Defence Exhibit 2 (MRND Statute), Article 54.
[541] Trial Judgement, para. 146. *See also* Ngirumpatse Defence Exhibit 2 (MRND Statute), Article 51.
[542] Trial Judgement, para. 1544.
[543] Trial Judgement, para. 161.

MRND.[544] Witnesses UB and ALG both had positions within the MRND[545] and Ngirumpatse's claim that Witness UB admitted to his lack of capacity to testify to the issue is unsupported by the evidence.[546] The Appeals Chamber similarly dismisses Ngirumpatse's challenge to Witness UB's evidence that Ngirumpatse "remained" the actual leader of the party after Habyarimana was replaced in July 1993,[547] since the Trial Chamber explicitly stated that Ngirumpatse was "elected" President of the MRND.[548] The Trial Chamber further expressly noted the "variations" between testimonies as to which person or organ in the MRND controlled the *Interahamwe*, but found that these discrepancies could be explained by the witnesses' reference to different time periods and the specificity of the terms they used.[549] The Appeals Chamber therefore concludes that a reasonable trier of fact could have accepted these testimonies.

209. Finally, the Appeals Chamber summarily dismisses Ngirumpatse's contention that the Trial Chamber failed to discuss Defence arguments,[550] since Ngirumpatse merely refers to a large part of his closing brief without identifying which evidence or argument was specifically disregarded by the Trial Chamber, and how it would undermine the impugned findings.

210. Accordingly, Karemera's and Ngirumpatse's arguments that the Trial Chamber erred in relying on their respective positions in the MRND as a basis for finding that they had *de facto* authority and effective control over the Kigali and Gisenyi *Interahamwe* are dismissed.

(v) Jean-Pierre Turatsinze

211. The Trial Chamber found that Jean-Pierre Turatsinze was a liaison between the *Interahamwe*, Ngirumpatse, and the MRND Executive Bureau.[551] The Trial Chamber considered that Turatsinze's role as liaison supported other Prosecution evidence underpinning its findings on Ngirumpatse's control over the *Interahamwe*.[552] The Trial Chamber incorporated this discussion by reference when discussing Ngirumpatse's superior responsibility.[553]

212. Ngirumpatse submits that the Trial Chamber erred in finding that Turatsinze was a liaison between him, the *Interahamwe*, and the MRND Executive Bureau, and in relying on this finding to

[544] Ngirumpatse Appeal Brief, para. 218.
[545] Trial Judgement, paras. 154, 157. *See also* Witness UB, T. 16 February 2006 p. 35; Witness ALG, T. 26 October 2006 pp. 15-18 (closed session).
[546] Ngirumpatse Appeal Brief, fn. 519, *referring to* Witness UB, T. 22 February 2006 pp. 22, 23.
[547] Ngirumpatse Appeal Brief, para. 221.
[548] Trial Judgement, paras. 10, 146.
[549] Trial Judgement, para. 264.
[550] Ngirumpatse Notice of Appeal, para. 65; Ngirumpatse Appeal Brief, para. 218, *referring to* Ngirumpatse Closing Brief, paras. 84 *et seq*.
[551] Trial Judgement, para. 261.
[552] Trial Judgement, para. 265.
[553] Trial Judgement, para. 1551, *referring to* Section IV.1.3 of the Trial Judgement.

establish his superior responsibility.[554] Ngirumpatse underscores that Turatsinze vanished in November 1993.[555]

213. Ngirumpatse also generally avers that the Trial Chamber erred in accepting the evidence of witnesses who were not credible.[556] In his view, Prosecution Witnesses ALG, HH, and AWD were not in a position to testify about Turatsinze's role.[557] Ngirumpatse further submits that it was an error to rely on Witnesses ALG's and HH's hearsay evidence and on Witness AWD's speculative evidence.[558] Ngirumpatse further contends that the Trial Chamber failed to provide a reasoned opinion as to Turatsinze's role,[559] ignored relevant Defence evidence,[560] impermissibly used "endless self-corroboration" by relying on the military training and distribution of weapons to infer Turatsinze's role as a liaison,[561] and failed to consider his closing arguments on the matter.[562] Ngirumpatse submits that the Trial Chamber shifted the burden of proof by finding the Prosecution evidence "more probative" than the Defence evidence and generally in its assessment of Prosecution and Defence evidence.[563] Ngirumpatse finally contends that a reasonable trier of fact could have drawn the inference that Turatsinze was not a "link" between himself, the *Interahamwe*, and the Executive Bureau, but instead a driver[564] or an agent employed by the RPF.[565]

214. The Prosecution responds that Ngirumpatse's arguments are unsubstantiated.[566] It submits that the Trial Chamber correctly assessed the evidence of Witnesses ALG, HH, and AWD,[567] and that they were in a good position to testify about Turatsinze's role.[568] The Prosecution further avers that the fact that the Trial Chamber did not specifically mention certain Defence evidence in the Trial Judgement does not imply that this evidence was not considered, but rather that it found that the evidence did not cast doubt on the Prosecution evidence.[569] In particular, the Prosecution underlines that Turatsinze's position as a driver was not inconsistent with the finding that he was a

[554] Ngirumpatse Notice of Appeal, paras. 83-85; Ngirumpatse Appeal Brief, para. 270. *See also* Ngirumpatse Appeal Brief, paras. 271, 695, 696; Ngirumpatse Reply Brief, paras. 74-81.
[555] Ngirumpatse Appeal Brief, para. 696. *See also* Ngirumpatse Appeal Brief, para. 283; Ngirumpatse Reply Brief, paras. 78, 80, 81.
[556] Ngirumpatse Notice of Appeal, para. 84; Ngirumpatse Appeal Brief, paras. 281, 282.
[557] Ngirumpatse Appeal Brief, para. 281.
[558] Ngirumpatse Appeal Brief, paras. 277, 278. *See also* Ngirumpatse Reply Brief, paras. 74-76.
[559] Ngirumpatse Appeal Brief, para. 280.
[560] Ngirumpatse Notice of Appeal, para. 84; Ngirumpatse Appeal Brief, paras. 283, 287.
[561] Ngirumpatse Appeal Brief, paras. 273, 277, 278.
[562] Ngirumpatse Appeal Brief, para. 276, *referring to*, *inter alia*, Ngirumpatse Closing Brief, paras. 794-803.
[563] Ngirumpatse Appeal Brief, paras. 279, 286.
[564] Ngirumpatse Appeal Brief, para. 284.
[565] Ngirumpatse Appeal Brief, para. 285. *See also* Ngirumpatse Appeal Brief, para. 287.
[566] Prosecution Response Brief (Ngirumpatse), para. 116.
[567] Prosecution Response Brief (Ngirumpatse), para. 118.
[568] Prosecution Response Brief (Ngirumpatse), para. 119.
[569] Prosecution Response Brief (Ngirumpatse), para. 120.

liaison officer.[570] The Prosecution adds that finding the Prosecution evidence to be more probative than the Defence evidence did not amount to a shifting of the burden of proof.[571]

215. The Trial Chamber did not explicitly consider the evidence that Turatsinze vanished in 1993. However, it noted the testimony of Nzirorera and Ngirumpatse that Turatsinze was discharged in 1993[572] and of Prosecution Witness HH that Turatsinze disappeared in March 1994.[573] Accordingly, the Appeals Chamber is satisfied that the Trial Chamber took into account that Turatsinze no longer worked for the MRND at the time of the genocide. The Appeals Chamber recalls that a trier of fact is not obliged to articulate every step of its reasoning[574] and that it is to be presumed that it assessed and weighed the evidence presented to it, as long as there is no indication that it completely disregarded any particular piece of evidence.[575] The Appeals Chamber thus concludes that the Trial Chamber acted within its discretion and dismisses Ngirumpatse's argument.

216. The Appeals Chamber further observes that the Trial Chamber provided a reasoned opinion as to Turatsinze's role and expressly chose to rely on the evidence of Witnesses HH, ALG, and AWD.[576] The Appeals Chamber finds that Ngirumpatse has failed to demonstrate that no reasonable trier of fact could have accepted their evidence regarding Turatszinse's role as a liaison, especially since these witnesses had official positions either in the *Interahamwe*[577] or in the MRND.[578] Additionally, the Trial Chamber noted Witness ALG's evidence that Turatszinse was formally introduced to party members as the liaison between the *Interahamwe* and the MRND during an MRND meeting.[579] The Trial Chamber further found that Witnesses HH's and ALG's evidence was corroborated by the testimony of Witness AWD[580] and by its findings on Turatsinze's role in the stockpiling and distribution of weapons.[581] The Appeals Chamber discerns no error in the Trial Chamber's reference to other findings which it considered proven beyond reasonable doubt.

217. Moreover, the Appeals Chamber does not identify any shift of the burden of proof. The Trial Judgement correctly sets forth the applicable standard that the Prosecution must prove its case

[570] Prosecution Response Brief (Ngirumpatse), para. 121.
[571] Prosecution Response Brief (Ngirumpatse), para. 122.
[572] Trial Judgement, paras. 239, 247.
[573] Trial Judgement, para. 415, *referring to* Witness HH, T. 8 November 2006 p. 55.
[574] *See*, *e.g.*, *Ntabakuze* Appeal Judgement, para. 161; *Kanyarukiga* Appeal Judgement, para. 114.
[575] *See*, *e.g.*, *Ntabakuze* Appeal Judgement, fn. 357; *Bagosora and Nsengiyumva* Appeal Judgement, fn. 625; *Kalimanzira* Appeal Judgement, para. 195; *Karera* Appeal Judgement, para. 20.
[576] Trial Judgement, para. 260.
[577] Trial Judgement, para. 170.
[578] Trial Judgement, paras. 157, 219. *See also* Witness ALG, T. 26 October 2006 pp. 15-18 (closed session).
[579] Trial Judgement, para. 211, *referring to* Witness ALG, T. 26 October 2006 pp. 36, 37.
[580] Trial Judgement, para. 260.

beyond reasonable doubt.[582] The Trial Chamber subsequently determined that the Prosecution proved "beyond reasonable doubt" that Turatsinze was a liaison between the *Interahamwe*, Ngirumpatse, and the MRND Executive Bureau.[583] The Appeals Chamber therefore considers that the language used by the Trial Chamber – that it found the Prosecution evidence to be "more probative" – merely reflected its intent to determine, when faced with competing versions of events, which evidence it considered more probative.[584] The Appeals Chamber finds no error in this approach.

218. The Appeals Chamber finally dismisses Ngirumpatse's contention that the Trial Chamber failed to consider Defence evidence or to draw other reasonable inferences. The Appeals Chamber observes that the Trial Chamber relied on the direct evidence of Witnesses HH and ALG that Turatsinze was the liaison between the *Interahamwe*, Ngirumpatse, and the MRND Executive Bureau.[585] Moreover, the Trial Chamber explicitly considered the possibility that Turatsinze could have been acting as something other than a liaison between the *Interahamwe* and the MRND but rejected this alternative based on the totality of the evidence.[586] Ngirumpatse therefore has failed to demonstrate any error in the Trial Chamber's approach.

219. Accordingly, Ngirumpatse's arguments are dismissed.

(vi) Activities Demonstrating *De Facto* Authority Before 6 April 1994

220. The Trial Chamber relied on Karemera's and Ngirumpatse's roles prior to April 1994, including in the facilitation of the provision of training and weapons to the *Interahamwe*,[587] and in an intervention in favour of Théoneste Bagosora,[588] to conclude that they had *de facto* authority over the Kigali and Gisenyi *Interahamwe*. In particular, the Trial Chamber found that, starting in 1993, military training was provided to the *Interahamwe* pursuant to an agreement between national MRND leaders and authorities in the Ministry of Defence and the Rwandan Armed Forces.[589] It considered that large-scale military training of the *Interahamwe* could not have taken place without

[581] Trial Judgement, para. 260, *referring to* Section IV.1.5.2 of the Trial Judgement. The Appeals Chamber considers Ngirumpatse's arguments in relation to the stockpiling and distribution of weapons before 6 April 1994 elsewhere in the Judgement. *See infra* Section III.D.1.(vi).
[582] Trial Judgement, paras. 99, 100.
[583] Trial Judgement, para. 261.
[584] *Hategekimana* Appeal Judgement, para. 155; *Rukundo* Appeal Judgement, para. 217.
[585] Trial Judgement, para. 260.
[586] Trial Judgement, paras. 239, 261.
[587] Trial Judgement, paras. 1518, 1548, *referring to* Sections IV.1.4 and IV.1.5 of the Trial Judgement.
[588] Trial Judgement, paras. 1518, 1548, *referring to* Witness Bagosora, T. 29 June 2010 pp. 17-19. The Trial Chamber found that when Bagosora, *directeur de cabinet* for the Ministry of Defence, was threatened with early removal by the Ministry of Defence, he sought assistance from the Executive Bureau of the MRND and Karemera and Ngirumpatse spoke to the Minister of Defence in order to ensure that Bagosora was treated fairly. *See* Trial Judgement, paras. 1518, 1548.
[589] Trial Judgement, para. 358. *See also* Trial Judgement, paras. 353, 354.

the involvement of the MRND leadership.[590] The Trial Chamber also found that, during the same period, weapons were provided to the *Interahamwe* or stockpiled for later distribution to them,[591] and that Ngirumpatse and the MRND Executive Bureau agreed to this.[592] The Trial Chamber further found that Ngirumpatse and the MRND Executive Bureau urged *Interahamwe* leaders to conceal weapons in advance of an anticipated search by the United Nations Assistance Mission for Rwanda ("UNAMIR").[593]

221. Ngirumpatse submits that the Trial Chamber erred in relying on the situation prior to 6 April 1994 to find that he had *de facto* authority over the *Interahamwe* after this date.[594] He also challenges the Trial Chamber's findings in relation to the provision of training and the distribution of weapons to the *Interahamwe* prior to April 1994.[595]

222. Ngirumpatse further contends that the Trial Chamber failed to provide a reasoned opinion in relation to the credibility of Prosecution witnesses,[596] whose testimony he claims was not credible and should have been discarded.[597] He asserts that the Trial Chamber erred in finding that the Prosecution witnesses' direct evidence could be self-corroborated by their hearsay evidence.[598] Ngirumpatse further submits that the Trial Chamber shifted the burden of proof when it observed that "testimony from a witness who positively experienced or learned a matter is generally more probative than testimony from a witness who was unaware of that same matter".[599] Ngirumpatse avers that this statement amounted to rejecting *a priori* the Defence evidence, despite its consistency.[600] Ngirumpatse contends that the Trial Chamber also shifted the burden of proof when concluding that the training of the *Interahamwe* "could not take place without the involvement of the MRND leadership" to infer that Ngirumpatse was involved.[601]

223. Ngirumpatse further asserts that his involvement in providing military training to the *Interahamwe* was not the only reasonable inference that could be drawn from the evidence.[602] Ngirumpatse contends that the Trial Chamber confused the training of young army recruits with the

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[590] Trial Judgement, para. 354.
[591] Trial Judgement, para. 444.
[592] Trial Judgement, para. 448.
[593] Trial Judgement, para. 450. *See also* Trial Judgement, para. 449.
[594] Ngirumpatse Appeal Brief, paras. 690, 691.
[595] Ngirumpatse Notice of Appeal, paras. 246, 247; Ngirumpatse Appeal Brief, paras. 695, 696, 704, *referring to* Ngirumpatse Grounds 13-17.
[596] Ngirumpatse Appeal Brief, para. 295.
[597] Ngirumpatse Notice of Appeal, para. 88; Ngirumpatse Appeal Brief, paras. 292, 295, 298, *referring to* Ngirumpatse Ground 10.
[598] Ngirumpatse Appeal Brief, paras. 293, 294, *referring to* Trial Judgement, paras. 343-352.
[599] Ngirumpatse Appeal Brief, para. 296, *referring to* Trial Judgement, para. 347.
[600] Ngirumpatse Appeal Brief, para. 296.
[601] Ngirumpatse Notice of Appeal, para. 87; Ngirumpatse Appeal Brief, para. 298.
[602] Ngirumpatse Appeal Brief, para. 299.

training of civilians which, according to him, was not proven beyond reasonable doubt.[603] He also asserts that a letter he wrote to President Juvénal Habyarimana in February 1993 showed that he was unaware that civilians were receiving military training.[604] He avers that the Trial Chamber distorted the content of this letter, which clearly referred to RPF attacks and called for the mobilization of the entire nation without discrimination.[605]

224. Similarly, Ngirumpatse contends that the Trial Chamber erred in finding that he was involved in the distribution or stockpiling of weapons as early as 1993.[606] Ngirumpatse submits that the Trial Chamber relied on Prosecution evidence which was not credible, failed to provide a reasoned opinion in relation to its assessment thereof,[607] and distorted Defence evidence.[608] He maintains that Prosecution Witness Frank Claeys only provided hearsay evidence,[609] that Claeys admitted that the information received from Turatsinze was vague and unverified,[610] and that Witnesses HH and T provided contradictory evidence.[611] Ngirumpatse asserts that the Trial Chamber failed to specify which evidence it relied on as "strong evidence" to support its finding that weapons were stockpiled for later distribution to the *Interahamwe*.[612]

225. Ngirumpatse further submits that the Trial Chamber erred by concluding that the only reasonable inference was that either he or the MRND Executive Bureau was involved in the distribution or stockpiling of weapons.[613] According to Ngirumpatse, a reasonable trier of fact could have also found that weapons may have been stockpiled at the MRND headquarters without the party's knowledge.[614] In support thereof, Ngirumpatse points to Witness Claeys's testimony, which he contends was disregarded by the Trial Chamber, as well as to his own testimony that MRND leaders spontaneously invited Dallaire to proceed with a search of the MRND headquarters.[615] Similarly, Ngirumpatse submits that Prosecution Witness G corroborated Defence evidence that the weapons were distributed solely for the protection of members of the Provisional National Committee and that it would have been reasonable to assume on this basis that he was not told

[603] Ngirumpatse Appeal Brief, para. 297.
[604] Ngirumpatse Appeal Brief, para. 299.
[605] Ngirumpatse Appeal Brief, para. 291, *referring to* Prosecution Exhibit 27 (Letter from Ngirumpatse to President Habyarimana, dated 15 February 1993).
[606] Ngirumpatse Notice of Appeal, paras. 91-93.
[607] Ngirumpatse Appeal Brief, paras. 303, 304, *referring to* Ngirumpatse Ground 10. *See also* Ngirumpatse Reply Brief, para. 84.
[608] Ngirumpatse Appeal Brief, para. 303.
[609] Ngirumpatse Appeal Brief, para. 305.
[610] Ngirumpatse Reply Brief, paras. 76, 77, *referring to* Witness Claeys, T. 23 November 2006 p. 18.
[611] Ngirumpatse Appeal Brief, para. 306.
[612] Ngirumpatse Appeal Brief, para. 307, *referring to* Trial Judgement, para. 443.
[613] Ngirumpatse Appeal Brief, para. 311.
[614] Ngirumpatse Appeal Brief, para. 311.
[615] Ngirumpatse Appeal Brief, paras. 309, 310.

about the weapons.[616] Ngirumpatse further avers that the Trial Chamber distorted his testimony and that of Witness Rutaganda because it confused the supply of guns for personal protection with a massive distribution of weapons.[617]

226. Ngirumpatse also generally challenges the Trial Chamber's inference that he had influence over decisions of the Interim Government because the MRND Executive Bureau spoke to "their" ministers to ensure that Bagosora was treated fairly.[618] He underlines that Bagosora was not a member of the MRND.[619]

227. With regard to the training of the *Interahamwe*, the Prosecution responds that the Trial Chamber properly assessed the evidence and that it did not shift the burden of proof.[620] The Prosecution submits that the Trial Chamber had the discretion to determine the weight to be accorded to witness testimony, including assessing which evidence was more credible when confronted with competing versions of events.[621] The Prosecution also contends that the Trial Chamber did not distort the content of Ngirumpatse's letter to President Habyarimana, and even relied on the letter to make a finding in Ngirumpatse's favour.[622] The Prosecution further maintains that many Defence witnesses expressed a lack of awareness of the relevant events, therefore not casting doubt on the testimonies of Prosecution witnesses who experienced or learned about the training of the *Interahamwe*.[623]

228. With regard to the distribution and stockpiling of weapons, the Prosecution responds that the Trial Chamber did not shift the burden of proof[624] and that it properly assessed the evidence.[625] The Prosecution reiterates that the Trial Chamber exercised its prerogative in weighing the evidence and provided a reasoned opinion in doing so.[626] The Prosecution asserts that the Trial Chamber correctly concluded, based on the totality of the evidence, that the MRND Executive Bureau was involved in the distribution and stockpiling of weapons.[627] The Prosecution also submits that, even if Witness Rutaganda received a weapon for personal protection, this would not negate the Trial Chamber's finding that there was a massive distribution of weapons to the *Interahamwe*.[628]

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[616] Ngirumpatse Appeal Brief, paras. 308, 311.
[617] Ngirumpatse Appeal Brief, para. 303.
[618] Ngirumpatse Appeal Brief, para. 206, *referring to* Ngirumpatse Grounds 19, 20, 24, 26, and 44.
[619] Ngirumpatse Appeal Brief, para. 206.
[620] Prosecution Response Brief (Ngirumpatse), paras. 126, 127, 129.
[621] Prosecution Response Brief (Ngirumpatse), para. 128.
[622] Prosecution Response Brief (Ngirumpatse), para. 125, *referring to* Trial Judgement, paras. 355, 357.
[623] Prosecution Response Brief (Ngirumpatse), para. 129.
[624] Prosecution Response Brief (Ngirumpatse), para. 137.
[625] Prosecution Response Brief (Ngirumpatse), paras. 131, 132.
[626] Prosecution Response Brief (Ngirumpatse), paras. 135, 136, *referring to* Trial Judgement, para. 442.
[627] Prosecution Response Brief (Ngirumpatse), para. 138.
[628] Prosecution Response Brief (Ngirumpatse), para. 134.

229. The Appeals Chamber finds that Ngirumpatse fails to demonstrate that no reasonable trier of fact could have relied on activities prior to 6 April 1994 as an indicator, among others, of his *de facto* authority over the Kigali and Gisenyi *Interahamwe* after this date.

230. Turning to the military training of the *Interahamwe*, the Appeals Chamber recalls that the appellant's right to a reasoned opinion does not ordinarily demand a detailed analysis of the credibility of particular witnesses.[629] A trier of fact shall decide which witness's testimony to prefer, without necessarily articulating every step of its reasoning in reaching this decision.[630] The Trial Chamber explicitly stated that the Prosecution witnesses gave "consistent evidence",[631] that it "believed" this evidence,[632] and that it was "convinced beyond reasonable doubt" that the *Interahamwe* received military training.[633] In this context, the Trial Chamber relied on the direct evidence of Prosecution Witnesses HH, GBU, AXA, GOB, and BDW, who selected or trained *Interahamwe*,[634] as well as of Witnesses T and G who were "in a position to know" of the training activities.[635] The Trial Chamber further found this evidence corroborated by the hearsay evidence of Prosecution Witnesses ALG, AWD, HH, AWE, BDW, GAY, and Claeys, which it noted was based on information received from authorities, MRND leaders, or *Interahamwe* who had undergone training.[636] The Appeals Chamber therefore finds that, contrary to Ngirumpatse's claim, the Trial Chamber did not fail to provide a reasoned opinion in relation to the credibility of witnesses for the impugned findings.

231. The Appeals Chamber equally finds no merit in Ngirumpatse's mere assertion that the witnesses were not credible or that the Trial Chamber impermissibly relied on hearsay evidence as corroboration of direct evidence. The Appeals Chamber further cannot identify any error in the Trial Chamber's preference for positive eyewitness testimony. As noted above, the Trial Chamber explicitly relied on direct evidence of witnesses who selected or trained *Interahamwe*,[637] which it found "consistent".[638] It then considered Defence evidence that such military training of the *Interahamwe* did not take place.[639] In these circumstances, the Appeals Chamber considers that the Trial Chamber's finding, relying on site visit observations that military training could have taken

[629] *Kajelijeli* Appeal Judgement, para. 60.
[630] *Karera* Appeal Judgement, para. 19.
[631] Trial Judgement, para. 343.
[632] Trial Judgement, paras. 350, 352.
[633] Trial Judgement, para. 351.
[634] Trial Judgement, para. 344.
[635] Trial Judgement, para. 344.
[636] Trial Judgement, paras. 345, 346.
[637] Trial Judgement, para. 344.
[638] Trial Judgement, para. 343.
[639] Trial Judgement, paras. 347-349.

place without being observed by Defence witnesses,[640] does not constitute a reversal of the burden of proof.

232. Ngirumpatse has also failed to demonstrate that the Trial Chamber's finding that large-scale military training of the *Interahamwe* could not have taken place without the involvement of the MRND leadership[641] amounted to speculation or a shift of the burden of proof. The Appeals Chamber observes that the Trial Chamber relied on the direct evidence of Witnesses AWD, HH, and AWE that Ngirumpatse and the MRND Executive Bureau were involved in the military training of the *Interahamwe*.[642] The Trial Chamber further found this evidence consistent with its finding that the MRND Executive Bureau was in control of the *Interahamwe*.[643] The Appeals Chamber does not identify any error in this approach.

233. The Appeals Chamber finds no merit in Ngirumpatse's contention that the Trial Chamber confused the training of young army recruits with the training of civilians. Ngirumpatse has also not demonstrated that the Trial Chamber erred in relation to its consideration of the February 1993 letter he wrote to President Habyarimana concerning military training. The Trial Chamber did not find that the purpose of the training at its inception was necessarily the targeting of Tutsi civilians.[644] Consequently, the Appeals Chamber can identify no contradiction between the letter's suggestion that civilians received military training to counter the RPF[645] and the Trial Chamber's ultimate conclusion that a training program was set up in 1993 with the agreement or understanding between Ngirumpatse and other MRND, government, and military officials.

234. With regard to the stockpiling and distribution of weapons to the *Interahamwe*, the Appeals Chamber equally finds no merit in Ngirumpatse's claim that the Trial Chamber failed to provide a reasoned opinion or relied on evidence which was not credible. The Appeals Chamber recalls that a trier of fact does not need to articulate every step of its reasoning in reaching a decision.[646] The Appeals Chamber observes that the Trial Chamber explicitly found that Witness Claeys received "abundant information" from Turatsinze regarding the stockpiling and distribution of weapons to the *Interahamwe*,[647] which was "corroborated in many ways"[648] by the evidence of Witnesses T, G, HH, and UB.[649] The Trial Chamber was "convinced" by this evidence[650] and found proven beyond

[640] Trial Judgement, paras. 348-350.
[641] Trial Judgement, para. 354.
[642] Trial Judgement, para. 353.
[643] Trial Judgement, para. 353. *See also* Trial Judgement, para. 271.
[644] Trial Judgement, paras. 358, 359.
[645] *See* Trial Judgement, para. 275; Prosecution Exhibit 27.
[646] *Karera* Appeal Judgement, para. 90.
[647] Trial Judgement, para. 439.
[648] Trial Judgement, para. 439.
[649] Trial Judgement, paras. 440, 441.

a reasonable doubt that weapons were distributed and stockpiled for later distribution to the *Interahamwe*.[651] In light of the above, the Appeals Chamber dismisses Ngirumpatse's argument that the Trial Chamber failed to specify which evidence it considered to be "strong evidence" of the stockpiling of weapons. The Appeals Chamber also finds that Ngirumpatse has failed to demonstrate that the Trial Chamber exceeded its discretion by finding the Prosecution witnesses credible, even though some aspects of their testimony diverged.

235. Turning to the involvement of Ngirumpatse and of the MRND Executive Bureau in the stockpiling and distribution of weapons to the *Interahamwe*, the Appeals Chamber observes that the Trial Chamber relied both on direct[652] and circumstantial evidence.[653] The Appeals Chamber therefore finds that Ngirumpatse's alternative interpretation of the evidence, suggesting that weapons may have been stockpiled without the party's knowledge, is insufficient to demonstrate that the Trial Chamber's findings were unreasonable. In addition, contrary to Ngirumpatse's claim, the Trial Chamber explicitly noted Ngirumpatse's evidence that he spontaneously invited Dallaire and Witness Claeys to carry out a search of MRND headquarters[654] and that the purpose of the distribution of weapons was to provide personal protection to Provisional National Committee members.[655] The Trial Chamber was also aware of Witness Rutaganda's evidence on the matter.[656] The Trial Chamber further recalled that Witness Claeys did not believe Ngirumpatse's denials about his knowledge of the weapons' stockpiling and his involvement in their distribution.[657] In light of these facts, the Appeals Chamber considers that it was within the Trial Chamber's discretion to rely on the evidence of Witnesses AWE, HH, Claeys, G, and UB to conclude that Ngirumpatse and the MRND Executive Bureau were involved in the distributions of weapons to the *Interahamwe*.[658] The Appeals Chamber further recalls that the Trial Chamber did not find proven beyond a reasonable doubt that the distributed weapons were aimed at killing Tutsi civilians[659] and did not exclude that MRND leaders may have merely sought to protect themselves and their supporters against attacks from other political parties.[660] The Appeals Chamber therefore finds that Ngirumpatse has failed to demonstrate that the Trial Chamber's approach was unreasonable.

[650] Trial Judgement, para. 443.
[651] Trial Judgement, para. 444.
[652] Trial Judgement, paras. 446, 447.
[653] Trial Judgement, paras. 445, 446.
[654] Trial Judgement, para. 435, *referring to* Ngirumpatse, T. 25 January 2011 p. 27.
[655] Trial Judgement, para. 431, *referring to* Ngirumpatse, T. 25 January 2011 p. 6.
[656] Trial Judgement, para. 425, *referring to* Witness Rutaganda, T. 12 April 2010 p. 33.
[657] Trial Judgement, para. 395, *referring to* Witness Claeys, T. 22 November 2006 pp. 17, 18.
[658] Trial Judgement, paras. 446-448.
[659] Trial Judgement, paras. 451-454.
[660] Trial Judgement, para. 1446.

236. With respect to the Trial Chamber's finding that the MRND Executive Bureau ensured Bagosora's fair treatment when he was threatened with early removal, the Appeals Chamber notes that the fact that Bagosora was or was not a member of the MRND would have had no bearing on the impugned findings. The Appeals Chamber therefore finds no merit in Ngirumpatse's contention, which provides no further analysis and points to no evidence.

237. Accordingly, Ngirumpatse's arguments are dismissed.

(vii) Activities Demonstrating *De Facto* Authority After 6 April 1994

238. In reaching the conclusion that Karemera and Ngirumpatse had *de facto* authority over the Kigali and Gisenyi *Interahamwe*, the Trial Chamber relied on various activities demonstrating their authority "during the genocide",[661] including their speeches as national political leaders during the 18 April 1994 meeting at the Murambi Training School[662] as well as Karemera's MRND *communiqués* and speech during the 3 May 1994 meeting in Kibuye.[663]

239. Ngirumpatse submits that the Trial Chamber failed to provide a reasoned opinion on the progression of his authority before and after 6 April 1994.[664] Ngirumpatse contends that the Trial Chamber did not consider the chaotic situation after 7 April 1994, which stripped his statutorily limited powers as MRND President of any substance.[665] According to Ngirumpatse, any "influence" he may have had before 6 April 1994 became immaterial after this date.[666] Ngirumpatse further challenges the Trial Chamber's reliance on his speech at the 18 April 1994 meeting at the Murambi Training School,[667] which in his view was only a call for MRND members to respect the Interim Government's calls for peace.[668]

[661] Trial Judgement, paras. 1517, 1547.
[662] Trial Judgement, paras. 1519, 1549.
[663] Trial Judgement, para. 1519.
[664] Ngirumpatse Notice of Appeal, para. 245; Ngirumpatse Appeal Brief, paras. 691, 696.
[665] Ngirumpatse Appeal Brief, para. 214, *referring to* Nzirorera Defence Exhibits 223, 226, 230, 232, 233, 236, 239 (UN cables, dated from 7 April to 6 May 1994); Ngirumpatse Defence Exhibit 159 (Declaration of Defence Witness Andrew Muhire, dated 9 April 2010); Ngirumpatse Defence Exhibit 184 (Declaration of Defence Witness GRT, dated 7 October 2010); Witness T, T. 31 May 2006 pp. 3-5; Witness CWL, T. 6 May 2008 pp. 64, 65; Witness Ngendahimana, T. 26 August 2010 pp. 57, 58; T. 30 August 2010 p. 7; Witness Nzabona, T. 11 January 2011 pp. 22, 23. *See also* Ngirumpatse Reply Brief, para. 59. The Appeals Chamber also notes Ngirumpatse's argument that the Trial Chamber erred in finding that he had considerable *de jure* authority over the MRND despite the chaotic situation after 6 April 1994, and all the more so over the *Interahamwe* who were neither organized, affiliated nor integrated. *See* Ngirumpatse Notice of Appeal, para. 240; Ngirumpatse Appeal Brief, para. 689. However, the Appeals Chamber recalls that the Trial Chamber did not find that Ngirumpatse had any *de jure* authority over the *Interahamwe* and that his general *de jure* authority over the MRND does not relate to any conviction or finding of responsibility. The Appeals Chamber therefore summarily dismisses this contention.
[666] Ngirumpatse Appeal Brief, paras. 691, 694.
[667] Ngirumpatse Notice of Appeal, para. 248; Ngirumpatse Appeal Brief, para. 697.
[668] Ngirumpatse Reply Brief, para. 147.

240. The Prosecution responds that the Trial Chamber did not fail to consider the chaotic situation after 7 April 1994.[669] It underlines that, during the entire genocide, Ngirumpatse maintained his position in the MRND and continued carrying out his functions, including attending meetings on 10 and 18 April 1994 and traveling on government-sanctioned missions from 21 April to July 1994.[670]

241. The Appeals Chamber finds that, contrary to Ngirumpatse's submission,[671] the Trial Chamber provided a reasoned opinion in relation to the progression of his *de facto* authority before and after 6 April 1994. The Trial Chamber expressly found that his activities after 6 April 1994 furthered his authority.[672] In particular, it explicitly took into consideration Ngirumpatse's address during the 18 April 1994 meeting at the Murambi Training School,[673] as well as his role as an international envoy and his influence on the decisions taken by the Interim Government.[674]

242. A reading of the Trial Judgement as a whole further reveals that the Trial Chamber was seised of the extraordinary circumstances prevailing after 6 April 1994. The Appeals Chamber notes that the Trial Chamber did not expressly refer to the evidence underlined by Ngirumpatse, which mostly described the situation of war against the RPF, infiltrations, subsequent disorder, and disruption of the lines of communication.[675] Nonetheless, elsewhere in the Trial Judgement, the Trial Chamber expressly noted similar contextual evidence of resumptions of hostilities with the RPF, as well as of infiltrations.[676] It explicitly acknowledged that the genocide took place in the context of a civil war against the RPF army[677] and that political leaders were engaged in this war.[678] The Trial Chamber was also well aware of Defence evidence of a certain chaos,[679] of the communication issues,[680] and of the large-scale killings that had spread throughout Rwanda at the time.[681] However, the Trial Chamber did not find that this context undermined its finding that Ngirumpatse retained *de facto* authority over his subordinates after 6 April 1994. On the contrary, the Trial Chamber specifically relied on the actions taken by Ngirumpatse in response to the emergency situation at the time, in particular his speech at the 18 April 1994 meeting at the

[669] Prosecution Response Brief (Ngirumpatse), para. 87.
[670] Prosecution Response Brief (Ngirumpatse), para. 88. *See also* AT. 11 February 2014 pp. 19, 20.
[671] Ngirumpatse Notice of Appeal, para. 245; Ngirumpatse Appeal Brief, paras. 691, 696.
[672] Trial Judgement, para. 1547.
[673] Trial Judgement, para. 1549.
[674] Trial Judgement, para. 1549.
[675] Ngirumpatse Appeal Brief, fn. 513.
[676] *See*, *e.g.*, Trial Judgement, paras. 797, 947, 951, 1014, 1046, 1189, 1220, 1221, 1224. The Appeals Chamber notes, however, that the Trial Chamber expressly discredited the evidence of RPF infiltrations in relation to the Bisesero events. *See* Trial Judgement, paras. 1232, 1233.
[677] Trial Judgement, para. 1680.
[678] Trial Judgement, para. 1452.
[679] *See*, *e.g.*, Trial Judgement, paras. 692, 796, 1271.
[680] *See*, *e.g.*, Trial Judgement, para. 957.
[681] *See*, *e.g.*, Trial Judgement, paras. 1612, 1614, 1620, 1626, 1633, 1637, 1642, 1646, 1647, 1649, 1650, 1656, 1662.

Murambi Training School.[682] Ngirumpatse's contention that the Trial Chamber failed to consider the situation prevailing after 6 April 1994 is therefore dismissed.

243. The Appeals Chamber further finds that Ngirumpatse has failed to demonstrate that no reasonable trier of fact could have relied on his speech at the 18 April 1994 meeting at the Murambi Training School as an indicator, among others, of his *de facto* authority over the Kigali and Gisenyi *Interahamwe*. Ngirumpatse's specific challenges to the Trial Chamber's factual findings in relation to this meeting are addressed elsewhere in this Judgement.[683]

244. Accordingly, Ngirumpatse's submissions are dismissed.

(viii) Ability to Prevent Crimes or Punish Subordinates

245. The Trial Chamber found that Karemera and Ngirumpatse had effective control over the Kigali and Gisenyi *Interahamwe* throughout the entirety of the genocide.[684] In particular, the Trial Chamber relied on the establishment of the Kigali and Gisenyi *Interahamwe* along MRND structures,[685] as well as on Karemera's and Ngirumpatse's position, authority, and status,[686] to conclude that they "could have prevented offences […] by speaking out and forbidding them"[687] and that they "could have sanctioned offenders politically, removed them from the ranks of the organisation, disabled their benefits and privileges, public[ly] humiliated them, or demoted them within the organisation, among other measures".[688]

246. The Trial Chamber further relied on the fact that Ngirumpatse gave orders on several occasions to *Interahamwe* national leaders, which were followed, as an indication that he had effective control over the Kigali and Gisenyi *Interahamwe*.[689] In particular, the Trial Chamber noted Ngirumpatse's order to the Provisional National Committee of the *Interahamwe* on 10 April 1994 to tour the roadblocks in Kigali, to control the *Interahamwe* manning them, and to report to him on the situation at the roadblocks.[690] However, the Trial Chamber also considered that Ngirumpatse's expression of support and greetings to the *Interahamwe* at roadblocks could have been opportunistic

[682] Trial Judgement, para. 1549. *See also* Trial Judgement, paras. 852, 857, 860.
[683] *See infra* Section III.H.4.
[684] Trial Judgement, paras. 1528, 1529, 1556, 1557.
[685] Trial Judgement, paras. 1523, 1551, *referring to* Section IV.1.3 of the Trial Judgement.
[686] Trial Judgement, paras. 1523, 1524, 1551, 1553, *referring to* Sections III and IV.1.3 of the Trial Judgement.
[687] Trial Judgement, paras. 1523, 1551.
[688] Trial Judgement, paras. 1524, 1553.
[689] Trial Judgement, para. 1552.
[690] Trial Judgement, para. 1552, *referring to* Section V.1.4 of the Trial Judgement. The Appeals Chamber observes that the Trial Chamber erroneously referred to Section IV.1.4 of the Trial Judgement.

gestures to extract himself from a potentially dangerous situation and did not conclude that they corroborated his control.[691]

247. Karemera submits that the Trial Chamber erred in arbitrarily finding that he had effective control over the *Interahamwe*.[692] He contends that the Trial Chamber failed to specify his material ability to prevent or punish the actions of alleged subordinates[693] and that in any case he did not have such ability.[694] Karemera generally avers that the relationship between the MRND Executive Committee and the *Interahamwe* did not meet the requirements of Article 6(3) of the Statute.[695] In this regard, he refers to the *Karera* case where the trial chamber found that MRND leaders at the communal level had influence but not effective control over the *Interahamwe*.[696] Karemera further asserts that only officially recognized authorities vested with unequivocal disciplinary powers can incur superior responsibility.[697]

248. Ngirumpatse contends that the Trial Chamber failed to identify the powers of coercion, which he allegedly wielded after 6 April 1994.[698] He generally submits that the Trial Chamber's findings on effective control were speculative and not based on any evidence.[699] Ngirumpatse avers that the fact that he could have sanctioned the offenders politically, disabled their privileges, or publicly humiliated them, did not amount to effective control, especially when no authority was respected any longer by anyone.[700] Ngirumpatse generally contends that the Trial Chamber shifted the burden of proof by requiring him to prove the absence of effective control.[701]

249. Ngirumpatse also submits that the Trial Chamber erred in inferring effective control from powers he allegedly had before 6 April 1994,[702] without ascertaining whether the control actually existed at the time of the commission of the offences.[703] Ngirumpatse underlines that he was not in

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[691] Trial Judgement, para. 1335.
[692] Karemera Notice of Appeal, paras. 125, 126; Karemera Appeal Brief, para. 314. The Appeals Chamber also notes Karemera's argument that the Trial Chamber erred in holding him responsible for the *Interahamwe*'s crimes on the basis of his effective control alone. *See* Karemera Notice of Appeal, para. 126; Karemera Appeal Brief, para. 313. However, the Appeals Chamber observes that the Trial Chamber explicitly addressed the other elements of Karemera's responsibility as a superior and considered that they were established, including his *de jure* and *de facto* authority, his knowledge of the crimes, and his failure to prevent or punish them. *See* Trial Judgement, paras. 1508-1522, 1530-1541. Accordingly, the Appeals Chamber summarily dismisses Karemera's argument.
[693] Karemera Appeal Brief, para. 304.
[694] Karemera Reply Brief, paras. 66, 67.
[695] Karemera Appeal Brief, para. 310.
[696] Karemera Appeal Brief, para. 310, *referring to Karera* Trial Judgement, para. 567.
[697] Karemera Appeal Brief, para. 309.
[698] Ngirumpatse Notice of Appeal, para. 252; Ngirumpatse Appeal Brief, paras. 700, 701, 707, 717.
[699] Ngirumpatse Notice of Appeal, para. 254; Ngirumpatse Appeal Brief, para. 710, *referring to Blaškić* Appeal Judgement, para. 69; *Aleksovski* Appeal Judgement, paras. 73, 74.
[700] Ngirumpatse Notice of Appeal, para. 256; Ngirumpatse Appeal Brief, para. 708.
[701] Ngirumpatse Notice of Appeal, para. 238; Ngirumpatse Appeal Brief, para. 687.
[702] Ngirumpatse Notice of Appeal, para. 252; Ngirumpatse Appeal Brief, paras. 701, 707.
[703] Ngirumpatse Appeal Brief, para. 707.

Rwanda during most of the relevant period and that the Trial Chamber failed to specify how he could have exercised effective control remotely.[704]

250. Ngirumpatse further submits that the Trial Chamber erred in concluding that he gave "orders" to *Interahamwe* leaders, which were followed, whereas the evidence reveals that he only made a "request". He avers that there is no evidence that he could have punished members of the National Provisional Council of the *Interahamwe* if they had refused to conduct the pacification tour.[705] Ngirumpatse also claims that this isolated event was insufficient to demonstrate effective control.[706] Ngirumpatse submits that other reasonable inferences were available, including that his request may have been "treated with consideration" because of his moral authority.[707]

251. Ngirumpatse finally contends that the Trial Chamber erred in finding that the MRND Executive Bureau controlled the *Interahamwe* manning roadblocks.[708] In this respect, he relies on the *Bagilishema* Trial Judgement to claim that the Trial Chamber should have assessed whether, as a civilian, he knew of or acquiesced to the erection of roadblocks, controlled them, or whether he had the power to dismantle them.[709] He also contends that the Trial Chamber disregarded the possible role of local authorities in the erection of roadblocks,[710] as well as evidence of the inability of anyone to exercise control over the militia.[711] Ngirumpatse further submits that the Trial Chamber erred in finding that he had general control over the roadblocks, while at the same time it acknowledged that he was personally exposed to danger at roadblocks.[712] He claims that other inferences were also available.[713]

252. The Prosecution responds that Karemera's claim that he had no effective control over the *Interahamwe* is unmeritorious.[714] It maintains that the Trial Chamber considered several factors in

[704] Ngirumpatse Appeal Brief, para. 712.
[705] Ngirumpatse Notice of Appeal, para. 255; Ngirumpatse Appeal Brief, para. 706. *See also* Ngirumpatse Reply Brief, para. 143. Ngirumpatse submits that the Trial Chamber contradicted itself by stating both that the Interim Government requested the tour, and that the Accused ordered the *Interahamwe* to conduct the tour. *See* Ngirumpatse Appeal Brief, paras. 361, 362; Ngirumpatse Reply Brief, para. 98. As this argument does not relate to any conviction or finding of responsibility, the Appeals Chamber summarily dismisses it.
[706] Ngirumpatse Appeal Brief, para. 706.
[707] Ngirumpatse Appeal Brief, para. 706.
[708] Ngirumpatse Notice of Appeal, paras. 191, 192; Ngirumpatse Appeal Brief, paras. 620-628. The Appeals Chamber summarily dismisses Ngirumpatse's vague assertion, which does not point to any relevant Trial Chamber's finding, that the Trial Chamber erred in disbelieving evidence that he had to resort to strategies to end killings and dismantle roadblocks. *See* Ngirumpatse Appeal Brief, paras. 625, 626.
[709] Ngirumpatse Appeal Brief, para. 621, *referring to Bagilishema* Trial Judgement, para. 902.
[710] Ngirumpatse Appeal Brief, para. 628.
[711] Ngirumpatse Appeal Brief, para. 624, *referring to* Nzirorera Defence Exhibit 238 (UN Cable, dated 5 May 1994); Witness GW, T. 1 September 2010 pp. 37, 43, 46 (French).
[712] Ngirumpatse Appeal Brief, paras. 622, 623, *referring to* Trial Judgement, paras. 1278, 1326, 1327. The Appeals Chamber notes that Ngirumpatse also erroneously refers to paragraph 1336 of the Trial Judgement but considers that he intended to refer to paragraph 1335 of the Trial Judgement.
[713] Ngirumpatse Appeal Brief, para. 720.
[714] Prosecution Response Brief (Karemera), para. 183.

their totality to characterize Karemera's effective control over the *Interahamwe*[715] and indeed devoted a whole section explaining how his positions endowed him with the material ability to prevent and punish the crimes.[716] The Prosecution particularly points to the Trial Chamber's consideration of the compliance of the *Interahamwe* with orders given by the MRND Executive Bureau, either individually or collectively, including Ngirumpatse's order of 10 April 1994 to tour the roadblocks in Kigali and report back, as well as Karemera's order to conduct the "mopping-up" operation in Bisesero in June 1994.[717] It further submits that Karemera worked closely and directly with the national *Interahamwe* leaders, controlling their activities in many ways, including by providing arms and military training, as well as by intimidating local officials to allow them to continue the killings.[718]

253. The Prosecution similarly responds to Ngirumpatse that the Trial Chamber correctly found that he had effective control over the Kigali and Gisenyi *Interahamwe*.[719] It reiterates that the Trial Chamber considered a number of factors in their totality,[720] including evidence that Ngirumpatse had powers to summon and give orders to the *Interahamwe* national leaders, as well as evidence that he worked closely and directly with them.[721] In particular, the Prosecution avers that the *Interahamwe* national leaders complied in all instances with Ngirumpatse's instructions.[722] It refers to orders given on 10 April 1994 and 18 May 1994, as well as regular reports addressed to Ngirumpatse and the MRND Executive Bureau.[723] The Prosecution further points to evidence of Ngirumpatse's supervision of official correspondence on behalf of the *Interahamwe*, his appointment of an MRND *Interahamwe* leader in Kicukiro Commune to monitor security issues, complaints about the *Interahamwe* addressed to him personally, his introduction of *Interahamwe* leaders during meetings, and his intimidation of local officials to reduce interference with the work of the *Interahamwe*, including on 18 April 1994 at the Murambi Training School in Gitarama Prefecture.[724]

254. The Appeals Chamber recalls that the threshold for the establishment of a superior-subordinate relationship within the meaning of Article 6(3) of the Statute is the possession of

[715] Prosecution Response Brief (Karemera), paras. 183-187.
[716] Prosecution Response Brief (Karemera), para. 180.
[717] Prosecution Response Brief (Karemera), para. 185, *referring to* Trial Judgement, paras. 680, 681, 711, 1234, 1551, 1552.
[718] Prosecution Response Brief (Karemera), para. 186.
[719] Prosecution Response Brief (Ngirumpatse), paras. 262, 268.
[720] Prosecution Response Brief (Ngirumpatse), para. 264.
[721] Prosecution Response Brief (Ngirumpatse), paras. 266, 267.
[722] Prosecution Response Brief (Ngirumpatse), para. 266.
[723] Prosecution Response Brief (Ngirumpatse), para. 266.
[724] Prosecution Response Brief (Ngirumpatse), para. 267.

effective control on the part of the superior, in the sense of a material ability to prevent or punish criminal conduct by his subordinates.[725]

255. In finding that Karemera and Ngirumpatse possessed effective control, the Trial Chamber explicitly relied on the factual finding that *Interahamwe* committees were established in Kigali-ville and Gisenyi Prefectures according to MRND party structures.[726] It further referred to the finding that Karemera and Ngirumpatse, as members of the MRND Executive Bureau, were the ultimate authority over the Kigali and Gisenyi *Interahamwe*.[727] The Appeals Chamber recalls that it has not identified any error in relation to these findings.[728] On this basis, the Trial Chamber expressly found that "it stands to reason" that Karemera and Ngirumpatse, being amongst the most respected and powerful leaders of the MRND, had the ability to speak out, forbid the offences, and issue orders that would be followed.[729] It also considered that the orders given by Ngirumpatse to the *Interahamwe* after 6 April 1994 constituted an additional indication of his effective control.[730] Therefore, the Appeals Chamber finds that, contrary to Karemera's[731] and Ngirumpatse's[732] assertions, the Trial Chamber provided a reasoned opinion as to their effective control over the Kigali and Gisenyi *Interahamwe* and that it correctly specified the powers they wielded in terms of preventing the crimes after 6 April 1994.[733]

256. The Appeals Chamber is equally not convinced by Karemera's claim that only officially recognized authorities with unequivocal disciplinary powers can incur superior responsibility.[734] The Appeals Chamber recalls that a *de facto* hierarchical chain of authority was found to be proven between Karemera and the Kigali and Gisenyi *Interahamwe*.[735] However, it is settled jurisprudence that the test for effective control is not whether the accused possessed *de jure* authority, but rather whether he had the material ability to prevent or punish the proven offences.[736] The Trial Chamber properly noted that possession of *de jure* authority may obviously imply such material ability, but that it is neither necessary nor sufficient to prove effective control.[737] The Appeals Chamber

[725] *Nahimana et al.* Appeal Judgement, para. 484; *Halilović* Appeal Judgement, para. 59.
[726] Trial Judgement, paras. 1523, 1551, *referring to* Section IV.1.3 of the Trial Judgement.
[727] Trial Judgement, paras. 1523, 1551, *referring to* Sections III and IV.1.3 of the Trial Judgement.
[728] *See supra* Sections III.D.1.(a).(ii), III.D.1.(a).(iv).
[729] Trial Judgement, paras. 1523, 1551.
[730] Trial Judgement, para. 1552.
[731] Karemera Notice of Appeal, paras. 125, 126; Karemera Appeal Brief, paras. 304, 314.
[732] Ngirumpatse Notice of Appeal, paras. 252, 254; Ngirumpatse Appeal Brief, paras. 700, 701, 707, 710, 717.
[733] Trial Judgement, paras. 1523, 1524, 1551-1553.
[734] Karemera Appeal Brief, para. 309.
[735] Trial Judgement, para. 1522.
[736] *Nahimana et al.* Appeal Judgement, para. 625.
[737] Trial Judgement, para. 1495. *See also Orić* Appeal Judgement, para. 91; *Nahimana et al.* Appeal Judgement, para. 625; *Kajelijeli* Appeal Judgement, para. 85.

therefore finds no error in the Trial Chamber's consideration of Karemera's official position as one of a number of indicative factors of his effective control.[738]

257. The Appeals Chamber also summarily dismisses Karemera's argument, for which he points to no evidence and provides no analysis, that he did not have the ability to prevent or punish crimes of the *Interahamwe* or that the MRND Executive Committee's relationship with the *Interahamwe* did not meet the requirements of Article 6(3) of the Statute.[739] Bearing in mind that trial chambers are in no way bound by factual findings in other proceedings,[740] the Appeals Chamber also finds no merit in Karemera's reliance on the *Karera* case as to the absence of control of local MRND leaders over the *Interahamwe*.[741]

258. Turning to Ngirumpatse's claim that his authority identified by the Trial Chamber did not amount to effective control,[742] the Appeals Chamber is not convinced that the Trial Chamber erred in finding that he had the material ability to prevent or punish his subordinates' criminal conduct. The Appeals Chamber recalls that the doctrine of superior responsibility applies to political or civilian superiors[743] and that there is no requirement that the *de jure* or *de facto* control exercised by a civilian superior must be of the same nature as that exercised by a military commander.[744] The Appeals Chamber therefore finds that a reasonable trier of fact could have concluded that the ability of Ngirumpatse to give orders that were actually followed, as well as to speak out and forbid offences,[745] amounted to an ability to prevent the subordinates' crimes. However, the Appeals Chamber notes that the Trial Chamber did not cite any evidence to support its conclusion that Ngirumpatse could have punished the offenders through measures such as political sanction, removal from the organization, disabling benefits and privileges, public humiliation, or demotion.[746] Nonetheless, the Appeals Chamber recalls that the superior's duty to punish the offences can be fulfilled by reporting the crimes to the competent authorities to trigger an investigation or disciplinary action.[747] In this regard, a reading of the Trial Judgement as a whole reveals that the Trial Chamber found that Ngirumpatse failed to report his subordinates' crimes to the judicial and

[738] Trial Judgement, para. 1496.
[739] Karemera Appeal Brief, para. 310; Karemera Reply Brief, paras. 66, 67.
[740] *See Lukić and Lukić* Appeal Judgement, paras. 86, 396; *Stakić* Appeal Judgement, para. 346; *Aleksovski* Appeal Judgement, para. 114.
[741] Karemera Appeal Brief, para. 310, *referring to Karera* Trial Judgement, para. 567.
[742] Ngirumpatse Notice of Appeal, para. 256; Ngirumpatse Appeal Brief, para. 708.
[743] *Bagosora and Nsengiyumva* Appeal Judgement, para. 482; *Kajelijeli* Appeal Judgement, para. 85.
[744] *Nahimana et al.* Appeal Judgement, para. 605.
[745] Trial Judgement, paras. 1551, 1552.
[746] Trial Judgement, para. 1553.
[747] *Bagosora and Nsengiyumva* Appeal Judgement, para. 510; *Boškoski and Tarčulovski* Appeal Judgement, paras. 231, 232.

security authorities,[748] thereby implicitly finding that he had such ability. Ngirumpatse has failed to demonstrate any error in this respect.

259. The Appeals Chamber further dismisses Ngirumpatse's argument that the Trial Chamber failed to ascertain whether effective control existed at the time of the commission of the offences, since he was not in Rwanda most of the time and authority was no longer respected by anyone.[749] As noted above, the Trial Chamber did not ignore the situation prevailing at the time.[750] More importantly, the Trial Chamber expressly took into consideration, as an added indication of Ngirumpatse's effective control after 6 April 1994, his orders to the *Interahamwe*, which were actually followed.[751] Ngirumpatse has equally failed to demonstrate that the Trial Chamber ignored evidence that he was not continuously in Rwanda during the events. The Trial Chamber was well aware that Ngirumpatse was abroad on mission part of the time[752] and explicitly relied on his role as an international envoy as an indicator of his *de facto* authority after 6 April 1994.[753] Bearing in mind that presence is not required for superior responsibility pursuant to Article 6(3) of the Statute, the Appeals Chamber therefore finds that Ngirumpatse has failed to demonstrate any error in the Trial Chamber's approach.

260. The Appeals Chamber further finds no merit in Ngirumpatse's challenge to the finding that orders given to the *Interahamwe* after 6 April 1994 were an added indication of his effective control. The Appeals Chamber recalls that, while a superior's authority to issue orders does not automatically establish that he had effective control over his subordinates, it is one of the indicators which can be taken into account when assessing effective control.[754] The Appeals Chamber thus finds that the Trial Chamber reasonably relied on orders given by Ngirumpatse to find that he had effective control over the *Interahamwe*, among a plurality of factors which included the MRND structure, and Ngirumpatse's position, status, and authority.[755]

261. The Appeals Chamber is also not convinced by Ngirumpatse's challenge to the terminology used by the Trial Chamber.[756] In this regard, the Appeals Chamber observes that the Trial Chamber used the terms "request" and "order" interchangeably.[757] The Appeals Chamber also notes the

[748] Trial Judgement, para. 1569.
[749] Ngirumpatse Appeal Brief, paras. 707, 708, 712.
[750] *See supra* Section III.D.1.(a).(vii).
[751] Trial Judgement, para. 1552.
[752] Trial Judgement, para. 912. *See also* Trial Judgement, para. 1481.
[753] Trial Judgement, para. 1549.
[754] *Strugar* Appeal Judgement, para. 253; *Halilović* Appeal Judgement, paras. 68, 70, 139.
[755] Trial Judgement, paras. 1551-1553.
[756] Ngirumpatse Appeal Brief, para. 706.
[757] Trial Judgement, paras. 711, 714, 1552.

evidence recalled by the Trial Chamber that the *Interahamwe* "complied" with the requests[758] and that Ngirumpatse "urged" the *Interahamwe* leaders again on 11 April 1994 to carry on spreading the message that killings at the roadblocks had to stop.[759] Having found that Ngirumpatse had *de facto* authority over the Kigali and Gisenyi *Interahamwe*[760] and the ability to punish them,[761] the Trial Chamber further expressly concluded that his "instructions" were "obeyed" or "followed".[762] Moreover, elsewhere in the Trial Judgement, the Trial Chamber expressly excluded the possibility that the Provisional National Committee could have ultimately run the Kigali *Interahamwe* without seeking Ngirumpatse's instructions.[763] In these circumstances, the Appeals Chamber finds that Ngirumpatse has failed to demonstrate that the Trial Chamber's conclusion was unreasonable or that it ignored other reasonable inferences from the evidence.

262. Turning to Ngirumpatse's contentions regarding the control of the *Interahamwe* manning roadblocks,[764] the Appeals Chamber finds no merit in his claim that the Trial Chamber failed to support its finding.[765] As noted above, the Trial Chamber provided a reasoned opinion in relation to the authority and general control of the MRND Executive Bureau over the Kigali and Gisenyi *Interahamwe*[766] and particularly referred to Ngirumpatse's order to tour the roadblocks on 10 April 1994 to control the *Interahamwe* manning them.[767] The Appeals Chamber finds Ngirumpatse's reliance on findings in the *Bagilishema* case[768] inapposite since trial chambers are not bound by other trial chambers' decisions.[769]

263. Ngirumpatse further does not demonstrate that the Trial Chamber ignored evidence that authorities found it difficult to control militias manning roadblocks. Although the Trial Chamber did not explicitly refer to the evidence on which Ngirumpatse relies,[770] it was well aware that not all roadblocks in Kigali were manned by MRND *Interahamwe*[771] and that local *Interahamwe* cells may have existed that were not under the control of the MRND leadership.[772] As Ngirumpatse

[758] Trial Judgement, para. 674.
[759] Trial Judgement, para. 684.
[760] Trial Judgement, para. 1550.
[761] Trial Judgement, para. 1553.
[762] Trial Judgement, para. 1552.
[763] Trial Judgement, para. 266.
[764] Ngirumpatse Notice of Appeal, paras. 191, 192; Ngirumpatse Appeal Brief, para. 620.
[765] Ngirumpatse Appeal Brief, para. 621.
[766] *See supra* Sections III.D.1.(a).(ii), III.D.1.(a).(iv). *See also* Trial Judgement, paras. 271, 1334, 1336, 1546-1553, 1556, 1557.
[767] Trial Judgement, para. 1552.
[768] Ngirumpatse Appeal Brief, para. 621.
[769] *See Lukić and Lukić* Appeal Judgement, paras. 86, 396; *Stakić* Appeal Judgement, para. 346; *Aleksovski* Appeal Judgement, para. 114.
[770] Ngirumpatse Appeal Brief, fn. 1026, *referring to*, *inter alia*, Nzirorera Defence Exhibit 238 (UN Cable, dated 5 May 1994). The Appeals Chamber will not address the portions of Witness GW's testimony on which Ngirumpatse relies, since they do not support his argument. *See* Witness GW, T. 1 September 2010 pp. 37, 43, 46 (French).
[771] Trial Judgement, para. 1287.
[772] Trial Judgement, para. 268.

acknowledges,[773] the Trial Chamber properly noted evidence of his personal exposure to danger at roadblocks.[774] The Trial Chamber was further aware of the context of the civil war[775] and of isolated conflicts between Ngirumpatse and the *Interahamwe*.[776] Nonetheless, it expressly found that these incidents were not inconsistent with the exercise of Ngirumpatse's authority over the *Interahamwe* on a national level.[777] In light of the above, the Appeals Chamber finds that the Trial Chamber considered the other reasonable inferences available from the evidence and that a reasonable trier of fact could have found that they were not incompatible with the conclusion that Ngirumpatse controlled the Kigali and Gisenyi *Interahamwe*, including those manning roadblocks. The Appeals Chamber is further not convinced by Ngirumpatse's argument that the possible role of local authorities in the erection of roadblocks was disregarded, since this would not undermine the Trial Chamber's findings.

264. Finally, the Appeals Chamber summarily dismisses Ngirumpatse's claim that the Trial Chamber shifted the burden of proof by requiring him to prove his absence of effective control,[778] since Ngirumpatse does not expand on this submission or point to any specific finding of the Trial Chamber.

265. Accordingly, Karemera's and Ngirumpatse's arguments that the Trial Chamber erred in finding that they had the material ability to prevent or punish criminal conduct by their subordinates are dismissed.

(ix) Conclusion

266. Accordingly, the Appeals Chamber dismisses Karemera's and Ngirumpatse's arguments relating to their *de facto* authority and effective control over the Kigali and Gisenyi *Interahamwe*.

(b) Civilians in the Civil Defence Programme and Local Authorities of the Territorial Administration

267. The Trial Chamber found Karemera responsible as a superior pursuant to Article 6(3) of the Statute for the killings committed in Bisesero as of 25 May 1994 by both the civilians participating in the Civil Defence programme and the local officials, who were part of the territorial administration.[779] The Trial Chamber found that Karemera had *de jure* and *de facto* authority over

[773] Ngirumpatse Appeal Brief, paras. 622, 623.
[774] Trial Judgement, paras. 1278, 1326, 1327. *See also* Trial Judgement, para. 1335.
[775] Trial Judgement, para. 268.
[776] Trial Judgement, para. 268.
[777] Trial Judgement, para. 268.
[778] Ngirumpatse Notice of Appeal, para. 238; Ngirumpatse Appeal Brief, para. 687.
[779] Trial Judgement, para. 1654.

these subordinates.[780] It further found that he had effective control over them as of 25 May 1994.[781] The Trial Chamber considered, as an example of Karemera's *de facto* authority, his involvement in the appointment of Alphonse Nteziryayo and Damascène Ukulikiyeyezu as the replacement prefects of Butare and Gitarama Prefectures in June 1994.[782]

268. Karemera specifically challenges the Trial Chamber's findings regarding the replacement of Sylvain Nsabimana with Nteziryayo as Prefect of Butare.[783] He submits that the Trial Chamber erred in finding that the only reasonable conclusion to be drawn from the circumstantial evidence was that he and the Interim Government replaced Nsabimana with Nteziryayo because they believed the latter would more effectively implement the genocidal policy.[784] Karemera contends that the Trial Chamber failed to take into consideration the alternative inference that Nteziryayo could have been appointed, in the context of the war, because of his military background.[785] According to Karemera, the Trial Chamber further failed to provide a reasoned opinion as to why it accepted Prosecution Witness G's testimony[786] and misrepresented the evidence of this witness.[787] Karemera also avers that the Trial Chamber confused the removal of Jean-Baptiste Habyalimana as Prefect of Butare on 17 April 1994 with the removal of Nsabimana on 17 June 1994.[788]

269. The Prosecution responds that Karemera does not demonstrate that the Trial Chamber's finding in relation to the replacement of Nsabimana with Nteziryayo as Prefect of Butare Prefecture was not the only reasonable conclusion.[789] It underscores that Karemera did not argue at trial that Nteziryayo was appointed prefect because of the war and his military background.[790] In the Prosecution's view, the Trial Chamber correctly assessed the evidence as a whole, including Sindikubwabo's incitement during Nsabimana's installation ceremony and the latter's deviation from the Interim Government's genocidal policy, and properly concluded that Nsabimana's removal from his post was directed at furthering the genocide.[791]

270. The Appeals Chamber notes that Karemera does not challenge that Nteziryayo was appointed a prefect of Butare Prefecture on his recommendation.[792] The Appeals Chamber recalls

[780] Trial Judgement, paras. 1515, 1522.
[781] Trial Judgement, paras. 1528, 1529.
[782] Trial Judgement, para. 1521.
[783] Karemera Notice of Appeal, paras. 79-81; Karemera Appeal Brief, paras. 174-178; Karemera Reply Brief, paras. 39-43, 68.
[784] Karemera Notice of Appeal, paras. 79-81; Karemera Appeal Brief, paras. 174-178.
[785] Karemera Appeal Brief, paras. 176, 178; Karemera Reply Brief, paras. 39-43.
[786] Karemera Appeal Brief, paras. 174, 177; Karemera Reply Brief, para. 39.
[787] Karemera Reply Brief, paras. 41, 42.
[788] Karemera Appeal Brief, para. 175; Karemera Reply Brief, para. 40.
[789] Prosecution Response Brief (Karemera), para. 99.
[790] Prosecution Response Brief (Karemera), para. 102.
[791] Prosecution Response Brief (Karemera), paras. 99-101.
[792] *See*, *e.g.*, Karemera Reply Brief, para. 40.

that the Trial Chamber relied on Karemera's role in the appointment of Nteziryayo as an additional indication of his control of the territorial administration and of his *de facto* authority relative to the Civil Defence programme.[793] The Trial Chamber did not expressly refer to the criminal nature of the replacement of Prefect Nsabimana in its legal findings on superior responsibility and, in any case, did not enter any distinct conviction.[794] The Appeals Chamber is therefore not convinced that whether the replacement of Prefect Nsabimana was aimed at implementing the genocidal policy would have had an impact on findings concerning Karemera's superior responsibility. Karemera's arguments in this regard, even if accepted, would therefore not demonstrate any error warranting appellate intervention. In these circumstances, Karemera's contentions need not be discussed any further.

271. Accordingly, the Appeals Chamber concludes that the Trial Chamber did not err in finding that Karemera exercised *de jure* and *de facto* authority and had effective control over civilians participating in the Civil Defence programme and local officials who were part of the territorial administration.

(c) Conclusion

272. Accordingly, the Appeals Chamber dismisses Karemera's and Ngirumpatse's arguments relating to their *de facto* and *de jure* authority and effective control over the Kigali and Gisenyi *Interahamwe*, as well as Karemera's authority and effective control over civilians participating in the Civil Defence programme, and local officials who were part of the territorial administration.

2. Criminal Conduct of Subordinates

273. Karemera submits that the Trial Chamber erred in failing to address whether his subordinates committed the crimes for which he was held responsible as a superior.[795] Karemera further contends that the Trial Chamber did not properly analyse the requisite *mens rea* of his subordinates in relation to the distribution of weapons on 11 and 12 April 1994.[796]

274. Ngirumpatse contends that the Trial Chamber erred in failing to establish beyond reasonable doubt the crimes for which he was held responsible as a superior under Article 6(3) of the Statute,

[793] Trial Judgement, para. 1521.
[794] *See infra* Section III.G.2.
[795] Karemera Notice of Appeal, paras. 127-130; Karemera Appeal Brief, paras. 315, 316. Karemera also generally challenges the assessment of the evidence in relation to the crimes for which he was held responsible as a superior. *See* Karemera Appeal Brief, paras. 316, 326-332, 334-336. The Appeals Chamber addresses these arguments elsewhere in this Judgement. *See supra* Section III.A, *and infra* Sections III.F, III.H, III.K, III.L.
[796] Karemera Appeal Brief, paras. 323, 324.

particularly in failing to sufficiently identify their nature and location.[797] Ngirumpatse also avers that the Trial Chamber failed to sufficiently identify his subordinates designated as the *Interahamwe*.[798] In particular, Ngirumpatse avers that it was not established that the crimes for which he was found liable were committed by the Kigali and Gisenyi *Interahamwe*.[799] He also submits that no evidence has established beyond reasonable doubt that the "*Interahamwe*" and "militias" referred to in the Prosecution evidence were MRND *Interahamwe*.[800] In that regard, Ngirumpatse refers to the Trial Chamber's findings[801] and the evidence that, during the genocide, the term "*Interahamwe*" referred to anyone who perpetrated crimes.[802] Ngirumpatse also refers to evidence that RPF infiltrators passed for MRND youth wing members and committed crimes to tarnish their image.[803] He further contends that the Prosecution failed to show how the *Interahamwe* were physically different from the population.[804]

275. The Prosecution responds that Ngirumpatse's assertion that it was not proven that the crimes were committed by the Kigali and Gisenyi *Interahamwe* must fail.[805] It submits that the Trial Chamber considered the totality of the evidence, which demonstrates that the Kigali and/or Gisenyi *Interahamwe* were involved in killings at roadblocks in Kigali[806] and in the "mopping-up" operation at Bisesero.[807] The Prosecution contends that it suffices to identify subordinates by category in relation to a particular crime site.[808] It avers that the Trial Judgement is not vague since it clearly refers to an identified group of perpetrators – the *Interahamwe* – who committed killings and rapes.[809] It also submits that the Trial Chamber concluded that, even if the term "*Interahamwe*" was

[797] Ngirumpatse Notice of Appeal, para. 260; Ngirumpatse Appeal Brief, para. 705. *See also* Ngirumpatse Notice of Appeal, paras. 316, 337, 338; Ngirumpatse Appeal Brief, paras. 707, 753.
[798] Ngirumpatse Appeal Brief, para. 693. *See also* Ngirumpatse Appeal Brief, paras. 615, 616.
[799] Ngirumpatse Notice of Appeal, para. 244; Ngirumpatse Appeal Brief, para. 693.
[800] Ngirumpatse Appeal Brief, para. 237. *See also* Ngirumpatse Appeal Brief, paras. 615, 616.
[801] Ngirumpatse Appeal Brief, para. 235, *referring to* Trial Judgement, para. 1287. *See also* Ngirumpatse Reply Brief, para. 64.
[802] Ngirumpatse Appeal Brief, para. 233, *referring to* Ngirumpatse Defence Exhibits 159 (Declaration of Defence Witness Andrew Muhire, dated 9 April 2010) and 190 (Declaration of Defence Witness Aminadab Iyakaremye, dated 17 March 2010); Witness Mpambara, T. 20 September 2010 pp. 9, 10; Witness Habyarimana, T. 14 September 2010 pp. 45-47; Witness Ndagijimana, T. 11 July 2008 pp. 26, 27; Witness LSP, T. 10 July 2008 pp. 14, 18; Witness XQL, T. 5 May 2008 p. 24; T. 6 May 2008 pp. 21, 22; Witness ETK, T. 11 November 2008 pp. 18-23; Witness Ndengejeho, T. 21 September 2010 pp. 16, 17; Witness Maniliho, T. 26 October 2010 pp. 27, 28; Witness T, T. 29 May 2006 pp. 11, 12; T. 30 May 2006 pp. 8, 9. *See also* Ngirumpatse Reply Brief, para. 65.
[803] Ngirumpatse Appeal Brief, para. 234, *referring to* Nzirorera Defence Exhibits 515 (*The Prosecutor v. Théoneste Bagosora et al.*, Case No. ICTR-98-41-T, Defence Witness Joshua Ruzibiza, T. 9 March 2006), 516B (*The Prosecutor v. Protais Zigiranyirazo*, Case No. ICTR-01-73-T, Defence Witness Aloys Ruyenzi, T. 3 April 2007), 517 (*The Prosecutor v. Théoneste Bagosora et al.*, Case No. ICTR-98-41-T, Defence Witness ALL42, T. 8 November 2006), 518 (*The Prosecutor v. Théoneste Bagosora et al.*, Case No. ICTR-98-41-T, Defence Witness BRA-1, T. 5 April 2006 and T. 6 April 2006).
[804] Ngirumpatse Appeal Brief, para. 236.
[805] Prosecution Response Brief (Ngirumpatse), paras. 275-277.
[806] Prosecution Response Brief (Ngirumpatse), paras. 275, 276.
[807] Prosecution Response Brief (Ngirumpatse), para. 277.
[808] Prosecution Response Brief (Ngirumpatse), para. 277.
[809] Prosecution Response Brief (Ngirumpatse), para. 277.

diluted over time, the majority of roadblocks were set up and controlled by MRND *Interahamwe*.[810] The Prosecution further points to evidence of the involvement of the Kigali *Interahamwe* in killings at roadblocks in Kigali.[811]

276. The Prosecution further avers that the genocidal intent of Karemera's subordinates was established beyond reasonable doubt.[812] It submits that genocidal intent can be inferred from the circumstance[813] and that, in this case, there was overwhelming evidence of systematic, widespread, and targeted attacks perpetrated by the *Interahamwe* throughout the genocide against Tutsis.[814] The Prosecution points in particular to the evidence of the erection of roadblocks by the *Interahamwe* in Kigali-ville, where Tutsis were identified and killed.[815]

277. The Appeals Chamber recalls that, for liability of an accused to arise under Article 6(3) of the Statute, it must be shown that a crime over which the Tribunal has jurisdiction was committed.[816] The Appeals Chamber further recalls that an accused may be held responsible as a superior under Article 6(3) of the Statute where a subordinate "planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of a crime referred to in Articles 2 to 4 of the present Statute",[817] provided, of course, that all the other elements of such responsibility have been established.[818]

278. In this section, the Appeals Chamber considers whether the Trial Chamber failed to sufficiently identify Karemera's and Ngirumpatse's culpable subordinates and to make findings on their criminal conduct in relation to each event in connection with which they were held responsible as superiors.

[810] Prosecution Response Brief (Ngirumpatse), para. 275.
[811] Prosecution Response Brief (Ngirumpatse), para. 275, *referring to* Witness HH, T. 9 November 2006 pp. 12, 13; Witness ALG, T. 26 October 2006 pp. 60, 61.
[812] Prosecution Response Brief (Karemera), paras. 204, 210.
[813] Prosecution Response Brief (Karemera), para. 205.
[814] Prosecution Response Brief (Karemera), para. 206.
[815] Prosecution Response Brief (Karemera), paras. 206, 207.
[816] *Nahimana et al*. Appeal Judgement, para. 484; *Gacumbitsi* Appeal Judgement, para. 143.
[817] Article 6(1) of the Statute.
[818] *Nahimana et al*. Appeal Judgement, para. 486. *See also Nahimana et al*. Appeal Judgement, para. 485; *Blagojević and Jokić* Appeal Judgement, paras. 280-282.

(a) Crimes Committed by the Kigali and Gisenyi *Interahamwe*

(i) Killings in Kigali by 12 April 1994

279. The Trial Chamber held Karemera and Ngirumpatse responsible as superiors pursuant to Article 6(3) of the Statute for the participation of the Kigali *Interahamwe* in the killings of Tutsis in Kigali up until 12 April 1994.[819]

280. The Appeals Chamber finds that, contrary to Karemera's and Ngirumpatse's claims,[820] the Trial Chamber addressed the criminal conduct of the Kigali *Interahamwe* in relation to the killings in Kigali by 12 April 1994. The Trial Chamber found that "the majority of roadblocks during the genocide were set up and manned or controlled by MRND *Interahamwe*",[821] that "people identified as Tutsis were killed because of their ethnicity at most roadblocks",[822] and that "[i]n Kigali alone, thousands of civilians were killed by militias and soldiers by 12 April 1994".[823] The Trial Chamber further found that the perpetrators had the requisite *mens rea* for the crimes of genocide, extermination as a crime against humanity, and murder as a serious violation of Article 3 common to the Geneva Conventions and of Additional Protocol II.[824] The Appeals Chamber recalls that it has dismissed Karemera's challenges to these findings elsewhere in this Judgement.[825]

281. The Appeals Chamber also finds that, contrary to Ngirumpatse's arguments,[826] the Trial Chamber expressly identified his culpable subordinates involved in the killings at roadblocks in Kigali by 12 April 1994 as "Kigali *Interahamwe*" in the legal findings section of the Trial Judgement.[827] In the factual findings section of the Trial Judgement, the Trial Chamber identified those same perpetrators as "MRND *Interahamwe*".[828] In assessing the identity of those manning the roadblocks in Kigali, the Trial Chamber expressly considered the possibility "that the MRND *Interahamwe* at some roadblocks were joined by non-MRND youths or that the term '*Interahamwe*' over time became diluted to mean all youths engaged in anti-Tutsi activities".[829] Nonetheless, bearing in mind this possibility, the Trial Chamber concluded that the majority of roadblocks were set up and manned by MRND *Interahamwe*.[830] Furthermore, in other sections of the Trial

[819] Trial Judgement, paras. 1664, 1692.
[820] Karemera Notice of Appeal, paras. 127-130; Karemera Appeal Brief, paras. 315, 316; Ngirumpatse Notice of Appeal, para. 260; Ngirumpatse Appeal Brief, para. 705. *See also* Ngirumpatse Appeal Brief, para. 707.
[821] Trial Judgement, para. 1662. *See also* Trial Judgement, paras. 1284, 1288.
[822] Trial Judgement, para. 1662. *See also* Trial Judgement, para. 1292.
[823] Trial Judgement, para. 1662. *See also* Trial Judgement, paras. 1290, 1294.
[824] Trial Judgement, paras. 1663, 1688-1690, 1705.
[825] *See infra* Section III.F.
[826] Ngirumpatse Appeal Brief, paras. 233-237, 693.
[827] Trial Judgement, para. 1664.
[828] Trial Judgement, para. 1288.
[829] Trial Judgement, para. 1287.
[830] Trial Judgement, para. 1288.

Judgement, the Trial Chamber found that the *Interahamwe* were organized according to the MRND party structures in Kigali,[831] where the Provisional National Committee of the *Interahamwe* had control over them.[832] The Trial Chamber further noted that the Provisional National Committee of the *Interahamwe*, as well as Witnesses G and T who had functions within the *Interahamwe* movement in Kigali,[833] were involved in the meetings and tours to the roadblocks on 10 and 11 April 1994.[834] In this particular context, the Appeals Chamber finds no merit in Ngirumpatse's reference to evidence of dilution of the term "*Interahamwe*" and finds that he has failed to demonstrate that no reasonable trier of fact could have reached the conclusion that a majority of the *Interahamwe* involved in killings in Kigali by 12 April 1994 were MRND *Interahamwe* from Kigali.

282. The Appeals Chamber thus finds that Karemera and Ngirumpatse have not shown that the Trial Chamber failed to make the requisite findings on the Kigali *Interahamwe*'s criminal conduct in relation to the killings of Tutsis in Kigali by 12 April 1994. Accordingly, Karemera's and Ngirumpatse's submissions are dismissed.

(ii) Killings in Gitarama After the 18 April 1994 Meeting at the Murambi Training School

283. The Trial Chamber held Karemera and Ngirumpatse responsible as superiors pursuant to Article 6(3) of the Statute for the participation of the Kigali *Interahamwe* in the killings of Tutsis in Gitarama which followed a meeting at the Murambi Training School on 18 April 1994 during which Interim Government ministers and national party leaders, including Karemera and Ngirumpatse, met with local authorities.[835]

284. The Appeals Chamber observes that the Trial Chamber failed to specify the criminal conduct of the subordinates for which Karemera and Ngirumpatse were held responsible in Gitarama Prefecture following the meeting at the Murambi Training School. The Trial Chamber concluded that, during the 18 April 1994 meeting, Karemera and Ngirumpatse "intimidated the local authorities to […] allow the *Interahamwe* to continue killing Tutsis"[836] and generally that "[h]undreds of thousands of unarmed civilians were killed by *Interahamwe*, other militias, and soldiers throughout Rwanda by mid-July 1994".[837] However, nowhere in the Trial Judgement did it

[831] Trial Judgement, paras. 258, 270, 1334.
[832] Trial Judgement, paras. 263, 1334.
[833] Trial Judgement, para. 256.
[834] Trial Judgement, paras. 708, 714.
[835] Trial Judgement, paras. 1619, 1624, 1692, 1706.
[836] Trial Judgement, para. 1619. *See also* Trial Judgement, paras. 859, 860.
[837] Trial Judgement, para. 1620, *referring to* Section V.7 of the Trial Judgement.

address whether there was sufficient evidence of killings in Gitarama Prefecture by the Kigali *Interahamwe* after 18 April 1994. The Appeals Chamber notes in particular that, in the specific section of the Trial Judgement dealing with the Murambi Training School meeting, the Trial Chamber recalled relevant evidence of Prosecution Witnesses FH[838] and Fidèle Uwizeye,[839] which it found consistent,[840] but failed to make findings in its deliberations as to the occurrence of killings by Kigali *Interahamwe* following the meeting.[841] In the general section of the Trial Judgement on the scale of killings by soldiers and militiamen, the Trial Chamber did not make any finding nor point to any evidence concerning killings specifically committed in Gitarama Prefecture and linked to the meeting at the Murambi Training School on 18 April 1994.[842]

285. Furthermore, the evidence recalled by the Trial Chamber that, after this meeting in Murambi, the "genocidal acts intensified"[843] and that there were "large-scale killings after the meeting from 18 to 28 April 1994"[844] is very general in nature, as is the evidence that bourgmestres "stopped trying to protect Tutsis" and "allowed the *Interahamwe* to continue massacring them".[845] In these circumstances, and in the absence of a reasoned opinion of the Trial Chamber on the sufficiency of the evidence in relation to killings committed by Kigali *Interahamwe* in Gitarama Prefecture after 18 April 1994, the Appeals Chamber finds that no reasonable trier of fact could have found beyond reasonable doubt that *Interahamwe* from Kigali were involved in any killings occurring in that prefecture following the Murambi Training School meeting of 18 April 1994. Furthermore, beyond referring to the *Interahamwe* as Kigali *Interahamwe*, the Trial Chamber made no findings indicating that those involved in killings after the Murambi Training School meeting were MRND *Interahamwe* who could be considered Karemera's and Ngirumpatse's subordinates.

286. The Appeals Chamber therefore finds that the Trial Chamber erred in failing to explain its finding that the subordinates for whom Karemera and Ngirumpatse were held responsible were implicated in crimes committed in Gitarama following the Murambi Training School meeting on 18 April 1994. Accordingly, the Appeals Chamber reverses the finding that Karemera and Ngirumpatse bear superior responsibility pursuant to Article 6(3) of the Statute over the Kigali

[838] Trial Judgement, para. 772 ("After this meeting where local officials realised that they were not going to receive any support from the government, efforts to assist Tutsis diminished, and genocidal acts intensified. The witness admitted that his own behaviour changed after the meeting as did that of *bourgmestre* Akayesu."), *referring to* Witness FH, T. 12 July 2007 pp. 32, 33.
[839] Trial Judgement, para. 781 ("The meeting demoralised the *bourgmestres* resulting in large-scale killings after the meeting from 18 to 28 April 1994."), *referring to* Witness Uwizeye, T. 19 July 2007 p. 52.
[840] Trial Judgement, para. 852.
[841] Trial Judgement, paras. 831-860.
[842] Trial Judgement, paras. 1281-1295. The Trial Chamber rather pointed to adjudicated facts and Prosecution evidence of crimes committed in Kigali and Ruhengeri regions. *See* Trial Judgement, paras. 1238-1264.
[843] Trial Judgement, para. 772.
[844] Trial Judgement, para. 781.
[845] Trial Judgement, para. 852.

Interahamwe in relation to the killings committed in Gitarama following the Murambi Training School meeting on 18 April 1994. However, given that Karemera's and Ngirumpatse's responsibility as superiors for these crimes were only taken into account by the Trial Chamber as an aggravating factor in sentencing, as the accused were already found guilty for the same acts under the basic form of joint criminal enterprise, their conviction for these killings under the basic form of joint criminal enterprise remains untouched.

(iii) Killings in Bisesero Following the "Mopping-Up" Operation in June 1994

287. The Trial Chamber held Karemera responsible as a superior pursuant to Article 6(3) of the Statute for the participation of Gisenyi *Interahamwe* in a "mopping-up" operation in Bisesero in June 1994.[846]

288. The Appeals Chamber finds that, contrary to Karemera's claim,[847] the Trial Chamber addressed the criminal conduct of his subordinates, identified as the Gisenyi *Interahamwe*, during the "mopping-up" operation in Bisesero. The Trial Chamber explicitly found that an operation against the Tutsis took place in Bisesero around 18 June 1994 with the participation of, *inter alia*, *Interahamwe* from Gisenyi,[848] which resulted in "the deaths of scores of Tutsi civilians".[849] The Trial Chamber further found that, considering the general context of regular attacks directed against Tutsi civilians in the Bisesero region, the only reasonable conclusion was that the assailants who physically perpetrated the killings possessed the requisite *mens rea* necessary for genocide, extermination as a crime against humanity, and murder as a serious violation of Article 3 common to the Geneva Conventions and of Additional Protocol II.[850] The Appeals Chamber recalls that it has dismissed Karemera's challenges to these findings elsewhere in this Judgement.[851]

289. The Appeals Chamber therefore finds that Karemera has not demonstrated that the Trial Chamber failed to make the requisite findings on the Gisenyi *Interahamwe*'s criminal conduct in relation to the "mopping-up" operation in Bisesero in June 1994. Accordingly, Karemera's submissions are dismissed.

[846] Trial Judgement, paras. 1659, 1692, 1706.
[847] Karemera Notice of Appeal, paras. 127-130; Karemera Appeal Brief, paras. 315, 316.
[848] Trial Judgement, paras. 1230, 1655.
[849] Trial Judgement, paras. 1234, 1655.
[850] Trial Judgement, paras. 1656, 1688-1690, 1705.
[851] *See infra* Section III.K.

(iv) Rapes and Sexual Assaults Throughout Rwanda from April to June 1994

290. The Trial Chamber held Karemera and Ngirumpatse responsible as superiors pursuant to Article 6(3) of the Statute for the participation of Kigali and Gisenyi *Interahamwe* in the systematic rape and sexual assault of Tutsi women throughout Rwanda from April to June 1994.[852]

291. The Appeals Chamber notes that, in its legal findings, the Trial Chamber found Karemera and Ngirumpatse responsible "for any rapes and sexual assaults committed by the Kigali and Gisenyi *Interahamwe* during the genocide".[853] Elsewhere, the Appeals Chamber has rejected the contention that the Trial Chamber erred in finding that Tutsi women were raped on a large scale in Kigali and that the perpetrators included *Interahamwe* affiliated with the MRND party.[854] Accordingly, the Appeals Chamber dismisses Karemera's and Ngirumpatse's challenges with respect to rapes committed by the Kigali *Interahamwe* in Kigali.

292. However, the Appeals Chamber observes that, with respect to the rapes committed throughout the rest of Rwanda, the Trial Chamber failed to specifically identify the perpetrators as members of the Kigali and Gisenyi *Interahamwe*, and referred instead only generally to the "*Interahamwe*".[855] Moreover, the Trial Chamber did not cite to any evidence as to the membership and origin of the perpetrators as specifically being *Interahamwe* from Kigali or Gisenyi.[856] In addition, as noted above, a reading of the Trial Judgement as a whole reflects that the Trial Chamber did not exclude that the term "*Interahamwe*" became diluted over time to mean all youths engaged in anti-Tutsi activities.[857] Under these circumstances, the Appeals Chamber is not convinced that a reasonable trier of fact could have excluded that the rapes and sexual assaults committed throughout the rest of Rwanda were perpetrated by assailants other than the Kigali or Gisenyi *Interahamwe*.

293. Accordingly, the Appeals Chamber concludes that the Trial Chamber erred in finding that the subordinates of Karemera and Ngirumpatse were implicated in rapes committed in Rwanda outside Kigali. The Appeals Chamber reverses the finding that Karemera and Ngirumpatse bear superior responsibility pursuant to Article 6(3) of the Statute over the Kigali and Gisenyi *Interahamwe* in relation to the rapes and sexual assaults of Tutsi women committed outside Kigali

[852] Trial Judgement, paras. 1671, 1683.
[853] Trial Judgement, paras. 1671, 1683.
[854] *See infra* Section III.L.2.
[855] *See*, *e.g.*, Trial Judgement, paras. 1341, 1343, 1344, 1348-1351, 1361, 1365-1368, 1370-1373, 1376, 1378-1381, 1384, 1385, 1387, 1393-1397, 1401-1403, 1408, 1409.
[856] The Appeals Chamber notes the mentioning of *Interahamwe* originating from Mukingo Commune and neighbouring areas in relation to the rapes in Ruhengeri Prefecture. *See* Trial Judgement, para. 1368, *referring to* Adjudicated Fact No. 17.
[857] *See* Trial Judgement, para. 1287.

from April to June 1994. However, given that Karemera's and Ngirumpatse's responsibility as superiors for these crimes were only taken into account as an aggravating factor in sentencing, as the accused were already found guilty for the same acts under the extended form of joint criminal enterprise, their conviction for these rapes and sexual assaults under the extended form of joint criminal enterprise remains untouched.

(b) Crimes Committed by Civilians in the Civil Defence Programme and Local Authorities of the Territorial Administration

294. The Trial Chamber held Karemera responsible as a superior pursuant to Article 6(3) of the Statute for the killings committed in Bisesero as of 25 May 1994 by both the civilian participants in the Civil Defence programme and the local authorities, who were part of the territorial administration.[858]

295. The Appeals Chamber finds that, contrary to Karemera's claim,[859] the Trial Chamber addressed the criminal conduct of his subordinates in Bisesero. The Trial Chamber expressly found that civilians were amongst the assailants who carried out attacks organized by local officials in Bisesero throughout April to June 1994.[860] In this regard, the Trial Chamber recalled adjudicated facts that regular attacks were carried out by civilians, amongst other perpetrators, in the Bisesero region between 9 April 1994 and 30 June 1994.[861] The Trial Chamber also found that "thousands of Tutsis" were killed during these attacks,[862] including during the "mopping-up" operation in June 1994.[863] It further concluded that, considering "the scale of the assaults and the brutal and systematic manner in which the Tutsi victims were attacked", it was proven beyond reasonable doubt that the assailants who physically perpetrated the killings possessed the requisite *mens rea* for genocide and extermination as a crime against humanity.[864]

296. The Appeals Chamber notes, however, that the Trial Chamber did not make explicit findings as to whether the civilians who carried out attacks in Bisesero were participants in the Civil Defence programme and were therefore Karemera's subordinates. The Appeals Chamber recalls that, in its section on superior responsibility, the Trial Chamber specifically identified Karemera's civilian subordinates as those participating in the Civil Defence programme.[865]

[858] Trial Judgement, paras. 1654, 1692.
[859] Karemera Notice of Appeal, paras. 127-130; Karemera Appeal Brief, paras. 315, 316.
[860] Trial Judgement, para. 1649.
[861] Trial Judgement, para. 1141. *See also* Adjudicated Facts Nos. 70 and 72.
[862] Trial Judgement, paras. 1649, 1656. *See also* Trial Judgement, para. 1210, *referring to* Indictment, para. 54.
[863] Trial Judgement, paras. 1234, 1655.
[864] Trial Judgement, paras. 1650, 1688-1690.
[865] Trial Judgement, paras. 1515, 1517, 1522, 1529, 1534, 1542.

297. Nonetheless, the Appeals Chamber recalls that the Trial Judgement must be read as a whole[866] and notes the Trial Chamber's finding that, after 25 May 1994, the Civil Defence programme aimed at encouraging armed civilians to continue to attack and kill Tutsis and destroy Rwanda's Tutsi population.[867] Significantly, the Trial Chamber considered the "mopping-up" operation in Bisesero in June 1994 to have been a "manifestation" of the agreement to utilize the Civil Defence programme to mobilize armed civilians to kill Tutsis.[868] In this regard, the Trial Chamber recalled that, in a telegram dated 9 June 1994, the Prefect of Kibuye informed the Minister of Defence that the "people" of Bisesero were "ready to undertake a clean-up operation in the interest of civil defense".[869] The Appeals Chamber is satisfied that, bearing in mind the structure of the Civil Defence programme, the mobilization of the assailants in Bisesero by local authorities, and the authorization for the "mopping-up" operation by government ministers in June 1994,[870] the Trial Chamber reasonably concluded that the civilians involved in the attacks in Bisesero were involved in the Civil Defence programme.

298. With regard to the criminal conduct of local authorities of the territorial administration after 25 May 1994, the Trial Chamber expressly concluded that "throughout April, May, and June 1994, thousands of Tutsis were killed in Bisesero Hills in several large-scale attacks organised by local officials".[871] In particular, the Trial Chamber recalled Prosecution Witness AMN's evidence that local authorities, including Prefect Clément Kayishema and bourgmestres, were involved in one attack in Bisesero in late May 1994, which resulted in the killing of a large number of Tutsis.[872] While the Trial Chamber considered Witness AMN's credibility as being impaired in relation to Karemera's presence in Bisesero, it nonetheless concluded that the attacks took place and that the authorities were present.[873] Furthermore, the Trial Chamber recalled several adjudicated facts that local officials participated in an attack at the Nyakavumu Cave at the end of May 1994, in which over 300 Tutsis died, and that it was Prefect Kayishema who directed the siege.[874] The Trial Chamber also recalled evidence that various officials, including Prefect Kayishema and bourgmestres, attended meetings which were convened in Kibuye in June 1994 to plan the attacks in Bisesero.[875] In this regard, the Trial Chamber recalled that attacks in the vicinity of Muyira Hill

[866] *See*, *e.g.*, *Mrkšić and Šljivančanin* Appeal Judgement, para. 379; *Orić* Appeal Judgement, para. 38.
[867] *See*, *e.g.*, Trial Judgement, paras. 1045, 1056, 1631, 1632, 1640, 1641.
[868] Trial Judgement, para. 1080, *referring to* Section V.6.3 of the Trial Judgement.
[869] Trial Judgement, para. 1213, *referring to* Prosecution Exhibit 53 (Telegram from the Prefect of Kibuye to the Minister of Defence, dated 12 June 1994).
[870] Trial Judgement, paras. 1199, 1210, 1229, 1230.
[871] Trial Judgement, para. 1649.
[872] Trial Judgement, para. 1173, *referring to* Witness AMN, T. 1 October 2007 pp. 24, 28, 29, 32, 33; T. 3 October 2007 p. 5.
[873] Trial Judgement, para. 1209.
[874] Trial Judgement, paras. 1152, 1153, *referring to* Adjudicated Facts Nos. 113-115.
[875] Trial Judgement, paras. 1154-1161, *referring to* Adjudicated Facts Nos. 118-137.

continued into June 1994.[876] The Trial Chamber moreover relied on documentary evidence implicating Prefect Kayishema in the organization of the "mopping-up" operation in Bisesero in June 1994,[877] which resulted in the death of "scores of Tutsi civilians".[878] The Appeals Chamber therefore finds no error in the Trial Chamber's conclusion that local authorities of the territorial administration were involved in the killings committed in Bisesero as of 25 May 1994. Furthermore, the Trial Chamber found that, in the context of the "notorious and open slaughter of Tutsis in Bisesero", the only reasonable inference was that the national and regional authorities who ordered and instigated these attacks shared the assailants' requisite *mens rea*.[879]

299. In these circumstances, the Appeals Chamber finds that Karemera has not demonstrated that the Trial Chamber failed to make the requisite findings on his subordinates' criminal conduct in relation to the attacks and killings committed in Bisesero as of 25 May 1994. Accordingly, Karemera's submissions are dismissed.

(c) Conclusion

300. The Appeals Chamber dismisses Karemera's and Ngirumpatse's arguments concerning the criminal conduct of: (i) the Kigali *Interahamwe* in relation to the killing of Tutsis in Kigali by 12 April 1994; (ii) the Gisenyi *Interahamwe* during the "mopping-up" operation in Bisesero in June 1994; (iii) the civilian participants in the Civil Defence programme and the local authorities who were part of the territorial administration in relation to the killings committed in Bisesero as of 25 May 1994; and (iv) the Kigali *Interahamwe* in relation to the systematic rapes and sexual assaults of Tutsi women in Kigali from April to June 1994. However, the Appeals Chamber reverses the Trial Chamber's findings that Karemera and Ngirumpatse bear superior responsibility pursuant to Article 6(3) of the Statute over the Kigali *Interahamwe* in relation to the killings committed in Gitarama Prefecture following the Murambi Training School meeting on 18 April 1994. The Appeals Chamber likewise reverses the Trial Chamber's finding that Karemera and Ngirumpatse bear superior responsibility pursuant to Article 6(3) of the Statute over the Kigali and Gisenyi *Interahamwe* in relation to the rapes and sexual assaults of Tutsi women committed outside Kigali from April to June 1994. However, given that Karemera's and Ngirumpatse's responsibility as superiors for these crimes were only taken into account as an aggravating factor in sentencing, as the accused were already found guilty for these killings under the basic form of joint criminal enterprise and for these rapes and sexual assaults under the extended form of joint criminal

[876] Trial Judgement, para. 1162, *referring to* Adjudicated Fact No. 110.
[877] Trial Judgement, paras. 1213, 1216, *referring to* Prosecution Exhibits 53 (Telegram from the Prefect of Kibuye to the Minister of Defence, dated 12 June 1994) and 54 (Letter from Karemera to the Prefect of Kibuye, dated 20 June 1994).
[878] Trial Judgement, paras. 1234, 1655.

enterprise, their convictions for these killings under the basic form of joint criminal enterprise and for these rapes and sexual assaults under the extended form of joint criminal enterprise remain untouched.

3. Knowledge

301. The Trial Chamber found that the crimes committed by Karemera's and Ngirumpatse's subordinates were "so widespread and public that it would have been impossible for [Karemera and Ngirumpatse] to be unaware of them".[880] In particular, the Trial Chamber found it "undisputed" that Karemera and Ngirumpatse were aware that widespread killings had commenced on 8 April 1994[881] and noted that Ngirumpatse himself stated that he had "obtained a lot of information" regarding the killings in Rwanda by 9 April 1994.[882] It also took into consideration the instructions given on 10 April 1994 by the MRND leadership to the *Interahamwe* Provisional National Committee to tour the roadblocks where killings were occurring,[883] the radio broadcast of a *communiqué* drafted by Karemera,[884] and Ngirumpatse's radio address.[885] The Trial Chamber further noted the massacres in Kibuye Prefecture just before Karemera's speech on 3 May 1994,[886] and Karemera's order to kill the remaining Tutsis in Bisesero Hills in mid-June 1994.[887] The Trial Chamber also found that Karemera and Ngirumpatse were aware of rapes occurring throughout Rwanda.[888] The Trial Chamber therefore concluded that the only reasonable conclusion available from the evidence was that Karemera and Ngirumpatse had actual knowledge that their subordinates were about to attack Tutsis, had already attacked them, or had facilitated attacks against them.[889]

302. Karemera submits that the Trial Chamber failed to consider the requisite *mens rea* for genocide in the analysis of his responsibility under Article 6(3) of the Statute.[890] Specifically, Karemera asserts that he cannot be held responsible as a superior for genocide in the absence of a finding that his subordinates possessed genocidal intent.[891] In relation to rapes committed throughout Rwanda, Karemera avers that the Trial Chamber erred in finding him liable in the

[879] Trial Judgement, paras. 1650, 1688-1690.
[880] Trial Judgement, paras. 1530, 1558.
[881] Trial Judgement, para. 1333.
[882] Trial Judgement, para. 1559.
[883] Trial Judgement, paras. 1333, 1531, 1559.
[884] Trial Judgement, para. 1333.
[885] Trial Judgement, para. 1333.
[886] Trial Judgement, para. 1531.
[887] Trial Judgement, para. 1531.
[888] Trial Judgement, paras. 1531, 1560.
[889] Trial Judgement, paras. 1533, 1561.
[890] Karemera Notice of Appeal, paras. 131-135; Karemera Appeal Brief, paras. 346, 351, 352.
[891] Karemera Appeal Brief, paras. 340, 347-352.

absence of evidence that he knew or had reason to know that his subordinates were committing rapes and that they had the requisite intent.[892]

303. Ngirumpatse submits that the Trial Chamber erred in finding that he was aware of the widespread killings which commenced on 8 April 1994, and of the commission of crimes by his subordinates.[893] Ngirumpatse asserts in this regard that the Trial Chamber failed to take into account his absence from Rwanda.[894] Ngirumpatse also contends that the Trial Chamber's findings were speculative[895] and mischaracterized the evidence.[896] In particular, he submits that the Trial Chamber did not rely on any supporting evidence to conclude that he knew how roadblocks were erected, that he acquiesced to their establishment, supported or controlled them, or was involved in the killings committed at the roadblocks.[897] Ngirumpatse further asserts that his magnanimous interventions to end killings and dismantle roadblocks[898] did not demonstrate any specific knowledge on his part.[899]

304. Ngirumpatse also submits that the Trial Chamber reversed the burden of proof by requiring proof that he had no knowledge of his subordinates' crimes.[900] He underscores that his knowledge was no different from the knowledge of other people who could have prevented or punished the crimes.[901]

305. The Prosecution responds that Article 6(3) of the Statute does not require that a superior know of his subordinates' genocidal intent; it is sufficient for the superior to know or have reason to know that his subordinates are about to commit a crime.[902] The Prosecution submits that, in any event, the Trial Chamber correctly relied on the totality of the evidence to find that Karemera's subordinates possessed genocidal intent and that he was aware of their intent.[903] The Prosecution points to the fact that, in his position as an MRND leader and then as Minister of Interior, Karemera had access to information on the security situation throughout Rwanda.[904] The Prosecution further underlines that the attacks were widespread and notorious[905] and that Karemera and the MRND leadership took several actions in response to these attacks, showing that they were aware of

[892] Karemera Notice of Appeal, para. 154; Karemera Appeal Brief, para. 340.
[893] Ngirumpatse Notice of Appeal, paras. 191, 192; Ngirumpatse Appeal Brief, para. 620.
[894] Ngirumpatse Notice of Appeal, para. 262; Ngirumpatse Appeal Brief, paras. 688, 713.
[895] Ngirumpatse Notice of Appeal, paras. 262, 263; Ngirumpatse Appeal Brief, para. 713.
[896] Ngirumpatse Notice of Appeal, paras. 262, 264.
[897] Ngirumpatse Appeal Brief, para. 621.
[898] Ngirumpatse Appeal Brief, para. 625.
[899] Ngirumpatse Appeal Brief, para. 626.
[900] Ngirumpatse Notice of Appeal, para. 262; Ngirumpatse Appeal Brief, para. 713.
[901] Ngirumpatse Appeal Brief, para. 713.
[902] Prosecution Response Brief (Karemera), para. 203.
[903] Prosecution Response Brief (Karemera), paras. 204, 206, 210.
[904] Prosecution Response Brief (Karemera), paras. 206, 246.
[905] Prosecution Response Brief (Karemera), paras. 206, 209, 245.

them.[906] Finally, the Prosecution recalls that Karemera specifically acknowledged that he assumed that women would be raped.[907]

306. The Prosecution contends that, based on the totality of both direct and circumstantial evidence, the Trial Chamber committed no error in finding that Ngirumpatse had actual knowledge of his subordinates' crimes,[908] despite his absence from Rwanda.[909] In support of its argument, the Prosecution points to evidence of the widespread and public nature of the crimes committed by the *Interahamwe*,[910] the MRND leadership's instructions to *Interahamwe* national leaders to erect and man roadblocks,[911] Ngirumpatse's orders to tour the roadblocks on 10 April 1994 in Kigali, and the reports provided to Ngirumpatse by the *Interahamwe* leaders following the tour of the roadblocks.[912] Additionally, the Prosecution points to Ngirumpatse's own admission that he knew as early as 8 April 1994 that the *Interahamwe* were committing crimes.[913]

(a) *Mens Rea* of Karemera's Subordinates and Karemera's Knowledge Thereof

307. The Appeals Chamber recalls that, in holding a superior criminally responsible under Article 6(3) of the Statute, it must be established that the superior knew or had reason to know that his subordinate was about to commit a crime or had done so.[914] In the case of specific intent crimes such as genocide, the Appeals Chamber has found that this requires proof that the superior was aware of the criminal intent of the subordinate.[915] In most cases, the superior's knowledge or reason to know of his subordinate's genocidal intent will be inferred from the circumstances of the case.[916]

308. The Trial Chamber found that Karemera's subordinates possessed genocidal intent during the commission of their crimes.[917] The Trial Chamber also expressly found that Karemera had

[906] Prosecution Response Brief (Karemera), paras. 207, 208.
[907] Prosecution Response Brief (Karemera), para. 246.
[908] Prosecution Response Brief (Ngirumpatse), paras. 272, 273.
[909] Prosecution Response Brief (Ngirumpatse), para. 272.
[910] Prosecution Response Brief (Ngirumpatse), para. 273.
[911] Prosecution Response Brief (Ngirumpatse), para. 276, *referring to* Witness ALG, T. 26 October 2006 pp. 60-62; T. 6 November 2006 pp. 23-25; Witness AWE, T. 4 July 2007 pp. 25-30.
[912] Prosecution Response Brief (Ngirumpatse), para. 273.
[913] Prosecution Response Brief (Ngirumpatse), para. 273. Although the Prosecution Response Brief refers to "10 May 1994", the Appeals Chamber considers it clear that it meant to refer to "10 April 1994".
[914] *Nahimana et al.* Appeal Judgement, para. 484.
[915] *See Naletilić and Martinović* Appeal Judgement, para. 114, fn. 257 (finding that a commander must have reason to know of the facts in question that make the conduct criminal). This is the same approach that the ICTY Appeals Chamber has taken with holding a superior responsible for other crimes which require proof of specific intent or other attendant circumstances. *See*, *e.g.*, *Krnojelac* Appeal Judgement, para. 155 (finding that, to hold a superior responsible for torture, it must be established that the superior had information that a beating inflicted by a subordinate is for one of the prohibited purposes provided for in the prohibition against torture).
[916] *Nahimana et al.* Appeal Judgement, para. 524.
[917] *See supra* Section III.D.2. *See also* Trial Judgement, paras. 1453, 1454, 1618 (concerning the distribution of weapons in Kigali on 11 April 1994), 1620 (meeting at the Murambi Training School in Gitarama Prefecture on 18 April 1994), 1650, 1654 (massacre of Tutsis in Bisesero Hills from April through June 1994), 1656, 1659

actual knowledge of their genocidal intent in relation to the crimes committed in Gitarama Prefecture and in Bisesero Hills.[918] The Trial Chamber did not, however, make this express finding in relation to the other crimes for which it held Karemera responsible as a superior, including the killings in Kigali by 12 April 1994 and the sexual violence against Tutsi women throughout Rwanda from April through June 1994.[919]

309. The Appeals Chamber, however, is not convinced that the failure to make express findings about Karemera's knowledge of the perpetrators' *mens rea* with respect to the killings in Kigali and sexual violence against Tutsis invalidates the verdict. Specifically, with respect to the killings in Kigali by 12 April 1994, the Trial Chamber made express findings that Ngirumpatse was aware of the perpetrators' genocidal intent based on "the open and notorious targeting and slaughter of Tutsis at roadblocks".[920] This reasoning applies to Karemera with equal force. In this respect, the Appeals Chamber notes that the Trial Chamber specifically concluded that Karemera was aware of these widespread killings.[921] In a similar vein, the Trial Chamber's findings on the large scale rapes in Kigali support its implicit conclusion that Karemera knew of the principal perpetrators' genocidal intent.[922] The Appeals Chamber recalls that it has reversed the finding of Karemera's responsibility as a superior for the rapes of Tutsi women by his subordinates elsewhere in Rwanda.[923]

310. Accordingly, Karemera has not demonstrated that the Trial Chamber erred in holding him responsible for genocide in the absence of findings related to his knowledge of the *mens rea* of his subordinates.

(b) Ngirumpatse's Knowledge of Subordinates' Crimes

311. The Appeals Chamber now turns to consider Ngirumpatse's challenges to the Trial Chamber's finding that he knew of the crimes being committed by his subordinates.[924] Ngirumpatse contends that the Trial Chamber shifted the burden of proof, by requiring him to prove that he was not aware of his subordinates' crimes, given that the Trial Chamber found that it would have been "impossible for [Ngirumpatse] to be unaware of [these crimes]".[925]

("mopping-up" operation in Bisesero Hills around 18 June 1994), 1663 (killings in Kigali by 12 April 1994), 1668 (systematic rapes and sexual assaults of Tutsi women and girls throughout Rwanda from April through June 1994).
[918] Trial Judgement, paras. 1621 (Murambi Training School meeting on 18 April 1994), 1650 (massacre of Tutsis in Bisesero Hills from April through June 1994), 1656 ("mopping-up" operation in Bisesero Hills around 18 June 1994).
[919] *See generally* Trial Judgement, paras. 1530-1533, 1610-1618, 1662-1671.
[920] Trial Judgement, para. 1614.
[921] Trial Judgement, para. 1662. *See also* Trial Judgement, para. 1531.
[922] Trial Judgement, para. 1354.
[923] *See supra* Section III.D.2.(iv).
[924] Ngirumpatse Appeal Brief, paras. 688, 713.
[925] Ngirumpatse Appeal Brief, para. 713, *quoting* Trial Judgement, para. 1558.

312. The Trial Chamber, in addressing Ngirumpatse's actual knowledge of his subordinates' crimes, stated that "the massacres and attacks committed by the Kigali and Gisenyi *Interahamwe*, among others, were so widespread and public that it would have been impossible for [Ngirumpatse] to be unaware of them".[926] The Trial Chamber then discussed Ngirumpatse's awareness of widespread killings and specific events that had taken place starting on 8 April 1994,[927] before finding that "the only reasonable conclusion is that Ngirumpatse had actual knowledge" of his subordinates' attacks on Tutsis during the genocide.[928]

313. The Appeals Chamber cannot discern how the finding that "it would have been impossible for [Ngirumpatse] to be unaware of" these crimes[929] indicates a shift in the burden of proof. In particular, the Appeals Chamber observes that the Trial Chamber's consideration that this is "the only reasonable conclusion"[930] reflects the appropriate standard. Moreover, the Trial Chamber explicitly considered Ngirumpatse's challenge that phrases such as "could not have been unaware" were indicative of a shifting of the burden of proof, and "reassure[d] the Defence that it will always place the burden of proof on the Prosecution to prove the charges in the Indictment".[931] Ngirumpatse has not demonstrated that the Trial Chamber shifted this burden onto him.

314. The Appeals Chamber further rejects Ngirumpatse's submission that the Trial Chamber erred in finding that he knew of killings, without relying on supporting evidence.[932] In this respect, the Appeals Chamber notes that the Trial Chamber found it proven beyond reasonable doubt that, on 10 April 1994, Ngirumpatse was at a meeting where *Interahamwe* leaders were asked to persuade their subordinates and others manning the roadblocks to stop the killings.[933] The Trial Chamber relied on this finding, *inter alia*, to conclude that Ngirumpatse knew that his subordinates were attacking Tutsis.[934] The Trial Chamber also recalled Ngirumpatse's testimony that he knew of the scope of the killings the day before this meeting.[935] The Appeals Chamber therefore does not consider that the Trial Chamber reached this finding without reference to supporting evidence.

315. Ngirumpatse further contends that the Trial Chamber "failed to take into account" that he was far away from the crime scenes.[936] The Trial Chamber, in finding that Ngirumpatse had knowledge of his subordinates' crimes, expressly considered his "absence from Rwanda during part

[926] Trial Judgement, para. 1558.
[927] Trial Judgement, paras. 1559-1561.
[928] Trial Judgement, para. 1561.
[929] Trial Judgement, para. 1558.
[930] Trial Judgement, para. 1561.
[931] Trial Judgement, para. 98. *See also* Trial Judgement, paras. 99, 100 (concerning the burden and standard of proof).
[932] Ngirumpatse Appeal Brief, paras. 620, 621.
[933] Trial Judgement, para. 714.
[934] Trial Judgement, paras. 1559, 1561.
[935] Trial Judgement, para. 1559, *quoting* Ngirumpatse, T. 26 January 2011 p. 41.

of the genocide".[937] Ngirumpatse's contention that the Trial Chamber failed to take this into account is therefore dismissed.

316. Finally, Ngirumpatse submits that his knowledge of crimes was no different from the knowledge shared by others.[938] The Appeals Chamber fails to see how the possible knowledge of others could be relevant to assessing Ngirumpatse's criminal responsibility.[939] This argument is therefore dismissed.

(c) Conclusion

317. The Appeals Chamber accordingly considers that Karemera and Ngirumpatse have failed to demonstrate that the Trial Chamber erred in finding that they had the requisite knowledge of their subordinates' crimes.

4. Failure to Prevent and Punish

318. The Trial Chamber found that Karemera and Ngirumpatse failed to prevent or punish the crimes committed by their subordinates.[940] The Trial Chamber found that Karemera and Ngirumpatse had a "considerable degree of effective control over [their] subordinates"[941] and that they took several steps to further the commission of crimes by their subordinates.[942] In particular, the Trial Chamber noted Karemera's speech in Kibuye on 3 May 1994,[943] Karemera's order to kill the remaining Tutsis in Bisesero Hills in mid-June 1994,[944] Karemera's and Ngirumpatse's agreement with the Interim Government to mobilize extremist militiamen and armed civilians,[945] as well as Ngirumpatse's arrangement with Bagosora to distribute weapons on 11 April 1994.[946] The Trial Chamber further concluded that Ngirumpatse's general call for peace on 10 April 1994 did not amount to a "necessary and reasonable measure" to prevent subordinates from massacring Tutsis, since the language he used was "unreasonably vague".[947]

[936] Ngirumpatse Appeal Brief, para. 713.
[937] Trial Judgement, para. 1558. In this regard, the Appeals Chamber recalls that a superior's absence from the crime scene does not necessarily prevent him from having knowledge of the events. *See Ntabakuze* Appeal Judgement, para. 222.
[938] Ngirumpatse Appeal Brief, para. 713.
[939] *Martić* Appeal Judgement, para. 270.
[940] Trial Judgement, paras. 1541, 1570.
[941] Trial Judgement, paras. 1537, 1562.
[942] Trial Judgement, paras. 1537-1539, 1567, 1568.
[943] Trial Judgement, para. 1538.
[944] Trial Judgement, para. 1538.
[945] Trial Judgement, paras. 1538, 1567.
[946] Trial Judgement, para. 1567.
[947] Trial Judgement, paras. 1563-1566.

319. The Trial Chamber found no indication that Karemera's and Ngirumpatse's subordinates were punished for killing Tutsis.[948] In this regard, it rejected Karemera's assertion that he sent a report to the Minister of Defence to sanction soldiers,[949] Ngirumpatse's claim that he lacked resources to make arrests and punish people, and that it was the responsibility of administrative, judicial, and security authorities to make arrests and punish people.[950]

320. Karemera and Ngirumpatse submit that the Trial Chamber erred in finding that they failed in their duty to prevent crimes and to punish their subordinates.[951] In particular, Karemera contends that the Trial Chamber reversed the burden of proof and required him to prove that he had taken all necessary steps within his power to prevent and punish the crimes.[952] According to Karemera, the Trial Chamber failed to consider or gave inadequate weight to his various efforts to prevent the crimes, including issuing a *communiqué* on 10 April 1994 and calling for calm in his speeches on 22 April 1994 and 3 May 1994, as well as his lack of ability to do more.[953] Ngirumpatse contends that the Trial Chamber erred in dismissing his radio appeal of 10 April 1994 calling for peace as too ambiguous and in not taking into account its findings on the dangers he and his family were exposed to.[954] Ngirumpatse also argues that he was convicted for a crime of omission that was not charged in the Indictment and that he had no obligation to act.[955] Karemera further submits that, in accordance with the *Bagosora and Nsengiyumva* Appeal Judgement, the Trial Chamber's statement that there was no evidence that he punished the perpetrators is insufficient to support a finding that he failed to do so.[956]

321. The Prosecution responds that the Trial Chamber did not shift the burden of proof and properly concluded, based on the record, that Karemera and Ngirumpatse failed to prevent or punish the crimes of their subordinates.[957]

322. The Appeals Chamber is not convinced by Karemera's and Ngirumpatse's arguments that the Trial Chamber reversed the burden of proof, requiring them to prove that they took the necessary and reasonable measures to prevent or punish the crimes of their subordinates. In this respect, the Appeals Chamber notes that the Trial Chamber properly recalled the burden of proof

[948] Trial Judgement, paras. 1539, 1540, 1568, 1569.
[949] Trial Judgement, para. 1540.
[950] Trial Judgement, para. 1569.
[951] Karemera Notice of Appeal, paras. 106, 136-139; Karemera Appeal Brief, paras. 354-369; Karemera Reply Brief, paras. 70-73; Ngirumpatse Notice of Appeal, paras. 265-270; Ngirumpatse Appeal Brief, paras. 714-720; Ngirumpatse Reply Brief, paras. 154-157.
[952] Karemera Appeal Brief, paras. 355, 356, 369.
[953] Karemera Appeal Brief, paras. 360-367; Karemera Reply Brief, paras. 70-73.
[954] Ngirumpatse Appeal Brief, paras. 714, 715, 720.
[955] Ngirumpatse Appeal Brief, para. 715.
[956] Karemera Appeal Brief, paras. 368, 369, *referring to Bagosora and Nsengiyumva* Appeal Judgement, para. 234.
[957] Prosecution Response Brief (Karemera), paras. 194-201; Prosecution Response Brief (Ngirumpatse), paras. 279-284.

and stated that it rested solely on the Prosecution.[958] Contrary to Karemera's and Ngirumpatse's claims, the Trial Chamber considered that they had not raised a reasonable doubt regarding their failure to prevent the crimes of their subordinates and to punish them afterwards.[959]

323. The Appeals Chamber recalls that the crux of the Trial Chamber's findings on Karemera's and Ngirumpatse's failure to prevent or punish the crimes rests on its findings in relation to their active participation in the crimes.[960] The Appeals Chamber considers that Karemera and Ngirumpatse have not demonstrated that it was unreasonable for the Trial Chamber to conclude that they failed to prevent and to punish the crimes of their subordinates based on their direct involvement in their subordinates' crimes.

324. In addition, the Appeals Chamber is not convinced by Karemera's reliance on the *Bagosora and Nsengiyumva* Appeal Judgement. In that case, the Trial Chamber found that there was no evidence that perpetrators of certain crimes were punished without considering what measures, if any, Bagosora had taken and without making an explicit finding that he personally failed to punish the crimes.[961] On appeal, the Appeals Chamber held that the finding that the perpetrators of the crimes were not punished was, on its own, insufficient to establish as a fact that Bagosora himself had failed in his duty to punish culpable subordinates.[962] This situation is different from the present case where the Trial Chamber explicitly found that Karemera and Ngirumpatse failed to punish their subordinates for their participation in various crimes.[963] Moreover, the Appeals Chamber in *Bagosora and Nsengiyumva* concluded that the Trial Chamber had erred in finding that Bagosora ordered or authorized the crimes and thus his failure to punish his subordinates was not based on his direct involvement in the killings,[964] whereas Karemera and Ngirumpatse have not demonstrated that the Trial Chamber erred in concluding that they directly participated in the crimes.[965]

325. Furthermore, the Appeals Chamber recalls that the Trial Chamber expressly considered that Ngirumpatse, in his speech on 10 April 1994, made a general call for peace.[966] Beyond disagreeing with the Trial Chamber's conclusion that this general call did not amount to a reasonable measure, Ngirumpatse has failed to identify any error on the part of the Trial Chamber, in particular bearing

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[958] Trial Judgement, para. 99. *See also* Trial Judgement, para. 100.
[959] Trial Judgement, paras. 1541, 1570. *See also* Trial Judgement, paras. 1534-1540, 1562-1569.
[960] Trial Judgement, paras. 1537-1539, 1567-1569.
[961] *Bagosora et al.* Trial Judgement, para. 2040.
[962] *Bagosora and Nsengiyumva* Appeal Judgement, paras. 681, 683. In this regard, the Appeals Chamber in *Bagosora and Nsengiyumva* recalled that "[i]n certain circumstances, although the necessary and reasonable measures have been taken, the result may fall short of punishment of the perpetrators". *See Bagosora and Nsengiyumva* Appeal Judgement, para. 683.
[963] Trial Judgement, paras. 1541, 1570.
[964] *Bagosora and Nsengiyumva* Appeal Judgement, para. 686.
[965] *See infra* Sections IIII.F, III.I, III.J, III.K.
[966] Trial Judgement, para. 1563.

in mind its assessment of widespread, systematic, and public killings that were occurring in Kigali and Ngirumpatse's own role in furthering the killings in Rwanda.[967] In a similar vein, the Appeals Chamber is not persuaded that Karemera has shown that the general calls for peace in the *communiqué* of 10 April 1994 discharged his obligation to prevent or punish crimes.[968]

326. In addition, the Appeals Chamber finds no merit in Ngirumpatse's contention that the Trial Chamber erred in holding him responsible based on an omission not pleaded in the Indictment. Ngirumpatse's responsibility as a superior is based on his failure to prevent the crimes or punish them afterwards, which is pleaded in paragraphs 20 and 21 of the Indictment. In light of Ngirumpatse's role as a superior over the Kigali and Gisenyi *Interahamwe*, the Appeals Chamber also rejects his contention that he had no obligation to act.

327. The Appeals Chamber is also not persuaded by Karemera's general argument that the Trial Chamber disregarded evidence showing that he adopted measures to prevent or punish the commission of crimes. Most of the exhibits to which he refers are communications from Prime Minister Kambanda[969] and President Sindikubwabo.[970] Karemera has failed to explain how the actions of these individuals could be relevant to the question of whether he adopted the necessary and reasonable measures to prevent the crimes of his subordinates or punish the offenders.

328. In any case, the Appeals Chamber notes that some of these exhibits containing speeches by Kambanda or Sindikubwabo were considered in the Trial Judgement and relied upon by the Trial Chamber for its conclusions that the relevant speeches incited the population to continue killing

[967] Trial Judgement, paras. 1564, 1567.
[968] While the Trial Chamber did not expressly consider the *communiqué* when analysing Karemera's superior responsibility, it explicitly addressed it in the context of its analysis of the evidence concerning the pacification tours to roadblocks. *See* Trial Judgement, paras. 674, 675.
[969] Karemera Appeal Brief, paras. 365, 366, fns. 445, 446; Karemera Reply Brief, para. 70, fn. 41, *referring to* Nzirorera Defence Exhibits 23 and 23B (Transcript of Radio Rwanda Broadcast, including speeches of Sindikubwabo and Kambanda); Nzirorera Defence Exhibit 31 (Transcript of speech of Kambanda in Butare); Nzirorera Defence Exhibit 32 (Transcript of Radio Rwanda Broadcast, including speech of Kambanda); Karemera Appeal Brief, para. 206; Karemera Reply Brief, para. 70, *referring to* Nzirorera Defence Exhibit 183 (Letter from Kambanda to prefects, dated 27 April 1994); Nzirorera Defence Exhibit 288 (Transcript of speech of Kambanda, 3 May 1994 Kibuye Meeting); Nzirorera Defence Exhibit 289 (Transcript of speeches of MDR Secretariat Member and the Bourgmestres of Gisovu and Gishyita Communes, 3 May 1994 Kibuye Meeting); Nzirorera Defence Exhibit 290 (Transcript of speeches of Prime Minister Kambanda, Donat Murego, Eliézer Niyitegeka, and the Bourgmestre of Bwakira Commune, 3 May 1994 Kibuye Meeting); *and* Karemera Defence Exhibit 36 (Transcript of Radio Rwanda Broadcast, dated 19 April 1994). Karemera refers to the portion of Karemera Defence Exhibit 36 regarding a speech delivered by Kambanda at a meeting in Gitarama. *See* Karemera Appeal Brief, fn. 445, *referring to* Karemera Defence Exhibit 36, pp. 21, 22.
[970] Karemera Appeal Brief, para. 365, fn. 445; Karemera Reply Brief, para. 70, *referring to* Nzirorera Defence Exhibit 22 (Transcript of Radio Rwanda Broadcast, including speeches of Ngirumpatse and Sindikubwabo), pp. 12-14; Nzirorera Defence Exhibit 23 (Transcript of Radio Rwanda Broadcast, including speeches of Sindikubwabo and Kambanda); Nzirorera Defence Exhibit 25 (Transcript of speech of Sindikubwabo in Kigali, dated 13 April 1994); Nzirorera Defence Exhibit 26 (Transcript of speech of Sindikubwabo in Kigali, dated 14 April 1994); Nzirorera Defence Exhibit 27 (Transcript of speech of Sindikubwabo, dated 17 April 1994); Nzirorera Defence Exhibit 29 (Transcript of speech of Sindikubwabo in Kigali, dated 8 April 1994); *and* Nzirorera Defence Exhibit 291 (Transcript of Radio Rwanda Broadcast, including speech of Sindikubwabo at the 16 May 1994 Kibuye Meeting).

Tutsis.[971] The Trial Chamber also concluded that Kambanda's 27 April 1994 letter manifested an agreement to encourage extremist militiamen and armed civilians to attack and kill Tutsis and destroy Rwanda's Tutsi population.[972] The Appeals Chamber has found no error in these findings.[973]

329. Karemera also refers to a *communiqué* of the Rwandan Armed Forces of 7 April 1994, which was signed by Théoneste Bagosora as *Directeur de Cabinet* of the Ministry of Defence.[974] The Appeals Chamber notes that this *communiqué*, issued in the aftermath of the President's death, relays the decisions taken at a meeting of the Rwandan Armed Forces held on 7 April 1994 at the *École supérieure militaire*, chaired by Bagosora.[975] Karemera has not identified how this *communiqué* relates in any way to his own obligation to prevent the criminal acts of his subordinates.

330. The Appeals Chamber notes that Karemera also refers to his speech at the 3 May 1994 meeting in Kibuye to show that he called for the killings to stop.[976] The Trial Chamber found that Karemera, by his speech at the 3 May 1994 meeting, incited the audience to physically attack and destroy Tutsis as a group.[977] The Appeals Chamber has found no error in this conclusion.[978]

331. The remaining two exhibits which Karemera claims the Trial Chamber disregarded are two *communiqués* issued by the MRND on 23 and 27 April 1994.[979] Both were signed, on behalf of the MRND party, by Karemera. The 23 April 1994 *communiqué* was also signed by Ngirumpatse. While the Trial Chamber did not explicitly address these exhibits, it noted the 23 and 27 April 1994 *communiqués* in the context of its analysis of the 3 May 1994 meeting in Kibuye.[980] In summarizing the minutes of that meeting, the Trial Chamber noted that Karemera, in his speech, had read several

[971] Trial Judgement, paras. 956-958, 995, 1007, *referring to* Nzirorera Defence Exhibit 289 (Transcript of speeches of MDR Secretariat Member and the Bourgmestres of Gisovu and Gishyita Communes, 3 May 1994 Kibuye Meeting); Nzirorera Defence Exhibit 290 (Transcript of speeches of Prime Minister Kambanda, Donat Murego, Eliézer Niyitegeka, and the Bourgmestre of Bwakira Commune, 3 May 1994 Kibuye Meeting); Nzirorera Defence Exhibit 291 (Transcript of Radio Rwanda Broadcast, including speech of Sindikubwabo at the 16 May 1994 Kibuye Meeting). *See also* Trial Judgement, paras. 1597, 1601, 1602. The Appeals Chamber observes that it has rejected Karemera's and Ngirumpatse's arguments that the Trial Chamber distorted the speeches given at the 3 May 1994 meeting or ignored evidence relating to them. The Appeals Chamber has also found no error in the Trial Chamber's conclusion that Sindikubwabo incited the population to continue killing Tutsis in order to destroy the Tutsi population. *See infra* Section III.I.
[972] Trial Judgement, para. 1045.
[973] *See infra* para. 544.
[974] Karemera Reply Brief, para. 70, *referring to* Nzirorera Defence Exhibit 18B (*Communiqué* of the Rwandan Armed Forces, dated 7 April 1994).
[975] Nzirorera Defence Exhibit 18B (*Communiqué* of the Rwandan Armed Forces, dated 7 April 1994).
[976] Karemera Appeal Brief, para. 367, *referring to* Witness GK, T. 8 December 2006 p. 36.
[977] Trial Judgement, para. 992.
[978] *See infra* Section III.I.1.
[979] Karemera Appeal Brief, para. 365, fn. 445; Karemera Reply Brief, para. 70, fn. 41, *referring to* Nzirorera Defence Exhibit 33 (MRND party *communiqué* signed by Karemera and Nzirorera, dated 23 April 1994); Nzirorera Defence Exhibit 35 (MRND party *communiqué* signed by Karemera, dated 27 April 1994).

MRND announcements.[981] In particular, it noted that, in the 23 April 1994 MRND announcement, the MRND stated its support for the Rwandan Armed Forces, and requested all Rwandans, especially MRND members, to double their efforts in supporting the army and government policies intended to restore tranquillity and security in the country.[982] It also noted that the 27 April 1994 *communiqué* contained a message intended for party leaders at all levels, concerning the restoration of peace in the country.[983] While the Trial Chamber found the minutes of the meeting generally reliable,[984] it concluded that Karemera, along with the Interim Government officials, only provided "abstract rhetoric" about restoring peace in the country.[985] It then found that, in his speech, Karemera incited the audience to physically attack and destroy Tutsis as a group.[986] The Appeals Chamber has found no error in these conclusions.[987]

332. The Appeals Chamber notes that the 23 April 1994 *communiqué* contains an appeal to all Rwandans not to worsen the situation by attacking their neighbours, and condemns everyone, including party militants, responsible for attacking innocent members of the population on ethnic and other grounds.[988] The Appeals Chamber notes, however, that the *communiqué* also reminds the audience of the enemy's objective to exterminate all Rwandans and warns that "[i]t is imperative to discover and denounce the enemy wherever he is so as to restore peace and security throughout the country".[989]

333. The Trial Chamber, in the context of its analysis of the 27 April 1994 letter from Kambanda to the prefects, considered a similar alternation between appeals for the restoration of peace, and warnings to the population to remain watchful and unmask the enemy.[990] It concluded that the 27 April 1994 letter was "a thinly-veiled attempt to deliver a false message of pacification for the purpose of hiding, at the very least, the Interim Government's implicit approval of the genocide from the world and from posterity".[991] In addition, instead of clearly acknowledging the responsibility of the *Interahamwe* in the attacks, the 23 April 1994 *communiqué* only concedes, with tenuous language, that "certain *Interahamwe* members [*seem*] to deviate from their objective

[980] Trial Judgement, para. 953.
[981] Trial Judgement, para. 953. *See also* Trial Judgement, para. 1519 ("as Vice-Chairman of the MRND, he drafted, signed, and read MRND *communiqués* at public meetings, which were broadcast on the radio").
[982] Trial Judgement, para. 953.
[983] Trial Judgement, para. 953.
[984] Trial Judgement, para. 984.
[985] Trial Judgement, para. 991.
[986] Trial Judgement, para. 991.
[987] *See infra* Section III.I.1.
[988] Nzirorera Defence Exhibit 33B (MRND party *communiqué* signed by Karemera and Nzirorera, dated 23 April 1994).
[989] Nzirorera Defence Exhibit 33B (MRND party *communiqué* signed by Karemera and Nzirorera, dated 23 April 1994).
[990] Trial Judgement, para. 1040.
[991] Trial Judgement, para. 1044.

to militate for peace and security amongst all Rwandans".[992] Furthermore, both *communiqués* underline that atrocities were perpetrated by civilians under the guise of the *Interahamwe*.[993] The Appeals Chamber considers that a reasonable trier of fact could not have concluded that these *communiqués* raised a reasonable doubt regarding Karemera's failure to prevent the crimes of his subordinates.

334. In light of the foregoing, Karemera and Ngirumpatse have not demonstrated any error in the Trial Chamber's conclusions on their failure to prevent the crimes of their culpable subordinates and to punish them.

5. Cumulative Convictions under Articles 6(1) and 6(3) of the Statute

335. The Trial Chamber considered Karemera's[994] and Ngirumpatse's[995] superior positions as aggravating factors in sentencing, except in relation to the killings in Kigali by 12 April 1994 and the distribution of weapons on 11 and 12 April 1994, for which it entered convictions against Karemera pursuant to his superior responsibility under Article 6(3) of the Statute.[996]

336. Karemera submits that the Trial Chamber erred in law by convicting him under both Articles 6(1) and 6(3) of the Statute for the same crimes.[997] While Karemera acknowledges that the Trial Chamber only considered his superior responsibility as an aggravating factor and "did not actually convict [him] concurrently under the two modes [of liability]", he claims that the Trial Chamber substantially did so by finding him "guilty" under both Article 6(1) and Article 6(3) of the Statute.[998]

337. The Prosecution responds that Karemera's claim is unmeritorious since, in keeping with the jurisprudence, the Trial Chamber correctly convicted him under Article 6(1) of the Statute and only considered his responsibility under Article 6(3) of the Statute as an aggravating factor in sentencing.[999]

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[992] Nzirorera Defence Exhibit 33B (MRND Party *Communiqué* signed by Karemera and Nzirorera, dated 23 April 1994).
[993] Nzirorera Defence Exhibit 33B (MRND Party *Communiqué* signed by Karemera and Nzirorera, dated 23 April 1994); Nzirorera Defence Exhibit 35B (MRND Party *Communiqué* signed by Karemera, dated 27 April 1994).
[994] Trial Judgement, paras. 1624, 1654, 1659, 1671, 1683, 1692, 1706, 1747.
[995] Trial Judgement, paras. 1618, 1624, 1664, 1671, 1683, 1692, 1706, 1758.
[996] Trial Judgement, paras. 1618, 1664, 1692.
[997] Karemera Appeal Brief, paras. 318-320, 332, 337, 339. The Appeals Chamber notes that Karemera did not raise this argument in his notice of appeal. Nonetheless, it observes that the Prosecution did not object and responded to this argument. The Appeals Chamber will therefore consider this argument in the interests of justice.
[998] Karemera Appeal Brief, para. 318.
[999] Prosecution Response Brief (Karemera), paras. 211, 244.

338. The Appeals Chamber recalls that it is inappropriate to convict an accused for a specific count under both Article 6(1) and Article 6(3) of the Statute.[1000] When, for the same count and the same set of facts, the accused's responsibility is pleaded pursuant to both provisions and the accused could be found liable under both, the Trial Chamber should enter a conviction on the basis of Article 6(1) of the Statute alone and consider the superior position of the accused as an aggravating factor in sentencing.[1001]

339. The Appeals Chamber notes that the Trial Chamber correctly recalled these principles.[1002] It also correctly recalled that a trial chamber is required to make a finding on an accused's superior responsibility for the purpose of sentencing.[1003] As acknowledged by Karemera,[1004] the Trial Chamber considered his superior position only as an aggravating circumstance in all instances where it found him guilty pursuant to Article 6(1) of the Statute for the same count and the same set of facts.[1005] While, in its legal findings concerning murder as a serious violation of Article 3 common to the Geneva Conventions and of Additional Protocol II, the Trial Chamber did not provide such clarification,[1006] it clearly follows from the Trial Judgement that Karemera's conviction for this crime is based upon Article 6(1) of the Statute and that the Trial Chamber considered Karemera's superior position in this regard as an aggravating circumstance only.[1007] Additionally, contrary to Karemera's contention, the Trial Chamber did not use the term "guilty" in relation to his superior responsibility for the purpose of sentencing.[1008]

340. Accordingly, Karemera has not demonstrated that the Trial Chamber convicted him cumulatively under Articles 6(1) and 6(3) of the Statute.

6. Conclusion

341. For the foregoing reasons, the Appeals Chamber grants Karemera's Thirty-First Ground of Appeal, in part, and Ngirumpatse's Forty-Fourth Ground of Appeal, in part. The Appeals Chamber

[1000] *Setako* Appeal Judgement, para. 266; *Renzaho* Appeal Judgement, para. 564; *Nahimana et al.* Appeal Judgement, para. 487.
[1001] *Setako* Appeal Judgement, para. 266; *Renzaho* Appeal Judgement, para. 564; *Nahimana et al.* Appeal Judgement, para. 487.
[1002] Trial Judgement, para. 1502.
[1003] Trial Judgement, para. 1503.
[1004] Karemera Appeal Brief, para. 318.
[1005] Trial Judgement, paras. 1624, 1654, 1659, 1671, 1683, 1692, 1747.
[1006] Trial Judgement, para. 1706.
[1007] Trial Judgement, paras. 1706, 1747. Furthermore, the Appeals Chamber notes that the Trial Chamber's findings on extermination as a crime against humanity and on murder as a serious violation of Article 3 common to the Geneva Conventions and of Additional Protocol II refer to its legal findings on genocide in relation to Karemera's forms of responsibility. *See* Trial Judgement, paras. 1691, 1692, 1704-1706. The Appeals Chamber addresses below Ngirumpatse's contention that the Trial Chamber, in relation to murder as a serious violation of Article 3 common to the Geneva Conventions and of Additional Protocol II, cumulatively convicted him on the basis of Article 6(1) and Article 6(3) of the Statute. *See infra* Section III.N.2.
[1008] Trial Judgement, paras. 1624, 1654, 1659, 1671, 1683, 1692, 1706, 1747.

reverses the Trial Chamber's finding that Karemera and Ngirumpatse bear superior responsibility over the Kigali and/or Gisenyi *Interahamwe* in relation to killings following the Murambi Training School meeting on 18 April 1994 and the rapes and sexual assaults of Tutsi women committed outside Kigali from April to June 1994. The Appeals Chamber further recalls that, elsewhere in this Judgement, it concluded that the Trial Chamber erred in holding Karemera and Ngirumpatse responsible as superiors for the actions of Théoneste Bagosora in relation to the distribution of weapons to *Interahamwe*.[1009] The impact of these findings, if any, on Karemera's and Ngirumpatse's sentence will be addressed below. The Appeals Chamber dismisses Karemera's Fifteenth Ground of Appeal, in part, Thirtieth, Thirty-Second, Thirty-Third Grounds of Appeal, and Thirty-Eighth Ground of Appeal, in part, as well as Ngirumpatse's Thirteenth through Twentieth Grounds of Appeal, Fortieth Ground of Appeal and Forty-Seventh Ground of Appeal, in part.

[1009] *See infra* paras. 368-376, 388.

E. Pre-8 April 1994 Meetings (Ngirumpatse Grounds 21 and 22)

342. The Trial Chamber determined that, between late 1993 and early 1994, Karemera and Ngirumpatse participated in public rallies and that, at one of these rallies, Tutsis were characterized as accomplices of the enemy and that, at others, the cause of "Hutu Power" was promoted.[1010] The Trial Chamber, however, was not convinced that the only reasonable conclusion to be drawn from this pre-8 April 1994 evidence was that Karemera and Ngirumpatse intended to destroy the Tutsi population in Rwanda.[1011]

343. Ngirumpatse submits that the Trial Chamber erred in assessing the evidence related to these rallies as well as the meaning of "Hutu Power" prior to 8 April 1994.[1012] The Prosecution responds that the Trial Chamber did not err in assessing this evidence.[1013]

344. A review of the Trial Judgement reflects that none of Ngirumpatse's convictions rests on any of these pre-8 April 1994 events or on the Trial Chamber's understanding of the meaning of "Hutu Power" prior to 8 April 1994.[1014] Consequently, Ngirumpatse has not demonstrated any error on the part of the Trial Chamber that resulted in a miscarriage of justice or invalidated the verdict.[1015]

345. Accordingly, the Appeals Chamber dismisses Ngirumpatse's Twenty-First and Twenty-Second Grounds of Appeal.

[1010] Trial Judgement, paras. 537, 552, 566, 567, 598, 1445(3).
[1011] Trial Judgement, paras. 1446, 1449.
[1012] Ngirumpatse Notice of Appeal, paras. 96-105; Ngirumpatse Appeal Brief, paras. 313-352.
[1013] Prosecution Response Brief (Ngirumpatse), paras. 145-153.
[1014] Trial Judgement, paras. 1446-1449. *See also* Section III.B.1.
[1015] *See*, *e.g.*, *Munyakazi* Appeal Judgement, paras. 129, 130.

F. Distribution of Weapons and Killings in Kigali on 11 and 12 April 1994 (Karemera Grounds 12, 13, 23, in Part, 27, and 31, in Part; Ngirumpatse Grounds 23, 24, 37, 38, 42, in Part, and 47, in Part)

346. The Trial Chamber found that, on 10 April 1994, Karemera and Ngirumpatse attended a meeting at the *Hôtel des Diplomates* in Kigali, where *Interahamwe* leaders of the MRND party were requested to tour roadblocks and to persuade the *Interahamwe* and others manning the roadblocks to stop the killings.[1016] The Trial Chamber found that, at that time, *Interahamwe* from the MRND party had established and were manning or controlling most of the roadblocks in Kigali.[1017] The Trial Chamber further found that, on 11 April 1994, weapons were distributed to the *Interahamwe* in the presence of Colonel Théoneste Bagosora, the *directeur de cabinet* of the Ministry of Defence, with Ngirumpatse's consent, and that, on 12 April 1994, Bagosora arranged for weapons to be issued to persons manning roadblocks.[1018] Thousands of civilians were killed in Kigali by 12 April 1994[1019] and, according to the Trial Chamber, the aforementioned distributions of weapons substantially contributed to the killings at roadblocks in Kigali by this date.[1020]

347. Consequently, the Trial Chamber convicted Ngirumpatse for aiding and abetting genocide, extermination as a crime against humanity, and murder as a serious violation of Article 3 common to the Geneva Conventions and of Additional Protocol II in relation to the distribution of weapons on 11 April 1994,[1021] and for committing these crimes as a member of a joint criminal enterprise based on the role played by other members of the joint criminal enterprise in relation to the distribution of weapons on 12 April 1994.[1022] The Trial Chamber also convicted Karemera of genocide, extermination as a crime against humanity, and murder as a serious violation of Article 3 common to the Geneva Conventions and of Additional Protocol II pursuant to Article 6(3) of the Statute for failing to prevent or punish Bagosora's crimes in distributing weapons on 12 April 1994 and the crimes of the Kigali *Interahamwe* committed in Kigali by 12 April 1994,[1023] and took

[1016] Trial Judgement, para. 714.
[1017] Trial Judgement, para. 1288.
[1018] Trial Judgement, para. 745.
[1019] Trial Judgement, para. 1294.
[1020] Trial Judgement, paras. 1613, 1615, 1662, 1663.
[1021] Trial Judgement, paras. 1613, 1614, 1617, 1691, 1706. The Trial Chamber found that a joint criminal enterprise to pursue the destruction of Tutsi population in Rwanda manifested itself with the distribution of weapons on 11 April 1994. It further found that the distribution of weapons on 12 April 1994 furthered the joint criminal enterprise. Trial Judgement, paras. 1450(1), 1453, 1615.
[1022] Trial Judgement, paras. 1615-1617, 1691, 1706.
[1023] Trial Judgement, paras. 1618, 1664, 1692, 1706.

Ngirumpatse's superior responsibility for Bagosora's and the Kigali *Interahamwe*'s crimes into consideration as an aggravating circumstance in sentencing.[1024]

348. Karemera and Ngirumpatse challenge their convictions based on the distribution of weapons on 11 and 12 April 1994.[1025] In this section, the Appeals Chamber considers whether the Trial Chamber erred: (i) in finding that most roadblocks were established or operated by the *Interahamwe*; (ii) in its assessment of the meeting and the pacification tour of roadblocks on 10 April 1994; and (iii) as to Karemera's and Ngirumpatse's responsibility for the distribution of weapons on 11 and 12 April 1994.

1. Roadblocks Established or Operated by the *Interahamwe*

349. The Trial Chamber found that individuals identified as Tutsis were killed at most roadblocks because of their ethnicity.[1026] It further found that, during the genocide, members of the *Interahamwe*, linked to the MRND party, established, manned, or controlled most roadblocks in Kigali.[1027] The Trial Chamber observed that Ngirumpatse and Karemera represented the "ultimate authority" over the *Interahamwe* in Kigali-ville and Gisenyi Prefectures[1028] and that they "were generally in control of the *Interahamwe*".[1029]

350. Ngirumpatse submits that there was no evidence proving that the *Interahamwe* of the MRND party set up and manned roadblocks.[1030] To the contrary, he observes that the Trial Chamber accepted both that the term "*Interahamwe*" was open to different interpretations,[1031] and that several witnesses testified about various groups having established roadblocks for a variety of purposes.[1032] Ngirumpatse further contends that the Trial Chamber erred in considering a pacification tour of roadblocks on 10 April 1994 as corroboration of the MRND party's control over the roadblocks because it was "an undisputed and established fact that the Interim Government

[1024] Trial Judgement, paras. 1618, 1664, 1692, 1706, 1758. The Appeals Chamber has addressed elsewhere Karemera's and Ngirumpatse's challenges to their superior responsibility for the killings in Kigali by 12 April 1994. *See supra* Section III.D.2.(i).
[1025] Karemera Notice of Appeal, paras. 68-74, 104, 105, 113-115, 128-130; Karemera Appeal Brief, paras. 132-146, 226-236, 244-258, 322-324; Ngirumpatse Notice of Appeal, paras. 106-117, 178-186, 204, 205, 217, 297-299, 305-314; Ngirumpatse Appeal Brief, paras. 353-413, 593-611, 643, 644, 653, 745-752, 754. *See also* AT. 10 February 2014 pp. 24-26; AT. 11 February 2014 pp. 5, 6, 8, 9, 17. The Appeals Chamber will not consider Karemera's Ground 26, concerning meetings prior to the distribution of weapons on 11 April 1994, since he has abandoned it in his appeal brief (*see supra* fn. 28).
[1026] Trial Judgement, paras. 1292, 1450(10). *See also* Trial Judgement, para. 1662. The Appeals Chambers observes that the Trial Chamber's conclusion that "people identified as Tutsis were killed because of their ethnicity at most roadblocks" primarily refers to civilians killed at roadblocks in Kigali by 12 April 1994. *See*, *e.g.*, Trial Judgement, paras. 1283, 1285, 1287, 1294.
[1027] Trial Judgement, paras. 1288, 1450(10). *See also* Trial Judgement, para. 1662.
[1028] Trial Judgement, para. 271. *See also* Trial Judgement, para. 270.
[1029] Trial Judgement, para. 1336. *See also* Trial Judgement, para. 1334.
[1030] Ngirumpatse Appeal Brief, paras. 593, 594, 596, 601; Ngirumpatse Reply Brief, para. 136.
[1031] Ngirumpatse Appeal Brief, paras. 597, 598, *citing* Trial Judgement, para. 1287.

invited all political parties to send representatives to the roadblocks".[1033] Additionally, Ngirumpatse submits that there was no proof of his involvement in the setting up, control, or supervision of the roadblocks.[1034] Finally, Ngirumpatse argues that the Trial Chamber erred in finding that roadblocks were erected to kill Tutsis whereas it emerges from the context of the case and from the evidence that they were intended to prevent RPF movements.[1035]

351. The Prosecution responds that Ngirumpatse's arguments lack merit, and that the Trial Chamber's findings were proper and were based on evidence from both Prosecution and Defence witnesses.[1036]

352. In finding that the *Interahamwe* established and manned roadblocks, the Trial Chamber relied on the evidence of Prosecution Witnesses HH, AWE, BDX, and ALG, the testimony of Defence Witness Agnes Ntamabyaliro in the *Bizimungu et al.* trial, adjudicated facts from the *Rutaganda* case, and an interview with journalists in May 1994 given by Defence Witness Eliézer Niyitegeka to journalists in May 1994.[1037] In relation to its finding that people identified as Tutsis were killed because of their ethnicity at most roadblocks, the Trial Chamber relied on adjudicated facts from the *Rutaganda* case, the testimony of Prosecution Witnesses HH, T, UB, and AWE, and corroboration from both Prosecution Witness G and Defence Witness PTR.[1038]

353. The Appeals Chamber notes that Ngirumpatse does not submit that the Trial Chamber erred in its assessment of this evidence. Instead, he appears to argue that the evidence was insufficient to make findings beyond a reasonable doubt due to uncertainties about the term "*Interahamwe*" and

[1032] Ngirumpatse Appeal Brief, paras. 599, 600, *citing* Trial Judgement, paras. 1286, 1287.
[1033] Ngirumpatse Appeal Brief, para. 603 (emphasis omitted), *citing* Trial Judgement, para. 1288. *See also* Ngirumpatse Reply Brief, para. 137. Ngirumpatse also submits that the pacification messages were effective "until the RPF worsened the situation by bombing the population indiscriminately". *See* Ngirumpatse Appeal Brief, para. 604. Because Ngirumpatse fails to link this assertion with his allegations of error, the Appeals Chamber dismisses this contention.
[1034] Ngirumpatse Appeal Brief, para. 602. *See also* Ngirumpatse Appeal Brief, paras. 609, 610. As part of his Ground 37, Ngirumpatse relies on submissions made in Grounds 15 through 17 of his appeal. *See* Ngirumpatse Appeal Brief, paras. 594, 595, *citing only* "Grounds 15, 16, 17". The Appeals Chamber has addressed these grounds, and the contentions raised by Ngirumpatse in relation to them, elsewhere. *See supra* Section III.D. Additionally, the Appeals Chamber notes that, under his Ground 37 on the setting up and supervision of roadblocks, Ngirumpatse challenges the Trial Chamber's findings regarding his relationship with the soldiers who supervised roadblocks. *See* Ngirumpatse Appeal Brief, para. 605, *referring to* Trial Judgement, para. 1289. The Appeals Chamber notes that Ngirumpatse did not raise this argument in his notice of appeal. Nonetheless, it observes that the Prosecution did not object and responded to this argument. *See* Prosecution Response Brief (Ngirumpatse), para. 247. Accordingly, the Appeals Chamber exercises its discretion to consider it in the interests of justice. However, since Ngirumpatse was not convicted as a superior of the soldiers, the Appeals Chamber summarily dismisses this argument. *See* Trial Judgement, paras. 1556, 1562, 1571.
[1035] Ngirumpatse Appeal Brief, paras. 607, 608. *See also* Ngirumpatse Notice of Appeal, para. 183.
[1036] Prosecution Response Brief (Ngirumpatse), paras. 239-244. *See also* AT. 10 February 2014 pp. 52-58, 61, 73. The Prosecution also submits that Ngirumpatse's culpability was properly established through his participation in distributing weapons to *Interahamwe* manning roadblocks, and through his superior responsibility. *See* Prosecution Response Brief (Ngirumpatse), paras. 245-247.
[1037] Trial Judgement, para. 1284. *See also* Trial Judgement, paras. 1239, 1250, 1251, 1260-1262, 1264, 1267, 1270.
[1038] Trial Judgement, paras. 1290, 1292. *See also* Trial Judgement, paras. 1239, 1251-1253, 1255, 1258, 1259, 1261, 1277.

because of evidence that other groups also set up roadblocks.[1039] The Appeals Chamber observes that the Trial Chamber was aware of both of these issues, as Ngirumpatse himself acknowledges.[1040] The Trial Chamber concluded, however, that "the evidence with respect to the weekend of 8 to 10 April 1994 convincingly shows that the majority of the roadblocks [in Kigali] were set up or manned by MRND *Interahamwe* or controlled by MRND *Interahamwe*".[1041] In particular, in its discussion of the evidence, the Trial Chamber cited a report from UNAMIR recounting that *Interahamwe* from the MRND party controlled several areas in the city and were committing atrocities.[1042] Ngirumpatse has not challenged this evidence and thus has failed to demonstrate that the Trial Chamber erred in finding that roadblocks in Kigali were operated by *Interahamwe* linked to the MRND party.

354. The Appeals Chamber further notes that, contrary to Ngirumpatse's submission, the Trial Chamber did not find that the roadblocks were erected to kill Tutsis. In any case, the Trial Chamber did not base its finding of Ngirumpatse's liability for the crimes committed at the roadblocks on the reason for their establishment. Rather, it found Ngirumpatse liable for the distributions of weapons to *Interahamwe* from the MRND party on 11 and 12 April 1994, which facilitated the killing of Tutsis at the roadblocks.[1043] Elsewhere, the Appeals Chamber has assessed and rejected Ngirumpatse's claim that he lacked control or authority over the personnel manning the roadblocks.[1044]

355. As for Ngirumpatse's contention that the evidence of the pacification tour should not have served as corroboration of the control of roadblocks by the *Interahamwe* of the MRND party because all political parties were invited to send their representatives, the Appeals Chamber observes that Ngirumpatse erroneously asserts this invitation to all political parties to have been "an undisputed and established fact".[1045] However, the Trial Chamber found that it was leaders of the *Interahamwe*, not representatives of all political parties, who were requested to conduct a tour of the roadblocks.[1046]

356. For the foregoing reasons, Ngirumpatse has not demonstrated that the Trial Chamber erred in finding that most of the roadblocks in Kigali were established and operated by the *Interahamwe*

[1039] Ngirumpatse Appeal Brief, paras. 596-601.
[1040] Ngirumpatse Appeal Brief, paras. 598, 600, *citing* Trial Judgement, paras. 1286, 1287.
[1041] Trial Judgement, para. 1288.
[1042] Trial Judgement, para. 1249, *citing* Prosecution Exhibit 141 (UN Cable, dated 9 April 1994), paras. 3, 8.
[1043] Trial Judgement, paras. 1557, 1610-1618, 1662-1664.
[1044] *See supra* Section III.D.1.(a).(iii).
[1045] Ngirumpatse Appeal Brief, para. 603.
[1046] Trial Judgement, paras. 711, 714. *See also* Trial Judgement, paras. 674, 1288.

linked to the MRND party and that Tutsi civilians were killed at most of these roadblocks because of their ethnicity.

2. Pacification Tour of Roadblocks

357. The Trial Chamber found that, on 10 April 1994, Karemera and Ngirumpatse attended a meeting at the *Hôtel des Diplomates* in Kigali, where the *Interahamwe* leaders were asked to tour the roadblocks and to persuade those manning the roadblocks to stop the killings.[1047] Although the Trial Chamber was convinced that the request to stop the killings at roadblocks was not motivated by genuine concern for the Tutsi population,[1048] it could not conclude beyond a reasonable doubt that the mission was launched to aid and abet future killings.[1049]

358. Ngirumpatse submits that the Trial Chamber erroneously found this alleged meeting to be undisputed,[1050] and that there was no evidence proving that it took place.[1051] Ngirumpatse further argues that the Trial Chamber erred in questioning the motivation for the tour of the roadblocks.[1052]

359. A review of the Trial Judgement reflects that Ngirumpatse was not convicted with respect to this meeting or his motivation underlying the pacification tour.[1053] Nor did the Trial Chamber rely on these aspects in assessing his membership in a joint criminal enterprise or his superior responsibility.[1054] The Trial Chamber simply relied on this evidence to corroborate a finding, which was already "convincingly" established by other evidence, that the MRND *Interahamwe* manned and controlled roadblocks in Kigali prior to 12 April 1994.[1055] Accordingly, Ngirumpatse has not demonstrated that any alleged error in this respect on the part of the Trial Chamber resulted in a miscarriage of justice or invalidated the verdict.

[1047] Trial Judgement, para. 714.
[1048] Trial Judgement, para. 711.
[1049] Trial Judgement, paras. 713, 715.
[1050] Ngirumpatse Appeal Brief, paras. 353, 356; Ngirumpatse Reply Brief, para. 96.
[1051] Ngirumpatse Appeal Brief, paras. 356-359; Ngirumpatse Reply Brief, para. 97.
[1052] Ngirumpatse Appeal Brief, paras. 354, 360, 361; Ngirumpatse Reply Brief, paras. 98, 99. Ngirumpatse further contends that the Trial Chamber contradicted itself by stating both that the Interim Government requested the tour, and that the Accused ordered the *Interahamwe* to conduct the tour. *See* Ngirumpatse Appeal Brief, paras. 361, 362; Ngirumpatse Reply Brief, para. 98. The Appeals Chamber has addressed this argument in the section pertaining to superior responsibility. *See supra* fn. 705.
[1053] Trial Judgement, paras. 1573(5), 1574.
[1054] *See*, *e.g.*, Trial Judgement, paras. 1450, 1552, 1559. The Trial Chamber referred to its conclusion that Ngirumpatse ordered the pacification tour of roadblocks at the meeting on 10 April 1994, and that this order was obeyed. *See* Trial Judgement, para. 1552. The Appeals Chamber has addressed this argument in the section pertaining to superior responsibility. *See supra* Section III.D.1.(a).(viii).
[1055] Trial Judgement, para. 1288.

3. Meeting and Distribution of Weapons

360. The Trial Chamber found that, at the *Hôtel des Diplomates* in Kigali on 11 April 1994, weapons were distributed to the *Interahamwe*.[1056] It follows from the Trial Judgement that this distribution took place in the presence of Bagosora and with the consent of Ngirumpatse and Joseph Nzirorera.[1057] The Trial Chamber found that, the following day, Nzirorera arranged with Bagosora to issue more weapons to persons manning roadblocks.[1058] The Trial Chamber found that, when these distributions took place on 11 and 12 April 1994, it was foreseeable to the MRND leaders that the weapons would be used to kill Tutsi civilians.[1059]

361. Based on these findings, the Trial Chamber found that Ngirumpatse aided and abetted the killings at roadblocks in Kigali through the distribution of weapons on 11 April 1994[1060] and that he committed killings, through a joint criminal enterprise, based on the distribution of weapons on 12 April 1994.[1061] The Trial Chamber also found that both Karemera and Ngirumpatse bear superior responsibility for failing to prevent or punish Bagosora's participation in the distribution of weapons.[1062]

362. Karemera and Ngirumpatse submit that the Trial Chamber erred in finding them criminally responsible for the distributions of weapons. They contend that they received insufficient notice in relation to these events, and challenge the Trial Chamber's assessment of the modes of liability and of the evidence.[1063]

[1056] Trial Judgement, paras. 745, 1450(1).
[1057] Trial Judgement, paras. 745, 1450(1). *See also* Trial Judgement, paras. 739, 740.
[1058] Trial Judgement, paras. 745, 1450(1). *See also* Trial Judgement, paras. 741, 742.
[1059] Trial Judgement, paras. 745, 1450(1). *See also* Trial Judgement, paras. 743, 744. The Appeals Chamber observes that there is some ambiguity in the factual findings as to whether the Trial Chamber found that both distributions of weapons were undertaken with the foreseeability that they would be used to kill Tutsi civilians, or whether this applied only to the distribution on 12 April 1994. *See* Trial Judgement, paras. 743-745. The Trial Chamber also found, however, that a joint criminal enterprise to destroy the Rwandan Tutsi population materialized at the time of the weapons distribution on 11 April 1994. *See* Trial Judgement, paras. 1450(1), 1453, 1454. Consequently, the Appeals Chamber understands the Trial Chamber's finding of foreseeability to apply equally to the weapons distributions on 11 and 12 April 1994.
[1060] Trial Judgement, para. 1613.
[1061] Trial Judgement, para. 1616. *See also* Trial Judgement, paras. 1450(1), 1458-1460.
[1062] Trial Judgement, para. 1618. *See also* Trial Judgement, paras. 1526, 1528, 1529, 1532-1534, 1539, 1541, 1542, 1554-1557, 1560-1562, 1567, 1568, 1570, 1571. Under Ground 27 of his appeal, Karemera submits that the Trial Chamber erroneously assessed the evidence in relation to the distributions of weapons on 11 and 12 April 1994, and that this led to Karemera being convicted for these distributions under both Articles 6(1) and 6(3) of the Statute. *See* Karemera Appeal Brief, paras. 244-258. *See also* Karemera Appeal Brief, paras. 33, 316, 317, 320. In this regard, the Appeals Chamber observes the Trial Chamber's finding that Karemera did not substantially contribute to the common purpose of the joint criminal enterprise until 18 April 1994. *See* Trial Judgement, paras. 1450(3), 1457. Because Karemera was not convicted pursuant to Article 6(1) of the Statute for the distributions of weapons on 11 and 12 April 1994, this aspect of his appeal is summarily dismissed. *See also supra* Section III.D.
[1063] Karemera Appeal Brief, paras. 134-138, 140-146, 227-236, 245-258, 321-324; Karemera Reply Brief, paras. 32-36, 55, 56, 66, 67; Ngirumpatse Appeal Brief, paras. 364-413, 643, 644, 646, 653, 662, 664, 665, 667, 746, 752, 754; Ngirumpatse Reply Brief, paras. 100-105, 166, 180-188.

(a) Notice

363. The Indictment alleges that:

> 38. On or about 10 April 1994 Édouard KAREMERA, Mathieu NGIRUMPATSE, and Joseph NZIRORERA convened a meeting with the national leadership of the *Interahamwe* at the *Hôtel des Diplomates* that included participation from the recently appointed Interim Government ministers. Mathieu NGIRUMPATSE ordered and instigated the *Interahamwe* leaders to control their men and to invoke the authority of the Interim Government to organize the removal [of] corpses from the streets. The campaign was deemed one of "pacification", though essentially, and practically, it was a means of exerting control and direction over *Interahamwe* militias so that the killings would be focused on the most important targets first, the Tutsi intellectuals, and so that the killings would proceed with greater discretion, and in fact was a means to aid and abet the killings.
>
> 39. Even as they attempted to control the killings at roadblocks, Mathieu NGIRUMPATSE and Joseph NZIRORERA made arrangements with Théoneste BAGOSORA to obtain firearms from the Ministry of Defense and caused such weapons to be distributed to militiamen in Kigali, intending that they be used to attack and kill the Tutsi population.

364. Karemera and Ngirumpatse submit that paragraph 39 of the Indictment alleges the distribution of weapons on 10 April 1994, and that the Trial Chamber prejudicially expanded this allegation to find that weapons were distributed on 11 and 12 April 1994.[1064] Karemera also maintains that he was only charged in relation to the meeting in paragraph 38 of the Indictment, but that he was unable to apprehend that the allegations against him extended to the distribution of weapons in paragraph 39 of the Indictment, since his name was not mentioned there.[1065] Ngirumpatse further contends that the Indictment did not plead a superior-subordinate relationship between him and Bagosora.[1066]

365. The Prosecution responds that paragraph 39 of the Indictment, together with paragraph 38, plead that Karemera and Ngirumpatse were involved in the distribution of weapons.[1067] The Prosecution further submits that paragraph 18 of the Indictment alleges a superior-subordinate relationship with all administrative personnel in the ministries controlled by the MRND party, that this included Bagosora, and that identifying alleged subordinates by category constitutes sufficient notice.[1068]

366. The Appeals Chamber observes that the allegations in this portion of the Indictment appear in chronological order. Karemera and Ngirumpatse are mistaken, however, that paragraphs 38

[1064] Karemera Appeal Brief, paras. 134-137; Ngirumpatse Appeal Brief, paras. 364-366, 369-372; Ngirumpatse Reply Brief, paras. 101-103. *See also* Ngirumpatse Appeal Brief, paras. 367, 368.
[1065] Karemera Appeal Brief, para. 136.
[1066] Ngirumpatse Appeal Brief, para. 751; Ngirumpatse Reply Brief, para. 188.
[1067] Prosecution Response Brief (Karemera), para. 91; Prosecution Response Brief (Ngirumpatse), para. 167. With respect to Karemera's challenge, the Prosecution also relies on the context provided by paragraphs 40 and 41 of the Indictment, and on the Prosecution Pre-Trial Brief. *See* Prosecution Response Brief (Karemera), paras. 91, 92.
[1068] Prosecution Response Brief (Ngirumpatse), para. 351, *citing Simba* Appeal Judgement, paras. 71, 72. The Prosecution referred to paragraph 17 of the Indictment, but given the content of the Prosecution's submissions and the

and 39 of the Indictment allege criminal conduct "on" 10 April 1994.[1069] Instead, the Indictment specifies that their alleged conduct took place "[o]n or about 10 April 1994".[1070] The Appeals Chamber considers that this phrase could encompass 11 and 12 April 1994, and was sufficiently precise to give notice of these dates to Karemera and Ngirumpatse.[1071]

367. Turning to Karemera's submissions contesting that paragraph 39 of the Indictment charged him with criminal responsibility, the Appeals Chamber recalls that Karemera was not found to have personally participated in the distribution of weapons on 11 and 12 April 1994. Instead, he was convicted under Article 6(3) of the Statute for failing to punish Bagosora for his involvement.[1072]

368. Paragraph 18 of the Indictment provides, in relevant part, that:

> From January 1994 through July 1994, Édouard KAREMERA, Mathieu NGIRUMPATSE, and Joseph NZIRORERA exercised effective control over the following persons or classes of persons: […]
>
> (vii) administrative personnel in the ministries controlled by the MRND, such as Callixte KALIMANZIRA, *Directeur de cabinet* in the Ministry of Interior.
>
> The Prosecutor is unable to specifically identify each and every subordinate of the accused. This is the best information available at this time.

369. Elsewhere in the Indictment, Bagosora is identified as the *Directeur de cabinet* in the Ministry of Defense,[1073] and this Ministry is alleged – along with the Ministry of the Interior – to have been "controlled by the MRND political party".[1074]

370. The Appeals Chamber recalls the well-established principle that in determining whether an accused was adequately put on notice of the nature and cause of the charges against him, the indictment must be considered as a whole.[1075] When an accused is charged with superior responsibility pursuant to Article 6(3) of the Statute, the indictment must plead certain material facts, including that "the accused is the superior of sufficiently identified subordinates over whom

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quotation of a different Indictment paragraph, the Appeals Chamber considers it clear that the Prosecution intended to refer instead to paragraph 18 of the Indictment.

[1069] Karemera Appeal Brief, para. 135; Ngirumpatse Appeal Brief, para. 364.

[1070] The French version of the Indictment specifies, at paragraph 38: "[*l*]*e 10 avril 1994 ou vers cette date*".

[1071] *See generally Muvunyi II* Appeal Judgement, para. 29; *Rukundo* Appeal Judgement, paras. 162, 163; *Nchamihigo* Appeal Judgement, para. 374; *Rutaganda* Appeal Judgement, paras. 300-303 (concerning an Indictment allegation that weapons were distributed "on or about" a specific date in April 1994).

[1072] Trial Judgement, paras. 745, 1610, 1611, 1618.

[1073] Indictment, para. 6(i) (identifying alleged members of the joint criminal enterprise, and referring to "Théoneste BAGOSORA, *Directeur de cabinet* in the Ministry of Defense" under the sub-heading of "military authorities"). Callixte Kalimanzira is also identified as an alleged member of the joint criminal enterprise, but as one of the "political authorities at the national and regional level". *See* Indictment, para. 6(ii).

[1074] Indictment, para. 13 ("the Ministry of the Interior and the Ministry of Defense, both of which were controlled by the MRND political party, […].").

he had effective control […] and for whose acts he is alleged to be responsible".[1076] Under certain circumstances, referring to an alleged subordinate by category can constitute sufficient notice of his or her identity.[1077] However, where the Prosecution has specific information in its possession pertaining to the material facts of its case, it should expressly provide these facts in the indictment.[1078]

371. An indictment which fails to set forth the specific material facts underpinning the charges against the accused is defective.[1079] If an indictment is found to be defective because it fails to plead material facts or does not plead them with sufficient specificity, the defect may be cured if the Prosecution provides the accused with timely, clear, and consistent information detailing the factual basis underpinning the charges.[1080] However, a clear distinction has to be drawn between vagueness in an indictment and an indictment omitting certain charges altogether.[1081] While it is possible to remedy the vagueness of an indictment, omitted charges can be incorporated into the indictment only by a formal amendment pursuant to Rule 50 of the Rules.[1082] In reaching its judgement, a trial chamber can only convict the accused of crimes that are charged in the indictment.[1083]

372. Paragraph 18 of the Indictment alleges that Karemera and Ngirumpatse had a superior-subordinate relationship with "administrative personnel in the ministries controlled by the MRND", citing as an example Callixte Kalimanzira, the *Directeur de cabinet* of the Ministry of the Interior.

[1075] *See*, *e.g.*, *Mugenzi and Mugiraneza* Appeal Judgement, para. 71; *Ntabakuze* Appeal Judgement, para. 65; *Bagosora and Nsengiyumva* Appeal Judgement, para. 182; *Seromba* Appeal Judgement, para. 27; *Gacumbitsi* Appeal Judgement, para. 123.

[1076] *Ntabakuze* Appeal Judgement, para. 100; *Bagosora and Nsengiyumva* Appeal Judgement, para. 191; *Muvunyi I* Appeal Judgement, para. 19; *Nahimana et al.* Appeal Judgement, para. 323.

[1077] *Hategekimana* Appeal Judgement, para. 166 (considering that "a soldier from the Ngoma Military Camp" provided a reasonable identification of the alleged subordinate); *Ntabakuze* Appeal Judgement, para. 127 (upholding a finding that there was sufficient notice for crimes allegedly committed by "members of the Para-Commando Battalion" at specific locations); *Muvunyi I* Appeal Judgement, para. 55 (finding sufficient notice that alleged superior responsibility extended to the criminal acts of "ESO Camp soldiers" at a specific location); *Ntagerura et al.* Appeal Judgement, paras. 140, 141, 153 (establishing that sufficient notice was provided when the alleged subordinates were identified as soldiers from the camp under the accused's control). *See also Simba* Appeal Judgement, paras. 71, 72 (confirming the Trial Chamber's statement, in relation to notice of members of an alleged joint criminal enterprise, that it was sufficient to identify the general perpetrators "by broad category, such as *Interahamwe* or gendarmes" along with other geographic and temporal details). Notably, in the *Simba* case on which the Prosecution relies, the Trial Chamber also stated that it was "not satisfied that the Prosecution could have provided more specific identification". *Simba* Trial Judgement, para. 393, *quoted in Simba* Appeal Judgement, para. 71, *cited by* Prosecution Response Brief (Ngirumpatse), para. 351.

[1078] *Bagosora and Nsengiyumva* Appeal Judgement, paras. 131, 132; *Muvunyi I* Appeal Judgement, para. 94; *Muhimana* Appeal Judgement, para. 197. *See also Renzaho* Appeal Judgement, para. 128.

[1079] *Ntabakuze* Appeal Judgement, para. 30; *Bagosora and Nsengiyumva* Appeal Judgement, para. 96; *Ntawukulilyayo* Appeal Judgement, para. 189.

[1080] *Mugenzi and Mugiraneza* Appeal Judgement, para. 117; *Ntabakuze* Appeal Judgement, para. 30; *Bagosora and Nsengiyumva* Appeal Judgement, para. 96; *Ntawukulilyayo* Appeal Judgement, para. 189.

[1081] *Mugenzi and Mugiraneza* Appeal Judgement, para. 117; *Ntabakuze* Appeal Judgement, para. 30; *Bagosora and Nsengiyumva* Appeal Judgement, para. 96; *Ntawukulilyayo* Appeal Judgement, para. 189.

[1082] *Mugenzi and Mugiraneza* Appeal Judgement, para. 117; *Ntabakuze* Appeal Judgement, para. 30; *Bagosora and Nsengiyumva* Appeal Judgement, para. 96; *Ntawukulilyayo* Appeal Judgement, para. 189.

Paragraph 13 of the Indictment identifies the Ministry of Defence as being under MRND control. Taken together, these paragraphs might suggest that Bagosora was amongst Karemera's and Ngirumpatse's subordinates. However, the Appeals Chamber observes that, unlike Kalimanzira, Bagosora is not named as an alleged subordinate, even though he is mentioned elsewhere in the Indictment. The Indictment specifies that the list of subordinates contains "the best information available at this time".[1084] Considering the Indictment holistically, this phrase leaves the impression that Karemera and Ngirumpatse are not charged with superior responsibility for the acts of Bagosora.[1085]

373. Moreover, the procedural history in this case makes clear that Karemera and Ngirumpatse were not charged for any superior responsibility over Bagosora. On 5 August 2005, the Trial Chamber rendered a decision concerning defects in a previously filed indictment, and stated that:

> Regarding the issue of identity of subordinates, if the Prosecution is in a position to name an individual, the Indictment should set it forth. When people cannot be individually identified, then the Indictment should refer to their category or position as a group. Where the Prosecution cannot provide greater detail, then the Indictment must clearly indicate that it provides the best information available to the Prosecution.[1086]

The Trial Chamber found the prior indictment to be defective in this regard, and ordered the Prosecution to amend its indictment and to "[r]eveal the identities of subordinates if known, otherwise a statement that this information is unknown".[1087]

374. On 25 August 2005, the Prosecution filed an amended indictment, in which it made substantial changes to the list of alleged subordinates of Karemera and Ngirumpatse.[1088] It also added the specification, evidently in response to the Trial Decision of 5 August 2005, that: "The Prosecutor is unable to specifically identify each and every subordinate of the accused. This is the

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[1083] *Mugenzi and Mugiraneza* Appeal Judgement, para. 117; *Ntawukulilyayo* Appeal Judgement, para. 189; *Munyakazi* Appeal Judgement, para. 36.
[1084] Indictment, para. 18.
[1085] *Cf. Ntawukulilyayo* Appeal Judgement, para. 197 (considering, with respect to the pleading of modes of liability, that the specification of certain information in individual paragraphs of the indictment "created more ambiguity with respect to the pleading […] than if the Prosecution had failed to specify any" information at all).
[1086] *The Prosecutor v. Édouard Karemera et al.*, Case No. ICTR-98-44-R72, Decision on Defects in the Form of the Indictment, 5 August 2005 ("Trial Decision of 5 August 2005"), para. 24 (references omitted).
[1087] Trial Decision of 5 August 2005, para. 26, p. 13.
[1088] *The Prosecutor v. Édouard Karemera et al.*, Case No. ICTR-98-44-PT, Amended Indictment of 24 August 2005 – Annotations, 25 August 2005 (confidential), para. 18 (containing a "track-changes" version identifying amendments to that indictment, including the list of alleged subordinates). The Appeals Chamber observes that this indictment served as the operative indictment for much of the trial, except for changes made due to the Prosecution's withdrawal of three indictment paragraphs in 2008, and due to Joseph Nzirorera's death in 2010. *See The Prosecutor v. Édouard Karemera et al.*, Case No. ICTR-98-44-T, Prosecutor's Filing in Compliance with Trial Chamber III Order of 19 March 2008: Amended Indictment of 3 April 2008, 3 April 2008; *The Prosecutor v. Édouard Karemera and Matthieu Ngirumpatse*, Case No. ICTR-98-44-T, Prosecutor's Submission of Eighth Amended Indictment pursuant to Trial Chamber III Order of 23 August 2010, 23 August 2010.

best information available at this time".[1089] This amended indictment of 25 August 2005, however, did not specify Bagosora as an alleged subordinate of Karemera and Ngirumpatse, even though it continued to identify Bagosora as a member of the joint criminal enterprise.[1090]

375. Even if this amounted "only" to vagueness rendering the Indictment defective, the Prosecution does not argue that any defect in the Indictment in this respect was cured, and it does not refer to any material capable of curing this defect.[1091] The Appeals Chamber notes that the Prosecution Pre-Trial Brief does not provide any indication that the Prosecution would rely on these alleged superior-subordinate relationships to support its case.[1092] In any event, the Prosecution Pre-Trial Brief is of little assistance in the present instance because it pertained to a previously filed indictment.[1093] This is particularly true here, given that the prior indictment was found to be defective in relation to the list of alleged subordinates, and that this resulted in the filing of a substantially amended indictment concerning this very issue. Furthermore, a review of the Prosecution's opening statement reveals no further information identifying Bagosora as an alleged subordinate of Karemera and Ngirumpatse.[1094]

376. For the foregoing reasons, the Appeals Chamber finds that the Indictment failed to put Karemera and Ngirumpatse on notice that Bagosora was alleged to be their subordinate and that they were being charged with superior responsibility for his crimes. The Appeals Chamber therefore finds that the Trial Chamber erred in holding Karemera and Ngirumpatse responsible as superiors based on the distribution of weapons by Bagosora. Accordingly, the Appeals Chamber reverses the finding that Karemera and Ngirumpatse are responsible under Article 6(3) of the Statute for failing to prevent or punish Bagosora's criminal conduct in distributing weapons on 11 and 12 April 1994.

[1089] Indictment, para. 18.
[1090] Indictment, para. 6.
[1091] Prosecution Response Brief (Karemera), para. 92, *referring to* Prosecution Pre-Trial Brief; Prosecution Response Brief (Ngirumpatse), para. 351.
[1092] *See*, *e.g.*, Prosecution Pre-Trial Brief, paras. 85-89, 124-126, 152. *See also* Prosecution Pre-Trial Brief, paras. 208-211.
[1093] The Appeals Chamber observes that the Prosecution Pre-Trial Brief was filed on 27 June 2005 and pertains to "[t]he amended indictment of 23 February 2005". *See* Prosecution Pre-Trial Brief, para. 2. Therefore, the Prosecution Pre-Trial Brief was filed before, and did not pertain to, the operative Indictment of 23 August 2010. The Appeals Chamber also recalls that where the Appeals Chamber has conducted a curing analysis with respect to defects in an indictment, it has tended to look to *post*-indictment submissions. *See*, *e.g.*, *Ntawukulilyayo* Appeal Judgement, fn. 505, *quoting Ntawukulilyayo* Trial Judgement, para. 47. Having found that the Prosecution Pre-Trial Brief did not provide the necessary information, the Appeals Chamber considered that it did not need to consider the issue further.
[1094] Opening Statement, T. 19 September 2005 pp. 6-22.

(b) Ngirumpatse's Role in the Distribution of Weapons

377. Ngirumpatse argues that the Trial Chamber erred in finding that, because he spent time at the *Hôtel des Diplomates* on 11 April 1994, he consented to the distribution of weapons.[1095] He claims that the Trial Chamber acknowledged that being present at the scene of a crime is insufficient to establish approval, and therefore argues that evidence that he spent time at the hotel does not demonstrate his presence during, or approval of, the alleged distribution of weapons.[1096]

378. Ngirumpatse further submits that the Trial Chamber erred in finding that the weapons distributed on 11 and 12 April 1994 were aimed and actually used to commit crimes, and that this error invalidates its finding that he was responsible for commission through participation in a joint criminal enterprise and aiding and abetting with respect to any resultant killings.[1097]

379. The Prosecution responds that Ngirumpatse's claims are unsubstantiated.[1098] In the Prosecution's view, the Trial Chamber correctly found that the distribution of weapons on 11 April 1994 substantially contributed to the genocide by providing the physical perpetrators of the killings with the material means to kill Tutsis.[1099] In this regard, the Prosecution recalls that hundreds of weapons were distributed to the *Interahamwe* who had already began and continued killings in Kigali, and that thousands of mostly Tutsi civilians had been massacred by militias and soldiers by 12 April 1994.[1100]

380. The Appeals Chamber notes that the Trial Chamber did not find any direct evidence that Ngirumpatse authorized or agreed to the distribution of weapons on 11 April 1994, but reached its conclusion on the basis of circumstantial evidence.[1101] The Appeals Chamber recalls that a trial chamber may infer the existence of a particular fact upon which the guilt of the accused depends from circumstantial evidence only if it is the only reasonable conclusion that could be drawn from the evidence presented.[1102]

[1095] Ngirumpatse Appeal Brief, para. 394.
[1096] Ngirumpatse Appeal Brief, paras. 394, 395, 397-399.
[1097] Ngirumpatse Appeal Brief, paras. 389, 390, 653, 748, 752; Ngirumpatse Reply Brief, paras. 180, 181. Ngirumpatse also challenges the Trial Chamber's finding that he knew of the principal perpetrators' genocidal intent and shared it. Ngirumpatse Appeal Brief, paras. 749, 750; Ngirumpatse Reply Brief, paras. 182-186.
[1098] Prosecution Response Brief (Ngirumpatse), para. 344.
[1099] Prosecution Response Brief (Ngirumpatse), para. 347.
[1100] Prosecution Response Brief (Ngirumpatse), para. 347. *See also* Prosecution Response Brief (Ngirumpatse), paras. 310, 345. The Prosecution further maintains that the Trial Chamber did not err in finding that Ngirumpatse had the requisite intent to aid and abet genocide. Prosecution Response Brief (Ngirumpatse), paras. 348-350.
[1101] *See* Trial Judgement, paras. 739, 740, 745.
[1102] *Bagosora and Nsengiyumva* Appeal Judgement, para. 515; *Nchamihigo* Appeal Judgement, para. 80, *citing Stakić* Appeal Judgement, para. 219. *See also Karera* Appeal Judgement, para. 34; *Ntagerura et al.* Appeal Judgement, para. 306.

381. The Trial Chamber found that weapons were distributed to *Interahamwe* sector leaders in the presence of Bagosora, Callixte Nzabonimana – an MRND minister of the Interim Government – and others on 11 April 1994 at the *Hôtel des Diplomates*.[1103] It further relied on Nzirorera's evidence, as corroborated by the hearsay evidence of Witness HH, to conclude that Ngirumpatse was present at the *Hôtel des Diplomates* on that day.[1104]

382. In view of the findings that the MRND Executive Bureau controlled the *Interahamwe* in Kigali and that Ngirumpatse was the ultimate authority of them,[1105] along with testimony that *Interahamwe* leaders informed MRND leaders that persons manning roadblocks had requested weapons,[1106] the Trial Chamber concluded that weapons were distributed to the *Interahamwe* on 11 April 1994 with Ngirumpatse's "consent".[1107] It considered the only reasonable inference to be that Ngirumpatse, as chairman of the MRND Executive Bureau, aided and abetted the killings at roadblocks in Kigali through the distribution of weapons on 11 April 1994.[1108] According to the Trial Chamber, the distribution of weapons on 11 April 1994 substantially contributed to the genocide by providing the physical perpetrators of the killings with the material means to kill Tutsis.[1109]

383. The Trial Chamber found that Ngirumpatse, given his position within the MRND party, represented the "ultimate authority" over the *Interahamwe* in Kigali-ville and Gisenyi Prefectures.[1110] In its legal findings on superior responsibility, the Trial Chamber addressed Ngirumpatse's *de jure* authority and recalled the powers of the MRND's chairman according to the party's statute.[1111] As the Trial Chamber noted, Article 51 of the MRND Statute enumerates several political functions such as the duty to advise, direct, and represent the political party, but does not refer to any power or authority to either consent to or forbid the distribution of weapons.[1112] Furthermore, the Trial Chamber addressed Ngirumpatse's *de facto* authority and referred to his "involve[ment] in the distribution of weapons to the *Interahamwe* and the stockpiling and concealment of weapons in Kigali for later distribution to the *Interahamwe*".[1113]

384. The evidence underpinning the Trial Chamber's finding in relation to Ngirumpatse's involvement in the stockpiling, concealing, and distribution of weapons to the *Interahamwe* is

[1103] Trial Judgement, para. 739.
[1104] Trial Judgement, para. 739.
[1105] Trial Judgement, para. 740, *referring to* Trial Judgement, paras. 269, 271.
[1106] Trial Judgement, para. 740, *referring to* Trial Judgement, paras. 679, 683, 684.
[1107] Trial Judgement, paras. 740, 745. *See also* Trial Judgement, paras. 711, 1450(1), 1560, 1610.
[1108] Trial Judgement, para. 1613.
[1109] Trial Judgement, para. 1613.
[1110] Trial Judgement, paras. 269, 271.
[1111] Trial Judgement, para. 1544. *See also* Trial Judgement, paras. 1543, 1545.
[1112] Trial Judgement, para. 1544, *referring to* Ngirumpatse Defence Exhibit 2 (MRND Statute).

discussed elsewhere in the Trial Judgement and pertains to events prior to April 1994.[1114] Moreover, the Trial Chamber's findings that Ngirumpatse and the MRND Executive Bureau agreed with the military authorities to distribute arms to the *Interahamwe* and stockpile arms for later distribution to the *Interahamwe*,[1115] is based on inferences.[1116] However, while the Trial Judgement refers to evidence showing, *inter alia*, that *Interahamwe* received military training and weapons with the knowledge and endorsement of the MRND Executive Bureau, the Trial Chamber never expressly discussed whether the only reasonable conclusion to be drawn from the evidence was that Ngirumpatse's agreement to such activities was essential for their occurrence.[1117]

385. The Appeals Chamber also notes that the Trial Chamber's finding on Ngirumpatse's consent was drawn from testimonies that *Interahamwe* leaders informed MRND leaders that persons manning roadblocks had requested weapons.[1118] According to the Trial Chamber, the *Interahamwe* leaders reported this information following a request made by senior officials, including Ngirumpatse, that they conduct a tour in order to "persuade the *Interahamwe* and others manning the roadblocks to stop the killings".[1119] The Trial Chamber also relied on evidence that Ngirumpatse stayed at the *Hôtel des Diplomates* on 11 April 1994.[1120] However, the Trial Chamber did not explain why or how the knowledge that persons manning roadblocks had requested weapons or his staying at the hotel at the relevant time could lead to the only reasonable inference that Ngirumpatse consented to the distribution of weapons on 11 April 1994.

386. Based on the foregoing, the Appeals Chamber considers, Judges Pocar and Ramaroson dissenting, that the Trial Chamber erred in finding that the only reasonable inference to be drawn from the circumstantial evidence was that Ngirumpatse consented on 11 April 1994 to the distribution of weapons to the *Interahamwe* at roadblocks. Accordingly, the Appeals Chamber finds, Judges Pocar and Ramaroson dissenting, that the Trial Chamber erred in concluding that Ngirumpatse aided and abetted the killings based on the distribution of weapons on 11 April 1994. Moreover, the Appeals Chamber observes that Ngirumpatse's purported agreement to the distribution of these weapons manifested his agreement to participate in the joint criminal enterprise

[1113] Trial Judgement, para. 1548, *referring to* Trial Judgement, paras. 445-450.
[1114] Trial Judgement, para. 360 (concerning the allegation that Ngirumpatse was involved with the stockpiling and distribution of weapons "during 1993 and early 1994"), 445-450 (making findings concerning Ngirumpatse's involvement with this alleged stockpiling and distribution of weapons).
[1115] Trial Judgement, para. 448. The Trial Chamber also clearly stated that "[t]he Prosecution has not proved beyond a reasonable doubt that the distribution of weapons to the *Interahamwe* and stockpiling of weapons for later distribution to the *Interahamwe* was aimed at killing Tutsi civilians". *See* Trial Judgement, para. 454.
[1116] Trial Judgement, paras. 446, 447.
[1117] Trial Judgement, paras. 445-447. *See also* Trial Judgement, para. 446 ("[t]hese circumstances, therefore, strongly suggest that the MRND Executive Bureau agreed with the military authorities to distribute arms to the *Interahamwe* and stockpile arms for later distribution. The testimony of several Prosecution witnesses supports this conclusion.").
[1118] Trial Judgement, para. 740, *referring to* Trial Judgement, paras. 678, 679, 683, 684.
[1119] Trial Judgement, para. 714.

and represented one of his significant contributions to it.[1121] In view of the Trial Chamber's error in finding that Ngirumpatse consented to the distribution of weapons, the Appeals Chamber, Judges Pocar and Ramaroson dissenting, finds that the Trial Chamber erred in finding that Ngirumpatse participated in a joint criminal enterprise as of 11 April 1994 and therefore erred in holding him responsible for the killings that resulted from the distribution of weapons by members of the joint criminal enterprise on 12 April 1994. The Appeals Chamber therefore dismisses his remaining arguments as moot.

4. Conclusion

387. The Appeals Chamber, Judges Pocar and Ramaroson dissenting, grants Ngirumpatse's Forty-Second and Forty-Seventh Grounds of Appeal, in part, and reverses Ngirumpatse's convictions pursuant to Article 6(1) of the Statute for the killings of Tutsis at roadblocks in Kigali through the distribution of weapons on 11 and 12 April 1994 in light of the Trial Chamber's erroneous finding that he consented to the distribution of weapons on 11 April 1994. Accordingly, the Appeals Chamber sets aside, Judges Pocar and Ramaroson dissenting, Ngirumpatse's convictions for genocide, extermination as a crime against humanity, and murder as a serious violation of Article 3 common to the Geneva Conventions and of Additional Protocol II for the killings of Tutsis at roadblocks in Kigali through the distributions of weapons on 11 and 12 April 1994. However, in view of the Trial Chamber's findings that Ngirumpatse was also liable as a superior of the Kigali *Interahamwe* pursuant to Article 6(3) of the Statute for the killings perpetrated in Kigali by 12 April 1994, the Appeals Chamber finds him criminally responsible for these crimes and affirms his convictions on this basis.

388. In addition, the Appeals Chamber grants, in part, Karemera's Twelfth and Thirteenth Grounds of Appeal, and Ngirumpatse's Forty-Seventh Ground of Appeal, in part, and reverses the finding that Karemera and Ngirumpatse are responsible pursuant to Article 6(3) of the Statute for the distribution of weapons by Bagosora. Karemera, however, remains convicted as a superior of the Kigali *Interahamwe* pursuant to Article 6(3) of the Statute for the killings perpetrated in Kigali by 12 April 1994.

389. The impact of these findings, if any, on Karemera's and Ngirumpatse's sentence will be addressed below. The Appeals Chamber dismisses Ngirumpatse's Thirty-Seventh and Thirty-Eighth Grounds of Appeal relating to the MRND *Interahamwe*'s role at most of the roadblocks during the genocide, and dismiss Ngirumpatse's Twenty-Third Ground of Appeal, in part, concerning the

[1120] Trial Judgement, para. 739.
[1121] Trial Judgement, paras. 1450(1), 1451, 1458.

meeting at the *Hôtel des Diplomates* in Kigali on 10 April 1994. The remaining arguments under Karemera's Twenty-Third Ground of Appeal, in part, Twenty-Seventh Ground of Appeal, and Thirty-First Ground of Appeal, in part, as well as under Ngirumpatse's Twenty-Fourth Ground of Appeal, are dismissed as moot.

G. Killings Following President Théodore Sindikubwabo's Speech at Sylvain Nsabimana's Installation Ceremony (Karemera Grounds 15, in Part, and 29; Ngirumpatse Grounds 25 and 27)

390. The Trial Chamber convicted Karemera and Ngirumpatse for committing genocide through their participation in a joint criminal enterprise – the common purpose of which was the destruction of the Tutsi population in Rwanda – in relation to the killings that followed President Théodore Sindikubwabo's speech at Sylvain Nsabimana's installation ceremony as the new prefect of Butare Prefecture on 19 April 1994 following the removal of the former prefect Jean-Baptiste Habyalimana.[1122] The Trial Chamber further convicted Karemera and Ngirumpatse based on these events for extermination as a crime against humanity and murder as a serious violation of Article 3 common to the Geneva Conventions and of Additional Protocol II.[1123]

391. According to the Trial Judgement, the Interim Government removed Habyalimana, who opposed attacks on Tutsis, and installed Nsabimana because it believed Nsabimana would embrace its genocidal policy.[1124] The Trial Chamber was convinced that in his speech, Sindikubwabo urged the population to kill Tutsis and that attacks on Tutsis in Butare started immediately thereafter.[1125] It further found that the perpetrators of the killings had genocidal intent.[1126] In these circumstances, the Trial Chamber concluded that the replacement of Habyalimana and Sindikubwabo's speech furthered the common purpose of the joint criminal enterprise and that the subsequent killings could be imputed to its members.[1127]

392. Karemera and Ngirumpatse challenge their convictions for the killings which followed the speech of President Sindikubwabo at the installation ceremony of Sylvain Nsabimana following the replacement of Habyalimana as prefect of Butare.[1128] In this section, the Appeals Chamber considers whether the Trial Chamber erred in assessing: (i) the sufficiency of the notice provided to Karemera; (ii) the reasons for Habyalimana's removal as prefect of Butare on 17 April 1994;

[1122] Trial Judgement, paras. 878-889, 892, 1625-1628, 1714, 1715.
[1123] Trial Judgement, paras. 1688, 1691, 1706, 1714, 1715.
[1124] Trial Judgement, paras. 883, 887, 892, 1625.
[1125] Trial Judgement, paras. 889, 892, 1625, 1626.
[1126] Trial Judgement, para. 1628.
[1127] Trial Judgement, paras. 1627, 1628.
[1128] Karemera Notice of Appeal, paras. 122-124; Karemera Appeal Brief, paras. 169, 171, 172, 296-299; Ngirumpatse Notice of Appeal, paras. 118-123, 132-135; Ngirumpatse Appeal Brief, paras. 414-419, 494-501. *See also* AT. 10 February 2014 pp. 8, 9. The Appeals Chamber notes that, under his Ground 15 on the replacement of prefects, Karemera also challenges the Trial Chamber's findings in relation to the replacement of Sylvain Nsabimana by Alphonse Nteziryayo as Prefect of Butare in June 1994. *See* Karemera Notice of Appeal, paras. 79-81; Karemera Appeal Brief, paras. 170, 174-178. However, Karemera was not convicted for his role in the replacement of Nsabimana *per se*. *See* Trial Judgement, paras. 1450(5), 1582-1591, 1596-1604, 1610-1671, 1678-1684, 1688-1692, 1704-1706. The Appeals Chamber therefore dismisses Karemera's argument in this regard.

(iii) Sindikubwabo's speech at Nsabimana's installation ceremony on 19 April 1994; and (iv) the timing of the start of the killings in Butare Prefecture.

1. Notice

393. Karemera's conviction with respect to the killings that followed Sindikubwabo's speech after Habyalimana's replacement is based on paragraphs 45 and 48 of the Indictment.[1129]

394. Paragraph 45 of the Indictment reads:

> On or about 17 April 1994 the *conseil des ministres* of the Interim Government convened to review the status of office-holders in the territorial administration. They removed the *préfets* of Butare and Kibungo, both of whom were known to have opposed the attacks upon the Tutsi population, and appointed several new *préfets* that embraced the Interim Government's policy of targeting Tutsi civilians as "the enemy". These decisions on appointments of *préfets* were broadcast to the nation in a Radio Rwanda communiqué read by Minister of Information Eliézer NIYITEGEKA on or about that same day. The new office-holders would be installed on 19 April.

395. Paragraph 48 of the Indictment reads:

> On or about 19 April 1994, Interim President SINDIKUBWABO addressed a public rally in Butare *préfecture* and encouraged those that did not adopt the government program to "step aside". Thereafter, killings of Tutsi civilians started or accelerated in Butare. The rally was also the occasion on which the Interim Government publicly deposed the only Tutsi *préfet* in Rwanda, Jean-Baptiste HABYALIMANA of Butare, a member of the *Parti Libéral*, and replaced him by Sylvain NSABIMANA.

396. Karemera contends that the Indictment did not charge him with criminal liability for the replacement of the prefects.[1130] He points to paragraphs 46 and 48 of the Indictment, which, in his view, did not implicate him and therefore did not properly inform him about the charges against him.[1131] Karemera further argues that the Prosecution's subsequent attempts to cure the defects resulted in radically altering the existing pleading and thus violated his right to be informed of the charges against him and to prepare his case.[1132]

397. The Prosecution responds that paragraphs 6, 7, 14, and 43 of the Indictment properly charged Karemera as a member of a joint criminal enterprise for having participated in the formation and implementation of the Interim Government's policies.[1133] According to the Prosecution, paragraphs 45, 46, and 48 of the Indictment adequately pleaded that one of these policies furthering the purpose of the joint criminal enterprise involved the removal of local

[1129] Trial Judgement, paras. 861, 862, fns. 1072-1074.
[1130] Karemera Appeal Brief, paras. 171, 172. The Appeals Chamber notes that Karemera did not raise this argument in his notice of appeal. Nonetheless, it observes that the Prosecution did not object and responded to this argument. The Appeals Chamber therefore exercises its discretion to consider it in the interests of justice.
[1131] Karemera Appeal Brief, para. 171.
[1132] Karemera Appeal Brief, para. 172.
[1133] Prosecution Response Brief (Karemera), para. 103.

administrative officials who were not sympathetic to the Interim Government's genocidal policy.[1134]

398. The Appeals Chamber observes that the Trial Chamber's findings relating to the replacement of Habyalimana and to Sindikubwabo's speech indicate that paragraphs 45 and 48 of the Indictment underpin Karemera's conviction.[1135] Consequently, the Appeals Chamber need not consider Karemera's challenge to paragraph 46 of the Indictment, which relates to the appointment and transfer of military officers, as it is not relevant to any of his convictions.[1136] A review of the Trial Chamber's findings further shows that Karemera was convicted in relation to the killings that followed President Sindikubwabo's speech at Nsabimana's installation ceremony on 19 April 1994 following the removal of Habyalimana.[1137] The Appeals Chamber therefore focuses on whether paragraphs 45 and 48 of the Indictment provided Karemera with sufficient notice that he was charged with criminal liability for the killings that followed Sindikubwabo's speech and the replacement of the prefect.

399. The Appeals Chamber recalls that "in determining whether an accused was adequately put on notice of the nature and cause of the charges against him, the indictment must be considered as a whole".[1138] The Appeals Chamber notes that paragraphs 45 and 48 are listed under Count 3 (Genocide) and incorporated by reference under Count 6 (Extermination as a Crime Against Humanity) and Count 7 (Murder as a Serious Violation of Article 3 common to the Geneva Conventions and of Additional Protocol II).[1139] The Appeals Chamber further notes that, according to paragraph 7 of the Indictment, "[t]he crimes enumerated in Counts 2, 3, 4, 6, and 7 of this Indictment were within the object of the joint criminal enterprise".[1140]

400. Although Karemera was not mentioned in paragraphs 45 and 48, it is clear, when read together with paragraphs 6 and 7 of the Indictment, that the killings that followed the replacement of Habyalimana and Sindikubwabo's speech were within the common purpose of the joint criminal enterprise of which Karemera was a member. In addition, paragraph 48 of the Indictment clearly states that killings of Tutsis civilians started or accelerated in Butare after Sindikubwabo's speech on 19 April 1994. The Appeals Chamber thus finds that the Indictment properly charged Karemera

[1134] Prosecution Response Brief (Karemera), para. 103.
[1135] Trial Judgement, paras. 861, 862, fns. 1072-1074.
[1136] Trial Judgement, paras. 893, 897.
[1137] Trial Judgement, paras. 878-889, 892, 1625-1628, 1714, 1715.
[1138] *Mugenzi and Mugiraneza* Appeal Judgement, para. 71; *Ntabakuze* Appeal Judgement, para. 65.
[1139] Indictment, paras. 71-73, 76, 77, *referring to* Indictment, paras. 34-66.
[1140] The Appeals Chamber recalls that Karemera's general challenges to the notice of modes of responsibility and joint criminal enterprise, under Grounds 1 to 4, are addressed elsewhere in this Judgement. *See supra* Sections III.B.2, III.B.3.

with individual criminal responsibility in relation to the killings that followed the replacement of the prefect.

401. Accordingly, Karemera has not demonstrated that the Trial Chamber erred by convicting him on the basis of a defective indictment. Karemera's remaining arguments regarding the curing of defects of the Indictment are therefore dismissed as moot.

2. Replacement of Jean-Baptiste Habyalimana as Prefect of Butare Prefecture

402. Ngirumpatse challenges the Trial Chamber's findings in relation to the reasons for the removal of Habyalimana as Prefect of Butare Prefecture.[1141] The Appeals Chamber recalls that the Trial Chamber found that several members of the joint criminal enterprise were responsible for the removal of Habyalimana,[1142] which occurred at a meeting of the Interim Government on 17 April 1994.[1143] The Appeals Chamber recalls that Karemera's participation in the joint criminal enterprise commenced with his participation in the meeting at the Murambi Training School on 18 April 1994.[1144] The Appeals Chamber further recalls that it has, Judges Pocar and Ramaroson dissenting, reversed Ngirumpatse's conviction for committing, through a joint criminal enterprise, the killings at roadblocks in Kigali that resulted from the distribution of weapons by other members of the joint criminal enterprise on 12 April 1994 and thus that his membership in the joint criminal enterprise commenced prior to 18 April 1994.[1145]

403. Accordingly, the Appeals Chamber considers that the Trial Chamber erred in finding that Karemera could be held responsible for the crimes committed on the basis of the decision taken on 17 April 1994 to remove Habyalimana as Prefect of Butare Prefecture. Moreover, given that the Appeals Chamber, Judges Pocar and Ramaroson dissenting, found that the Trial Chamber erred in finding that Ngirumpatse participated in a joint criminal enterprise as of 11 April 1994,[1146] the Appeals Chamber, Judges Pocar and Ramaroson dissenting, considers that the Trial Chamber erred in finding that Ngirumpatse could be held responsible for the crimes committed on the basis of the decision taken on 17 April 1994 to remove Habyalimana as Prefect of Butare Prefecture. The Appeals Chamber considers, however, that Karemera and Ngirumpatse were also convicted as participants in a joint criminal enterprise based on the killings which followed the speech given by Sindikubwabo at the installation ceremony of Nsabimana on 19 April 1994. The Appeals Chamber is therefore not convinced that this error resulted in a miscarriage of justice. The Appeals Chamber,

[1141] Ngirumpatse Appeal Brief, para. 414. *See also* Ngirumpatse Reply Brief, para. 106.
[1142] Trial Judgement, para. 1627.
[1143] Trial Judgement, paras. 863-865, 1450(2), 1625.
[1144] *See supra* Section III.C and *infra* Section III.H.4.
[1145] *See infra* Section III.F.3.(b).
[1146] *See infra* Section III.F.3.(b).

however, need not consider Ngirumpatse's challenges to the Trial Chamber's findings with respect to the reasons for the removal of Habyalimana as Prefect of Butare Prefecture as they provide only background and context to Sindikubwabo's speech.

3. President Théodore Sindikubwabo's Speech on 19 April 1994 in Butare Prefecture

404. The Trial Chamber found that, at Sylvain Nsabimana's installation ceremony as prefect of Butare Prefecture on 19 April 1994, President Théodore Sindikubwabo urged the population to kill Tutsis.[1147] It considered the context in Rwanda at the time of the events to interpret Sindikubwabo's references to "work" as a call to kill Tutsis.[1148] The Trial Chamber found this conclusion corroborated by the removal of Habyalimana from his post as prefect of Butare because he opposed attacks on Tutsis and by the attacks which started immediately after Sindikubwabo's speech and Nsabimana's installation as prefect of Butare.[1149] The Trial Chamber concluded that Sindikubwabo's speech furthered the common purpose of the joint criminal enterprise and that the killings it prompted could be imputed to the members of the joint criminal enterprise.[1150]

405. Karemera submits that the Trial Chamber erred in relying on the single testimony of Witness G, which was not credible and which the Trial Chamber misinterpreted.[1151] Karemera maintains that evidence ascribed to Witness G in the Trial Judgement, to the effect that he testified that it was soon after Sindikubwabo's speech that Karemera and others decided to replace Nsabimana, was not credible because there was in fact a two month interval between these events.[1152] Karemera further argues that the Trial Chamber erred in finding that he attended the installation ceremony of Nsabimana on 19 April 1994.[1153] In particular, he points to Witness G's testimony, in which he explicitly stated that he was not present,[1154] and to evidence that, on 19 April 1994, he was on a pacification tour with the Minister of Defence.[1155]

406. Ngirumpatse asserts that the Trial Chamber erred in finding that Sindikubwabo incited the population to kill Tutsis.[1156] According to Ngirumpatse, the speech was consistent with prior

[1147] Trial Judgement, paras. 889, 892, 1625.
[1148] Trial Judgement, para. 889.
[1149] Trial Judgement, para. 889.
[1150] Trial Judgement, paras. 1627, 1628.
[1151] Karemera Appeal Brief, paras. 298, 299.
[1152] Karemera Appeal Brief, para. 298.
[1153] Karemera Appeal Brief, paras. 297, 298.
[1154] Karemera Appeal Brief, para. 297, *citing* Witness G, T. 25 October 2005.
[1155] Karemera Appeal Brief, paras. 297, 298, *citing* Witness G, T. 25 October 2005 p. 49.
[1156] Ngirumpatse Appeal Brief, paras. 494, 499, 500; Ngirumpatse Reply Brief, para. 119. The Appeals Chamber notes Ngirumpatse's submission that the Trial Chamber's factual findings should be reversed as a remedy to alleged violations of Rule 68 of the Rules. *See* Ngirumpatse Reply Brief, para. 118, *referring to* Ngirumpatse Response Brief, paras. 9-15. *See also Requête de Matthieu Ngirumpatse Connexe à la requête d'É. Karemera en admission de moyens de preuves Additionnels*, 27 September 2012, paras. 7-32. The Appeals Chamber addresses these arguments in its Decision on Ngirumpatse's Rule 115 Motion.

speeches by Sindikubwabo during that period calling for calm, and with Kambanda's speech on the same day, reminding people of the Interim Government's appeal to stop the killings.[1157] Ngirumpatse further argues that the Prosecution did not prove that he was involved in the elaboration or delivery of the speech, or that he conspired with Sindikubwabo.[1158] He also generally contends that the Trial Chamber's findings were based on the evidence of Witnesses G and Mbonyunkiza which was contradictory and not credible.[1159]

407. The Prosecution responds that the Trial Chamber's implication that Karemera attended the installation ceremony on 19 April 1994 was an "inadvertent typographical error".[1160] It maintains that the Trial Chamber concluded only that Karemera was involved in the replacement of Nsabimana with Nteziryayo, not that he attended Nsabimana's installation ceremony on 19 April 1994.[1161] The Prosecution asserts, however, that this error has no impact on the conviction.[1162]

408. The Prosecution further responds that Ngirumpatse demonstrates no error in the Trial Chamber's finding that Sindikubwabo's speech incited killings.[1163] According to the Prosecution, the claim that the evidence was not credible is unsubstantiated.[1164] It argues that the Trial Chamber considered the totality of the evidence and the context in which the speech was made.[1165] It adds that the fact that Ngirumpatse was not personally involved has no impact on his conviction.[1166] The Prosecution also maintains that Karemera misreads the trial record and that the Trial Chamber correctly assessed Witness G's testimony that the decision to replace Nsabimana was made soon after his installation although he was actually replaced on 17 June 1994.[1167] In this regard, the Prosecution submits that a decision can be made at one point in time but implemented later.[1168]

409. The Appeals Chamber notes that the Trial Chamber explicitly relied on the evidence of Witnesses G and Mbonyunkiza to conclude that in his speech Sindikubwabo urged the population of Butare to kill Tutsis.[1169] The Trial Chamber also took into consideration the context in Rwanda

[1157] Ngirumpatse Appeal Brief, para. 499. *See also* Ngirumpatse Reply Brief, para. 119.
[1158] Ngirumpatse Appeal Brief, para. 499.
[1159] Ngirumpatse Appeal Brief, para. 498, *referring to* Ground 10 of Ngirumpatse's appeal in relation to Witnesses G and T.
[1160] Prosecution Response Brief (Karemera), paras. 173, 175.
[1161] Prosecution Response Brief (Karemera), para. 174.
[1162] Prosecution Response Brief (Karemera), para. 175.
[1163] Prosecution Response Brief (Ngirumpatse), paras. 185, 186.
[1164] Prosecution Response Brief (Ngirumpatse), para. 188.
[1165] Prosecution Response Brief (Ngirumpatse), para. 186.
[1166] Prosecution Response Brief (Ngirumpatse), para. 187.
[1167] Prosecution Response Brief (Karemera), paras. 176, 177, *referring to* Witness G, T. 12 October 2005 p. 22.
[1168] Prosecution Response Brief (Karemera), para. 177.
[1169] Trial Judgement, para. 889.

on 19 April 1994 and the killings in other prefectures.[1170] It further found that its conclusion that Sindikubwabo's speech urged the killing of Tutsis was bolstered by its prior findings that Habyalimana was removed because he opposed attacks on Tutsis and by Witness G's testimony that the attacks on Tutsis started immediately after the speech and the installation of the new prefect.[1171] The Appeals Chamber finds no error in the Trial Chamber's approach.

410. The Appeals Chamber also does not find any merit in Karemera's challenge to the Trial Chamber's summary of Witness G's evidence on the basis that it was not credible that Karemera and others decided to replace Nsabimana as prefect of Butare "soon after" Sindikubwabo's speech as there was a two month interval between these events. The Appeals Chamber notes the Trial Chamber's statement when summarizing Witness G's testimony that "[s]oon after Sindikubwabo's speech, Karemera and his consorts decided to replace Nsabimana as *préfet*".[1172] However, the Appeals Chamber cannot find any statement to that effect in Witness G's testimony. Rather, Witness G testified that it was when Karemera came to Butare for the swearing-in of Alphonse Nteziryayo as prefect of Butare that Karemera informed him of their decision to remove Nsabimana.[1173] Witness G further stated that the main reason for Nsabimana's removal was that he had tried to help some Tutsis to cross the border to Burundi.[1174] Nevertheless, the Appeals Chamber does not find that Karemera has shown that it was unreasonable to use the phrase "soon after" in this context to describe the two month period between Nsabimana's installation and his replacement by Nteziryayo.

411. The Appeals Chamber notes that during the course of the appeal hearing, Karemera and Ngirumpatse submitted that the Prosecution effectively "bribed" Witnesses G and T by offering them substantial benefits and that the Trial Chamber failed to take this into account in assessing their credibility.[1175] On 29 May 2008, the Trial Chamber admitted into evidence a list of all payments to Witness G and his family.[1176] As the Trial Chamber determined, the benefits provided to the witnesses warrant that their evidence be viewed with caution.[1177] However, the Trial Chamber did not hold that for this reason their evidence was *per se* unreliable or that it had to be

[1170] Trial Judgement, para. 889.
[1171] Trial Judgement, paras. 887, 889.
[1172] Trial Judgement, para. 869.
[1173] Witness G, T. 12 October 2005 pp. 21, 22.
[1174] Witness G, T. 12 October 2005 p. 22.
[1175] *See* AT. 11 February 2014 pp. 9, 10, 28, 29, 36, 43. *See also* Karemera Appeal Brief, paras. 233-235; Ngirumpatse Appeal Brief, paras. 78-81, 174-181.
[1176] *See The Prosecutor v. Édouard Karemera et al.*, Case No. ICTR-98-44-T, Decision on Joseph Nzirorera's Motion for Reconsideration of Oral Decision on Motion to Compel Full Disclosure of ICTR Payments for the Benefit of Witnesses G and T and Motion for Admission of Exhibit: Payment Made for the Benefit of Witness G, 29 May 2008, p. 6.
[1177] *See* Trial Judgement, para. 878. *See also* Trial Judgement, paras. 175, 178, 194, 249, 341, 437, 470, 495, 530, 591, 623, 701, 735, 1281, 1331, 1352.

corroborated. The Appeals Chamber considers, Judge Afande dissenting, that the Trial Chamber acted within its discretion in this regard.

412. As to Karemera's assertion that the Trial Chamber erroneously found that he was present at Nsabimana's installation ceremony, the Appeals Chamber notes that the Trial Chamber did not make such a finding in the relevant section of the Trial Judgement dealing with the installation ceremony.[1178] Instead, the Trial Chamber referred to his presence at the installation ceremony as an aside when discussing Karemera's attendance at a meeting at the Murambi Training School in Gitarama Prefecture.[1179] This misstatement of the record by the Trial Chamber in a different section of the Trial Judgement does not obviate its detailed conclusions regarding Sindikubwabo's speech[1180] and Karemera's responsibility related to this event.[1181]

413. The Appeals Chamber also notes Ngirumpatse's general challenge to Witnesses G's and Mbonyunkiza's credibility. However, in the absence of any showing that the Trial Chamber's assessment was unreasonable, the Appeals Chamber dismisses Ngirumpatse's mere assertion that Witnesses G and Mbonyunkiza were not credible.[1182] The Appeals Chamber considers Ngirumpatse's specific challenges to the witnesses' credibility made in other grounds of appeal elsewhere in this Judgement.[1183]

414. The Appeals Chamber finds that Ngirumpatse has failed to demonstrate any error with regard to the Trial Chamber's finding that Sindikubwabo's speech incited the killings of Tutsis.[1184] Ngirumpatse points to a number of contemporaneous speeches made by Sindikubwabo and Kambanda[1185] which, according to him, constituted consistent calls for peace and were therefore

[1178] Trial Judgement, paras. 889, 892. The Appeals Chamber notes Witness G's undisputed evidence that Karemera was not in Butare on 19 April 1994, when Nsabimana took office. *See* Witness G, T. 25 October 2005 p. 49.
[1179] Trial Judgement, para. 838.
[1180] Trial Judgement, paras. 889, 892, 1625.
[1181] Trial Judgement, paras. 1627, 1628.
[1182] The Appeals Chamber observes that Ngirumpatse merely refers to his Tenth Ground of Appeal where he generally challenges the Trial Chamber's assessment of witness credibility. *See* Ngirumpatse Appeal Brief, para. 498. *See also* Ngirumpatse Appeal Brief, paras. 78-81. Ngirumpatse notably refers to advantages received by Witness G and Witness T for their participation in a witness protection program and argues that the Trial Chamber failed to apply the requisite caution in its assessment of the evidence. *See* Ngirumpatse Appeal Brief, paras. 80, 81. Ngirumpatse, however, does not specifically refer to his conviction related to the replacement of the prefect of Butare Prefecture nor does he present any concrete argument challenging the Trial Chamber's reliance on Witness G, as corroborated by Witness Mbonyunkiza, to conclude that Sindikubwabo urged the population of Butare to kill Tutsis.
[1183] *See supra* Section III.A.2.
[1184] Trial Judgement, paras. 889, 892, 1625.
[1185] Ngirumpatse Appeal Brief, fns. 887, 888, *referring to* Nzirorera Defence Exhibits 18, 19A, 21A, 22A, 23, 23B, 23C, 26, 27, 29, 31B, 32B, and 79. The Appeals Chamber notes that Ngirumpatse's references to, *inter alia*, Nzirorera Defence Exhibits 18 (Confession of Prosecution Witness GFA), 23 (*Procès-verbal* of Prosecution Witness GBU), and 29 (Interview of Witness GBU) do not appear relevant to his claim. The Appeals Chamber thus considers that Ngirumpatse instead intended to refer to Nzirorera Defence Exhibits 18A and 18B (*Communiqué* of the Rwandan Armed Forces, dated 7 April 1994), 19A and 19B (*Communiqué* of the Minister of Defence), 21A and 21B (*Communiqué* of political parties, dated 10 April 1994), 22A, 22B, and 22C (Transcript of Radio Rwanda Broadcast, including speeches of Ngirumpatse and Sindikubwabo), 26 (Transcript of speech of Sindikubwabo in Kigali, dated 14

inconsistent with the finding that Sindikubwabo incited killings.[1186] However, a review of the Trial Judgement reveals that the Trial Chamber expressly noted the general context in Rwanda on 19 April 1994 when it interpreted the references to "work" in Sindikubwabo's speech to be a call to kill Tutsis.[1187] Furthermore, although the Trial Chamber did not explicitly refer to other contemporaneous speeches in this section of the Trial Judgement, it noted elsewhere the *communiqué* of 10 April 1994,[1188] cited by Ngirumpatse, which it did not consider to be a genuine attempt to prevent attacks against Tutsis.[1189] The Trial Chamber also found, when analysing Sindikubwabo's and Kambanda's speeches in Kibuye on 3 and 16 May 1994,[1190] that the Interim Government officials' "abstract rhetoric about restoring peace in the country", without resoundingly condemning the existing massacres, could only be understood as an endorsement of the killings.[1191]

415. The Trial Chamber reached similar conclusions in relation to the language used by Kambanda in his 27 April 1994 letter concerning instructions to restore security in the country[1192] and in his 25 May 1994 directive on the organisation of the civil defence.[1193] In these circumstances, the Appeals Chamber cannot identify in any other speech cited by Ngirumpatse language that would cast reasonable doubt on the Trial Chamber's conclusion. Ngirumpatse has therefore failed to demonstrate that the Trial Chamber acted unreasonably by not explicitly referring to every speech or address made by Sindikubwabo or Kambanda during the relevant period. In this respect, the Appeals Chamber also recalls that a trier of fact is not obliged to articulate every step of its reasoning[1194] and that it is to be presumed that the trial chamber assessed and weighed the evidence presented to it, as long as there is no indication that it completely disregarded any particular piece of evidence.[1195] The Appeals Chamber thus concludes that Ngirumpatse has not demonstrated that the Trial Chamber acted outside of its discretion regarding the interpretation of President Sindikubwabo's speech and dismisses Ngirumpatse's argument.

April 1994), 27 (Transcript of speech of Sindikubwabo, dated 17 April 1994), 29A (Transcript of speech of Sindikubwabo in Kigali, dated 8 April 1994), 31A, 31B, and 31C (Transcript of speech of Kambanda in Butare), 32, 32A, and 32B (Transcript of Radio Rwanda Broadcast, including speech of Kambanda), and 79, 79A, and 79B (Transcript of speech of Sindikubwabo at Kimisagara Stadium).

[1186] Ngirumpatse Appeal Brief, paras. 499, 500.

[1187] Trial Judgement, para. 889. The Appeals Chamber notes, however, that the Trial Chamber cited to a non-existent reference when discussing "the context in Rwanda" on 19 April 1994. *See* Trial Judgement, fn. 1104 *referring to* Section III.4.1 of the Trial Judgement. Accordingly, the Appeals Chamber is unable to discern what the Trial Chamber considered the "context in Rwanda" on 19 April 1994 to be.

[1188] *See*, *e.g.*, Trial Judgement, paras. 675, 689, 691, 692, 927, 1333, 1469, 1488, 1563. *See also* Trial Judgement, fns. 896, 898, 918, 1606, 1843, 1891 *referring to*, *inter alia*, Nzirorera Defence Exhibit 21B (*Communiqué* of political parties, dated 10 April 1994).

[1189] Trial Judgement, para. 1488.

[1190] Trial Judgement, paras. 988-992, 1007-1009.

[1191] Trial Judgement, paras. 990, 991, 1008.

[1192] Trial Judgement, paras. 1037-1045.

[1193] Trial Judgement, paras. 1051-1056.

[1194] *See*, *e.g.*, *Ntabakuze* Appeal Judgement, para. 161; *Kanyarukiga* Appeal Judgement, para. 114.

[1195] *See*, *e.g.*, *Ntabakuze* Appeal Judgement, fn. 357; *Bagosora and Nsengiyumva* Appeal Judgement, fn. 625; *Kalimanzira* Appeal Judgement, para. 195; *Karera* Appeal Judgement, para. 20.

416. The Appeals Chamber finds that Ngirumpatse's submission that he was not involved in the elaboration or delivery of Sindikubwabo's speech fails to establish that the Trial Chamber erred in finding him responsible in relation to this incident. The Appeals Chamber recalls that Ngirumpatse was convicted, in relation to the killings that followed Sindikubwabo's speech, on the basis of his participation in a joint criminal enterprise.[1196] The Trial Chamber expressly reasoned that Karemera and Ngirumpatse incurred joint criminal enterprise liability for the killings following Sindikubwabo's speech because this speech furthered the common purpose of the joint criminal enterprise[1197] to which they had otherwise "substantially" contributed.[1198] The Appeals Chamber, Judge Tuzmukhamedov dissenting, cannot identify any error in this regard.

417. For the foregoing reasons, the Appeals Chamber, Judge Tuzmukhamedov dissenting, finds that Karemera and Ngirumpatse have not demonstrated that the Trial Chamber erred in its analysis of Sindikubwabo's speech at the installation ceremony.

4. Killings in Butare Prefecture

418. The Trial Chamber found that large scale killings of Tutsis in Butare Prefecture, including women, children, and the elderly, started immediately after Habyalimana's replacement as prefect and Sindikubwabo's speech on 19 April 1994.[1199] It concluded that Habyalimana's replacement and Sindikubwabo's speech furthered the common purpose of the joint criminal enterprise and that the killings they prompted could be imputed to the members of the joint criminal enterprise.[1200] The Trial Chamber convicted Karemera and Ngirumpatse for committing genocide through a joint criminal enterprise with respect to these killings.[1201]

419. Ngirumpatse submits that Habyalimana's replacement and Sindikubwabo's speech were not criminal *per se* and therefore cannot be considered as a contribution to the joint criminal enterprise.[1202] In his view, the Trial Chamber erred in finding that the massacres of the Tutsis began immediately after Nsabimana's installation.[1203] Ngirumpatse further contends that the violence in Butare Prefecture started before 16 April 1994.[1204]

420. The Appeals Chamber notes that the Trial Chamber expressly relied on Prosecution Witnesses G's and Uwizeye's evidence that the attacks on Tutsis began immediately after

[1196] Trial Judgement, paras. 1627, 1628.
[1197] Trial Judgement, para. 1627.
[1198] Trial Judgement, para. 1628, *referring to* Trial Judgement, paras. 1457, 1458.
[1199] Trial Judgement, paras. 884, 1626, 1628.
[1200] Trial Judgement, paras. 1627, 1628.
[1201] Trial Judgement, para. 1628.
[1202] Ngirumpatse Appeal Brief, paras. 416, 497.
[1203] Ngirumpatse Notice of Appeal, para. 119.

Habyalimana's replacement[1205] and/or after Sindikubwabo's speech.[1206] However, the Appeals Chamber cannot find any statement to that effect in Witness Uwizeye's testimony.[1207] Nevertheless, other evidence on the record such as the testimony of Prosecution Witness ALG supports the finding that the killings of Tutsis in Butare started only after Prefect Habyalimana was removed.[1208] Therefore, the Appeals Chamber finds that the Trial Chamber's finding was not unreasonable in light of the evidence on the record. In any event, the Appeals Chambers notes that in support of his argument that the Trial Chamber erred in finding that the killings started immediately after Nsabimana's installation as prefect, Ngirumpatse relies solely on an exhibit from the *Nyiramasuhuko et al.* case,[1209] which refers to ethnic violence in Butare Prefecture before 16 April 1994. This exhibit is not part of the trial record or record on appeal in this case. The Trial Chamber thus did not err by not considering it in its assessment of the evidence,[1210] and the Appeals Chamber therefore does not question the reasonableness of the Trial Chamber's findings. Ngirumpatse has not otherwise identified any evidence on the record demonstrating the extent and scope of the killings in Butare Prefecture prior to the removal of Habyalimana and the installation of Nsabimana. Accordingly, he has failed to demonstrate that a reasonable tier of fact could not have concluded that the killings started after Sindikubwabo's speech and Habyalimana's replacement on 19 April 1994.

421. The Appeals Chamber finally observes that Ngirumpatse's submission that Habyalimana's removal and Sindikubwabo's speech were not criminal is largely unsubstantiated. As noted above, the killings in Butare Prefecture started immediately after Sindikubwabo's speech following Habyalimana's replacement as prefect. The Trial Chamber therefore did not err in finding that Sindikubwabo's speech facilitated the killings of predominantly Tutsi civilians,[1211] thus furthering the common purpose of the joint criminal enterprise for which Ngirumpatse incurs liability.[1212]

422. Accordingly, the Appeals Chamber dismisses Ngirumpatse's argument that Sindikubwabo's speech could not be considered as a contribution to the joint criminal enterprise.

[1204] Ngirumpatse Reply Brief, paras. 110, 119.
[1205] Trial Judgement, paras. 880, 884.
[1206] Trial Judgement, paras. 887, 889.
[1207] *See* Trial Judgement, paras. 872, 873; T. 19-27 July 2007.
[1208] *See* Trial Judgement, para. 871.
[1209] Ngirumpatse Reply Brief, fns. 47, 53, *referring to The Prosecutor v. Pauline Nyiramasuhuko et al.*, Case No. ICTR-98-42-T, Kanyabashi Defence Exhibit 240A ("*Communiqué* 16 April 1994").
[1210] *See*, *e.g.*, *Kanyarukiga* Appeal Judgement, para. 163; *Nchamihigo* Appeal Judgement, para. 123.
[1211] Trial Judgement, paras. 1450(4), 1451.
[1212] Trial Judgement, paras. 1454, 1459, 1460, 1627, 1628.

5. Conclusion

423. For the foregoing reasons, the Appeals Chamber, Judge Tuzmukhamedov dissenting, dismisses Karemera's Fifteenth Ground of Appeal, in part, and Twenty-Ninth Ground of Appeal, as well as Ngirumpatse's Twenty-Fifth and Twenty-Seventh Grounds of Appeal.

H. Meeting at Murambi Training School (Karemera Ground 28, in Part; Ngirumpatse Ground 26 and Ground 47, in Part)

424. The Trial Chamber found that, on 18 April 1994, several national and local authorities, including Karemera, Ngirumpatse, Justin Mugenzi, Prefect Fidèle Uwizeye, area bourgmestres, and others, met at the behest of Prime Minister Jean Kambanda at the Murambi Training School in Gitarama Prefecture to discuss the security situation in the area.[1213] According to the Trial Judgement, the authorities conducted the meeting in two parts.[1214] The Trial Chamber found that, during the first part of the meeting, the national authorities remained passive to the requests from the prefect, bourgmestres, and clergy for assistance in stopping the killings that were being committed in the prefecture by the *Interahamwe*.[1215]

425. It follows from the Trial Judgement that the second part of the meeting was limited to the national authorities, the prefect, and the bourgmestres.[1216] The Trial Chamber observed that, during the second part of the meeting, Karemera, Ngirumpatse, and Mugenzi intimidated local officials, warned them to support the Interim Government's policy and not to interfere with the *Interahamwe*.[1217] The Trial Chamber also considered that there was consistent evidence that, following the meeting, area bourgmestres stopped trying to protect Tutsis and allowed the *Interahamwe* to massacre them.[1218] The Trial Chamber relied on these findings in concluding that Karemera and Ngirumpatse eliminated the resistance offered by the immediate superiors of the perpetrators, and thereby substantially contributed to the killing of Tutsis in Gitarama Prefecture.[1219]

426. The Trial Chamber convicted Karemera and Ngirumpatse of genocide, extermination as a crime against humanity, and murder as a serious violation of Article 3 common to the Geneva Conventions and of Additional Protocol II for aiding and abetting and committing, through their participation in a joint criminal enterprise, the killing of Tutsi civilians in Gitarama Prefecture, which followed their participation in a meeting on 18 April 1994 at the Murambi Training School.[1220] Their convictions are solely based on the fact that they intimidated local government

[1213] Trial Judgement, para. 860.
[1214] In certain passages of the Trial Judgement, the Trial Chamber describes the events at the Murambi Training School on 18 April 1994 as "meetings" and refers to a first and second meeting. *See* Trial Judgement, paras. 846-849, 852, 853, 859. Elsewhere, the Trial Chamber refers to the events collectively as a "meeting" but indicates that there were two distinct sessions or parts. *See* Trial Judgement, paras. 845, 849, 851, 860.
[1215] Trial Judgement, para. 851.
[1216] Trial Judgement, para. 851.
[1217] Trial Judgement, para. 852.
[1218] Trial Judgement, para. 852.
[1219] Trial Judgement, paras. 860, 1621.
[1220] Trial Judgement, paras. 1619, 1621, 1623, 1691, 1704-1706. *See also supra* fn. 25. The Trial Chamber also found that Karemera and Ngirumpatse bear superior responsibility for the participation of Kigali *Interahamwe* in the killings

officials during the second part of the meeting so that they would stop protecting Tutsis and allow *Interahamwe* to kill Tutsis. The Trial Chamber found that by eliminating the resistance offered by the immediate superior of the perpetrators, Karemera and Ngirumpatse substantially contributed to the killings of Tutsis in Gitarama Prefecture.[1221]

427. Karemera and Ngirumpatse challenge their convictions based on their roles in the Murambi Training School meeting.[1222] In this section, the Appeals Chamber considers whether the Trial Chamber erred in: (i) the remedy it provided for the Prosecution's violation of Rule 68 of the Rules; (ii) its findings on Ngirumpatse's responsibility for the meeting given the notice provided to him; (iii) its legal findings on Ngirumpatse's responsibility for aiding and abetting; and (iv) its assessment of the evidence.

1. Rule 68 of the Rules

428. After the closing arguments, the Prosecution disclosed exculpatory evidence relevant both to its allegation set forth in paragraph 47 of the Indictment concerning the Murambi Training School meeting and to the credibility of Prosecution Witnesses FH and Fidèle Uwizeye, who testified in relation to the event.[1223]

429. In its decision of 15 November 2011, the Trial Chamber considered that the Prosecution had violated its disclosure obligations under Rule 68 of the Rules with respect to the transcripts from the *Nzabonimana* case concerning Witnesses T24, FH, and CNAC, the *Gacaca* judgement and prior statement of Witness FH, and the prior statements of Witness T24 from the *Nzabonimana* case.[1224] The Trial Chamber concluded that Karemera and Ngirumpatse suffered material prejudice and, as a

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that occurred following the meeting, and considered this as an aggravating factor in sentencing. *See* Trial Judgement, paras. 1624, 1692, 1706, 1747, 1758. The Appeals Chamber has reversed this finding of responsibility, for reasons detailed elsewhere in this Judgement. *See supra* Section III.D.2.(a).(ii).

[1221] *See* Trial Judgement, paras. 1621, 1623.

[1222] Karemera Notice of Appeal, paras. 62-64, 66, 67, 116-121; Karemera Appeal Brief, paras. 260, 265, 269-295; Ngirumpatse Notice of Appeal, paras. 124-131, 300-305, 315, 316; Ngirumpatse Appeal Brief, paras. 420-493, 745-750, 753. *See also* AT. 10 February 2014 pp. 13, 14, 21, 26-30, 42; AT. 11 February 2014 pp. 8. The Appeals Chamber will not consider Karemera's Ground 11, since it was merged with Karemera's Ground 28 (*see supra* fn. 28).

[1223] Trial Judgement, paras. 810-830. *See also The Prosecutor v. Édouard Karemera and Matthieu Ngirumpatse*, Case No. ICTR-98-44-T, Interoffice Memorandum, Subject "Disclosure of potential R68 material from *Nzabonimana* trial", 11 October 2011 (confidential); Indictment, para. 47. On 30 May 2011, the Trial Chamber admitted into evidence Jean-Marie Vianney Mporanzi's transcripts from the *Nzabonimana* case. It observed that his testimony was relevant to the Murambi Training School meeting and to assess the credibility of Prosecution Witnesses FH and QBG. *See The Prosecutor v. Édouard Karemera and Matthieu Ngirumpatse*, Case No. ICTR-98-44-T, *Décision sur la requête d'Édouard Karemera en admission des comptes rendus d'audience du témoignage de Jean-Marie Vianney Mporanzi dans l'affaire Nzabonimana ainsi que pour la prise de sanctions pour violation de l'Article 68*, 30 May 2011 ("Trial Decision of 30 May 2011"), para. 13. The Trial Chamber also concluded that the Prosecution had not violated its Rule 68 obligations in that particular instance. *See* Trial Decision of 30 May 2011, para. 9.

[1224] *See The Prosecutor v. Édouard Karemera and Matthieu Ngirumpatse*, Case No. ICTR-98-44-T, *Décision faisant suite à l'Ordonnance de la Chambre concernant la communication confidentielle du Procureur d'éléments de preuve en vertu de l'Article 68(A)*, 15 November 2011 ("Trial Decision of 15 November 2011"), para. 24. *See also* Trial Judgement, paras. 815, 816.

preliminary remedy, granted Ngirumpatse's request to admit parts of the disclosed material into evidence.[1225] The Trial Chamber further decided that it would consider in the Trial Judgement whether the evidence provided by Witnesses FH and Uwizeye should be disregarded.[1226] It subsequently decided that the disclosed material was of a relatively low probative value and that its admission was, therefore, a sufficient remedy to the disclosure violation.[1227]

430. Karemera and Ngirumpatse submit that the Trial Chamber failed to sufficiently remedy the prejudice caused to them by the Prosecution's failure to timely disclose exculpatory material.[1228] Specifically, they argue that the Trial Chamber abused its discretion in concluding that the belatedly disclosed material was of low probative value.[1229] Karemera and Ngirumpatse claim that the Trial Chamber failed to consider that Witness T24's testimony was also relevant to the Murambi Training School meeting and that it further failed to fully appreciate the impact of the disclosed material on Witnesses FH's and Uwizeye's credibility.[1230] In addition, Ngirumpatse submits that the Trial Chamber erred in limiting its analysis to the probative value of the evidence while the late disclosure also prevented the Defence both from cross-examining Witnesses FH and Uwizeye in light of the disclosed material and from filing a request to recall these witnesses.[1231]

431. Karemera and Ngirumpatse also contend that the Trial Chamber erroneously shifted the burden of proof onto the Defence, underscoring that it was for the Defence to call Witness T24 as a witness and that, contrary to the Trial Chamber's observation, the Defence did cross-examine Witness FH on any advantages he accrued for his confession.[1232] Karemera and Ngirumpatse aver that their prejudice is further demonstrated by the fact that the trial chamber in the *Bizimungu et al.* case decided not to consider the Murambi Training School meeting as a basis for conviction in light of the Prosecution's Rule 68 violations.[1233] Finally, Ngirumpatse requests the Appeals Chamber to exclude the allegation set forth in paragraph 47 of the Indictment as well as the testimonies of Witnesses FH and Uwizeye.[1234]

432. The Prosecution responds that the Trial Chamber properly assessed the probative value of the disclosed material and acted within its discretion in deciding that the admission of the evidence

[1225] Trial Decision of 15 November 2011, paras. 24-26; Trial Judgement, paras. 815, 816.
[1226] Trial Decision of 15 November 2011, para. 27.
[1227] Trial Judgement, paras. 818, 825-828, 830.
[1228] Karemera Notice of Appeal, paras. 62-64; Karemera Appeal Brief, paras. 260, 261, 262, 265-278, 281-289; Ngirumpatse Notice of Appeal, para. 128; Ngirumpatse Appeal Brief, paras. 422-440.
[1229] Karemera Appeal Brief, paras. 265, 269, 270, 275, 276, 278, 281, 282; Karemera Reply Brief, para. 63; Ngirumpatse Appeal Brief, paras. 422, 424, 425, 437. *See also* Trial Judgement, paras. 826-828, 830.
[1230] Karemera Appeal Brief, paras. 270, 275, 276, 281, 282; Karemera Reply Brief, para. 63; Ngirumpatse Appeal Brief, paras. 426-428.
[1231] Ngirumpatse Appeal Brief, para. 424; Ngirumpatse Reply Brief, para. 113.
[1232] Karemera Appeal Brief, paras. 272-274; Ngirumpatse Appeal Brief, para. 423.
[1233] Karemera Appeal Brief, paras. 271, 277; Ngirumpatse Appeal Brief, para. 440.

was sufficient to remedy the minimal prejudice suffered by Karemera and Ngirumpatse.[1235] It further contends that comparison with other cases is irrelevant as trial chambers are not bound by other trial chamber's findings,[1236] and that the Trial Chamber did not shift the burden of proof given that Karemera could have called Witness T24 as a witness.[1237]

433. There is no dispute that Karemera and Ngirumpatse suffered prejudice from the Prosecution's failure to timely disclose potentially exculpatory evidence. Rather, the issue is whether the prejudice was sufficiently remedied. In this context, the Appeals Chamber recalls that the granting of a remedy is a matter falling within the trial chamber's discretion and must be determined on a case-by-case basis.[1238] The Appeals Chamber finds that the admission of the disclosed material fell within the remedies available to the Trial Chamber as a result of the Prosecution's violation of its obligations under Rule 68 of the Rules. The Appeals Chamber further observes that, in doing so, the Trial Chamber granted Ngirumpatse's request in part.[1239] In relation to Ngirumpatse's claim that the Appeals Chamber should exclude the allegation set forth in paragraph 47 of the Indictment as well as the testimonies of Witnesses FH and Uwizeye, the Appeals Chamber recalls that a trial chamber's discretionary decision will only be reversed if it was based on an incorrect interpretation of the law or a patently incorrect conclusion of fact, or was so unfair or unreasonable as to constitute an abuse of the trial chamber's discretion.[1240]

434. The Appeals Chamber observes that Witness FH's evidence in the disclosed material was not related to the Murambi Training School meeting, but rather to his status within the Gitarama prison hierarchy as well as to his statements during his *Gacaca* trial.[1241] The Trial Chamber noted and discussed this evidence but concluded that it did not necessarily lead to the conclusion that

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[1234] Ngirumpatse Appeal Brief, para. 439.
[1235] Prosecution Response Brief (Karemera), paras. 166-168; Prosecution Response Brief (Ngirumpatse), para. 180. *See also* AT. 10 February 2014 pp. 47-49.
[1236] Prosecution Response Brief (Karemera), para. 169.
[1237] Prosecution Response Brief (Karemera), para. 171.
[1238] *Kalimanzira* Appeal Judgement, para. 14; *Bizimungu et al.* Trial Judgement, para. 143; *The Prosecutor v. Augustin Ndindiliyimana et al.*, Case No. ICTR-00-56-T, Decision on Defence Motions Alleging Violations of the Prosecution's Disclosure Obligations Pursuant to Rule 68, 22 September 2008, para. 14; *The Prosecutor v. Édouard Karemera et al.*, Case No. ICTR-98-44-AR73.6, Decision on Joseph Nzirorera's Interlocutory Appeal, 28 April 2006 ("Appeal Decision of 28 April 2006"), paras. 8, 9.
[1239] Trial Judgement, para. 816; Trial Decision of 15 November 2011, para. 5 ("[*à*] *titre de sanction et de réparation du préjudice subi, [Ngirumpatse] demande à la Chambre d'écarter les allégations contenues dans le paragraphe 47 de l'acte d'accusation et l'ensemble des témoignages de Fidèle Uwizeye et de FH. En outre, il prie la Chambre d'ordonner au Procureur de certifier par écrit qu'il s'est conformé à ses obligations découlant de l'article 68(A). Au surplus, Matthieu Ngirumpatse demande l'admission en preuve de six documents.*") (references omitted). *See also* Trial Judgement, para. 815 ("[t]he Chamber ordered the Prosecution to identify the material it assessed as exculpatory, and the Defence to make submissions. Ngirumpatse made submissions moving the Chamber [for various forms of relief]. Karemera requested a translation of the Prosecutor's submissions and refrained from making submissions when the Chamber denied the request.").
[1240] *Kalimanzira* Appeal Judgement, para. 14; *Bagosora et al.* Appeal Decision of 25 September 2006, para. 6.
[1241] Trial Judgement, paras. 810, 811, 826-828.

Witness FH's testimony regarding the Murambi Training School meeting was not credible.[1242] It further concluded that this evidence had relatively low probative value.[1243] In view of the above, the Appeals Chamber finds that Ngirumpatse has failed to demonstrate how the Trial Chamber abused its discretion and erred in not excluding Witness FH's testimony.[1244] In addition, Ngirumpatse does not substantiate his claim that Witness Uwizeye's testimony should have been excluded as a result of the impact of the disclosed material on his credibility.

435. The Appeals Chamber is not convinced that the Trial Chamber failed to consider the substance of Witness T24's evidence about what transpired at the Murambi Training School meeting. Although the Trial Chamber, in summarizing the content of Witness T24's statement, focused on allegations concerning Witness FH's actions as a prisoner,[1245] a review of the remainder of the Trial Judgement reveals that it assessed Witness T24's evidence concerning the content of the Murambi Training School meeting and weighed it against the accounts of Witnesses FH and Uwizeye.[1246] In particular, the Trial Chamber observed that Witness T24 attended the meeting and denied that the bourgmestres were threatened, thereby differing from Witnesses FH's and Uwizeye's evidence.[1247] It concluded nevertheless that Witness T24's evidence did not render "the consistent testimony of Witness FH and Uwizeye unreliable".[1248] Therefore, the Appeals Chamber is not convinced that the Trial Chamber only considered the impact of Witness T24's evidence in relation to Witness FH.

436. In addition, the Appeals Chamber finds no merit in Ngirumpatse's contention that the Trial Chamber limited its analysis of prejudice to the probative value of Witness T24's evidence and failed to consider his inability to recall Witnesses FH and Uwizeye and to cross-examine them based on the disclosed material. Contrary to Ngirumpatse's submission, the Trial Chamber expressly acknowledged that the late disclosure deprived the Defence of the possibility of confronting Witnesses FH and Uwizeye or recalling them.[1249] It therefore considered these elements in its determination related to the gravity of the prejudice.

[1242] Trial Judgement, paras. 826-828.
[1243] Trial Judgement, paras. 826-828.
[1244] Trial Judgement, para. 830.
[1245] Trial Judgement para. 813. *See also* Trial Judgement, p. 146 (subsection entitled "Evidence Concerning the Credibility of Prosecution Witness FH (Disclosed and Admitted after Closing Arguments)").
[1246] Trial Judgement, para. 854.
[1247] Trial Judgement, para. 854.
[1248] Trial Judgement, para. 854.
[1249] Trial Judgement, para. 820. *See also* Trial Decision of 15 November 2011, para. 24.

437. The Appeals Chamber further recalls that exclusion of evidence for disclosure violations is an extreme remedy and should not be imposed unless the defence demonstrated sufficient prejudice to justify such a remedy.[1250] In terms of prejudice, the Trial Chamber noted:

> To put the prejudice suffered into perspective, however, the Chamber notes that it is a common theme in cross-examination of detained witnesses to inquire whether they have received favourable treatment in prison in exchange for their testimony before the Tribunal. Nonetheless, the Defence teams in this case put no such questions to Witness FH. Likewise, it appears from the Prosecution evidence presented in 2007 that Witness T-24 attended the 18 April meeting. Thus, the Defence could have interviewed him on this matter and could have called him to testify if it considered that the totality of his testimony could have benefited the Accused. Also, the Defence must have known that the 18 April meeting was an issue in *Nzabonimana*.[1251]

438. The Appeals Chamber recalls that it is not for the Trial Chamber to dictate how a party should conduct its case.[1252] However, the Trial Chamber's observation was not determinative to its finding that the Defence suffered material prejudice. Indeed, the Trial Chamber expressly recognized that Karemera and Ngirumpatse were prejudiced.[1253] It further determined that the late disclosure prevented them from requesting the admission of Witness FH's transcripts and from calling Witness T24 to testify.[1254] The Trial Chamber's observation was also not determinative of its finding on the probative value of the evidence. As mentioned earlier, the conclusion that the evidence had low probative value was based on the impact of the disclosed material on the credibility of Witness FH. Therefore, although the Trial Chamber's language is equivocal, it had no consequences on its findings.

439. The Appeals Chamber also finds Karemera's and Ngirumpatse's reliance on the *Bizimungu et al.* case to be unfounded. It recalls that two reasonable triers of facts may reach different but equally reasonable conclusions when assessing the reliability of a witness and determining the probative value of the evidence presented at trial.[1255] An error cannot be established by simply demonstrating that other trial chambers have exercised their discretion in a different way.[1256] Furthermore, the Appeals Chamber recalls that the determination by a trier of fact of the appropriate remedy for late disclosure depends on the particular circumstances of that case as it entails an

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[1250] *The Prosecutor v. Pauline Nyiramasuhuko et al.*, Case No. ICTR-98-42-T, Decision on Ntahobali's Motion for Exclusion of Evidence or for Recall of Prosecution Witnesses QY, SJ and Others, 3 December 2008, para. 20; *The Prosecutor v. Édouard Karemera et al.*, Case No. ICTR-98-44-T, Decision on Joseph Nzirorera's Sixth, Seventh and Eighth Notices of Disclosure Violations and Motions for Remedial, Punitive and Other Measures, 29 November 2007, p. 9; *The Prosecutor v. Édouard Karemera et al.*, Case No. ICTR-98-44-T, Decision on Joseph Nzirorera's Motion to Exclude the Testimony of Prosecution Witness Upendra Baghel, 30 October 2007, para. 12; *The Prosecutor v. Édouard Karemera et al.*, Case No. ICTR-98-44-T, Decision on Joseph Nzirorera's Notices of Rule 68 Violation and Motions for Remedial and Punitive Measures, 25 October 2007, para. 22.
[1251] Trial Judgement, para. 822 (references omitted).
[1252] *Bikindi* Appeal Judgement, para. 22.
[1253] Trial Judgement, para. 821.
[1254] Trial Judgement, para. 821.
[1255] *Lukić and Lukić* Appeal Judgement, para. 396; *Krnojelac* Appeal Judgement, paras. 11, 12.
[1256] *Lukić and Lukić* Appeal Judgement, para. 396. *See also Krnojelac* Appeal Judgement, para. 12.

assessment of the prejudice to the accused.[1257] Accordingly, the Appeals Chamber considers that the Trial Chamber was entitled to reach a conclusion with respect to the remedy for a disclosure violation that differs from the one decided by the trial chamber in the *Bizimungu et al*. case.[1258]

440. The Appeals Chamber further observes that the trial chamber in the *Bizimungu et al*. case decided to draw a reasonable inference in favour of the accused[1259] after finding that the material was "highly relevant, highly probative and clearly exculpatory".[1260] In contrast, the Trial Chamber in this case found that the disclosed material had low probative value and that its admission into evidence was a sufficient remedy.[1261] The Appeals Chamber finds that the Trial Chamber was entitled to reach a different conclusion from that of the trial chamber in the *Bizimungu et al.* case, Karemera and Ngirumpatse have not demonstrated otherwise.

441. Nevertheless, the Appeals Chamber has stressed repeatedly that the Prosecution's obligation to disclose exculpatory material is essential to a fair trial,[1262] and notes that the Trial Chamber qualified as "completely unacceptable" the Prosecution's conduct regarding its disclosure obligations pursuant to Rule 68.[1263]

442. In light of the foregoing, the Appeals Chamber finds that Karemera and Ngirumpatse have not demonstrated that the Trial Chamber abused its discretion in deciding that the admission of the disclosed material was sufficient to remedy the Prosecution's Rule 68 violation.[1264]

2. Notice

443. Ngirumpatse argues that the Trial Chamber erred in convicting him of "omission by tacit approval" in relation to the Murambi Training School meeting and that this form of conduct was not pleaded in the Indictment.[1265]

[1257] *See*, *e.g.*, *Kalimanzira* Appeal Judgement, para. 18.
[1258] *Compare* Trial Judgement, paras. 815-830 *with Bizimungu et al.* Trial Judgement, paras. 144-177.
[1259] *Bizimungu et al.* Trial Judgement, paras. 174, 176, 1189-1192.
[1260] *Bizimungu et al.* Trial Judgement, paras. 170, 1192. *See also Bizimungu et al.* Trial Judgement, paras. 145-149, 169, 175.
[1261] Trial Judgement, para. 830.
[1262] *See*, *e.g.*, *Kalimanzira* Appeal Judgement, para. 18; *Ndindabahizi* Appeal Judgement, para. 72; *The Prosecutor v. Édouard Karemera et al.*, Case No. ICTR-98-44-AR73.7, Decision on Interlocutory Appeal Regarding the Role of the Prosecutor's Electronic Disclosure Suite in Discharging Disclosure Obligations, 30 June 2006, para. 9; Appeal Decision of 28 April 2006, para. 7.
[1263] T. 24 May 2006 p. 36.
[1264] The Appeals Chamber finds no merit in Karemera's argument that the Prosecution deliberately concealed material relevant to the Murambi Training School meeting and therefore implicitly admitted that Karemera did not attend the meeting. *See* Karemera Appeal Brief, para. 260. *See also* Prosecution Response Brief (Karemera), paras. 158, 159, 163 (responding that it had no intention to conceal the disclosed material). Regardless of the reason for the Prosecution's failure to discharge its disclosure obligations in this instance, the Appeals Chamber does not consider this failure to be tantamount to any form of admission by the Prosecution.

444. The Prosecution responds that the Indictment clearly charges Ngirumpatse for his involvement in the Murambi Training School meeting,[1266] as well as for his failure to stop the killings.[1267] The Prosecution further asserts that the notion of tacit approval is established in law, and that the Trial Chamber did not err in this regard.[1268]

445. In its factual findings, the Trial Chamber found that Ngirumpatse, other members of the MRND, and members of the Interim Government refused to take any measures during the Murambi Training School meeting to stop the killings and rapes of Tutsis.[1269] According to the Trial Chamber, this amounted to a "tacit approval of the attacks against innocent civilians".[1270] A review of the Trial Judgement reflects, however, that this finding does not underpin Ngirumpatse's convictions. Rather, the basis of the Trial Chamber's findings on his responsibility rest on Ngirumpatse's address to local government officials during the second part of the meeting where he, Karemera, Mugenzi, and other national authorities intimidated the local officials to stop protecting Tutsis and to allow the Tutsis to be killed.[1271]

446. Accordingly, Ngirumpatse has not identified any error in the notice he received that would invalidate the verdict.

3. Criminal Responsibility

447. Ngirumpatse argues that the Trial Chamber erred in holding him responsible for aiding and abetting the killing of Tutsis in Gitarama Prefecture.[1272] The Prosecution responds that the Trial Chamber correctly found him to be responsible for aiding and abetting the crimes.[1273]

448. The Appeals Chamber notes that the Trial Chamber's conclusion that Karemera and Ngirumpatse aided and abetted the killing of Tutsis in Gitarama are based on the same facts as its conclusion regarding Karemera's and Ngirumpatse's liability pursuant to a joint criminal enterprise.[1274] In the circumstances of this case, the Appeals Chamber *proprio motu* finds that Karemera's and Ngirumpatse's responsibility for participating in a joint criminal enterprise fully encompasses their criminal conduct and thus does not warrant a conviction on the basis of aiding

[1265] Ngirumpatse Appeal Brief, paras. 489, 490. Ngirumpatse further adds that the evidence of Witnesses FH and Uwizeye shows, contrary to the Trial Chamber findings, that the Interim Government took measures during the Murambi Training School meeting to stop the killings. *See* Ngirumpatse Appeal Brief, para. 491.
[1266] Prosecution Response Brief (Ngirumpatse), para. 179.
[1267] Prosecution Response Brief (Ngirumpatse), para. 183.
[1268] Prosecution Response Brief (Ngirumpatse), para. 183.
[1269] Trial Judgement, para. 857.
[1270] Trial Judgement, para. 857.
[1271] Trial Judgement, paras. 852, 859, 860, 1619-1624.
[1272] Ngirumpatse Appeal Brief, paras. 748-750, 753.
[1273] Prosecution Response Brief (Ngirumpatse), paras. 345-350.
[1274] *See* Trial Judgement, paras. 1621, 1623.

and abetting the same crimes.[1275] Accordingly, the Appeals Chamber reverses their convictions on the basis of aiding and abetting. As a result, Ngirumpatse's challenge to the Trial Chamber's findings that he aided and abetted the crimes based on his participation in the meeting at the Murambi Training School is moot.

4. Assessment of Evidence

449. The Trial Chamber based its findings on the meeting at the Murambi Training School principally on the direct evidence of Prosecution Witnesses Uwizeye and FH.[1276] According to the Trial Judgement, Witness Uwizeye attended both parts of the meeting.[1277] The Trial Chamber relied on Witnesses Uwizeye and FH to find that Karemera was present and participated in the meeting.[1278] The Trial Chamber relied only on Witness Uwizeye to place Ngirumpatse at the meeting.[1279] The Trial Chamber noted that Witness FH did not name Ngirumpatse as a participant, but explained that the witness did not know Ngirumpatse and thus was not in a position to identify him.[1280]

450. The Trial Chamber also considered the testimony of Defence Witnesses Jean-Paul Akayesu, Eliézer Niyitegeka, CWL, and PR and the transcripts tendered by the Defence of the evidence of Witnesses Jean-Marie Vianney Mporanzi and T24 given in the *Nzabonimana* case.[1281] The Trial Chamber noted that Witnesses Akayesu, Niyitegeka, CWL, and PR disputed that Karemera and Ngirumpatse attended the meeting.[1282] The Trial Chamber, observed, however, that Witness Niyitegeka only attended the meeting briefly, that Witness PR did not enter the meeting room, and that Witness CWL based his testimony solely on his recollection of listening to a radio broadcast, and as such found this evidence insufficient to call into question the reliable Prosecution evidence.[1283] The Trial Chamber did not attach any weight to aspects of Witness Akayesu's testimony that contradicted Witnesses Uwizeye's and FH's evidence after finding Akayesu evasive and noting that his testimony differed from his defence in his own trial before the Tribunal.[1284]

451. The Trial Chamber relied on some aspects of the evidence of Witnesses Akayesu, Mporanzi, and T24 as general corroboration for certain features of Witnesses Uwizeye's and FH's account of

[1275] *Cf. Đorđević* Appeal Judgement, para. 833; *D. Milošević* Appeal Judgement, para. 274.
[1276] Trial Judgement, paras. 834, 843, 851, 852, 859.
[1277] Trial Judgement, paras. 845, 851, 852.
[1278] Trial Judgement, paras. 834, 842, 852.
[1279] Trial Judgement, paras. 843, 848.
[1280] Trial Judgement, para. 844.
[1281] Trial Judgement, paras. 782-806, 835-837, 845, 846, 849-855. The Appeals Chamber notes that the Trial Chamber misspelled Jean-Marie Vianney Mporanzi's name as "Jeanne Marie Vianney Mporanzi". *See* Trial Judgement, p. 143.
[1282] Trial Judgement, paras. 836, 837, 845, 846.
[1283] Trial Judgement, paras. 836, 837, 846.
[1284] Trial Judgement, paras. 836, 846.

the meeting.[1285] The Trial Chamber noted, however, that the evidence of Witnesses Akayesu, Mporanzi, and T24 differed from that of Witnesses Uwizeye and FH on the tenor of the meeting, notably the intimidation of the bourgmestres.[1286] The Trial Chamber considered the evidence of Witnesses Uwizeye and FH more convincing.[1287]

452. Karemera and Ngirumpatse submit that the Trial Chamber erred in relying on Witnesses Uwizeye and FH and in considering that they corroborated each other, in particular focusing on the credibility of their evidence and the differences between their accounts and other evidence.[1288] With respect to their credibility, Karemera submits that Witnesses Uwizeye and FH were former local officials and thus had an incentive to shift blame onto higher authorities.[1289] Karemera also argues that the Trial Chamber failed to consider that he dismissed Witness Uwizeye from the post of prefect and that the witness thus had an incentive to inculpate him.[1290]

453. Karemera and Ngirumpatse also highlight that Witness Uwizeye was arrested after testifying for the defence in the *Akayesu* case.[1291] Ngirumpatse, in particular, submits that Witness Uwizeye was a member of an opposition party, later joined the RPF, admitted discussing his testimony with authorities after appearing before the Tribunal, and played an ambiguous role in the war and was thus exposed to threats of persecution.[1292] Karemera and Ngirumpatse also point to evidence that a Prosecution investigator raised doubts about Witness Uwizeye's "ability to testify in fairness before a court of law".[1293]

454. Karemera and Ngirumpatse highlight Witness Uwizeye's own concession that he misattributed statements made by Karemera to Ngirumpatse and vice-versa.[1294] Ngirumpatse also argues that Witness Uwizeye's testimony on Ngirumpatse's presence at the Murambi Training School meeting is uncorroborated and that the witness failed to mention him as one of the leaders present at the meeting in prior statements.[1295]

[1285] Trial Judgement, paras. 845, 851, 852, 855.
[1286] Trial Judgement, paras. 845, 853, 854.
[1287] Trial Judgement, para. 859.
[1288] Karemera Notice of Appeal, paras. 66, 104, 105, 116-121; Karemera Appeal Brief, paras. 259, 260, 278-295. Ngirumpatse Notice of Appeal, paras. 124-125; Ngirumpatse Appeal Brief, paras. 420, 421, 442-455, 460-480; Ngirumpatse Reply Brief, paras. 112, 115, 117. The Appeals Chamber further notes Karemera's submission under his Ground 28 relying on the *Bizimungu et al.* case (*see* Karemera Appeal Brief, paras. 271, 277; Karemera Reply Brief, para. 63). The Appeals Chamber recalls its finding that such reliance on factual findings in other proceedings is unfounded and summarily dismisses this submission. *See supra* Section III.H.1.
[1289] Karemera Appeal Brief, para. 278.
[1290] Karemera Appeal Brief, para. 278.
[1291] Karemera Appeal Brief, para. 280; Ngirumpatse Appeal Brief, para. 446.
[1292] Ngirumpatse Appeal Brief, paras. 443, 447.
[1293] Karemera Appeal Brief, para. 293, *referring to* Karemera Defence Exhibit 39 (Reconfirmation of Witness Uwizeye, dated 24 March 2001). *See also* Ngirumpatse Appeal Brief, para. 448.
[1294] Karemera Appeal Brief, para. 294; Ngirumpatse Appeal Brief, paras. 462, 463, 465.
[1295] Ngirumpatse Appeal Brief, paras. 442, 444, 445.

455. In addition, Karemera and Ngirumpatse point to the inconsistency between the radio interviews given by Witnesses Uwizeye and FH on 7 June 1994, lauding the government's efforts, and their condemnation of the government in their evidence.[1296] Karemera and Ngirumpatse further contend that the Trial Chamber failed to consider that Witness Uwizeye lied about giving this interview until confronted with an audio recording and expert evidence and that he exhibited contemptuous behaviour when questioned by the Defence.[1297]

456. Furthermore, Karemera and Ngirumpatse challenge the Trial Chamber's reliance on Witness FH by highlighting evidence of his status as a Rwandan prisoner, expressions of support for the Rwandan government, and willingness to cooperate to obtain release.[1298] Ngirumpatse also submits that the Trial Chamber erred in finding that Witnesses FH and Uwizeye gave consistent evidence that Ngirumpatse intimidated local bourgmestres by highlighting that Witness FH did not mention Ngirumpatse's presence.[1299] Ngirumpatse submits that Witness FH did not mention Ngirumpatse's presence at the meeting and that, had Ngirumpatse been present, the witness would have remembered this since the witness acknowledged some familiarity with him.[1300]

457. Karemera and Ngirumpatse also highlight various inconsistencies in the evidence with respect to the tenor and content of the statements by various national authorities at the meeting, whether Witness Uwizeye left the meeting early, the presence of religious leaders, the presence of Ngirumpatse, and whether Callixte Nzabonimana slapped Witness Mporanzi.[1301] In their view, the Defence evidence amply supports the contention that the meeting was directed solely at security issues and not intimidation, and they further submit that the Trial Chamber erred in discounting Defence evidence and in selectively relying on portions of it to bolster Witnesses Uwizeye's and FH's credibility.[1302]

458. The Prosecution responds that the Trial Chamber reasonably assessed the evidence in relation to the meeting at the Murambi Training School.[1303]

459. The Appeals Chamber is not satisfied that Karemera and Ngirumpatse have demonstrated that the Trial Chamber erred in relying on the evidence of Witnesses Uwizeye and FH. With respect to Witness FH, the Trial Chamber specifically examined whether his prior appearance in cases

[1296] Karemera Appeal Brief, para. 291; Ngirumpatse Appeal Brief, para. 485.
[1297] Karemera Appeal Brief, para. 292; Ngirumpatse Appeal Brief, paras. 449, 450, 486.
[1298] Karemera Appeal Brief, paras. 281, 282. *See also* Ngirumpatse Appeal Brief, paras. 433, 435, 436.
[1299] Ngirumpatse Appeal Brief, para. 452, *referring to* Trial Judgement, para. 852.
[1300] Ngirumpatse Appeal Brief, paras. 453-455.
[1301] Karemera Appeal Brief, paras. 283-290; Ngirumpatse Appeal Brief, paras. 464-476.
[1302] Karemera Appeal Brief, paras. 289, 290; Ngirumpatse Appeal Brief, paras. 426-428, 477-484.
[1303] Prosecution Response Brief (Karemera), paras. 155-161; Prosecution Response Brief (Ngirumpatse), paras. 177, 178, 181, 182. *See also* AT. 10 February 2014 pp. 58, 59, 61, 64.

before the Tribunal and in Rwanda, his leadership role among Rwandan prisoners, and his cooperation with prison administrators exhibited bias.[1304] The Trial Chamber found that these issues did not impact on Witness FH's credibility.[1305] In reaching this conclusion, the Trial Chamber noted, among other things, that Karemera and Ngirumpatse had not identified any discrepancies between his testimony and the evidence he gave in the *Akayesu* case, which covered similar issues and occurred prior to his arrest.[1306] Beyond disagreeing with this conclusion, Karemera and Ngirumpatse have not identified any error in the Trial Chamber's consideration of these issues.

460. In addition, a review of the Trial Judgement reveals that the Trial Chamber was well aware of Witnesses Uwizeye's and FH's status as local officials,[1307] their lack of support for the Interim Government and the MRND party,[1308] and that Karemera dismissed Witness Uwizeye from the post of prefect.[1309] As such, it was not unreasonable for the Trial Chamber to consider these issues insufficient to impeach the credibility of Witnesses Uwizeye's and FH's evidence. Moreover, the Appeals Chamber considers that the bare allegation that Witness Uwizeye must have been biased because Karemera dismissed him does not, in itself, demonstrate that the Trial Chamber was unreasonable in crediting the witness's testimony.[1310]

461. The Trial Chamber did not discuss any possible impact on Witness Uwizeye's testimony in light of his arrest following his evidence in the *Akayesu* case or his subsequent interactions with Rwandan government officials. The Appeals Chamber, however, is not convinced that the Trial Chamber was required to do so, in particular in the absence of any showing that the content of his evidence concerning the meeting materially changed after the arrest. Karemera's and Ngirumpatse's submissions in this regard amount to mere speculation and fail to demonstrate that the Trial Chamber erred in relying on Witness Uwizeye's testimony. In a similar vein, the fact that a Prosecution investigator raised questions about Witness Uwizeye's ability to testify cannot substitute for the Trial Chamber's own assessment after hearing the witness in court and observing his demeanour. 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 and that it is best placed to assess the evidence.[1311]

[1304] Trial Judgement, paras. 826-828.
[1305] Trial Judgement, paras. 826-828.
[1306] Trial Judgement, para. 829.
[1307] *See*, *e.g.*, Trial Judgement, paras. 609, 749, 750, 763, 768-773, 797, 852, 901-904, 907-909, 1031; Ngirumpatse Defence Exhibit 229(A11) (*The Prosecutor v. Callixte Nzabonimana*, Case No. ICTR-98-44D-T, *Gacaca* judgement of Prosecution Witness CNAA, dated 4 November 2008), p. 6.
[1308] *See*, *e.g.*, Trial Judgement, paras. 766, 768-772, 778-781, 826-830, 851, 852, 898-909.
[1309] Trial Judgement, paras. 898-909.
[1310] *Kajelijeli* Appeal Judgement, para. 18.
[1311] *Nchamihigo* Appeal Judgement, para. 47. *See also Simba* Appeal Judgement, para. 9.

462. The Appeals Chamber can also identify no error in the Trial Chamber's reliance on Witness Uwizeye's uncorroborated evidence to establish Ngirumpatse's participation in the meeting. The Appeals Chamber recalls that a trial chamber has the discretion to rely on uncorroborated, but otherwise credible, witness testimony.[1312] The fact that Witness FH did not expressly place Ngirumpatse at the meeting does not call into question the reasonableness of the Trial Chamber's reliance on the evidence of Witness Uwizeye. The Trial Chamber expressly noted that Witness FH was not in a position to identify Ngirumpatse.[1313] Ngirumpatse's mere suggestion to the contrary does not call into question the reasonableness of the Trial Chamber's analysis.

463. Turning to Witness Uwizeye's prior statement, the Trial Chamber considered that he identified Ngirumpatse as having attended the Murambi Training School meeting in an interview with the Prosecution in 1997, prior to Ngirumpatse's arrest the following year.[1314] The citation offered by the Trial Chamber referred to a statement from 1996 in which Witness Uwizeye does not mention Ngirumpatse.[1315] It is clear, however, that this is merely a mistaken reference. The following sentence refers to the next exhibit entered into the record, which is Witness Uwizeye's statement from 1997 discussing Ngirumpatse's presence at the Murambi Training School meeting.[1316] This mistaken reference in the Trial Judgement is insufficient to establish an error on appeal.[1317]

464. Moreover, the Appeals Chamber is not convinced that the Trial Chamber erred in relying on Witness FH to corroborate Witness Uwizeye's account of the content of the meeting. Although Witness FH was not in a position to identify Ngirumpatse,[1318] a reasonable trier of fact could have relied on his testimony as corroboration given his general statement that those officials who addressed the second part of the meeting were trying to intimidate local officials.[1319] Ngirumpatse has not shown how this general aspect of Witness FH's testimony is incompatible with the more specific content of Witness Uwizeye's evidence identifying Ngirumpatse as one of the speakers.

465. The Appeals Chamber is also not convinced that a reasonable trier of fact could not have relied on Witnesses Uwizeye's and FH's evidence concerning the tenor and purpose of the meeting in light of a radio address they gave in June 1994 voicing support for the government. Ngirumpatse

[1312] *Hategekimana* Appeal Judgement, para. 150; *Nchamihigo* Appeal Judgement, para. 42.
[1313] Trial Judgement, para. 844.
[1314] Trial Judgement, para. 843. *See also* Trial Judgement, para. 11.
[1315] Trial Judgement, fn. 1068, *citing* Ngirumpatse Defence Exhibit 76 (Declaration of Witness Uwizeye, dated 10 May 1996). *See also* Ngirumpatse Appeal Brief, paras. 444, 445.
[1316] Trial Judgement, para. 843 *and* fn. 1069, *citing* Prosecution Closing Brief, fn. 589, *referring to* Ngirumpatse Defence Exhibit 77 (Declaration of Witness Uwizeye, dated 16 March 1997), p. 6.
[1317] *Hategekimana* Appeal Judgement, para. 30.
[1318] Trial Judgement, para. 844.
[1319] Trial Judgement, para. 768.

and Karemera have failed to show how this address in June 1994 is in any way related to the content of the meeting at the Murambi Training School. The Appeals Chamber is not satisfied that Karemera and Ngirumpatse have shown how the fact that Witness Uwizeye may have denied giving this address until confronted with expert evidence identifying him as one of the speakers undermines the reasonableness of the Trial Chamber's decision to accept his corroborated testimony about the meeting at the Murambi Training School.

466. Finally, the Appeals Chamber is not convinced that Karemera and Ngirumpatse have identified any inconsistency between the accounts of Witnesses Uwizeye and FH or the other evidence that would call into question the Trial Chamber's reliance on their evidence. The Appeals Chamber observes that the various differences highlighted by Karemera and Ngirumpatse between Witnesses Uwizeye's and FH's evidence and defence evidence, including whether Uwizeye left the meeting, specific utterances and actions by certain officials such as Mugenzi, Kalimanzira, Nzabonimana and Akayesu, or the presence of religious leaders,[1320] do not form part of the Trial Chamber's analysis.[1321] The fact that these differences were not referred to in the Trial Judgement does not mean that they were not taken into account in the Trial Chamber's assessment.[1322] In any event, Karemera and Ngirumpatse have not shown that these differences are clearly relevant to the findings to rebut the presumption that the Trial Chamber evaluated this aspect of their evidence.[1323]

467. It follows from the Trial Judgement that the Trial Chamber relied on the fundamental features of Witnesses Uwizeye's and FH's evidence that the national authorities, including Karemera and Ngirumpatse, intimidated the local bourgmestres and warned them to support the Interim Government's policy and not to interfere with the *Interahamwe*.[1324] The Appeals Chamber recalls that a trial chamber has the main responsibility to resolve any inconsistencies that may arise within or among witnesses' testimonies.[1325] It is within the discretion of the trial chamber to evaluate any such inconsistencies, to consider whether the evidence taken as a whole is reliable and credible, and to accept or reject the fundamental features of the evidence.[1326] The Appeals Chamber further recalls 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

[1320] Karemera Appeal Brief, paras. 284-288; Ngirumpatse Appeal Brief, paras. 464-476.
[1321] *See generally* Trial Judgement, paras. 834-859.
[1322] *Kalimanzira* Appeal Judgement, para. 195; *Simba* Appeal Judgement, para. 152.
[1323] *Kalimanzira* Appeal Judgement, para. 195 ("[t]he Appeals Chamber considers that there is a presumption that a Trial Chamber has evaluated all the evidence presented to it, as long as there is no indication that the Trial Chamber completely disregarded any particular piece of evidence. However, this presumption may be rebutted when evidence which is clearly relevant to the findings is not addressed by the Trial Chamber's reasoning.").
[1324] Trial Judgement, para. 852.
[1325] *Hategekimana* Appeal Judgement, para. 82; *Munyakazi* Appeal Judgement, para. 71
[1326] *Hategekimana* Appeal Judgement, para. 82; *Munyakazi* Appeal Judgement, para. 71.

with the description given in another credible testimony".[1327] The Appeals Chamber is not satisfied that Karemera and Ngirumpatse have highlighted any difference in the fundamental features of Witnesses Uwizeye's and FH's evidence concerning the meeting on 18 April 1994 that renders them incompatible.

468. The Trial Chamber gave express reasons for discounting key aspects of defence evidence which contradicted Witnesses Uwizeye's and FH's evidence on their presence and the tenor and purpose of the meeting. In particular, the Trial Chamber noted that Witness Niyitegeka attended the meeting only briefly, Witness Akayesu's testimony was evasive and different from the defence presented in his own trial, Witness PR did not enter the meeting room, Witness CWL's testimony was based on what he recalled from a radio broadcast, Witness Mporanzi had acknowledged lying in prior statements, and Witness T24 acknowledged not remembering a lot of what transpired.[1328] 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.[1329] Moreover, the Appeals Chamber can identify no error in the Trial Chamber's decision to credit portions of their testimony. The Appeals Chamber recalls that "[a] [t]rial [c]hamber is entitled to rely on any evidence it deems to have probative value and it may accept a witness's testimony only in part if it considers other parts of his or her evidence not reliable or credible".[1330]

469. Accordingly, Karemera and Ngirumpatse have not demonstrated that the Trial Chamber erred in assessing the evidence in relation to the meeting at the Murambi Training School.

5. Conclusion

470. For the foregoing reasons, the Appeals Chamber dismisses Karemera's Twenty-Eighth Ground of Appeal, in part, as well as Ngirumpatse's Twenty-Sixth Ground of Appeal and Forty-Seventh Ground of Appeal, in part. The Appeals Chamber, however, reverses *proprio motu* Karemera's and Ngirumpatse's convictions on the basis that they aided and abetted the crimes.

[1327] *Hategekimana* Appeal Judgement, para. 82. *See also Nahimana et al.* Appeal Judgement, para. 428.
[1328] Trial Judgement, paras. 836, 837, 853, 854.
[1329] *Muhimana* Appeal Judgement, para. 103; *Gacumbitsi* Appeal Judgement, para. 81; *Rutaganda* Appeal Judgement, para. 29.
[1330] *Kajelijeli* Appeal Judgement, para. 167.

I. Meetings in Kibuye (Karemera Grounds 14, 23, in Part, and 37; Ngirumpatse Grounds 29, 30, and 46)

471. The Trial Chamber convicted Karemera and Ngirumpatse of direct and public incitement to commit genocide pursuant to Article 6(1) of the Statute in relation to speeches delivered by Karemera and other authorities at a meeting held at the Kibuye Prefecture office on 3 May 1994 ("3 May 1994 Meeting") and by the Interim President Théodore Sindikubwabo at a meeting held in Kibuye on 16 May 1994 ("16 May 1994 Meeting").[1331] In this section, the Appeals Chamber considers Karemera's and Ngirumpatse's challenges to their convictions based on these events.

1. 3 May 1994 Meeting

472. The Trial Chamber found that, on 3 May 1994, Karemera and other authorities, including Prime Minister Jean Kambanda and Minister of Information Eliézer Niyitegeka addressed a public meeting at the Kibuye Prefecture office.[1332] The Trial Chamber found Karemera guilty of direct and public incitement to commit genocide based, in part, on the speech he gave at this meeting.[1333] The Trial Chamber also convicted Ngirumpatse of direct and public incitement to commit genocide based on Karemera's and the other authorities' speeches at the 3 May 1994 Meeting in view of Ngirumpatse's membership in and contribution to the joint criminal enterprise.[1334]

473. Karemera and Ngirumpatse challenge their convictions based on the findings in relation to the 3 May 1994 Meeting.[1335]

474. The Appeals Chamber recalls that a person may be found guilty of direct and public incitement to commit genocide, pursuant to Article 2(3)(c) of the Statute, if he or she directly and publicly incited the commission of genocide (*actus reus*) and had the intent to directly and publicly incite others to commit genocide (*mens rea*).[1336]

[1331] Trial Judgement, paras. 1596-1604, 1714, 1715.
[1332] Trial Judgement, paras. 949, 951, 992, 1596.
[1333] Trial Judgement, para. 1599.
[1334] Trial Judgement, para. 1600.
[1335] Karemera Notice of Appeal, paras. 75-78, 104, 105, 152, 153; Karemera Appeal Brief, paras. 147-168, 226-232, 237-243, 391-397; Ngirumpatse Notice of Appeal, paras. 140-143, 215, 219, 222, 283-296; Ngirumpatse Appeal Brief, paras. 518-525, 645, 740-744. *See also* AT. 10 February 2014 pp. 5-8; AT. 11 February 2014 p. 3. The Appeals Chamber notes that, in challenging his convictions for direct and public incitement to commit genocide, Karemera mistakenly assumes that such convictions also rely on Sindikubwabo's speech on 19 April 1994 at the installation ceremony for the new prefect of Butare, Sylvain Nsabimana. *See* Karemera Appeal Brief, paras. 396, 397. However, as he was not convicted of direct and public incitement to commit genocide in relation to that speech, the Appeals Chamber summarily dismisses Karemera's arguments in this respect.
[1336] *Kalimanzira* Appeal Judgement, para. 155, *referring to Nahimana et al.* Appeal Judgement, para. 677.

(a) The Direct Nature of the Incitement

475. The Trial Chamber found that, during the course of his speech at the 3 May 1994 Meeting, Karemera paid tribute to the *Interahamwe* by reading an MRND announcement expressing support for their contribution in restoring peace, and called on them to continue flushing out, stopping, and combating the enemy.[1337] The Trial Chamber noted that: (i) 2,000 people had recently been massacred by the *Interahamwe* and the military in close vicinity of the meeting place; (ii) the mass graves for the victims had been completed only two days prior to the 3 May 1994 Meeting; and (iii) the stench of the dead bodies was still in the air at the time of the meeting.[1338] The Trial Chamber concluded that Karemera's words encouraged the audience to "fight the enemy" and physically attack and destroy Tutsis as a group.[1339] The Trial Chamber also found that the speeches delivered at the 3 May 1994 Meeting condoned the killings and incited the population to continue killing Tutsis.[1340] The Trial Chamber concluded that the speeches were understood by the audience as a direct call to continue killing Tutsis in order to destroy the Tutsi population in whole or in part.[1341]

476. The Trial Chamber considered the speeches of Karemera and others in the context of the massacres that had recently occurred in Kibuye.[1342] In particular, an important consideration in the Trial Chamber's determination was that the speakers did not comment on the killings and did not urge the population to cease massacring civilians.[1343] The Trial Chamber, having considered that "[i]t would have been utterly impossible for the Interim Government officials to be unaware of the killings that had occurred",[1344] and having noted that the 3 May 1994 Meeting was part of a programme of "pacification" tours organized by the Interim Government,[1345] observed that "[n]o reasonable individual who sought peace and wished to end the killings would have squandered such an opportunity to immediately and resoundingly condemn the massacre of innocent civilians".[1346]

477. The Trial Chamber noted that Karemera and other members of the Interim Government officials did not refer to those killings and had "only provided abstract rhetoric about restoring peace" in their speeches.[1347] With regard to Karemera's speech specifically, the Trial Chamber concluded that his paying tribute to the *Interahamwe* and calling upon them to flush out, stop, and

[1337] Trial Judgement, paras. 987, 992, 1596.
[1338] Trial Judgement, para. 989.
[1339] Trial Judgement, para. 991.
[1340] Trial Judgement, paras. 1597, 1598.
[1341] Trial Judgement, para. 1598.
[1342] Trial Judgement, paras. 989-991.
[1343] Trial Judgement, para. 990.
[1344] Trial Judgement, para. 989.
[1345] Trial Judgement, para. 943.
[1346] Trial Judgement, para. 990.

combat the enemy, could only have been understood, given "such a backdrop", as "an unequivocal endorsement of the killings" and, accordingly, as incitement to continue killing Tutsis.[1348]

478. In reaching its findings on the 3 May 1994 Meeting, the Trial Chamber considered the evidence of witnesses who had heard the speeches,[1349] Karemera's testimony,[1350] the minutes of the meeting ("Minutes of the Meeting"),[1351] the transcripts of the broadcast of the meeting by Radio Rwanda ("Transcripts of the Broadcast of the Meeting"),[1352] and the results of its site visit to Kibuye Prefecture.[1353]

479. Karemera submits that nothing in his speech can be interpreted as a direct call to commit genocide.[1354] He claims that the Trial Chamber found him guilty of incitement by omission based on what was not said in the speeches, namely the absence of a clear condemnation of the killings.[1355] Karemera contends that the Indictment did not plead his responsibility for incitement by omission, thereby depriving him of the opportunity to defend himself.[1356] Ngirumpatse argues that the Trial Chamber introduced the new crime of "incitement by omission" and that its findings in this regard are inconsistent with the Tribunal's jurisprudence.[1357]

480. Karemera and Ngirumpatse further submit that the Trial Chamber distorted the speeches given at the 3 May 1994 Meeting and mischaracterized the evidence.[1358] In particular, they argue that, contrary to the Trial Chamber's findings, the speakers addressed the killings, condemned them, did not characterize the Tutsis as an enemy, and warned against any confusion between the Tutsis and the enemy.[1359] Karemera and Ngirumpatse claim that the Trial Chamber ignored evidence to that effect, referring in particular to the Transcripts of the Broadcast of the Meeting, without providing any explanation.[1360] Karemera submits that the Trial Chamber erred in finding that

[1347] Trial Judgement, para. 991.
[1348] Trial Judgement, para. 991.
[1349] Trial Judgement, paras. 959-973.
[1350] Trial Judgement, paras. 974-979.
[1351] Trial Judgement, paras. 951-955, 983, 984, *referring to* Prosecution Exhibit 82B (Minutes of the 3 May 1994 Kibuye Prefecture Security Meeting).
[1352] Trial Judgement, paras. 956-958, *referring to* Nzirorera Defence Exhibits 289 (Transcript of speeches of MDR Secretariat Member and the Bourgmestres of Gisovu and Gishyita Communes, 3 May 1994 Kibuye Meeting), 290 (Transcript of speeches of Prime Minister Kambanda, Donat Murego, Eliézer Niyitegeka, and the Bourgmestre of Bwakira Commune, 3 May 1994 Kibuye Meeting).
[1353] Trial Judgement, para. 950.
[1354] Karemera Appeal Brief, para. 395.
[1355] Karemera Notice of Appeal, paras. 76, 152; Karemera Appeal Brief, paras. 148, 153, 156.
[1356] Karemera Appeal Brief, paras. 154, 165, 166.
[1357] Ngirumpatse Appeal Brief, paras. 523, 524, 743.
[1358] Karemera Notice of Appeal, para. 76; Karemera Appeal Brief, para. 156; Ngirumpatse Notice of Appeal, paras. 141, 286; Ngirumpatse Appeal Brief, para. 523. *See also* Karemera Response Brief, paras. 38-42.
[1359] Karemera Appeal Brief, paras. 149, 150, 156-161, 167, 395; Ngirumpatse Appeal Brief, para. 523. *See also* Karemera Response Brief, paras. 38, 51, 53; Ngirumpatse Response Brief, paras. 138-151, 155, 156.
[1360] Karemera Notice of Appeal, para. 77; Karemera Appeal Brief, paras. 156, 161-164, *referring to* Nzirorera Defence Exhibit 289 (Transcript of speeches of MDR Secretariat Member and the Bourgmestres of Gisovu and Gishyita

encouraging the *Interahamwe* who were fighting alongside the Rwandan Armed Forces was tantamount to incitement to physically attack and destroy Tutsis as a group.[1361] Karemera further asserts that the evidence should be considered in the context of the war in which his call upon the "youth" to stop the enemy could not have been regarded as criminal because the "youth" were fighting against the RPF.[1362]

481. Karemera and Ngirumpatse also argue that the Trial Chamber failed to exercise the necessary caution in assessing the evidence of Witness GK who was the sole Prosecution witness to testify about the 3 May 1994 Meeting and who was detained for the same crimes as those for which Karemera and Ngirumpatse were convicted.[1363] Karemera asserts that the Trial Chamber should have considered Witness GK's evidence alongside his own testimony, as well as that of Defence Witnesses ETK, Mathias Hitiyaremye, and LSP, and the Transcripts of the Broadcast of the Meeting.[1364] Karemera adds that the Trial Chamber erred in finding that Witness GK's testimony was generally corroborated by the Minutes of the Meeting and the Transcripts of the Broadcast of the Meeting.[1365]

482. The Prosecution responds that the Trial Chamber did not convict Karemera for direct and public incitement by omission, but on the basis of his public call on the *Interahamwe* to remain vigilant and to continue flushing out the enemy, meaning Tutsis.[1366] It further submits that Karemera and Ngirumpatse fail to demonstrate how, based on the evidence on the trial record, the Trial Chamber erred in finding that Karemera and members of the Interim Government directly and publicly incited genocide given the context.[1367]

483. The Appeals Chamber recalls that, in determining whether a speech constitutes a direct incitement to commit genocide, the principal consideration is the meaning of the words used in the specific context.[1368] The Appeals Chamber further recalls that a particular message may appear ambiguous on its face or to a given audience, or not contain an explicit appeal to commit genocide,

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Communes, 3 May 1994 Kibuye Meeting); Ngirumpatse Notice of Appeal, para. 286. *See also* Karemera Reply Brief, para. 37; Ngirumpatse Response Brief, para. 158.

[1361] Karemera Appeal Brief, para. 160.

[1362] Karemera Reply Brief, para. 38.

[1363] Karemera Notice of Appeal, para. 104; Karemera Appeal Brief, paras. 232, 237-240. *See also* Karemera Appeal Brief, paras. 227, 231; Ngirumpatse Response Brief, para. 134. Karemera further argues that the Prosecution did not disclose all of Witness GK's prior statements and that the Trial Chamber failed to grant appropriate relief for this violation. *See* Karemera Appeal Brief, para. 243. This argument is addressed elsewhere in this Judgement. *See supra* Section III.A.7.

[1364] Karemera Appeal Brief, para. 240. *See also* Ngirumpatse Response Brief, paras. 133, 158, 159. The Appeals Chamber notes that Karemera misspells Hitiyaremye's name in his Appeal Brief as "Habiyaremye".

[1365] Karemera Appeal Brief, para. 241.

[1366] Prosecution Response Brief (Karemera), para. 94.

[1367] Prosecution Response Brief (Karemera), paras. 95-97; Prosecution Response Brief (Ngirumpatse), para. 196. *See also* AT. 10 February 2014 pp. 45-47, 59.

[1368] *Nahimana et al.* Appeal Judgement, para. 701.

and still, when viewed in its proper context, amount to direct incitement.[1369] Furthermore, it may be helpful to examine how a speech was understood by its intended audience in order to determine its true message.[1370]

484. Karemera's and Ngirumpatse's arguments that they were convicted for incitement by "omission" are unfounded. The Trial Chamber found that Karemera's speech amounted to direct incitement based on what he said at the 3 May 1994 Meeting.[1371] In this respect, the Trial Chamber concluded that Karemera "paid tribute to the *Interahamwe* in his speech, calling on them to continue flushing out, stopping and combating the enemy, *thereby* inciting the audience to physically attack and destroy Tutsis as a group".[1372] The Trial Chamber's analysis reflects that its assessment of "what was not said" at the meeting merely served to assist in the interpretation of the speeches, including that of Karemera, and in assessing them in the given context. The Appeals Chamber finds no error in this approach. The Appeals Chamber therefore need not address Karemera's contention that the Indictment was defective as it did not plead his responsibility for incitement by omission, and dismisses Ngirumpatse's claim that the Trial Chamber introduced a new crime of incitement by omission.

485. The Appeals Chamber is also not convinced that Karemera and Ngirumpatse have demonstrated that the Trial Chamber ignored evidence that the speakers condemned the killing of civilians and urged those present to distinguish between "*Inkotanyi*", who were assisting the RPF, and Tutsis. To illustrate his argument, Karemera points to a passage from Prime Minister Kambanda's speech as recorded in the Transcripts of the Broadcast of the Meeting and to Witness GK's testimony relating to Kambanda's and Karemera's speeches.[1373] Although the Trial Chamber did not discuss the particular passages cited by Karemera, this does not mean that it did not consider this particular evidence,[1374] specifically since it considered the relevant exhibit and witness in its deliberations on the 3 May 1994 Meeting.[1375] Moreover, the Trial Chamber expressly noted other evidence indicating that the speakers condemned killings in general and made attempts to distinguish between Tutsis and the *Inkotanyi*,[1376] which it ultimately described as "abstract rhetoric about restoring peace".[1377]

[1369] *Nahimana et al.* Appeal Judgement, paras. 700, 701, 703.
[1370] *Nahimana et al*. Appeal Judgement, para. 701. *See also Nahimana et al.* Appeal Judgement, paras. 711, 713.
[1371] Trial Judgement, para. 992.
[1372] Trial Judgement, para. 992 (emphasis added). *See also* Trial Judgement, paras. 987, 991, 1450(5), 1596.
[1373] Karemera Appeal Brief, paras. 159 (*referring to* Nzirorera Defence Exhibit 290, p. K0235243), 167 (*referring to* Witness GK, T. 8 December 2006 p. 36).
[1374] *See*, *e.g*., *Muhimana* Appeal Judgement, para. 72.
[1375] Trial Judgement, paras. 956-968.
[1376] Trial Judgement, paras. 952, 956, 961, 966, 970, 972, 976.
[1377] Trial Judgement, para. 991.

486. The Appeals Chamber is also not satisfied that Karemera and Ngirumpatse have shown that, in view of this evidence, the Trial Chamber mischaracterized Karemera's speech as direct incitement to kill Tutsis. The Trial Chamber found that Karemera's tribute to the *Interahamwe* and his call on them to continue to be vigilant and flush out, stop, and combat the enemy occurred in the immediate aftermath of the *Interahamwe* having just participated in the massacre of 2,000 Tutsi civilians near the venue of the speeches.[1378] For the Trial Chamber, it was Karemera's and the other speakers' failure to condemn this specific and very recent massacre that rendered all of their other, more general statements about the restoration of peace hollow and abstract. None of the evidence highlighted by Karemera indicates any condemnation of this specific attack. In addition, the Trial Chamber considered evidence that those present understood the speeches as a call to kill Tutsi refugees, not just those purportedly fighting with the RPF.[1379]

487. Moreover, the Appeals Chamber considers that the reasonableness of the Trial Chamber's interpretation of Karemera's speech as a direct call for the killing of Tutsis is confirmed when viewed in the context of other findings made in the Trial Judgement. Notably, the Trial Chamber found that other participants in the meeting, including Kayishema and Niyitegeka, ordered and instigated the *Interahamwe* to kill thousands of Tutsi civilians just days after their supposed condemnation of the killing of Tutsis.[1380] Karemera has therefore failed to show that, when his speech is placed in its proper context, his call for the *Interahamwe* to fight the enemy did not amount to direct incitement to kill members of the Tutsi group and that his general condemnation of killings was mere abstract and hollow rhetoric.

488. The Appeals Chamber turns to consider Karemera's and Ngirumpatse's arguments that the Trial Chamber erred in its assessment of Witness GK's credibility. The Appeals Chamber is not convinced that the Trial Chamber did not exercise the necessary caution in the assessment of the credibility of Witness GK.[1381] The Trial Chamber noted that, at the time of his testimony, Witness GK was detained and awaiting trial on genocide charges.[1382] As a result, the Trial Chamber expressly indicated that it would exercise caution when assessing his credibility and the weight to be given to his evidence, even if it considered that he was not a direct accomplice of Karemera or Ngirumpatse.[1383] Having considered that Witness GK's evidence was corroborated in several

[1378] Trial Judgement, paras. 989, 990.
[1379] Trial Judgement, paras. 961, 962, 964, 965, 966, 982.
[1380] Trial Judgement, para. 1649.
[1381] Karemera Appeal Brief, paras. 237-239.
[1382] Trial Judgement, paras. 959, 980.
[1383] Trial Judgement, para. 981. *See also* Trial Judgement, para. 108 (where the Trial Chamber indicates that it is reasonable for a trial chamber to employ a lesser degree of caution towards the testimony of witnesses charged with similar crimes as opposed to accomplices, as long as no special circumstances have been identified).

respects, it concluded that he was generally credible.[1384] Karemera and Ngirumpatse have identified no error in this approach beyond stating that the Trial Chamber ought to have been mindful of Witness GK's status.[1385] Accordingly, their arguments are dismissed.

489. In relation to his assertion that the Trial Chamber erred in finding that Witness GK's evidence was corroborated, Karemera argues that the identity of the speakers and the order of the speeches was not in dispute but that the content of the speeches was and that the Minutes of the Meeting and the Transcripts of the Broadcast of the Meeting contradicted Witness GK's evidence in this respect.[1386] The Appeals Chamber identifies no error in the Trial Chamber's consideration that Witness GK's testimony was generally corroborated. The Trial Chamber found that the witness's evidence was corroborated by the Minutes of the Meeting and the Transcripts of the Broadcast of the Meeting in relation to the identity of the speakers, the order in which they spoke, and the fact that the speeches did not mention that killings had recently occurred in Kibuye.[1387] Moreover, the Appeals Chamber recalls that the Trial Chamber found Witness GK to be generally credible and did not find that his evidence had to be corroborated in all respects to be relied upon.[1388] To the extent that Karemera asserts that these documents contradict Witness GK's testimony regarding condemning the killings and urging a stop to the killing, the Appeals Chamber recalls that it has found no error in the Trial Chamber's finding that the speeches only provided abstract rhetoric about restoring peace.

490. The Appeals Chamber turns to consider Karemera's assertion that the Trial Chamber should have considered Witness GK's evidence alongside his own testimony, as well as that of Witnesses ETK, Hitiyaremye, and LSP and the Transcripts of the Broadcast of the Meeting.[1389] The Trial Chamber summarized the Transcripts of the Broadcast of the Meeting and the evidence of these witnesses in respect of the 3 May 1994 Meeting.[1390] However, the Appeals Chamber notes that the Trial Chamber neither engaged in a credibility assessment of Karemera and Witnesses ETK, Hitiyaremye, and LSP nor discussed any inconsistencies between their evidence and the evidence of Witness GK in relation to the 3 May 1994 Meeting.[1391] Similarly, the Trial Chamber did not discuss inconsistencies between the Transcripts of the Broadcast of the Meeting and Witness GK's evidence.[1392] While the Appeals Chamber recalls that a trial chamber need not

[1384] Trial Judgement, para. 982.
[1385] Karemera Appeal Brief, paras. 237-239.
[1386] Karemera Appeal Brief, para. 241.
[1387] Trial Judgement, para. 982.
[1388] Trial Judgement, para. 982.
[1389] Karemera Appeal Brief, para. 240. *See also* Ngirumpatse Response Brief, paras. 133, 158, 159.
[1390] Trial Judgement, paras. 956-958, 969-979.
[1391] Trial Judgement, paras. 969-992.
[1392] Trial Judgement, paras. 969-992.

explain every step of its reasoning,[1393] the Trial Chamber should have at least addressed the Defence evidence in its deliberations and explained why it preferred Witness GK's evidence. Nonetheless, Karemera does not point to any specific aspect of these witnesses' evidence or the Transcripts of the Broadcast of the Meeting which he considers contradict that of Witness GK or undermines the Trial Chamber's assessment. Accordingly, this argument is dismissed.

491. In light of the foregoing, Karemera and Ngirumpatse have failed to demonstrate that the Trial Chamber erred in finding that Karemera's speech at the 3 May 1994 Meeting amounted to direct incitement to commit genocide.

(b) The Public Nature of the Incitement

492. The Trial Chamber stated that it was undisputed that the 3 May 1994 Meeting was public and found that it was large.[1394] The Trial Chamber also found that the meeting was broadcast over the radio.[1395]

493. Karemera submits that the Trial Chamber failed to assess the public nature of the 3 May 1994 Meeting.[1396] Karemera argues that, since the meeting was held in a room, it was not open or directly addressed to the general public, but was a private, restricted meeting addressed to a limited group of invited prefecture-level officials.[1397] In this respect, Karemera points to the evidence of Witness GK, who testified that "the meeting was not a public meeting" and that it "was a meeting which gathered the people who had been invited, and it took place in the meeting room of the Kibuye *préfecture* office".[1398] He further argues that Witness GK testified that the room was not full.[1399] On this basis, Karemera contends that the public nature requirement of incitement was not met.[1400] Ngirumpatse generally submits that the Trial Chamber did not characterize the public nature of the incitement and that there was no evidence on the trial record from which it could have drawn such an inference.[1401]

[1393] *Kanyarukiga* Appeal Judgement, para. 114; *Renzaho* Appeal Judgement, para. 405; *Nchamihigo* Appeal Judgement, paras. 165, 166.
[1394] Trial Judgement, paras. 949, 1596.
[1395] Trial Judgement, para. 1596.
[1396] Karemera Appeal Brief, para. 152.
[1397] Karemera Appeal Brief, paras. 242 (*referring to* Nzirorera Defence Exhibit 286), 395. *See also* Karemera Appeal Brief, para. 156; Karemera Response Brief, para. 35.
[1398] Karemera Appeal Brief, para. 152, *referring to* Witness GK, T. 11 December 2006 pp. 38, 39.
[1399] Karemera Appeal Brief, para. 242.
[1400] Karemera Appeal Brief, para. 395.
[1401] Ngirumpatse Notice of Appeal, para. 288; Ngirumpatse Appeal Brief, para. 743.

494. The Prosecution responds that Karemera's assertion that the 3 May 1994 Meeting was not public is unfounded given that: (i) at least 188 people were in attendance; (ii) it was an open-door meeting, as testified by Defence Witness LSP; and (iii) it was broadcast over Radio Rwanda.[1402]

495. Contrary to Karemera's and Ngirumpatse's contentions, the Trial Chamber addressed the issue of the public character of the meeting and found that it was undisputed that the meeting was public.[1403] The Trial Chamber referred to the testimony of Defence Witness LSP in this regard.[1404] Witness LSP, who was a bourgmestre and attended the meeting, testified: "So it wasn't a closed-door meeting, it was an open-door meeting. It was an open meeting".[1405] The Appeals Chamber further observes that Karemera and Ngirumpatse did not challenge the public nature of Karemera's speech at trial.[1406] The Appeals Chamber recalls that, in principle, a party cannot refrain from raising an objection on an issue that was evident at trial, with a view to raising the issue on appeal if the party has lost the case at first instance.[1407]

496. Nonetheless, as Karemera argues, the Trial Chamber did not explicitly address Witness GK's evidence on the public nature of the meeting. Witness GK indicated in a prior statement that the 3 May 1994 Meeting was public.[1408] However, in cross-examination, Witness GK testified that the meeting was not public and that those gathered had been invited.[1409] The Appeals Chamber considers that the Trial Chamber should have explicitly considered Witness GK's contradictory testimony on this point. Nevertheless, the Appeals Chamber observes that, contrary to Karemera's contention, Witness GK testified that the room where the meeting was held was full, and that there were more than 300 people in attendance.[1410] The Appeals Chamber further notes that the list of participants, annexed to the Minutes of the Meeting, consisted of 188 participants.[1411] The Appeals Chamber considers that in certain circumstances the number of people in attendance may provide evidence in support of a finding that the incitement was public.[1412]

497. The Appeals Chamber also observes that the list of participants demonstrates that the meeting was not restricted to prefecture or commune officials, but included members of the public

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[1402] Prosecution Response Brief (Karemera), para. 137. *See also* AT. 11 February 2014 p. 41.
[1403] Trial Judgement, para. 949.
[1404] Trial Judgement, para. 949, *referring to* Witness LSP, T. 10 July 2008 p. 36.
[1405] Witness LSP, T. 10 July 2008 p. 37.
[1406] *See generally* Karemera Closing Brief; Ngirumpatse Closing Brief.
[1407] *Nahimana et al.* Appeal Judgement, para. 830; *Niyitegeka* Appeal Judgement, para. 199; *Kayishema and Ruzindana* Appeal Judgement, para. 91.
[1408] Karemera Defence Exhibit 13B (Declaration of Witness GK, dated 15 and 16 May 1996), p. 6.
[1409] Witness GK, T. 11 December 2006 p. 39.
[1410] Witness GK, T. 11 December 2006 p. 40.
[1411] Prosecution Exhibit 82B (Minutes of the Meeting), pp. 25-31.
[1412] *Kalimanzira* Appeal Judgement, para. 156, fn. 410. The Appeals Chamber recalls that it has previously found that a speech at a public place to "a crowd of over 100 people" constituted direct and public incitement to commit genocide. *See Kalimanzira* Appeal Judgement, fn. 410 and references cited therein.

from a cross-section of the Kibuye population, such as teachers, businessmen, and farmers.[1413] The Appeals Chamber notes that local authorities and members of the population were invited to attend the 3 May 1994 Meeting by a letter from the prefect of Kibuye.[1414] Therefore, as testified by Witness GK, the meeting gathered the people who had been invited. However, this is not irreconcilable with Witness LSP's testimony that the 3 May 1994 Meeting was an open-door meeting as there is no indication in the invitation that the meeting was only for those specifically invited.

498. The Appeals Chamber further observes that Karemera testified that the 3 May 1994 Meeting was part of a programme of pacification tours,[1415] and that the Trial Chamber found that in the course of these pacification tours, the Interim Government dispatched ministers and party leaders "to address the population throughout the part of the country controlled by the Interim Government".[1416] The Appeals Chamber also notes that, according to the Transcript of the Broadcast of the Meeting, after greeting a number of specific authorities, Kambanda opened his speech by greeting "all the inhabitants of Kibuye".[1417] Additionally, according to the Minutes of the Meeting, other speakers addressed the members of the population or the people of Kibuye in their speeches.[1418]

499. In light of the foregoing, the Appeals Chamber finds that Karemera has not demonstrated that the 3 May 1994 Meeting was akin to a conversation or a private meeting, which, as noted by the Trial Chamber,[1419] are not included in the scope of the crime of direct and public incitement to commit genocide.[1420] Given the broader audience in attendance at the 3 May 1994 Meeting, the Appeals Chamber finds that a reasonable trier of fact could have concluded that Karemera's speech was addressed to the public. Furthermore, the Appeals Chamber notes the Trial Chamber's finding

[1413] Prosecution Exhibit 82B (Minutes of the Meeting), pp. 25-31.
[1414] Nzirorera Defence Exhibit 286B (Letter from the Prefect of Kibuye to other prefects, dated 30 April 1994).
[1415] Karemera, T. 20 May 2009 p. 4. *See also* Nzirorera Defence Exhibit 286B (Letter from the Prefect of Kibuye to other prefects, dated 30 April 1994), indicating that the purpose of the 3 May 1994 Meeting was a "message of pacification".
[1416] Trial Judgement, para. 940.
[1417] Nzirorera Defence Exhibit 288B (Transcript of speech of Kambanda, 3 May 1994 Kibuye Meeting), p. 16. *See also* Nzirorera Defence Exhibit 288B (Transcript of speech of Kambanda, 3 May 1994 Kibuye Meeting), p. 15 (the radio speaker, presenting Kamabanda's speech, stated "we are going to read the message he addressed to the people of Kibuye. This message is directed, not only to the people of Kibuye, but to all Rwandans; and that is why we have decided to bring it to you right away").
[1418] Prosecution Exhibit 82B (Minutes of the Meeting), pp. 3, 10, 11, 14 (with regard to the statements of the Prefect, Karemera, and Donat Murego).
[1419] Trial Judgement, para. 1595.
[1420] *Kalimanzira* Appeal Judgement, para. 158. The Appeals Chamber recalls that, in the *Kalimanzira* Appeal Judgement, invoked by Karemera in support of his contention, Kalimanzira's audiences consisted of the restricted groups of individuals manning two roadblocks, and, on this basis, the nature of Kalimanzira's exchanges with them was considered to be more in line with a "conversation" and therefore to be consistent with a notion of private incitement which is not covered by the ambit of the crime. *See Kalimanzira* Appeal Judgement, paras. 151, 156, 159.

that the meeting was broadcast over the radio.[1421] The Appeals Chamber recalls that the dissemination of inciting messages via the media may establish the public element of incitement, as noted by the Trial Chamber.[1422]

500. In light of the above, the Appeals Chamber is not persuaded that Karemera and Ngirumpatse have demonstrated any error in the Trial Chamber's conclusion on the public nature of the incitement in Karemera's and the other government officials' speeches on 3 May 1994.

(c) Conclusion

501. For the foregoing reasons, the Appeals Chamber concludes that Karemera and Ngirumpatse have not demonstrated any error in the Trial Chamber's assessment of the elements of direct and public incitement to commit genocide in relation to the 3 May 1994 Meeting.

2. 16 May 1994 Meeting

502. The Trial Chamber found that, on 16 May 1994, President Sindikubwabo held a "security meeting" in Kibuye, with Prefect Clément Kayishema and others.[1423] The Trial Chamber further found that at the meeting, President Sindikubwabo delivered a speech in which he congratulated the Rwandan Armed Forces and the people of Kibuye for restoring the security of persons and property.[1424] The Trial Chamber considered the speech in the context of the recent massacre of 2,000 Tutsi civilians in Kibuye and found that Sindikubwabo demonstrated a deliberate silence regarding the massacres in Kibuye, as did the Interim Government officials at the 3 May 1994 Meeting.[1425] It further found that the audience understood the speech as a direct call to continue killing Tutsis in order to destroy the Tutsi population in Rwanda.[1426] The Trial Chamber concluded that, by congratulating the army and the people of Kibuye despite the public knowledge of the killings and mass graves in the area, Sindikubwabo condoned the killings and encouraged the people to attack and destroy the Tutsis as a group.[1427]

503. The Trial Chamber, having found that Sindikubwabo was a member of the joint criminal enterprise and that his speech furthered the enterprise's common purpose, concluded that both

[1421] Trial Judgement, para. 1596.
[1422] Trial Judgement, para. 1595, *referring to Kalimanzira* Appeal Judgement, para. 156, fn. 410.
[1423] Trial Judgement, paras. 994, 1009, 1601.
[1424] Trial Judgement, paras. 1009, 1601.
[1425] Trial Judgement, paras. 1008, 1602.
[1426] Trial Judgement, para. 1602.
[1427] Trial Judgement, paras. 1008, 1009, 1601.

Karemera and Ngirumpatse incurred liability for direct and public incitement to commit genocide based on their membership in and contribution to the joint criminal enterprise.[1428]

504. Karemera generally asserts that the Trial Chamber erred in law and in fact in finding him guilty of direct and public incitement to commit genocide in the absence of proof beyond reasonable doubt in relation to the constituent elements of this crime.[1429]

505. Ngirumpatse submits that the Trial Chamber mischaracterized evidence and construed exculpatory evidence as incriminating, contrary to its own findings.[1430] Ngirumpatse asserts that the Trial Chamber provided no reasoning and that it failed to characterize the incitement, including its direct and public nature, and failed to refer to any evidence of the constituent elements of the crime.[1431] Ngirumpatse generally indicates that his submissions in relation to the 3 May 1994 Meeting also apply, *mutatis mutandis*, to the 16 May 1994 Meeting.[1432] He argues that the Trial Chamber erred in relying on what was not said in Sindikubwabo's speech, which "was contrary to what the latter clearly stated".[1433] In this regard, he argues that the Trial Chamber introduced a new crime of "incitement by omission".[1434]

506. The Prosecution responds that the Trial Chamber correctly found that, during the 16 May 1994 Meeting, President Sindikubwabo condoned the massacre of 2,000 civilians by congratulating the Rwandan Armed Forces and the people of Kibuye for restoring security despite his knowledge of the killings and mass graves in the area.[1435] It further submits that Ngirumpatse's challenges are vague, obscure, and unfounded.[1436] It argues that the Trial Chamber was entitled to holistically examine all the evidence.[1437]

[1428] Trial Judgement, paras. 1603, 1604.
[1429] Karemera Notice of Appeal, p. 45; Karemera Appeal Brief, p. 88. The Appeals Chamber notes that the heading to Ground 37 includes reference to paragraphs of the Trial Judgement relating to the 16 May 1994 Meeting. *See* Karemera Notice of Appeal, fn. 132; Karemera Appeal Brief, fn. 472. However, no arguments are developed.
[1430] Ngirumpatse Notice of Appeal, paras. 144, 145, 294; Ngirumpatse Appeal Brief, para. 526, *referring to*, *inter alia*, Trial Judgement, paras. 1008-1010. The Appeals Chamber notes that Ngirumpatse also mistakenly refers to the Trial Chamber's findings relating to the 3 May 1994 Meeting. *See* Ngirumpatse Appeal Brief, fn. 925, *referring to* Trial Judgement, paras. 989, 990. The Appeals Chamber also notes that, in his notice of appeal, Ngirumpatse argued that the Trial Chamber failed to find a nexus between the 16 May 1994 Meeting and the killings, disregarded the standard applicable to circumstantial evidence and failed to consider the totality of the evidence on the record. *See* Ngirumpatse Notice of Appeal, paras. 294, 295. However, as he did not repeat or develop these arguments in his appeal brief and provided no details in support of them in his notice of appeal, the Appeals Chamber understands that he has abandoned these arguments.
[1431] Ngirumpatse Notice of Appeal, para. 295; Ngirumpatse Appeal Brief, para. 743.
[1432] Ngirumpatse Appeal Brief, paras. 530, 742; Ngirumpatse Reply Brief, para. 124.
[1433] Ngirumpatse Reply Brief, para. 125. The Appeals Chamber notes that Ngirumpatse mistakenly refers to the section of his appeal brief where he challenges his conviction in relation to Sindikubwabo's speech on 19 April 1994 in Butare and to the Trial Judgement section relating to the 3 May 1994 Meeting.
[1434] Ngirumpatse Appeal Brief, para. 743.
[1435] Prosecution Response Brief (Ngirumpatse), para. 197.
[1436] Prosecution Response Brief (Ngirumpatse), para. 198.
[1437] Prosecution Response Brief (Ngirumpatse), para. 199.

507. The Appeals Chamber summarily dismisses Karemera's argument that the Trial Chamber erred in convicting him in relation to the 16 May 1994 Meeting as he merely asserts that the Trial Chamber erred without pointing to any specific error or providing any arguments in support of his contention.[1438] The Appeals Chamber will likewise not consider Ngirumpatse's assertion that his submissions in relation to the 3 May 1994 Meeting also apply, *mutatis mutandis*, to the 16 May 1994 Meeting as he has failed to indicate what specific submissions he refers to and the Appeals Chamber has, in any event, dismissed his arguments in relation to the 3 May 1994 Meeting. Ngirumpatse has also failed to point to what evidence the Trial Chamber allegedly mischaracterized or how it erred in assessing the credibility of the Prosecution evidence.[1439]

508. The Appeals Chamber is also not convinced by Ngirumpatse's suggestion that the Trial Chamber convicted him for Sindikubwabo having incited by omission on the basis of what Sindikubwabo did not say in his speech. To the contrary, the Trial Chamber found that Sindikubwabo incited genocide by congratulating the army and the people of Kibuye for restoring security.[1440] The Appeals Chamber recalls that, in interpreting the speech, the Trial Chamber reasonably relied on how those who heard the speech understood it: Witness GK, who attended the meeting, and Witness AMO, who heard about it on the radio.[1441] In this regard, the Appeals Chamber recalls that a particular message may appear ambiguous on its face or to a given audience, or not contain an explicit appeal to commit genocide, and still, when viewed in its proper context, amount to direct incitement.[1442] It is helpful to examine, as the Trial Chamber did, how the speech was understood by its intended audience in order to determine its true message.[1443] Accordingly, the Appeals Chamber consider that a reasonable trier of fact could have determined, based on the public knowledge of the killings and mass graves in the area, that Sindikubwabo's speech directly incited genocide by congratulating the army and the people of Kibuye for restoring security.[1444]

509. With respect to the public nature of the incitement, the Appeals Chamber observes that the Trial Chamber properly recalled the law.[1445] The Trial Chamber further found that Sindikubwabo's speech was broadcasted over the radio[1446] – which is not disputed – and concluded that the speech constituted direct and public incitement to commit genocide.[1447] In light of the foregoing, no error

[1438] *See*, *e.g.*, *Milošević* Appeal Judgement, para. 17; *Krajišnik* Appeal Judgement, para. 26.
[1439] In support of his argument, Ngirumpatse offers only a cryptic footnote which reads: "They did not say". *See* Ngirumpatse Notice of Appeal, para. 144, fn. 60; Ngirumpatse Appeal Brief, para. 526, fn. 926.
[1440] Trial Judgement, paras. 1008, 1009, 1601.
[1441] Trial Judgement, paras. 998, 999, 1602.
[1442] *Nahimana et al.* Appeal Judgement, paras. 700, 701, 703.
[1443] *Nahimana et al.* Appeal Judgement, paras. 700, 711.
[1444] Trial Judgement, para. 1008.
[1445] Trial Judgement, para. 1595.
[1446] Trial Judgement, para. 1601.
[1447] Trial Judgement, paras. 1601-1604.

has been demonstrated with regard to the Trial Chamber's assessment of the public nature of the incitement at the 16 May 1994 Meeting.

510. Accordingly, Karemera and Ngirumpatse have failed to demonstrate any error in the Trial Chamber's assessment of the elements of direct and public incitement to commit genocide in relation to the 16 May 1994 Meeting.

3. Conclusion

511. For the foregoing reasons, the Appeals Chamber dismisses Karemera's Fourteenth Ground of Appeal, Twenty-Third Ground of Appeal, in part, Thirty-Seventh Ground of Appeal, as well as Ngirumpatse's Twenty-Ninth, Thirtieth, and Forty-Sixth Grounds of Appeal.

J. Civil Defence (Karemera Grounds 16-21; Ngirumpatse Grounds 31-34, and Ground 47, in Part)

512. The Trial Chamber found that the Interim Government issued five documents between late April and mid-June 1994 ("Civil Defence Documents"), which set in motion an agreement to mobilize extremist militiamen and armed civilians to attack, kill, and destroy the Tutsi population of Rwanda.[1448] The Trial Chamber considered it undisputed that the documents were agreed upon by the Interim Government and derived at least in part from recommendations by Karemera, Ngirumpatse, and the MRND.[1449] In addition, the Trial Chamber found that, on or about 25 April 1994, Félicien Kabuga organized a meeting to create a national defence fund ("Fund") to purchase traditional weapons to massacre Tutsis, and that Karemera and Ngirumpatse knew or had reason to know of its creation.[1450]

513. The Trial Judgement reflects that the Civil Defence Documents consisted of: (i) a letter from Prime Minister Jean Kambanda to all prefects with instructions to restore security in the country, dated 27 April 1994 ("27 April 1994 Letter");[1451] (ii) a directive from Kambanda to all prefects on the organisation of the civil defence, dated 25 May 1994 ("25 May 1994 Directive");[1452] (iii) a letter from Karemera, to all prefects regarding the implementation of Kambanda's directives, dated 25 May 1994 ("25 May 1994 Letter");[1453] (iv) ministerial instructions from Karemera to all prefects on the use of funds earmarked for the Ministry of Interior and Communal Development for Civil Self-Defence around mid-June 1994 ("Mid-June 1994 Instructions");[1454] and (v) a letter from Karemera to the commander of the Gisenyi Operational Sector, Lieutenant Colonel Anatole Nsengiyumva requesting assistance in the "mopping-up" operation in Bisesero, dated 18 June 1994 ("18 June 1994 Letter").[1455]

[1448] Trial Judgement, paras. 1024, 1450(7). *See also* Trial Judgement, paras. 1014, 1026-1029, 1037-1048, 1051-1059, 1063-1071, 1074-1080, 1215, 1631-1644.
[1449] Trial Judgement, para. 1024.
[1450] Trial Judgement, paras. 1106, 1645, 1646. *See also* Trial Judgement, paras. 1647, 1648.
[1451] Trial Judgement, para. 1024, *referring to* Nzirorera Defence Exhibit 183 (Letter from Kambanda to prefects, dated 27 April 1994). *See also* Trial Judgement, paras. 1026-1029. The Trial Chamber elsewhere considered it undisputed that the *Conseil des ministres* convened on 27 April 1994, the same day Kambanda issued his letter, and found that Kambanda authorized the establishment of roadblocks knowing that they were being used to identify and kill Tutsis. *See* Trial Judgement, paras. 1082-1084.
[1452] Trial Judgement, para. 1024, *referring to* Nzirorera Defence Exhibit 347 (Directive of Kambanda to Prefects on the Organization of the Civil Defence, dated 25 May 1994). *See also* Trial Judgement, paras. 1046-1048.
[1453] Trial Judgement, para. 1024, *referring to* Prosecution Exhibit 59 (Letter from Karemera to Prefects regarding Kambanda's Directives, dated 25 May 1994). *See also* Trial Judgement, paras. 1057-1059.
[1454] Trial Judgement, para. 1024, *referring to* Prosecution Exhibit 60 (Ministerial Instructions to the Prefects on the Use of Funds for Civil Self-Defence, mid-June 1994). *See also* Trial Judgement, paras. 1069-1071.
[1455] Trial Judgement, para. 1024, *referring to* Prosecution Exhibit 58 (Letter from Karemera to Nsengiyumva, Commander of Gisenyi Operational Sector, dated 18 June 1994). *See also* Trial Judgement, paras. 1215, 1229.

514. The Trial Chamber convicted Ngirumpatse of genocide, extermination as a crime against humanity, and murder as a serious violation of Article 3 common to the Geneva Conventions and of Additional Protocol II through the basic form of a joint criminal enterprise in relation to the issuance of the 27 April 1994 Letter, the 25 May 1994 Letter, the 25 May 1994 Directive, the Mid-June 1994 Instructions, and the creation of the Fund.[1456] The Trial Chamber found Karemera guilty of aiding and abetting and instigating these crimes based on the issuance of the 25 May 1994 Letter and the Mid-June 1994 Instructions, both of which it found to have had a substantial effect on the commission of the crimes.[1457] The Trial Chamber further found Karemera guilty of these crimes through the basic form of a joint criminal enterprise in relation to the issuance of the 27 April 1994 Letter, the 25 May 1994 Directive, and the creation of the Fund.[1458]

515. Karemera and Ngirumpatse challenge their convictions arising out of the issuance of the Civil Defence Documents and the creation of the Fund.[1459] In this section, the Appeals Chamber considers whether the Trial Chamber erred: (i) with respect to the notice received by Karemera and Ngirumpatse; (ii) in finding that the Civil Defence Documents manifested an agreement to mobilize and encourage members of the population to kill Tutsis; (iii) in determining that the Fund was created to purchase traditional weapons to further the killing of Tutsis; and (iv) with respect to Karemera's and Ngirumpatse's responsibility for the issuance of the Civil Defence Documents and the creation of the Fund.

1. Notice

516. Paragraph 28.2 of the Indictment reads in relevant parts that Karemera, Ngirumpatse, and others "agreed among themselves and with others to place structures of authorities in the MRND and 'Hutu Power' political parties at the service of the Interim Government […] as a means to

[1456] Trial Judgement, paras. 1634, 1639, 1644, 1648, 1691, 1705, 1706, 1714, 1715. The Trial Chamber also found, based in part on the Civil Defence Documents, that Karemera and Ngirumpatse committed conspiracy to commit genocide. *See* Trial Judgement, paras. 1586-1591. The Trial Chamber did not enter a conviction for this crime, reasoning that doing so would be duplicative and unfair to Karemera and Ngirumpatse. *See* Trial Judgement, para. 1713. The Appeals Chamber considers Karemera's and Ngirumpatse's submissions regarding these findings, as well as the Prosecution's challenge that this should have led to a conviction, elsewhere in the Judgement. *See infra* Sections III.M, IV.A. The Trial Chamber relied on the 18 June 1994 Letter, in finding Karemera and Ngirumpatse guilty of genocide for the "mopping-up" operation at Bisesero Hills. *See supra*, para. 569.
[1457] Trial Judgement, paras. 1636, 1641, 1643, 1691, 1705, 1706.
[1458] Trial Judgement, paras. 1634, 1648.
[1459] Karemera Notice of Appeal, paras. 82-101; Karemera Appeal Brief, paras. 126-131, 179-217; Ngirumpatse Notice of Appeal, paras. 148-167, 317, 320-328, 339; Ngirumpatse Appeal Brief, paras. 532-586, 745-750, 754; AT. 10 February 2014 pp. 9-12, 31. In his appeal brief, Ngirumpatse argues that the Trial Chamber erred with respect to the notice he received in relation to the Civil Defence programme and the Civil Defence Documents. *See* Ngirumpatse Appeal Brief, paras. 533-535. The Appeals Chamber considers that these arguments exceed the scope of Ngirumpatse's notice of appeal. *See* Ngirumpatse Notice of Appeal, paras. 148-152. However the Prosecution does not oppose the late introduction of these arguments. *See* Prosecution Response Brief (Ngirumpatse), para. 201. The Appeals Chamber recalls that objections based on the lack of notice directly impact upon an accused's right to due process under

mobilize extremist militiamen […] and armed civilians to attack, kill and destroy Rwanda's Tutsi population".

517. Paragraph 28.3 of the Indictment alleges in relevant part that "[the] agreement [to mobilize extremist militiamen and armed civilians to attack, kill, and destroy the Tutsi population of Rwanda] was manifested in various orders, directives and instructions issued to *préfets* and *bourgmestres* and to the general population during the course of April, May and June 1994".

518. According to paragraph 29 of the Indictment, these various agreements and initiatives were part of a conspiracy and were intended to further a campaign of destruction against the Tutsi population.

519. Karemera and Ngirumpatse assert that the Trial Chamber erred by convicting them on the basis of an agreement by omission, given that the omission was not pleaded in the Indictment.[1460]

520. In addition, Ngirumpatse submits that the Trial Chamber erred in clarifying paragraphs 28.2, 28.3, and 29 of the Indictment.[1461] Specifically, Ngirumpatse contends that the Trial Chamber erroneously "clarified" the Indictment "to impose its finding" that he and others agreed to "a Civil Defence Plan", which was set in motion by the issuance of "Civil Defence Documents".[1462] According to Ngirumpatse, the Trial Chamber distorted the nature of the documents listed in paragraph 28.3 of the Indictment, given that only one of the five documents, the 25 May 1994 Directive, relates to the Civil Defence programme.[1463] Ngirumpatse further submits that the Trial Chamber erroneously interpreted the Indictment by characterizing the Civil Defence Documents as furthering a criminal purpose, rather than as documents which were issued in furtherance of the implementation of the agreement referenced in paragraph 28.2 of the Indictment.[1464]

521. The Prosecution submits that Karemera was not convicted on the basis of an omission, but rather on the basis of his entering into a tacit agreement to commit genocide. In the Prosecution's view, Karemera's argument in this regard is therefore "misguided".[1465]

Article 20(4)(a) of the Statute emphasising the accused's right to be informed of the nature and cause of the charges against him. Therefore, the Appeals Chamber considers that it is in the interests of justice to address these arguments.

[1460] Karemera Appeal Brief, paras. 181, 182, 197; Ngirumpatse Appeal Brief, para. 535.

[1461] Ngirumpatse Appeal Brief, paras. 533-536.

[1462] Ngirumpatse Appeal Brief, para. 533 (emphasis omitted).

[1463] Ngirumpatse Appeal Brief, para. 534.

[1464] Ngirumpatse Appeal Brief, para. 535.

[1465] Prosecution Response Brief (Karemera), para. 108. The Prosecution submits that the arguments developed by Ngirumpatse under his Ground 31 have been addressed elsewhere in his response brief. *See* Prosecution Response Brief (Ngirumpatse), para. 201.

522. The Appeals Chamber finds Karemera's and Ngirumpatse's claim that the Trial Chamber convicted them for omissions noted in the Civil Defence Documents to be without merit. The Trial Chamber's analysis reflects that its assessment of what the Civil Defence Documents "[do] not say" or "[do] not include" merely served to assist in the interpretation of the speeches and in assessing them given the context.[1466] The Appeals Chamber finds no error in this approach. The Appeals Chamber therefore need not address Karemera's contention that the Indictment was defective as the Trial Chamber did not convict Karemera for having entered into an agreement by omission.

523. The Appeals Chamber can identify no error in the Trial Chamber's characterization of the agreement referenced in paragraphs 28.2, 28.3, and 29 of the Indictment as a "Civil Defence Plan" and the documents which manifested the agreement as "Civil Defence Documents".[1467] The Appeals Chamber recalls that an indictment must be read as a whole.[1468] A plain reading of the Indictment shows that an agreement to destroy the Tutsi population manifested itself in various orders, directives, and instructions.[1469] The Trial Chamber did not "clarify" the Indictment, but instead defined the agreement referenced in paragraphs 28.2, 28.3, and 29 of the Indictment as a "Civil Defence Plan" and thereafter defined the orders, directives and instructions referenced in paragraph 28.3 of the Indictment as the "Civil Defence Documents".[1470] It expressly stated that it assessed the Indictment paragraphs holistically, and thereafter analyzed whether "the Civil Defence Plan", that was implemented through the issuance of "the Civil Defence Documents" intended to mobilise extremist militiamen and armed civilians to destroy the Tutsi population, as alleged in paragraph 29 of the Indictment.[1471] Ngirumpatse has failed to demonstrate that the Trial Chamber erred in this regard.

524. The Appeals Chamber is further unpersuaded by Ngirumpatse's claim that the Trial Chamber distorted the nature of the relevant orders, directives, and instructions of the documents by characterizing them as "Civil Defence Documents". While the title of the documents does not expressly refer to the Civil Defence programme, it is apparent from their content that they were issued in furtherance of the creation of the programme. Indeed, the Trial Judgement reflects that the five documents consist of security instructions issued by the Interim Government to local officials

[1466] Trial Judgement, paras. 1039, 1052, 1064. *See also* Trial Judgement, paras. 1037, 1038, 1040-1045, 1051, 1053-1056, 1063, 1065-1068, 1074-1080.
[1467] Trial Judgement, para. 1013.
[1468] *See*, *e.g.*, *Mugenzi and Mugiraneza* Appeal Judgement, para. 71; *Ntabakuze* Appeal Judgement, para. 65.
[1469] *See* Indictment, paras. 28.2, 28.3, 29.
[1470] *See* Trial Judgement, paras. 1012, 1013.
[1471] Trial Judgement, para. 1013.

requesting that they mobilise the population in response to the assassination of the President Habyarimana and the renewal of hostilities by the RPF.[1472]

525. The Appeals Chamber also finds Ngirumpatse's argument that the Trial Chamber distorted the Indictment in interpreting the Civil Defence Documents as having a criminal purpose to be unmeritorius. It follows from the Indictment that the Prosecution relied on the Civil Defence Documents to establish the existence of a criminal agreement. Ngirumpatse does not challenge this fact. Accordingly, the Appeals Chamber considers that he was put on notice that the Civil Defence Documents had a criminal purpose.

526. Accordingly, Karemera and Ngirumpatse have not demonstrated that the Trial Chamber erred in its interpretation of the Indictment.

2. Civil Defence Documents

527. The Trial Chamber found that the Civil Defence Documents issued by the Interim Government "defined and set in motion the genocidal Civil Defence Plan", during a period when Karemera and Ngirumpatse were "inextricably linked" with the policies of the Interim Government.[1473]

528. The Trial Chamber determined that while the Civil Defence Documents, on their face, did not evince an agreement by the Interim Government to mobilize extremist militiamen and armed civilians to attack and kill Tutsis, the only reasonable inference to be drawn from the circumstances was that, at the very least, the documents constituted an implicit approval of the genocide, which had the effect of encouraging the continued killing of Tutsis.[1474] The Trial Chamber concluded that the Civil Defence Documents deliberately failed to clarify the distinction between Tutsi civilians and the RPF and instruct the civil defence elements not to target Tutsi civilians,[1475] employed "incomprehensively distant language" as a "thinly-veiled attempt to deliver a false message of pacification",[1476] and implicitly encouraged the manning of civil defence forces with traditional weapons in order to kill Tutsis.[1477]

529. Karemera and Ngirumpatse submit that the Trial Chamber erred in its interpretation of the Civil Defence Documents and failed to assess the documents in the context of the ongoing civil war

[1472] *See* Trial Judgement, paras. 1014-1024, 1026-1029, 1046-1048, 1057-1059, 1069-1071.
[1473] Trial Judgement, para. 1450(7). *See also* Trial Judgement, paras. 1045, 1056, 1068, 1079, 1080, 1632, 1635, 1640.
[1474] Trial Judgement, paras. 1037, 1044, 1045, 1051, 1055, 1056, 1063, 1066, 1068, 1074, 1079. *See also* Trial Judgement, paras. 1083, 1084.
[1475] Trial Judgement, paras. 1052, 1055, 1066.
[1476] Trial Judgement, paras. 1039, 1044.
[1477] Trial Judgement, paras. 1075, 1078.

or the evidence on the trial record.[1478] Specifically, they contend that the Trial Chamber erred in finding that the only reasonable inference to be drawn from the issuance of the Civil Defence Documents was that they constituted an agreement to attack, kill, and destroy the Tutsi population.[1479] Karemera and Ngirumpatse claim that the Civil Defence Documents are clear on their face and leave no doubt as to their message, namely to restore security in the country, while pursuing the RPF.[1480] They contend that the Trial Chamber erred in dismissing Defence evidence,[1481] engaged in "pure speculation",[1482] "distorted" the content of the documents,[1483] and that, in any event, the Civil Defence Documents were not criminal in nature.[1484]

530. Karemera adds that the Trial Chamber, by interpreting the Civil Defence Documents, erred in making findings contrary to those made on the same issue in other cases.[1485] He submits that the Trial Chamber relied on expert evidence, particularly when assessing the use of traditional weapons, despite having previously determined that it would refrain from doing so.[1486] Lastly, Karemera contends that the Trial Chamber failed to explain why it preferred the use of the

[1478] Karemera Appeal Brief, paras. 186-188, 192-194, 198, 199, 201-203; Ngirumpatse Appeal Brief, paras. 552, 556-567, 573-577. *See also* Karemera Reply Brief, paras. 44, 46. Ngirumpatse contends that the Trial Chamber considered the Civil Defence Documents only in light of the genocide which had been going on for three weeks when the first directive was issued, but discarded evidence establishing that the RPF "had been launching attacks everywhere" during this period of time and had rejected all calls to end the hostilities. *See* Ngirumpatse Appeal Brief, para. 562, *referring to* Nzirorera Defence Exhibits 226 (UN Cable, dated 9 April 1994), 227 (UN Cable, dated 10 April 1994), 228 (UN Cable, dated 12 April 1994).

[1479] Karemera Appeal Brief, paras. 188, 194, 199, 202, 203, 209; Ngirumpatse Appeal Brief, paras. 558, 577. *See also* Karemera Reply Brief, paras. 44, 46. The Appeals Chamber notes that Karemera and Ngirumpatse both challenge the Trial Chamber's finding that Kambanda called for the establishment of roadblocks knowing that roadblocks were being used to identify and kill Tutsis and their accomplices. *See* Karemera Appeal Brief, paras. 189, 206(b); Karemera Reply Brief, paras. 45, 77; Ngirumpatse Appeal Brief, paras. 573, 574, 576, 577, *referring to* Trial Judgement, paras. 1081, 1083, 1084. The Appeals Chamber notes that Kambanda's discussion in the 27 April 1994 Letter on establishing roadblocks is assessed in the Trial Judgement in a section entitled "Meetings of the *Conseils des Ministres* on 27, 29, and 30 April 1994". *See* Trial Judgement, paras. 1081-1085. Given that the submissions of Karemera and Ngirumpatse regarding the establishment of roadblocks relate to the content of the 27 April 1994 Letter, the Appeals Chamber will consider them in conjunction with the assessment of the evidence related to the Civil Defence Documents.

[1480] Karemera Appeal Brief, paras. 187, 194, 198, 199, 209; Ngirumpatse Appeal Brief, paras. 542, 557, 559, 561, 567, 574.

[1481] Karemera Appeal Brief, para. 198; Ngirumpatse Appeal Brief, paras. 563, 565, 567, 577.

[1482] Karemera Appeal Brief, para. 198. *See also* Ngirumpatse Appeal Brief, paras. 565, 566, 577.

[1483] Karemera Appeal Brief, para. 186. *See also* Ngirumpatse Appeal Brief, para. 577.

[1484] Karemera Appeal Brief, paras. 187, 192; Ngirumpatse Appeal Brief, paras. 572, 574. *See also* Karemera Reply Brief, para. 45.

[1485] Karemera Appeal Brief, paras. 189, 203, *referring to Bagilishema* Trial Judgement, para. 935; *Kalimanzira* Trial Judgement, paras. 503, 589. The Appeals Chamber observes that Karemera mistakenly refers to the "*Bagilishema* Appeal Judgement, 7 June 2001". The Appeals Chamber considers that Karemera instead intended to refer to the *Bagilishema* Trial Judgement of that date.

[1486] Karemera Appeal Brief, para. 202. The Appeals Chamber notes that Karemera mistakenly refers to "Case No. ICTR-98-44-T; *Decision on the Prosecutor's Motion on Expert Witnesses*, 16 November 2007, para. 14", in support of his contention that the Trial Chamber decided it would not rely on expert evidence. The Appeals Chamber considers that the decision referred to by Karemera is in fact *The Prosecutor v. Édouard Karemera et al.*, Case No. ICTR-98-44-T, Decision on Prosecution Motion for Reconsideration of the Decision on Prospective Experts Guichaoua, Nowrojee and Des Forges, or for Certification, 16 November 2007 ("Trial Decision of 16 November 2007").

27 April 1994 Letter, a Defence exhibit, as a basis for his conviction, which it subsequently "distort[ed]", notwithstanding the fact that the Prosecution did not prove this allegation at trial.[1487]

531. Ngirumpatse also submits that the context upon which the Trial Chamber relied to evaluate the issuance of the Civil Defence Documents was based on a wrong premise, namely the assumption that the indoctrination of the Rwandan youth prior to 6 April 1994 to espouse the concept of "Hutu Power", and that the meaning of "Hutu Power" took on a more sinister tone after the assassination of the Burundian president.[1488] Ngirumpatse further contends that Trial Chamber's finding that the meaning of "Hutu Power" changed following the assassination of the Burundian president contradicts its finding that "Hutu Power" was not synonymous with the genocidal ideology to massacre Tutsis.[1489]

532. Ngirumpatse further submits generally that the Trial Chamber's findings were based on evidence of Prosecution Witnesses FH and ALG, who lacked credibility.[1490] Moreover, he contends that the Trial Chamber's assessment of the evidence was "misguided, inconsistent and biased because it considered some of the circumstances, while disregarding others".[1491] In this regard, Ngirumpatse asserts that the Trial Chamber erred in failing to consider that the "RPF infiltrators and troops" also used traditional weapons.[1492]

533. The Prosecution responds that the Trial Chamber correctly found Karemera and Ngirumpatse guilty based on the issuance of the Civil Defence Documents.[1493] According to the Prosecution, Karemera and Ngirumpatse fail to demonstrate any error in the Trial Chamber's thorough analysis of the totality of the evidence, or in its conclusion that the Civil Defence Documents reflected the Interim Government's agreement to commit genocide against the Tutsis.[1494]

534. Moreover, the Prosecution contends that a trial chamber is not bound by other trial chambers' findings and submits that a finding is not unreasonable solely on the basis that it differs from the finding reached in another case.[1495] Lastly, the Prosecution avers that the Trial Chamber

[1487] Karemera Appeal Brief, paras. 206, 208.
[1488] Ngirumpatse Appeal Brief, paras. 536, 537.
[1489] Ngirumpatse Appeal Brief, para. 537.
[1490] Ngirumpatse Appeal Brief, para. 567.
[1491] Ngirumpatse Appeal Brief, para. 560. *See also* Ngirumpatse Appeal Brief, paras. 566, 576.
[1492] Ngirumpatse Appeal Brief, paras. 560, 565.
[1493] Prosecution Response Brief (Karemera), para. 240; Prosecution Response Brief (Ngirumpatse), para. 213. The Prosecution generally indicates that its submissions in relation to conspiracy to commit genocide apply, *mutatis mutandis*, to the Civil Defence Documents. *See* Prosecution Response Brief (Karemera), para. 106. *See also* AT. 10 February 2014 pp. 61, 66-73.
[1494] Prosecution Response Brief (Karemera), paras. 107, 114, 231-238, 240; Prosecution Response Brief (Ngirumpatse), paras. 205-213, 224-227.
[1495] Prosecution Response Brief (Karemera), para. 110.

was "entitled" to consider all evidence on the record, including Defence exhibits, and that, in any case, the Prosecution originally produced the 27 April 1994 Letter.[1496]

535. The Appeals Chamber recalls that a conviction may be based on circumstantial evidence but that, where a finding of guilt is based on an inference drawn from such evidence, it must be the only reasonable conclusion that could be drawn from it.[1497] If there is another conclusion that could be reasonably reached from the evidence, the conclusion of guilt beyond reasonable doubt cannot be drawn.[1498]

536. The Appeals Chamber finds that the Trial Chamber correctly applied the legal standard for the assessment of circumstantial evidence. The Trial Chamber found that the only reasonable inference to be drawn from the circumstances was that the issuance of the Civil Defence Documents, at a minimum, deliberately omitted information which "had the effect of encouraging the continued killings of Tutsis".[1499] While the Trial Chamber did not make a finding in regard to each separate document, it concluded in respect of a number of the Civil Defence Documents that the instructions contained therein "meant that [weapons to which they pertained] would be used to continue committing genocide against the Tutsis instead of to assist with civil defence",[1500] or constituted an attempt to hide "at the very least, the Interim Government's implicit approval of the genocide".[1501] The Appeals Chamber is not convinced that Karemera and Ngirumpatse have identified another reasonable conclusion that could be drawn from the evidence.

537. Furthermore, contrary to Karemera's and Ngirumpatse's claims, the Trial Chamber's findings were not speculative, but based on circumstantial evidence. In reaching its conclusion that the Civil Defence Documents encouraged the continued killing of Tutsis, the Trial Chamber specifically considered the context in which the Civil Defence Documents were issued, including: (i) contemporaneous rallies and speeches that took place where the concept of Hutu Power was espoused;[1502] (ii) Karemera's and Ngirumpatse's knowledge by 9 April 1994 of the scope of the killings;[1503] (iii) the genocide that had been ongoing for nearly three weeks by the time the first

[1496] Prosecution Response Brief (Karemera), para. 115.
[1497] *See*, *e.g.*, *Mugenzi and Mugiraneza* Appeal Judgement, para. 136; *Bagosora and Nsengiyumva* Appeal Judgement, para. 515.
[1498] *See*, *e.g.*, *Mugenzi and Mugiraneza* Appeal Judgement, para. 136; *Bagosora and Nsengiyumva* Appeal Judgement, para. 515.
[1499] Trial Judgement, paras. 1055, 1066. *See also* Trial Judgement, paras. 1078, 1083.
[1500] Trial Judgement, para. 1078.
[1501] Trial Judgement, para. 1044.
[1502] Trial Judgement, para. 1016.
[1503] Trial Judgement, paras. 1018, 1019. The Trial Chamber found, relying on Karemera's and Ngirumpatse's testimony, that the Interim Government fled to Gitarama as a unit on 12 April 1994. In light thereof, the Trial Chamber concluded that the only reasonable inference was that the mechanisms which informed Karemera and Ngirumpatse of the killings on 9 April 1994 continued to exist and inform them after their flight to Gitarama. *See* Trial Judgement, para. 1019.

document was issued on 27 April 1994;[1504] (iv) the establishment of the Fund on or about 25 April 1994 to purchase traditional weapons for the killing of Tutsis;[1505] (v) the encouragement on the part of Karemera, Ngirumpatse, and the Interim Government of the killing of Tutsis in Gitarama and Butare before 27 April 1994;[1506] and (vi) the 3 May 1994 Meeting, during which Karemera paid tribute to the *Interahamwe* and called upon them "to flush out the enemy".[1507]

538. Additionally, the Appeals Chamber considers that other findings made by the Trial Chamber further support the reasonableness of its interpretation of the Civil Defence Documents as demonstrating an agreement to kill Tutsis. Notably, the Trial Chamber recalled its earlier findings related to the Interim Government's initiative during the meeting at the Murambi Training School on 18 April 1994 to intimidate and force the local authorities in Gitarama not to resist the *Interahamwe*'s assault on Tutsis,[1508] the Interim Government's initiative to replace the prefects of Butare and Kibungo who resisted assaults on Tutsis, as well as the Interim Government's encouragement of attacks on Tutsis during the installation ceremony of Nsabimana on 19 April 1994 in Butare.[1509]

539. Furthermore, the Trial Chamber's consideration of what was not contained in the Civil Defence Documents was assessed in the context of the prevailing circumstances at the time.[1510] The Trial Chamber found that any organization or individual who opposed the killings would have stated in "much more obvious and empathic terms" that the massacre of Tutsis should be halted.[1511] The Trial Chamber also considered UNAMIR cables indicating that the Interim Government "lacked the will or capacity to curb the civil defence structure", which tended to demonstrate "that the Interim Government was using civil defence as a part of its operational strategy"[1512] and that it "did not seem concerned about civilian massacres".[1513] The Trial Chamber also rejected the argument that the traditional weapons, referenced in the Mid-June 1994 Instructions, would be used

[1504] Trial Judgement, para. 1020. *See also* Trial Judgement, paras. 1039, 1052, 1064. The Trial Chamber considered in this respect that, by the time the 25 May 1994 Directive was issued, "250,000 – 500,000 fatalities had occurred and tens of thousands of persons had been maimed or wounded, primarily at the hands of the *Interahamwe* and Presidential Guard", and particularly in areas controlled by "members or supporters of the armed forces of the Interim Government". *See* Trial Judgement, para. 1054.
[1505] Trial Judgement, para. 1021. *See also* Trial Judgement, para. 1106.
[1506] Trial Judgement, para. 1021.
[1507] Trial Judgement, para. 1022.
[1508] Trial Judgement, para. 1044.
[1509] Trial Judgement, para. 1044.
[1510] Trial Judgement, paras. 1039, 1052, 1064.
[1511] Trial Judgement, para. 1039.
[1512] Trial Judgement, para. 1043.
[1513] Trial Judgement, para. 1042.

to combat the RPF, given that it was clear, by mid-June 1994, that it would have been "suicidal" to confront the RPF with traditional weapons.[1514]

540. The Trial Judgement also reflects that the Trial Chamber considered whether there were other reasonable inferences to be drawn from the evidence, including whether the Civil Defence Documents were issued in furtherance of a legitimate military operation against the RPF.[1515] The Trial Chamber further took into account Defence Witness Tharcisse Renzaho's "general, conclusory" evidence that Civil Defence programmes are an integral part of the internal defence system of any country.[1516] However, the Trial Chamber explicitly concluded that this evidence could not reasonably lead to another inference for the reason behind the issuance of the Civil Defence Documents.[1517]

541. The Appeals Chamber considers that the remainder of Karemera's and Ngirumpatse's general and vague challenges to the Trial Chamber's assessment of the Defence evidence and the criminal nature of the Civil Defence programme fail to demonstrate that the Trial Chamber acted unreasonably in making its findings in relation to the issuance of the Civil Defence Documents.

542. Contrary to Karemera's contention, the Appeals Chamber further finds that the Trial Decision of 16 November 2007 does not demonstrate the Trial Chamber's decision not to rely on expert evidence generally, or that of Witness Filip Reyntjens in particular. Rather, the decision sets forth the reasons for which the Trial Chamber declined to hear the evidence of three specific Prosecution expert witnesses.[1518] Consequently, the Appeals Chamber dismisses Karemera's argument that the Trial Chamber erroneously relied on the expert testimony of Witness Reyntjens in support of its finding that traditional weapons would have been useless against the RPF.

543. Turning to Karemera's submission that the Trial Chamber should have taken into account findings reached by other trial chambers, the Appeals Chamber recalls that decisions of trial chambers have no binding force on each other.[1519] Instead, "a trial chamber must make its own final assessment of the evidence on the basis of the totality of the evidence presented in the case before

[1514] Trial Judgement, paras. 1075, 1076. The Trial Chamber further considered that, unlike the Tutsis at Bisesero Hills, the members of the civil defence were not forced to defend themselves on hilltops, and would thus not be in need of traditional weapons as they fled Rwanda. *See* Trial Judgement, para. 1077.
[1515] Trial Judgement, paras. 1040, 1041, 1052, 1053, 1055, 1064, 1065, 1067, 1076, 1077, 1083.
[1516] Trial Judgement, para. 1055.
[1517] Trial Judgement, paras. 1044, 1055, 1066, 1075, 1078.
[1518] *See generally* Trial Decision of 16 November 2007. The three Prosecution Witnesses are Alison Des Forges, André Guichaoua, and Binaifer Nowrojee. *See* Trial Decision of 16 November 2007, para. 1. The Appeals Chamber notes that the Trial Chamber did not rely on their evidence in support of any of its findings, including those related to the Mid-June 1994 Instructions. *See generally* Trial Judgement.
[1519] *Lukić and Lukić* Appeal Judgement, para. 260.

it".[1520] Consequently, an error cannot be established by simply demonstrating that other trial chambers have exercised their discretion in a different way.[1521] Karemera therefore has failed to demonstrate how findings made in the *Kalimanzira* and the *Bagilishema* Trial Judgements invalidate the Trial Chamber's assessment related to the purpose of the Civil Defence Documents.

544. The Appeals Chamber next turns to Karemera's argument that the Trial Chamber failed to explain its reasons for relying on the 27 April 1994 Letter as a basis for his conviction and that it distorted the content thereof.[1522] The Appeals Chamber recalls that a trial chamber need not explain every step of its reasoning,[1523] and observes that the Trial Chamber reasonably relied on additional circumstantial evidence to determine the purpose of the Civil Defence Documents. Karemera has not demonstrated that the Trial Chamber acted unreasonably in relying on this documentary evidence, in addition to other circumstantial evidence, to determine that the Civil Defence Documents manifested an agreement to further the destruction of the Tutsi population. The Appeals Chamber is not convinced that Karemera has shown that the Trial Chamber failed to give reasons for relying on the 27 April 1994 Letter or that it erred in interpreting its content.

545. Equally, Ngirumpatse's argument that the Trial Chamber erred and contradicted itself in interpreting the concept of "Hutu Power" as a contextual support for its finding on the criminal nature of the Civil Defence Documents is dismissed. In its findings related to the events prior to 8 April 1994, the Trial Chamber understood that the concept of "Hutu Power" was not inherently criminal and, therefore, no conviction rests thereon.[1524] It however observed that, after the assassination of the Burundian president, "the tone and intent behind the speeches given by MRND and other Hutu Power leaders took on a more sinister tone".[1525] The Appeals Chamber can identify no contradiction in those findings and Ngirumpatse's mere assertion that the Trial Chamber erred is groundless.

546. Turning now to Ngirumpatse's submission that the Trial Chamber did not consider whether the RPF used traditional weapons, the Appeals Chamber considers that Ngirumpatse has failed to explain how this contention might be relevant to the Trial Chamber's findings that underlie his responsibility. In any event, beyond maintaining that the Trial Chamber should have reached a

[1520] *Lukić and Lukić* Appeal Judgement, para. 260. *See also Stakić* Appeal Judgement, para. 346 (reiterating that "a Trial Chamber may draw its own reasonable conclusions based on the facts of the case before it, and is not bound by the factual findings of another case").
[1521] *Lukić and Lukić* Appeal Judgement, para. 396.
[1522] Karemera Appeal Brief, paras. 206, 208.
[1523] *Kanyarukiga* Appeal Judgement, para. 114; *Renzaho* Appeal Judgement, para. 405; *Nchamihigo* Appeal Judgement, paras. 165, 166.
[1524] Trial Judgement, para. 514. *See also supra* para. 98.
[1525] Trial Judgement, para. 1016.

different conclusion, Ngirumpatse has not advanced any argument to show that the Trial Chamber erred in its assessment of this evidence.

547. Finally, the Appeals Chamber notes that Ngirumpatse's challenge to the credibility of Witnesses FH and ALG in this section is only general in nature and does not demonstrate that the Trial Chamber's assessment was unreasonable. The Appeals Chamber considers Ngirumpatse's specific challenges to these witnesses' credibility made in other grounds of appeal elsewhere in this Judgement.[1526] The Trial Judgement reflects that Witnesses FH and ALG testified that the 27 April 1994 Letter was "mere rhetoric"[1527] and that "the documents actually intensified the genocide".[1528] The Appeals Chamber observes that, while the Trial Chamber considered the testimony of Witnesses FH and ALG, it was not persuaded by their evidence and therefore did not rely on their testimony to support its finding that the 27 April 1994 Letter contained instructions to kill Tutsis.[1529] Accordingly, the Appeals Chamber dismisses Ngirumpatse's submission in this regard.

548. In light of the above, the Appeals Chamber finds that Karemera and Ngirumpatse have failed to demonstrate that the Trial Chamber erred in finding that, when placed in their proper context, the Civil Defence Documents encouraged the ongoing killing of Tutsis and that any language calling for the restoration of security was but a void attempt to conceal an implicit approval of the genocide.

549. The Appeals Chamber notes, however, that the Trial Chamber's conclusion that Karemera instigated the continued killings of Tutsis that resulted from the 25 May 1994 Letter and the mid-June 1994 Instructions is based on the same facts as its conclusion regarding Karemera's liability pursuant to aiding and abetting.[1530] In the circumstances of this case, the Appeals Chamber *proprio motu* finds that Karemera's responsibility for instigating fully encompasses his criminal conduct and thus does not warrant a conviction on the basis of his aiding and abetting the same crimes.[1531]

3. Establishment of the Fund

550. According to the Trial Judgement, the Fund was created on or about 25 April 1994, following a meeting organized by Félicien Kabuga in Gisenyi, "to re-provision armed militias who were committing systematic attacks against Tutsis throughout Rwanda".[1532] The Trial Chamber

[1526] *See supra* Sections III.A, III.D, III.H.
[1527] Trial Judgement, para. 1033.
[1528] Trial Judgement, para. 1030.
[1529] Trial Judgement, para. 1038.
[1530] *See* Trial Judgement, paras. 1635-1638, 1640-1643.
[1531] *Cf. Đorđević* Appeal Judgement, para. 833; *D. Milošević* Appeal Judgement, para. 274.
[1532] Trial Judgement, paras. 1106, 1645. *See also* Trial Judgement, paras. 1103-1105.

found that Kabuga clearly communicated to the Interim Government that he intended to use the Fund to purchase traditional weapons "routinely used […] to massacre Tutsis" for the military, militiamen, and civilians, and that Karemera and Ngirumpatse knew or had reason to know of the creation of the Fund and its intended use.[1533] The Trial Chamber further found that Kabuga and the physical perpetrators of the killings possessed the intent to commit genocide, that Karemera and Ngirumpatse were aware of their genocidal intent, and that they shared it.[1534]

551. Karemera and Ngirumpatse submit that the Trial Chamber erred in its interpretation of the purpose for which the Fund was created and applied an incorrect standard to the assessment of circumstantial evidence.[1535] According to Karemera and Ngirumpatse, the evidence relied upon by the Trial Chamber clearly demonstrates that the Fund was created to provide assistance to those fighting the RPF, that it was not criminal in nature, and that it was not established for the purpose of providing traditional weapons to kill Tutsis.[1536] Karemera contends that the Trial Chamber "deliberately replaced the term 'RPF-*Inkotanyi*' with the term 'enemy and its accomplices'" when discussing the letter from Kabuga to the Interim Government on 25 April 1995.[1537] Ngirumpatse asserts that the Trial Chamber erred by finding that he did not challenge the creation of the Fund "as a criminal act".[1538]

552. The Prosecution responds that Karemera and Ngirumpatse fail to substantiate their claim that the Trial Chamber erred in its assessment of the evidence or in its conclusion concerning the Fund's use.[1539]

553. As set forth above, where a finding of guilt is based on an inference drawn from circumstantial evidence, it must be the only reasonable conclusion that could be drawn from it.[1540] If there is another conclusion that could be reasonably reached, the conclusion of guilt beyond reasonable doubt cannot be drawn.[1541]

[1533] Trial Judgement, paras. 1106, 1646. *See also* Trial Judgement, paras. 1103, 1104.
[1534] Trial Judgement, paras. 1646, 1647.
[1535] Karemera Appeal Brief, paras. 212-214, 216; Ngirumpatse Appeal Brief, paras. 583, 584. *See also* Karemera Reply Brief, paras. 48, 49.
[1536] Karemera Appeal Brief, paras. 214, 216; Ngirumpatse Appeal Brief, paras. 583, 584. *See also* Ngirumpatse Reply Brief, para. 134.
[1537] Karemera Appeal Brief, para. 214, *referring to* Trial Judgement, para. 1095. *See also* Prosecution Exhibit 200 (Letter from Kabuga to the Interim Government, dated 25 April 1994).
[1538] Ngirumpatse Appeal Brief, para. 579.
[1539] Prosecution Response Brief (Karemera), paras. 118-120; Prosecution Response Brief (Ngirumpatse), paras. 229, 230.
[1540] *See*, *e.g.*, *Mugenzi and Mugiraneza* Appeal Judgement, para. 136; *Bagosora and Nsengiyumva* Appeal Judgement, para. 515.
[1541] *See*, *e.g.*, *Mugenzi and Mugiraneza* Appeal Judgement, para. 136; *Bagosora and Nsengiyumva* Appeal Judgement, para. 515.

554. The Appeals Chamber does not discern any error in the Trial Chamber's application of the legal standard for the assessment of circumstantial evidence when it found that "the only reasonable conclusion is that Kabuga and the assailants who physically perpetrated the killings possessed the intent to destroy, in whole or in a substantial part, the Tutsi group".[1542] The Appeals Chamber also finds no error in the Trial Chamber's findings that the proposal to establish the Fund, as well as its actual creation significantly contributed to and furthered the common purpose of the joint criminal enterprise.[1543] A review of the Trial Judgement reflects that, contrary to Karemera's and Ngirumpatse's submissions, the Trial Chamber considered whether another inference could have been drawn, and acknowledged that the Fund would not have been criminal in nature if it had been limited to financing the war against the RPF.[1544] In this context, the Trial Chamber took into account that: (i) the Fund was set up to provide militias with traditional weapons at a time when the killing of Tutsis was widespread and public; (ii) the vast majority of the assailants were *Interahamwe* and other groups of armed civilians; and (iii) the perpetrators routinely used traditional weapons to kill Tutsis.[1545]

555. Additionally, in support of its finding that it was widely known that massacres were committed on a large scale two weeks before the Fund was created, the Trial Chamber relied on UNAMIR cables and Ngirumpatse's testimony that he and his colleagues were aware of the killings by this date.[1546] The Trial Chamber further observed that the evidence did not reflect any occasion where militia or civilians engaged the RPF with traditional weapons.[1547]

556. Karemera and Ngirumpatse have not demonstrated that the Trial Chamber was unreasonable in concluding that the proposal for and the establishment of the Fund contributed to the ongoing killing of Tutsis by re-arming militias who were committing systematic attacks against Tutsis throughout Rwanda. The Appeals Chamber notes that Karemera's and Ngirumpatse's general and vague challenges to the Trial Chamber's assessment of the criminal nature of the Fund and the evidence as a whole fail to demonstrate an error in the Trial Chamber's finding regarding the purpose for which the Fund was created.

[1542] Trial Judgement, para. 1646.
[1543] Trial Judgement, para. 1648.
[1544] Trial Judgement, para. 1103.
[1545] Trial Judgement, para. 1103.
[1546] Trial Judgement, para. 1104. *See also* Trial Judgement, paras. 1097, 1098, 1102, *referring to* Nzirorera Defence Exhibit 225 (UN Cable, dated 8 April 1994); Prosecution Exhibit 141 (UN Cable, dated 9 April 1994); *and* Ngirumpatse, T. 26 January 2011 p. 41.
[1547] Trial Judgement, para. 1104, *referring to* Trial Judgement, paras. 1099, 1100; Prosecution Exhibit 515-A1 (*The Prosecutor v. Théoneste Bagosora et al.*, Case No. ICTR-98-41-T, Prosecution Expert Witness Filip Reyntjens, T. 15 September 2004 pp. 62, 63); *and* Prosecution Exhibit 515-E1 (*The Prosecutor v. Théoneste Bagosora et al.*, Case No. ICTR-98-41-T, Prosecution Expert Witness Filip Reyntjens, T. 21 September 2004 p. 13).

557. Moreover, a plain reading of Kabuga's 25 April 1994 letter to the Interim Government reveals that it refers both to "RPF-*Inkotanyi*" and to the "enemy and their accomplices".[1548] Accordingly, the Appeals Chamber rejects Karemera's argument that the Trial Chamber "deliberately" mischaracterized the content of the letter with "terminology that was invented by the Prosecution",[1549] and considers that the Trial Chamber reasonably used the references interchangeably when summarizing the content of the letter.

558. The Appeals Chamber observes that Ngirumpatse has failed to substantiate his contention that he challenged the nature of the creation of the Fund as a criminal act.[1550] Moreover, a plain reading of the Trial Judgement reveals that the Trial Chamber did not consider undisputed the criminal nature of the Fund; rather it found unchallenged the actual creation of the Fund, nearly three weeks after the genocide began.[1551] Ngirumpatse's argument is therefore dismissed.

559. In light of the foregoing, the Appeals Chamber considers that Karemera and Ngirumpatse have failed to demonstrate that no reasonable trier of fact could have concluded, based on the totality of the evidence, that the Fund was established for the purpose of re-arming assailants with the intent of continuing the massacre against the Tutsi population.

4. Karemera's and Ngirumpatse's Responsibility

560. The Trial Chamber, having found that Kambanda and Kabuga were members of the joint criminal enterprise[1552] and that Kambanda's 27 April 1994 Letter and 25 May 1994 Directive,[1553] as well as the Fund established by Kabuga,[1554] furthered the common purpose of the enterprise, concluded that Karemera and Ngirumpatse incurred liability for genocide, extermination as a crime against humanity, and murder as a serious violation of Article 3 common to the Geneva Conventions and of Additional Protocol II based on their membership in and contribution to the joint criminal enterprise.[1555] The Trial Chamber further found Karemera guilty of aiding and abetting and instigating genocide, extermination as a crime against humanity, and murder as a

[1548] Prosecution Exhibit 200 (Letter from Kabuga to the Interim Government, dated 25 April 1994), which refers both to "fighting the RPF-*Inkotanyi* who are waging war against us" and to "the fight against the enemy and their accomplices".
[1549] Karemera Appeal Brief, para. 214.
[1550] Ngirumpatse Appeal Brief, para. 579.
[1551] Trial Judgement, para. 1103.
[1552] Trial Judgement, paras. 1453, 1600, 1627, 1634, 1648.
[1553] Trial Judgement, para. 1634.
[1554] Trial Judgement, para. 1648.
[1555] Trial Judgement, paras. 1634, 1648. In arriving at this conclusion, the Trial Chamber was mindful of Karemera's and Ngirumpatse's "substantial" contribution to the execution of the common purpose of the joint criminal enterprise. *See also* Trial Judgement, paras. 1450, 1457, 1458. The Trial Chamber considered, with respect to the 27 April 1994 Letter and the 25 May 1994 Directive, that the perpetrators of the killings possessed genocidal intent. *See* Trial Judgement, para. 1633. The Trial Chamber further found, in relation to the establishment of the Fund, that Karemera and Ngirumpatse were aware of the genocidal intent of the perpetrators and shared it. *See* Trial Judgement, para. 1647.

serious violation of Article 3 common to the Geneva Conventions and of Additional Protocol II, given the substantial effect his 25 May 1994 Letter and the Mid-June 1994 Instructions on the realization of the killing of Tutsis.[1556] The Trial Chamber found that Ngirumpatse incurred joint criminal enterprise liability in the basic form for Karemera's issuance of the 25 May 1994 Letter and the Mid-June 1994 Instructions.[1557] The Trial Chamber also found Karemera and Ngirumpatse liable, based on the same modes of liability, for extermination as a crime against humanity and for murder as a serious violation of Article 3 common to the Geneva Conventions and of Additional Protocol II.[1558]

561. Karemera and Ngirumpatse submit that the Trial Chamber erred by speculating that they knew or had reason to know of the establishment of the Fund for purposes of re-provisioning the assailants responsible for committing massacres against Tutsis.[1559] Moreover, Karemera submits that the Prosecution never "proved the foreseeability, in the mind of the Accused, that the traditional weapons were being purchased to exterminate Tutsis,"[1560] while Ngirumpatse contends that the evidence does not show that the Fund in fact contributed to the massacre of Tutsis.[1561] Ngirumpatse also points out that he was not in Rwanda when the Fund was established and submits that the evidence does not establish that he was involved in the creation of the Fund, contributed thereto, knew of Kabuga's letters to the Interim Government, or that he made use of the Fund.[1562]

562. According to Ngirumpatse, he cannot be convicted for his contribution to the joint criminal enterprise, if the Civil Defence Documents are not found to be criminal.[1563] Ngirumpatse also notes that he was not in Rwanda during the relevant time period.[1564] Ngirumpatse further contends that the Trial Chamber erred in finding that he was regularly informed of the killings perpetrated in Rwanda from 9 April 1994 onwards.[1565] Specifically, Ngirumpatse asserts that notoriety of the massacres alone is insufficient to establish that he encouraged the killings.[1566]

[1556] Trial Judgement, paras. 1635, 1636, 1638, 1641, 1643.
[1557] Trial Judgement, paras. 1639, 1644.
[1558] Trial Judgement, paras. 1691, 1704-1706.
[1559] Karemera Appeal Brief, paras. 215, 216; Ngirumpatse Appeal Brief, paras. 580-582. *See also* Ngirumpatse Reply Brief, paras. 132, 133.
[1560] Karemera Appeal Brief, para. 216.
[1561] Ngirumpatse Appeal Brief, para. 585.
[1562] Ngirumpatse Appeal Brief, para. 581.
[1563] Ngirumpatse Appeal Brief, para. 555.
[1564] Ngirumpatse Appeal Brief, paras. 553, 570.
[1565] Ngirumpatse Appeal Brief, paras. 539, 540.
[1566] Ngirumpatse Appeal Brief, para. 541. Ngirumpatse also submits that the evidence demonstrates that he undertook numerous actions to re-establish peace in Rwanda and indiscriminately saved the lives of people as of 8 April 1994. *See* Ngirumpatse Appeal Brief, paras. 542-550. The Appeals Chamber has considered Ngirumpatse's submissions regarding the positive actions he took during the genocide in its assessment of Ngirumpatse's challenges to his sentence. *See infra* Section III.O.2.(b).

563. The Prosecution submits that the Trial Chamber correctly found that Karemera and Ngirumpatse knew or had reason to know that the Fund was intended to re-provision armed militia, given their close proximity to the Interim Government.[1567]

564. The Appeals Chamber finds no merit in Karemera's contention that the Trial Chamber did not discuss whether it was foreseeable to him that the traditional weapons were purchased through the Fund with the purpose of destroying the Tutsi population. The question of "foreseeability" relates to the extended form of joint criminal enterprise,[1568] not the basic form on the basis of which Karemera was convicted.[1569] Karemera's argument is therefore dismissed.

565. The Appeals Chamber dismisses Ngirumpatse's argument regarding the criminal nature of the documents, in light of its finding above that the issuance of the Civil Defence Documents encouraged the continued killing of Tutsis. Similarly, the Appeals Chamber has elsewhere rejected Ngirumpatse's submission regarding his absence from Rwanda when the Civil Defence Documents were issued.[1570]

566. The Appeals Chamber has elsewhere rejected Ngirumpatse's challenges to the existence of a joint criminal enterprise and his responsibility for the criminal acts committed in furtherance of its purpose.[1571] Additionally, the Appeals Chamber has elsewhere rejected Ngirumpatse's argument that the Trial Chamber failed to consider whether he significantly contributed to each underlying criminal act and his absence from Rwanda during the relevant time period.[1572] Karemera's and Ngirumpatse's arguments in this respect are therefore dismissed.

567. The Trial Chamber expressly reasoned that Karemera and Ngirumpatse incurred joint criminal enterprise liability for the killings that resulted from the issuance of the Civil Defence Documents and the creation of the Fund, given that the documents and the Fund furthered the common purpose of the joint criminal enterprise.[1573] The Trial Chamber further recalled that "all participants in a JCE are equally guilty of the underlying crime regardless of the part played by each" and that Ngirumpatse "substantially contributed to the execution of the common purpose of

[1567] Prosecution Response Brief (Karemera), para. 237; Prosecution Response Brief (Ngirumpatse), para. 231. Specifically, the Prosecution argues that Ngirumpatse's position as the National Party Chairman and Chairman of the MRND Executive Bureau at the time, his close links with the Interim Government, as well as the fact that Kabuga's 25 April letter was addressed to the Interim Government, are sufficient bases to conclude that he knew or had reason to know of the purpose for which the Fund was created. *See* Prosecution Response Brief (Ngirumpatse), para. 231.
[1568] *Gotovina and Markač* Appeal Judgement, para. 90; *Karadžić* Appeal Decision of 25 June 2009, paras. 15-18.
[1569] Trial Judgement, para. 1648.
[1570] *See supra* para. 153.
[1571] *See supra* paras. 152, 153.
[1572] *See supra* para. 153.
[1573] *See* Trial Judgement, paras. 1634, 1639, 1644, 1648.

the JCE".[1574] The Appeals Chamber finds no error in this regard, and, accordingly, considers without merit Ngirumpatse's submissions regarding his *mens rea*.[1575]

5. Conclusion

568. For the foregoing reasons, the Appeals Chamber dismisses Karemera's Sixteenth through Twenty-First Grounds of Appeal, as well as Ngirumpatse's Thirty-Second through Thirty-Fourth Grounds of Appeal and Forty-Seventh Ground of Appeal, in part. The Appeals Chamber, however, *proprio motu* reverses Karemera's convictions for aiding and abetting the crimes as a result of the issuance of the the 25 May 1994 Letter and the mid-June 1994 Instructions.

[1574] Trial Judgement, paras. 1634, 1639, 1644, 1648.
[1575] The Appeals Chamber recalls that it elsewhere overturned the Trial Chamber's finding concerning Ngirumpatse's responsibility for conspiracy to commit genocide on the basis that Ngirumpatse's mere position of authority cannot suffice to infer, as the only reasonable conclusion, that he influenced the decisions taken by them and in fact agreed or intended to agree to their ultimate decisions. *See infra* paras. 649-652.

K. Bisesero Hills (Karemera Grounds 22 and 31, in Part; Ngirumpatse Grounds 35, 36, 47, in Part, and 49, in Part)

569. The Trial Chamber found that, from 13 May 1994, national and regional authorities from Kibuye Prefecture ordered and instigated attacks in Bisesero Hills that killed thousands of Tutsi civilians.[1576] In addition, around 18 June 1994, according to the Trial Judgement, Karemera ordered a "mopping-up" operation [1577] against Tutsis in Bisesero, resulting in the death of "scores of Tutsi civilians".[1578] The Trial Chamber viewed Karemera's order as a substantial contribution to the common purpose of the joint criminal enterprise, namely the destruction of the Tutsi population in Rwanda.[1579] The Trial Chamber convicted Karemera and Ngirumpatse for committing genocide, extermination as a crime against humanity, and murder as a serious violation of Article 3 common to the Geneva Conventions and of Additional Protocol II, through the basic form of a joint criminal enterprise in relation to these killings.[1580]

570. The Trial Chamber also found Karemera responsible as a superior for the attacks and killings committed in Bisesero on or after 25 May 1994 by civilian participants in the Civil Defence programme, by local authorities who were part of the territorial administration, and the Gisenyi *Interahamwe*.[1581] The Trial Chamber took Karemera's superior responsibility into account as an aggravating circumstance in sentencing.[1582]

571. Karemera and Ngirumpatse challenge their convictions for the killing of Tutsi civilians in Bisesero Hills.[1583] In this section, the Appeals Chamber considers whether the Trial Chamber erred: (i) in finding that the "mopping-up" operation occurred and was intended to kill Tutsi civilians; and (ii) as to Karemera's and Ngirumpatse's responsibility for the killings in Bisesero.

[1576] Trial Judgement, paras. 1199, 1210, 1649.
[1577] The Trial Judgement also referred to the operation as an "*opération de ratissage*". *See* Trial Judgement, para. 1211. *See also* Trial Judgement, para. 1234.
[1578] Trial Judgement, paras. 1234, 1655.
[1579] Trial Judgement, paras. 1450(9), 1457, 1655, 1657.
[1580] Trial Judgement, paras. 1653, 1655-1658.
[1581] Trial Judgement, paras. 1654, 1659, 1692, 1706.
[1582] Trial Judgement, para. 1747. *See also* Trial Judgement, paras. 1654, 1659.
[1583] Karemera Notice of Appeal, paras. 66, 102, 103, 127-130; Karemera Appeal Brief, paras. 218-225, 316, 333-337; Ngirumpatse Notice of Appeal, paras. 168-177, 317, 329-334, 339, 346, 348, 354; Ngirumpatse Appeal Brief, paras. 587-592, 745-747, 763. *See also* 11 February 2014 p. 6. In addition, Karemera challenges, in Grounds 5 and 6 of his appeal, the pleading of his superior responsibility for the attacks at Bisesero Hills. *See* Karemera Appeal Brief, paras. 29-38. Ground 30 of Karemera's appeal opposes the finding that he had effective control over the *Interahamwe*, including those who participated in the "mopping-up" operation in Bisesero Hills. *See* Karemera Appeal Brief, paras. 125, 126. The Appeals Chamber has addressed these challenges elsewhere. *See supra* Sections III.B, III.D.2.(a).(iii). In respect of Ngirumpatse's appeal, the Appeals Chamber observes that his notice of appeal refers, as part of Ground 45, to the factual findings concerning the "mopping-up" operation in the Bisesero region. *See* Ngirumpatse Notice of Appeal, para. 279. Ngirumpatse, however, does not develop this further in his appeal brief. *See* Ngirumpatse Appeal Brief, paras. 722-739. Consequently, the Appeals Chamber will not consider Ngirumpatse's Ground 45 here.

1. "Mopping-Up" Operation

572. The Trial Chamber found that, on 18 June 1994, Karemera, acting on behalf of the Interim Government, ordered a "mopping-up" operation in Bisesero.[1584] In making this finding, the Trial Chamber relied on a letter written by Karemera to Lieutenant Colonel Anatole Nsengiyumva, who was the commander of the Gisenyi Operational Sector, Clément Kayishema, who was the prefect of Kibuye Prefecture, and the commander of the Kibuye Operational Sector, requesting their assistance in the operation.[1585] In addition, the Trial Chamber relied on a letter dated 20 June 1994 from Karemera to Kayishema asking the prefect to seek assistance from surrounding communes in support of the operation.[1586] Finally, the Trial Chamber relied on a letter of 24 June 1994 from Ignace Bagilishema, the bourgmestre of Mabanza Commune, confirming that *Interahamwe* from Gisenyi traveled to Bisesero to participate in the attacks between 19 and 22 June 1994, and on the testimony of Prosecution Witness AMB, who confirmed that a large number of militiamen and gendarmes traveled from Gisenyi to Bisesero in late June 1994 to participate in massacres.[1587]

573. Karemera argues that the Trial Chamber erred in relying only on Prosecution Witness AMB's evidence to find that the letter he sent to Nsengiyumva on 18 June 1994 contained the order for an operation that was intended to kill Tutsi civilians.[1588] In support of his argument that the letter was rather requesting a legitimate military operation in the context of a war aimed at RPF soldiers, Karemera points to the 3 May 1994 Meeting where authorities were asked to check whether persons in the area were members of the population taking refuge or armed "*Inkotanyi*" dangerous to the population.[1589] He also refers to a 2 June 1994 report concerning an "imminent attack" by the RPF "not far" from Kibuye,[1590] and submits that the Trial Chamber erred in finding that there were no RPF combatants in Kibuye because the deployment of troops and the RPF's guerrilla tactics were not discussed at trial.[1591] Karemera further contends that, in any event, the

[1584] Trial Judgement, paras. 1229, 1234.
[1585] Trial Judgement, paras. 1215, 1229.
[1586] Trial Judgement, paras. 1216, 1229.
[1587] Trial Judgement, para. 1230. The Trial Chamber noted that the relevant evidence was also consistent with an adjudicated fact that, on 18 June 1994, Eliézer Niyitegeka, the Minister of Information, promised that he would supply gendarmes for the next day's attack and urged local bourgmestres to do all that they could to ensure the killings in Bisesero. *See* Trial Judgement, para. 1230.
[1588] Karemera Appeal Brief, para. 336. *See also* Karemera Appeal Brief, paras. 218, 221-223; Karemera Reply Brief, paras. 50-54.
[1589] Karemera Appeal Brief, para. 222, *referring to* Prosecution Exhibit 82 (Minutes of the Meeting).
[1590] Karemera Appeal Brief, para. 222, *referring to* Prosecution Exhibit 55 (Situation report from the Prefect of Kibuye, dated 2 June 1994).
[1591] Karemera Appeal Brief, para. 222.

"mopping-up" operation was never carried out and that the Trial Chamber erred in finding that it had taken place.[1592]

574. Ngirumpatse contends that the Trial Chamber erred in dismissing Defence evidence,[1593] and argues that, in any event, the attacks in Bisesero Hills were not criminal in nature.[1594]

575. The Prosecution responds that the Trial Chamber correctly found Karemera guilty of ordering a "mopping-up" operation to kill Tutsis in Bisesero.[1595] According to the Prosecution, Karemera has not demonstrated any error in the Trial Chamber's careful analysis of the evidence, or in its conclusion that the operation was illegitimate and succeeded in killing scores of Tutsis.[1596] The Prosecution further responds that Ngirumpatse's challenges "are unsubstantiated and obscure" and that he has failed to substantiate his claim that the Trial Chamber erred in dismissing Defence evidence.[1597]

576. Contrary to Karemera's submission, the Trial Chamber did not rely solely on Prosecution Witness AMB's evidence to find that he ordered an operation aimed at killing Tutsi civilians. Rather, the Trial Chamber's deliberations show that it relied on Karemera's letters of 18 and 20 June 1994, Bagilishema's letter dated 24 June 1994, as well as prior findings that mass killings of Tutsis were taking place in Kibuye Prefecture involving the authorities.[1598] The Trial Chamber also considered other evidence that, around 18 June 1994, Niyitegeka attended a meeting facilitating attacks on Tutsis in Bisesero.[1599] The Trial Chamber relied on Witness AMB's evidence as general corroboration and primarily to confirm that, in late June 1994, a large number of militiamen and gendarmes traveled to Kibuye Prefecture to participate in attacks.[1600] In any event, Karemera does not challenge Witness AMB's credibility nor does he refer to the Trial Chamber's assessment of his credibility.

[1592] Karemera Appeal Brief, paras. 223-225. Karemera also includes, as part of his challenges of the section concerning Bisesero Hills, what he believes to have been the Trial Chamber's finding that Nsengiyumva distributed weapons to militia who used them to kill Tutsis. *See* Karemera Appeal Brief, para. 219, *quoting in part* Trial Judgement, para. 1094. The Appeals Chamber observes, however, that the statement challenged by Karemera was not a finding by the Trial Chamber, but was instead a recitation of an allegation in the Indictment. This aspect of Karemera's appeal is therefore dismissed.
[1593] Ngirumpatse Appeal Brief, para. 591.
[1594] Ngirumpatse Appeal Brief, para. 590.
[1595] Prosecution Response Brief (Karemera), paras. 121, 127. *See also* AT. 10 February 2014 pp. 59, 61.
[1596] Prosecution Response Brief (Karemera), paras. 122-126.
[1597] Prosecution Response Brief (Ngirumpatse), paras. 234, 236.
[1598] Trial Judgement, paras. 1229-1231.
[1599] Trial Judgement, para. 1230, *referring to* Adjudicated Fact No. 134. *See also The Prosecution v. Édouard Karemera et al.*, Case No. ICTR-98-44-T, Decision on Appeals Chamber Remand of Judicial Notice, 11 December 2006 ("Trial Decision of 11 December 2006").
[1600] Trial Judgement, para. 1230.

577. In assessing Karemera's argument that he ordered a legitimate military operation against RPF elements operating in Bisesero, the Trial Chamber expressly considered evidence concerning the 3 May 1994 Meeting at the Kibuye Prefecture office,[1601] including evidence related to the presence of *Inkotanyi* and the need to confront the RPF.[1602] The Appeals Chamber has already rejected Karemera's challenges to the Trial Chamber's conclusion that his remarks and those of other officials at this meeting amounted to direct and public incitement to commit genocide as opposed to a legitimate call to oppose purported RPF elements in the area.[1603]

578. Moreover, although the Trial Chamber did not expressly address the report of 2 June 1994, it did summarize and discuss testimony from Karemera outlining the government's purported awareness of RPF infiltration and activities in the area.[1604] The Trial Chamber rejected Karemera's claim on this point by highlighting the evidence of a majority of witnesses who testified that the Tutsis civilians were unarmed and could only defend themselves against well armed assailants with sticks and stones.[1605] The Appeals Chamber finds that, in view of this evidence and the scale of the killings, a reasonable trier of fact could have concluded that the attacks were directed against civilians in Bisesero and did not involve legitimate operations against the RPF.

579. Turning to Karemera's contention that the "mopping-up" operation was never carried out, the Appeals Chamber observes that Karemera bases this position on evidence that Nsengiyumva refused to execute Karemera's order to engage in such an operation.[1606] The Trial Chamber considered evidence of Nsengiyumva's refusal to send military reinforcements from Gisenyi.[1607] However, it also examined a letter from 24 June 1994 indicating that Tutsis were attacked in Bisesero between 19 and 22 June 1994 with the assistance of the *Interahamwe*, as well as witness testimony about an influx of militia and gendarmes to Bisesero in late June to participate in these attacks.[1608] Karemera has not demonstrated that the Trial Chamber acted unreasonably in preferring and relying on this documentary and first-hand evidence to determine that the "mopping-up" operation occurred. In any event, beyond maintaining that the Trial Chamber should have reached a different conclusion, Karemera does not advance any argument to show that the Trial Chamber

[1601] Trial Judgement, para. 1231, *referring* to Trial Judgement, paras. 947-1010.
[1602] *See* Trial Judgement, paras. 951-971, 985.
[1603] *See supra* Section III.I.1.
[1604] Trial Judgement, paras. 1223, 1224, 1231-1233.
[1605] Trial Judgement, paras. 1232, 1233.
[1606] Karemera Appeal Brief, paras. 223-225. Karemera also suggests that the Trial Chamber should have engaged in an assessment of Prosecution Exhibit 54. *See* Karemera Appeal Brief, para. 223. The Trial Chamber both set out the content of this exhibit, and addressed it in its deliberations. *See* Trial Judgement, paras. 1216, 1229, *referring to* Prosecution Exhibit 54 (Letter from Karemera to the Prefect of Kibuye, dated 20 June 1994). Accordingly, the Appeals Chamber summarily dismisses this contention.
[1607] Trial Judgement, para. 1226.
[1608] Trial Judgement, para. 1230, *referring to* Prosecution Exhibit 57 (Letter from the Bourgmestre of Mabanza to the Prefect of Kibuye, dated 24 June 1994); Witness AMB, T. 1 October 2007 pp. 62-67.

erred in its assessment of this evidence. The Appeals Chamber therefore dismisses Karemera's challenge to the Trial Chamber's finding.

580. Finally, the Appeals Chamber considers that Ngirumpatse's general and vague challenges to the Trial Chamber's assessment of the Defence evidence and the criminal nature of the operation fail to demonstrate that the Trial Chamber acted unreasonably in making its findings in relation to the attacks in Bisesero in May and June 1994.

2. Karemera's and Ngirumpatse's Responsibility for the "Mopping-Up" Operation and the Killings which Occurred in Bisesero on or About 13 May 1994

581. Karemera submits that the Trial Chamber erred in finding him responsible for the killings in Bisesero without concluding beyond reasonable doubt that his subordinates acted with the *mens rea* required to commit a crime under the Statute.[1609] He also contends that the Trial Chamber did not find that he was present in Bisesero in order to coordinate the attacks on or about 13 May 1994.[1610]

582. Ngirumpatse submits that the Trial Chamber committed numerous errors in finding him responsible for attacks in Bisesero in May and June 1994, including for the "mopping-up" operation.[1611] In particular, Ngirumpatse argues that he cannot incur liability through a joint criminal enterprise because he was not in Rwanda during the commission of crimes in Bisesero Hills.[1612]

583. The Prosecution responds that the genocidal intent of Karemera's subordinates was established beyond reasonable doubt.[1613] Referring to its submissions on joint criminal enterprise, the Prosecution argues that Ngirumpatse has not demonstrated his lack of involvement in the attacks against Tutsis in Bisesero Hills.[1614]

[1609] Karemera Appeal Brief, paras. 315-317, 337.
[1610] Karemera Appeal Brief, para. 334. The Appeals Chamber further notes Karemera's argument that it was illogical for the Trial Chamber to find both that he ordered crimes at Bisesero under Article 6(1) of the Statute, and that he failed to prevent them or to punish their perpetrators pursuant to Article 6(3) of the Statute. *See* Karemera Appeal Brief, para. 337. *See also* Karemera Appeal Brief, paras. 318-321. The Appeals Chamber has addressed the arguments pertaining to cumulative convictions under Articles 6(1) and 6(3) of the Statute elsewhere in this Judgement. *See supra* Section III.D.5.
[1611] Ngirumpatse Appeal Brief, paras. 587-592, 745-747; Ngirumpatse Reply Brief, para. 135. *See also* Ngirumpatse Appeal Brief, para. 763. The Appeals Chamber considers Ngirumpatse's challenges to his conviction for the crime of extermination elsewhere in this Judgement. *See infra* Section III.N.1.
[1612] Ngirumpatse Appeal Brief, para. 588.
[1613] Prosecution Response Brief (Karemera), paras. 203-206, 208, 210. The Prosecution further submits that superior responsibility for genocide does not require the accused's knowledge of his subordinates' genocidal intent, but instead only that the superior knows or has reason to know that his subordinates are about to commit a crime. In any event, according to the Prosecution, it was proven beyond reasonable doubt that Karemera knew of his subordinates' genocidal intent. *See* Prosecution Response Brief (Karemera), paras. 203, 204.
[1614] Prosecution Response Brief (Ngirumpatse), para. 235, *referring to* Prosecution Response Brief (Ngirumpatse), paras. 296-328. *See also* AT. 10 February 2014 p. 79; AT. 11 February 2014 pp. 21, 22. In reply, Ngirumpatse

584. The Appeals Chamber observes that, contrary to Karemera's contention, the Trial Chamber concluded that the assailants at Bisesero Hills in April, May, and June 1994 acted with the *mens rea* necessary to commit the crimes of genocide, extermination as a crime against humanity, and murder as a serious violation of Article 3 common to the Geneva Conventions and of Additional Protocol II.[1615]

585. Karemera and Ngirumpatse also challenge their convictions for the crimes committed because they were not in Bisesero or Rwanda during this time period.[1616] Indeed, the Trial Chamber found it unproven that Karemera was among the authorities present in Bisesero to coordinate the attacks in April, May, or June 1994.[1617] However, as correctly noted by the Trial Chamber,[1618] an accused does not need to be present at the crime scene when the crime is committed by the principal offender in order to incur liability through a joint criminal enterprise.[1619] The Appeals Chamber also recalls that an accused's absence from the crime scene does not prevent him from having either knowledge of the events or effective control over the perpetrators.[1620] Karemera and Ngirumpatse have therefore failed to demonstrate any error on the part of the Trial Chamber in finding them responsible for the attacks in Bisesero Hills on or about 13 May 1994 and on 18 June 1994.

3. Conclusion

586. For the foregoing reasons, the Appeals Chamber dismisses Karemera's Twenty-Second Ground of Appeal and Thirty-First Ground of Appeal, in part, as well as Ngirumpatse's Thirty-Fifth and Thirty-Sixth Grounds of Appeal, and his Forty-Seventh and Forty-Ninth Grounds of Appeal, in part.

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maintains that his arguments have been articulated with precision, and that the Prosecution pretends not to understand them because they cannot be refuted. Ngirumpatse Reply Brief, paras. 17, 135.
[1615] Trial Judgement, paras. 1649, 1650, 1656, 1688, 1689, 1704, 1705.
[1616] Karemera Appeal Brief, para. 334; Ngirumpatse Appeal Brief, para. 588.
[1617] Trial Judgement, para. 1210.
[1618] Trial Judgement, para. 1438.
[1619] *Krnojelac* Appeal Judgement, para. 81.
[1620] *Ntabakuze* Appeal Judgement, para. 222. *See also Boškoski and Tarčulovski* Appeal Judgement, para. 125, fn. 442.

L. Rape and Sexual Assaults (Karemera Grounds 2-4, in Part, 34, and 38, in Part; Ngirumpatse Grounds 41, 43, 47, in Part, and 48)

587. The Trial Chamber convicted Karemera and Ngirumpatse of genocide and rape as a crime against humanity under the extended form of joint criminal enterprise for the rape and sexual assaults of Tutsi women committed in Ruhengeri Prefecture during early-mid April 1994, in Kigali-ville Prefecture during April 1994, in Butare Prefecture during mid-late April 1994, in Kibuye Prefecture during May to June 1994, and in Gitarama Prefecture during April and May 1994, and elsewhere throughout Rwanda.[1621] The Trial Chamber further found that Karemera and Ngirumpatse incurred superior responsibility for the rapes and sexual assaults committed during the genocide by the Kigali and Gisenyi *Interahamwe*[1622] and considered their superior responsibility as an aggravating circumstance in sentencing.[1623]

588. Karemera and Ngirumpatse submit that the Trial Chamber erred in convicting them of these crimes.[1624] In this section, the Appeals Chamber considers whether the Trial Chamber erred in assessing: (i) the notice Karemera and Ngirumpatse received of the crimes; (ii) the legal elements of genocide and of rape as a crime against humanity; and (iii) Karemera's and Ngirumpatse's responsibility under the extended form of joint criminal enterprise.

1. Notice

589. The Trial Chamber held Karemera and Ngirumpatse criminally responsible under the extended form of a joint criminal enterprise for rapes and sexual assaults committed from April to

[1621] Trial Judgement, paras. 1670, 1684. The Appeals Chamber observes that, in entering a conviction for genocide, the Trial Chamber referred more generally to Karemera's and Ngirumpatse's liability for rapes and sexual assaults that occurred after 11 April 1994, without specifying the location and date ranges. *See* Trial Judgement, para. 1670. The Trial Chamber was more specific in entering its conviction for rape as a crime against humanity. *See* Trial Judgement, para. 1684. The geographical and temporal limitations mentioned in the findings on rape as a crime against humanity track those found in paragraphs 66 and 68 of the Indictment, which charge these criminal acts under the counts of genocide and rape as a crime against humanity. In view of the Indictment and the fact that the Trial Chamber incorporated its genocide findings into its findings on crimes against humanity (*see* Trial Judgement, para. 1682), the Appeals Chamber considers that these date ranges and locations apply equally to the genocide findings.
[1622] Trial Judgement, paras. 1671, 1684. The Appeals Chamber has reversed this finding of superior responsibility, for reasons detailed elsewhere in this Judgement, with respect to the rapes and sexual assaults committed outside Kigali from April to June 1994. *See supra* Section III.D.2.(a).(iv).
[1623] Trial Judgement, paras. 1671, 1683, 1684, 1747, 1758.
[1624] Karemera Notice of Appeal, paras. 16-18, 140-145, 154-156; Karemera Appeal Brief, paras. 28, 30-32, 316, 338-342, 370-378; Ngirumpatse Notice of Appeal, paras. 195-202, 223-236, 338, 340-345; Ngirumpatse Appeal Brief, paras. 631-642, 668-685, 745, 746, 755-762. *See also* AT. 10 February 2014 pp. 18, 19; AT. 11 February 2014 p. 6. The Appeals Chamber also notes Karemera's contention that the Trial Chamber erred in convicting him of rape as a crime against humanity under both superior responsibility and the extended form of joint criminal enterprise. *See* Karemera Appeal Brief, para. 339. The Appeals Chamber has addressed the arguments pertaining to cumulative convictions under Articles 6(1) and 6(3) of the Statute elsewhere in this Judgement. *See supra* Section III.D.5.

June 1994, throughout Rwanda, including Kigali-ville, Ruhengeri, Gitarama, Kibuye, and Butare Prefectures.[1625]

590. Karemera submits that the Appeal Decision of 12 April 2006 did not, contrary to the Trial Chamber's finding, conclude that it was acceptable for the Prosecution to charge him under the extended form of joint criminal enterprise for rapes and sexual assaults.[1626] He further argues that the Trial Chamber erred in finding that the extended form of joint criminal enterprise and in particular its intentional element had been properly pleaded in the Indictment.[1627] In particular, he submits that the Prosecution failed to plead any material element in support of its assertion that the rapes committed throughout Rwanda were foreseeable to Karemera.[1628]

591. Ngirumpatse submits that the Trial Chamber erred in considering facts related to rape and sexual assaults that were not pleaded in the Indictment or pleaded with sufficient precision.[1629] In this respect, he highlights the Trial Chamber's consideration of rapes committed in Kibuye Prefecture in April 1994, as well as the lack of precision regarding the assaults committed in Gitarama Prefecture, and "elsewhere throughout Rwanda".[1630]

592. The Prosecution responds that Karemera's claims related to the pleading of his *mens rea* are unfounded as the extended form of joint criminal enterprise was properly pleaded in the Indictment.[1631] The Prosecution further responds that Ngirumpatse received adequate notice and that his arguments lack merit.[1632] It underlines that Ngirumpatse was not charged with personally committing rapes but with participating in an extended joint criminal enterprise and as a superior.[1633] It argues that all the elements required for these modes of liability were sufficiently pleaded.[1634] The Prosecution further submits that, in any event, the Prosecution Pre-Trial Brief provided additional notice regarding the location of the rapes and that Ngirumpatse fully understood the nature of the case against him.[1635]

593. The Appeals Chamber observes that the scope of the Appeal Decision of 12 April 2006 was limited to the finding that it was generally permissible for the Prosecution to rely on the extended form of joint criminal enterprise to hold an accused responsible for crimes committed by fellow

[1625] Trial Judgement, paras. 1354, 1373, 1390, 1407, 1412, 1424, 1473, 1665, 1684.
[1626] Karemera Appeal Brief, paras. 30, 31, *referring to* Trial Judgement, para. 76.
[1627] Karemera Appeal Brief, paras. 31, 32.
[1628] Karemera Appeal Brief, paras. 50-55.
[1629] Ngirumpatse Appeal Brief, para. 634.
[1630] Ngirumpatse Appeal Brief, para. 634, *referring to* Trial Judgement, paras. 1383-1407, 1424.
[1631] Prosecution Response Brief (Karemera), paras. 33-38. *See also* AT. 10 February 2014 pp. 49, 50.
[1632] Prosecution Response Brief (Ngirumpatse), paras. 287-292.
[1633] Prosecution Response Brief (Ngirumpatse), para. 289.
[1634] Prosecution Response Brief (Ngirumpatse), para. 289.
[1635] Prosecution Response Brief (Ngirumpatse), paras. 291, 292.

participants in a joint criminal enterprise of a "vast scope", and did not, as the Trial Chamber considered, address whether this particular mode of liability was properly pleaded in the Indictment.[1636] That said, the Appeals Chamber recalls its finding elsewhere that Karemera has failed to identify any error in the pleading of joint criminal enterprise in the Indictment and also rejects his challenges to the pleading of his knowledge of the foreseeability of sexual violence, in light of the language contained in the Indictment stating that the rape against Tutsi women "was so widespread and so systematic" that Karemera "knew or had reason to know that *Interahamwe* and other militiamen were about to commit these crimes or that they had committed them",[1637] and the Trial Chamber's findings concerning the widespread and systematic nature of the rapes.[1638]

594. The Appeals Chamber is not convinced that the Indictment is defective in failing to specify the exact location and dates of the rapes and sexual assaults for which Karemera and Ngirumpatse were convicted. The Appeals Chamber recalls that charges against the 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.[1639] The Appeals Chamber notes that Ngirumpatse was clearly charged under the extended form of joint criminal enterprise with regard to the crimes alleged in paragraphs 66 and 69 of the Indictment.[1640] The Appeals Chamber recalls that the degree of specificity of location required in the indictment depends on the nature of the Prosecution's case.[1641] Where crimes are alleged to have been perpetrated by subordinates in multiple locations, indication of location is not always possible.[1642] In addition, the Appeals Chamber has previously held that "a broad date range, in and of itself, does not invalidate a paragraph of an Indictment".[1643] Furthermore, "in light of the events that occurred in Rwanda in 1994 […] it is not always possible to be precise as to the specific date on which the crimes charged were committed".[1644] However, the date range should be "balanced with the accused's right to be informed in detail about the nature and cause of the charge against him in order to allow a comprehensive defence to be raised".[1645]

[1636] Appeal Decision of 12 April 2006, paras. 12-18.
[1637] Indictment, para. 70.
[1638] Indictment, paras. 67-69. *See* Trial Judgement, para. 1354. Specifically, the Trial Chamber found that there was "consistent evidence that rapes of Tutsi women by *Interahamwe* and soldiers occurred on a large scale in Kigali-ville [Prefecture]". *See also supra* Section III.B.2.
[1639] *See*, *e.g.*, *Ntabakuze* Appeal Judgement, para. 30; *Bagosora and Nsengiyumva* Appeal Judgement, para. 96; *Ntawukulilyayo* Appeal Judgement, para. 188; *Munyakazi* Appeal Judgement, para. 36.
[1640] Indictment, paras. 66, 69.
[1641] *Kupreškić et al.* Appeal Judgement, para. 89.
[1642] *Ntakirutimana* Appeal Judgement, para. 75 ("[t]here may well be situations in which the specific location of criminal activities cannot be listed, such as where the accused is charged as having effective control over several armed groups that committed crimes in numerous locations").
[1643] *Muvunyi I* Appeal Judgement, para. 58.
[1644] *Ndindabahizi* Appeal Judgement, para. 20.
[1645] *Ndindabahizi* Appeal Judgement, para. 20.

595. The Appeals Chamber observes that the Indictment does not charge Ngirumpatse with physical perpetration of the rapes but rather through the extended form of joint criminal enterprise.[1646] The crimes are alleged to have been perpetrated, not by Ngirumpatse himself, but by the *Interahamwe* and other militiamen.[1647] In addition, the allegations involve extensive attacks over a prolonged period of time and in different locations. In these circumstances, the Appeals Chamber considers the requirement for specificity to be lower than where an accused is charged with direct commission.

596. Paragraph 66 of the Indictment describes the rapes as intended to "destroy" the Tutsi ethnic identity as a group. The *chapeau* paragraph for Count 5 as well as paragraph 70 of the Indictment also describe the rapes of Tutsi women and girls as "widespread" and "systematic". Therefore, the Indictment signals the Prosecution's intent to prove the existence of rapes on a large scale reflecting a pattern of conduct. The Trial Chamber's findings that, from April to June 1994, Tutsi women and girls were raped and sexually assaulted on a systematic and large scale basis throughout Rwanda[1648] further reflect that the Prosecution was not necessarily in a position to provide greater specificity in the Indictment. Ngirumpatse advances no argument as to why greater specificity would be required.

597. Moreover, the Appeals Chamber is not convinced that the Trial Chamber erred in considering evidence of rapes and sexual assaults in Kibuye Prefecture in April 1994, even though this date is not pleaded in the Indictment. The Appeals Chamber recalls that Ngirumpatse was convicted only for such crimes committed in Kibuye Prefecture from May to June 1994.[1649] As such, the Trial Chamber only considered the evidence of such crimes in that prefecture in April 1994 as background. The Appeals Chamber has confirmed that a trial chamber has the discretion to admit any relevant evidence which it deems to have probative value, even where it is not possible to convict an accused on such evidence due to lack of notice.[1650]

598. Accordingly, Ngirumpatse has not demonstrated that the Indictment was defective with respect to the charges related to his responsibility for rape and sexual assault.

[1646] Indictment, paras. 66-69.
[1647] Indictment, paras. 66, 70.
[1648] Trial Judgement, paras. 1354, 1373, 1390, 1407, 1412, 1424, 1473, 1665, 1678, 1684.
[1649] Trial Judgement, para. 1684.
[1650] *Arsène Shalom Ntahobali and Pauline Nyiramasuhuko v. The Prosecutor*, Case No. ICTR-97-21-AR73, Decision on the Appeals by Pauline Nyiramasuhuko and Arsène Shalom Ntahobali on the "Decision on Defence Urgent Motion to Declare Parts of the Evidence of Witnesses RV and QBZ inadmissible", 2 July 2004, paras. 14-16.

2. Commission of Genocide and Rape as Crime against Humanity

599. The Trial Chamber found that Tutsi women and girls were raped and sexually assaulted by *Interahamwe*, soldiers, and others.[1651] According to the Trial Chamber, the rapes and sexual assaults that Tutsi women endured from April to June 1994 throughout Rwanda were acts of genocide and thus the perpetrators had genocidal intent.[1652] The Trial Chamber further concluded that these acts constituted rape as a crime against humanity.[1653]

600. Ngirumpatse submits that the Trial Chamber erred in finding that the *Interahamwe* and soldiers raped Tutsi women on a large scale in Kigali-ville Prefecture and that he had failed to rebut this evidence.[1654] Ngirumpatse contends that, in his closing brief, he emphasized that he had no means of challenging that rapes were generally attributed to the *Interahamwe*, in particular given the evolving nature of the term *Interahamwe* to simply mean "those who committed crimes".[1655] He further contends that the Trial Chamber erred in finding that Tutsi women were raped by the *Interahamwe*, soldiers, and others throughout Rwanda during the genocide.[1656]

601. In addition, Ngirumpatse submits that the Trial Chamber failed to provide a reasoned opinion for its finding that the rapes and sexual assaults were intended to destroy the Tutsis as a group.[1657] In this respect, he also submits that such crimes were committed against all Rwandan women, of all ethnic groups, by men from both sides in the conflict, and that the Trial Chamber erred in only considering those committed against Tutsi women.[1658] He adds that the Trial Chamber erred in convicting him of rape as a crime against humanity because it failed to provide reasons for its finding that the rapes were politically motivated and committed as a part of widespread and systematic attacks.[1659]

602. Finally, Ngirumpatse submits that the Trial Chamber erred in convicting him of rape as a crime against humanity because it also convicted him of rape as genocide based on the same facts.[1660]

[1651] Trial Judgement, paras. 1473, 1477, 1490.
[1652] Trial Judgement, para. 1668.
[1653] Trial Judgement, paras. 1678-1684.
[1654] Ngirumpatse Appeal Brief, para. 635.
[1655] Ngirumpatse Appeal Brief, para. 636, *referring to* Ngirumpatse Closing Brief, para. 928. *See also* Ngirumpatse Appeal Brief, para. 637.
[1656] Ngirumpatse Appeal Brief, paras. 639, 640.
[1657] Ngirumpatse Appeal Brief, para. 673.
[1658] Ngirumpatse Appeal Brief, para. 633.
[1659] Ngirumpatse Appeal Brief, para. 760. The Appeals Chamber notes that Ngirumpatse makes other arguments under Ground 48 of his appeal brief. Since these pertain to issues of evidence and superior responsibility, they are considered elsewhere in this Judgement. *See supra* Section III.D.
[1660] Ngirumpatse Appeal Brief, para. 757.

603. The Prosecution responds that Ngirumpatse has failed to demonstrate any error in the Trial Chamber's findings.[1661]

604. The Appeals Chamber is not convinced that the Trial Chamber erred in finding that the *Interahamwe* and soldiers raped Tutsi women on a large scale in Kigali-ville Prefecture in April 1994. The Trial Chamber relied on the testimony and statements of Prosecution Witnesses HH, UB, T, ATE, DBV, and Defence Witness Albert Lavie, along with adjudicated facts from the *Rutaganda* Trial Judgement.[1662] A review of this evidence clearly indicates that the *Interahamwe* raped Tutsi women on a large scale.[1663] Elsewhere in the Trial Judgement, the Trial Chamber clearly addressed the contention that, over time, the term "*Interahamwe*" became diluted and meant all persons engaged in anti-Tutsi activities.[1664] However, Ngirumpatse has failed to appreciate that much of the evidence relied on by the Trial Chamber implicates members of the *Interahamwe* affiliated with the MRND party in sexual violence in Kigali-ville Prefecture.[1665]

605. Furthermore, Ngirumpatse's contention that reference to the *Interahamwe* as a category is too broad to raise a proper defence is irrelevant to his challenge on the extended form of joint criminal enterprise.[1666] Indeed, the Trial Chamber's duty to identify the plurality of persons applies to the persons belonging to the joint criminal enterprise,[1667] not necessarily to the principal perpetrators of the crime. In that regard, the Trial Chamber expressly found that the *Interahamwe*, soldiers, and others who carried out the vast majority of the rapes and sexual assaults were not members of the joint criminal enterprise to pursue the destruction of the Tutsi population in Rwanda.[1668] The Appeals Chamber recalls that the decisive issue with regard to the principal perpetrators of the crimes is whether they were used by the accused or by any other member of the joint criminal enterprise in order to carry out the *actus reus* of the crimes forming part of the common purpose.[1669]

606. The Appeals Chamber summarily dismisses Ngirumpatse's argument that the Trial Chamber failed to provide a reasoned opinion for its findings that the rapes and sexual assaults were intended to destroy the Tutsis as a group and that the rapes were politically motivated and committed as part

[1661] Prosecution Response Brief (Ngirumpatse), paras. 294, 295, 341, 342.
[1662] Trial Judgement, para. 1354.
[1663] Trial Judgement, paras. 1338-1351.
[1664] Trial Judgement, para. 1287.
[1665] Notably, Witness HH gave testimony with respect to *Interahamwe* leaders affiliated with the MRND party such as Robert Kajuga, Georges Rutaganda, and Bernard Maniragaba. *See* Trial Judgement, paras. 1338-1340. In addition, the Trial Chamber also examined adjudicated facts from the *Rutaganda* Trial Judgement with respect to the raping of Tutsi women during the massacre at Nyanza. *See* Trial Judgement, para. 1351.
[1666] Ngirumpatse's arguments in relation to the reference to the "*Interahamwe*" as a category are addressed elsewhere in this Judgement. *See supra* Section III.B.1.
[1667] *See supra* para. 145.
[1668] Trial Judgement, para. 1487.

of widespread and systematic attacks, since it did not recognize that rapes were perpetrated against all ethnic groups by both sides of the conflict, and acknowledged only rapes of Tutsi women that were committed by the *Interahamwe* and others during the genocide. The Appeals Chamber recalls the Trial Chamber's previous finding that:

> There is no reasonable basis for anyone to dispute that, during 1994, there was a campaign of mass killing intended to destroy, in whole or at least in very large part, Rwanda's Tutsi population, which […] was a protected group. That campaign was, to a terrible degree, successful; although exact numbers may never be known, the great majority of Tutsis were murdered, and many others were raped or otherwise harmed.[1670]

607. Furthermore, in support of its conclusion that Tutsi women were raped and sexually assaulted by the *Interahamwe*, other militias, soldiers, and civilians on a large scale throughout Rwanda, as part of a widespread attack against Tutsis as an ethnic group,[1671] the Trial Chamber took into account the oral testimony of several Prosecution and Defence witnesses, the written statements of several other Prosecution witnesses, and various exhibits.[1672] It also considered its summary of Karemera's testimony that "[d]uring wartime, soldiers rape women so it is ridiculous to think that soldiers do not rape during war".[1673]

608. The Appeals Chamber is not convinced that Ngirumpatse has demonstrated that the Trial Chamber erred in concluding that the perpetrators of rape and sexual assaults possessed genocidal intent. In this respect, the Trial Chamber concluded that "Tutsi women and girls were raped and sexually assaulted systematically and on a large scale by the same individuals who were attacking Tutsis as a group".[1674] In addition, the Trial Chamber found that many of the Tutsi women were killed after being raped and sexually assaulted.[1675] The Trial Chamber determined that the rape and sexual assault of these women prior to their killing was intended to increase their suffering and to cause further harm to the Tutsi women's families and communities.[1676] Bearing in mind that these rapes and sexual assaults were intricately linked to the killing of members of the Tutsi group and intended to inflict further suffering, the Appeals Chamber finds that the Trial Chamber adequately explained and reasonably concluded that the perpetrators possessed genocidal intent. Ngirumpatse's

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[1669] *Kvočka et al*. Appeal Judgement, para. 168.
[1670] Appeal Decision of 16 June 2006, para. 35 (references omitted).
[1671] Trial Judgement, para. 1473.
[1672] Trial Judgement, paras. 1337-1424. The Trial Chamber considered the oral testimony of Prosecution Witnesses HH, UB, T, GAY, GBU, FH, AMN, and ZF, Defence Witnesses Albert Lavie, Juvenal Kajelijeli, Assiel Ndisetse, and ETK, and the written statements of Prosecution Witnesses ATE, DBV, GAY, GDT, FAL, AQQ, GV, CSB, DBG, APK, APW, APM, BB, ATA, ARP, and BIX. The Appeals Chamber observes that the Trial Chamber also considered exhibits, including RTLM broadcast transcripts and reports on human rights violations in Rwanda by UN officials and non-governmental organizations. *See* Trial Judgement, paras. 1413-1416. The Appeals Chamber further observes that the Trial Chamber took into consideration adjudicated facts. *See*, *e.g.*, Trial Judgement, fns. 1702-1706, 1732-1737, 1750-1758, 1773-1776. *See also* Trial Decision of 11 December 2006, pp. 17-19.
[1673] Trial Judgement, paras. 1470, 1475.
[1674] Trial Judgement, para. 1665.
[1675] Trial Judgement, paras. 1667, 1668.

mere contention, without any reference to the record, that rapes were perpetrated against all ethnic groups by men from both sides of the conflict is insufficient to call into question the Trial Chamber's finding that Tutsi women were targeted.

609. Further, the Trial Chamber found that the rapes and sexual assaults against Tutsi women and girls were politically motivated.[1677] It expressly noted that the rapes and sexual assaults of Tutsi women took place in the context of a civil war for the control of Rwanda between the Tutsi RPF and the Hutu political parties.[1678] The Appeals Chamber observes that other than merely stating the alleged error, Ngirumpatse provides no support to substantiate his claim that the Trial Chamber erred in its determinations. For the foregoing reasons, the Appeals Chamber dismisses Ngirumpatse's arguments.

610. Finally, the Appeals Chamber recalls that convictions entered under different statutory provisions but based on the same conduct are permissible only if each statutory provision involved has a materially distinct element not contained in the other.[1679] The Appeals Chamber further recalls that genocide and crimes against humanity are distinct crimes under Articles 2(3)(a) and 3 of the Statute. The Tribunal's jurisprudence establishes that cumulative convictions for genocide and crimes against humanity are permissible on the basis of the same acts, as each has a materially distinct element from the other: genocide requires "the intent to destroy, in whole or in part, a national, ethnical, racial or religious group",[1680] while a crime against humanity requires "a widespread or systematic attack against a civilian population".[1681] Therefore, the Appeals Chamber is not persuaded that the Trial Chamber erred in convicting Ngirumpatse of genocide and of rape as a crime against humanity for the same facts.

611. The Appeals Chamber notes, however, that in convicting Karemera and Ngirumpatse of rape as a crime against humanity, the Trial Chamber refers not only to rapes but also to sexual assaults.[1682] The Appeals Chamber considers that whilst the Trial Chamber's findings on sexual assaults can reasonably underpin a conviction of genocide, they cannot form the basis of a conviction for rape as crime against humanity. The Appeals Chamber recalls that acts of sexual

[1676] Trial Judgement, paras. 1667, 1668.
[1677] Trial Judgement, para. 1680.
[1678] Trial Judgement, para. 1680.
[1679] *Delalić et al.* Appeal Judgement, para. 412. *See also Gatete* Appeal Judgement, para. 259; *Ntabakuze* Appeal Judgement, para. 260; *Bagosora and Nsengiyumva* Appeal Judgement, para. 413; *Nahimana et al*. Appeal Judgement, para. 1019.
[1680] *See*, *e.g.*, *Munyakazi* Appeal Judgement, para. 141; *Nahimana et al.* Appeal Judgement, para. 492.
[1681] Article 3 of the Statute; *Bagosora and Nsengiyumva* Appeal Judgement, para. 389; *Nahimana et al.* Appeal Judgement, para. 1029; *Ntagerura et al*. Appeal Judgement, para. 426; *Semanza* Appeal Judgement, para. 318. *See also Musema* Appeal Judgement, paras. 366, 367.
[1682] Trial Judgement, para. 1684.

violence are a broader category than rape.[1683] Additionally, the Indictment only charged Karemera and Ngirumpatse with rape as a crime of humanity.[1684] Accordingly, the Appeals Chamber finds that the Trial Chamber erred in relying on its findings of sexual assaults committed throughout Rwanda to convict Karemera and Ngirumpatse of rape as a crime against humanity.[1685] However, as these convictions were also based on findings of rape[1686] the Appeals Chamber considers that this error has no overall impact on Karemera's and Ngirumpatse's convictions.

612. Accordingly, Ngirumpatse has not demonstrated that the Trial Chamber erred in assessing the legal elements of genocide and rape as a crime against humanity.

3. Extended Form of Joint Criminal Enterprise Liability

613. The Trial Chamber found that the rapes and sexual assault of Tutsi women and girls were not part of the common purpose to destroy the Tutsi population in Rwanda.[1687] However, it concluded that the commission of these crimes was a natural and foreseeable consequence of the joint criminal enterprise because the perpetrators were participating in the campaign to exterminate the Tutsis in Rwanda.[1688]

614. The Trial Chamber further held that Ngirumpatse and Karemera were aware that widespread rapes and sexual assaults on Tutsi women were at least a possible consequence of the joint criminal enterprise to pursue the destruction of the Tutsi population in Rwanda.[1689] Furthermore, the Trial Chamber found that they willingly took the risk of facilitating further rapes and sexual assaults on Tutsi women and girls because they continued to participate in the joint criminal enterprise.[1690] The Trial Chamber concluded that Karemera and Ngirumpatse incurred joint criminal enterprise liability in the extended form for the rapes and sexual assaults.[1691]

615. Karemera submits that the Trial Chamber erred in finding that rape and sexual violence was a natural and foreseeable consequence of the criminal acts committed in furtherance of the joint

[1683] *See Rukundo*, Trial Judgement, para. 380. *See also Kunarac et al.* Appeal Judgement, para. 150.
[1684] Indictment, Count 5.
[1685] The Appeals Chamber finds that the Trial Chamber reasonably considered that rapes and sexual assaults amounted to genocide in the form of serious bodily and mental harm. *See* Trial Judgement, para. 1667.
[1686] Trial Judgement, para. 1684. *See also* Trial Judgement, paras. 1354, 1373, 1390, 1407, 1412, 1424.
[1687] Trial Judgement, para. 1669.
[1688] Trial Judgement, paras. 1477, 1487.
[1689] Trial Judgement, paras. 1483, 1486.
[1690] Trial Judgement, paras. 1483, 1486. 1487. In relation to Ngirumpatse's responsibility, the Trial Chamber found that his willingness to take the risk of facilitating further rapes and sexual assaults on Tutsi women and girls was "particularly apparent from the fact that most of the rapes and sexual assaults in Ruhengeri, Kigali-Ville, and Butare *préfectures* occurred in April 1994 yet he insisted on making significant contributions to the execution of the basic JCE during that month and remained as the international envoy of the Interim Government until it fled Rwanda". *See* Trial Judgement, para. 1483.
[1691] Trial Judgement, para. 1490.

criminal enterprise and that he accepted that risk.[1692] In particular, he highlights the Trial Chamber's reliance on his testimony that sexual violence was a foreseeable consequence of war, which the Trial Chamber had determined was not part of the purpose of the joint criminal enterprise.[1693] He further argues that the Trial Chamber failed to take into account the institutional context and his geographic location at the time of the events.[1694] In addition, Karemera contends that the Trial Chamber confused the extended form of joint criminal enterprise with superior responsibility and considered the lack of evidence of his report to sanction soldiers who raped women to buttress its findings on his responsibility for sexual violence.[1695]

616. Ngirumpatse argues that the Trial Chamber erred by finding that the only reasonable inference to be drawn from the evidence was that rapes and sexual assaults were a foreseeable consequence of the common purpose to destroy the Tutsi population, rather than intrinsic to the armed conflict between the RPF and the Rwandan army.[1696] He also argues that the finding that rapes were a foreseeable consequence of the common purpose of the joint criminal enterprise contradicts the Trial Chamber's finding that the crimes committed were closely related to the armed conflict.[1697]

617. Ngirumpatse further argues that the Trial Chamber failed to "characterize" his criminal intent and erred in finding that he was aware that rapes were a foreseeable and natural consequence of the joint criminal enterprise and that he willingly took the risk of facilitating further rapes and sexual assaults on Tutsi women and girls.[1698]

618. Notably, Ngirumpatse recalls that he was absent from Rwanda most of the time and argues that the Trial Chamber merely speculated that he had knowledge of sexual violence on the basis of his political position as chairman of the MRND.[1699] He submits that his position at the time does not imply that he had a "specific knowledge of the crimes of sexual violence".[1700] He further argues that the Prosecution failed to prove his involvement in meetings with MRND ministers and *Interahamwe* leaders and that the Trial Chamber could not have deduced that he might have been informed of the rapes on these occasions.[1701] Ngirumpatse argues that the Trial Chamber's finding that he "took no action to inform himself of the situation" amounts to an impermissible liability for

[1692] Karemera Appeal Brief, paras. 372-378.
[1693] Karemera Appeal Brief, para. 373; Karemera Reply Brief, para. 74.
[1694] Karemera Appeal Brief, para. 374.
[1695] Karemera Appeal Brief, paras. 375, 376, *referring to* Trial Judgement, para. 1489.
[1696] Ngirumpatse Appeal Brief, paras. 671-673.
[1697] Ngirumpatse Appeal Brief, para. 671.
[1698] Ngirumpatse Appeal Brief, paras. 674-683.
[1699] Ngirumpatse Appeal Brief, paras. 676, 682.
[1700] Ngirumpatse Appeal Brief, para. 677.
[1701] Ngirumpatse Appeal Brief, para. 678.

omission and that the observation that "it is hard for the [Trial] Chamber to believe" that he was not informed and aware that rapes were committed reversed the burden of proof.[1702]

619. According to Ngirumpatse, the Trial Chamber further erred in relying on the fact that he remained in his functions until he fled Rwanda to conclude that he continued to participate in the joint criminal enterprise and therefore willingly took the risk to facilitate the commission of rapes and sexual assaults.[1703]

620. Ngirumpatse also raises general challenges to the Trial Chamber's findings arguing, *inter alia*, that the rapes and sexual assaults could also have been "committed in isolation during an armed conflict" by the physical perpetrators,[1704] and that the Trial Chamber failed to indicate when and how the rapes and sexual assaults expanded the common objective of the joint criminal enterprise.[1705]

621. The Prosecution responds that the Trial Chamber properly determined that Karemera and Ngirumpatse were aware that rapes were a natural and foreseeable consequence of the joint criminal enterprise, rather than the war, and provided adequate reasoning for its findings.[1706] It argues that the Trial Chamber did not reverse the burden of proof, but rather considered several circumstances, including Karemera's unfounded claim that he reported the crimes, as well as his presence and power in Rwanda, in reaching its conclusion as to Karemera's responsibility.[1707]

622. The Prosecution further responds that the Trial Chamber reasonably concluded that Ngirumpatse could access relevant information and was aware that rapes were a foreseeable consequence of the joint criminal enterprise, and that he willingly took the risk.[1708] In this context, the Prosecution underlines that the knowledge of the accused can be inferred from the totality of the evidence.[1709] It submits that the Trial Chamber made explicit findings on Ngirumpatse's intent in relation to the extended form of joint criminal enterprise.[1710]

[1702] Ngirumpatse Appeal Brief, paras. 679-681. Ngirumpatse adds that his evidence does not support the Trial Chamber's finding that "[i]t appears, however, from his testimony that he was not concerned with the rapes or sexual assaults". *See* Ngirumpatse Appeal Brief, para. 679.
[1703] Ngirumpatse Appeal Brief, para. 683.
[1704] Ngirumpatse Appeal Brief, para. 671.
[1705] Ngirumpatse Appeal Brief, para. 684.
[1706] Prosecution Response Brief (Karemera), para. 219; Prosecution Response Brief (Ngirumpatse), paras. 330-333, 340, 341.
[1707] Prosecution Response Brief (Karemera), paras. 220-223.
[1708] Prosecution Response Brief (Ngirumpatse), paras. 334-336.
[1709] Prosecution Response Brief (Ngirumpatse), para. 335. *See also* Prosecution Response Brief (Ngirumpatse), para. 342.
[1710] Prosecution Response Brief (Ngirumpatse), paras. 337-339.

623. The Appeals Chamber recalls that convictions for deviatory crimes that are not part of the joint criminal enterprise's common purpose are possible pursuant to the third or extended form of joint criminal enterprise. Convictions for such crimes require that the additional deviatory crimes were a "foreseeable" possible consequence of carrying out "the *actus reus* of the crimes forming part of the common purpose", and that "the accused, with the awareness that such a [deviatory] crime was a possible consequence of the implementation of th[e] enterprise, decided to participate in that enterprise".[1711]

(a) Foreseeability of Rapes and Sexual Assaults

624. The Appeals Chamber is not convinced that the Trial Chamber erred or contradicted itself by finding that the only reasonable inference to be drawn from the evidence was that rapes and sexual assaults were a foreseeable consequence of the joint criminal enterprise.[1712] The Trial Chamber expressly noted that during a war there was a "heightened risk" that combatants would commit rapes.[1713] However, it concluded that:

> Tutsi women and girls were not raped and sexually assaulted in connection with the war between the RPF and the Rwandan Armed Forces, which does not form part of the JCE. Rather, they were committed in the context of a campaign to destroy the Tutsi population in Rwanda and as such also took place in areas far from the front line. Furthermore, the Tutsi women and girls were not raped and sexually assaulted by invading soldiers, but by fellow Rwandan citizens, albeit of another ethnicity.[1714]

625. The Trial Chamber found that the rapes and sexual assaults of Tutsi women and girls were intended to destroy, in whole or in part, the Tutsi group and concluded that these crimes were a natural and foreseeable consequence of the joint criminal enterprise to destroy the Tutsi ethnic group.[1715] The Appeals Chamber observes that the Trial Chamber did not expressly discuss other possible inferences. However, the Appeals Chamber considers that Ngirumpatse has not demonstrated that other reasonable inferences were possible in the circumstances and that it was therefore necessary for the Trial Chamber to address them.

626. The Appeals Chamber further notes the Trial Chamber's finding that a nexus existed between the crimes committed and the armed conflict between the Rwandan government forces and the RPF.[1716] Karemera and Ngirumpatse have failed to demonstrate that this finding contradicts the

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[1711] *Gotovina and Markač* Appeal Judgement, para. 90; *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-AR72.4, Decision on Prosecution's Motion Appealing Trial Chamber's Decision on JCE III Foreseeability, 25 June 2009 ("*Karadžić* Appeal Decision of 25 June 2009"), paras. 15-18.
[1712] Ngirumpatse Appeal Brief, para. 671, *referring to* Trial Judgement, paras. 1696, 1997. *See also* Ngirumpatse Appeal Brief, paras. 672, 673.
[1713] Trial Judgement, para. 1475.
[1714] Trial Judgement, para. 1475.
[1715] Trial Judgement, para. 1477. *See also* Trial Judgement, para. 1668.
[1716] Trial Judgement, paras. 1696, 1697.

conclusion that rapes and sexual assaults were a foreseeable consequence of the joint criminal enterprise. In particular, they fail to show how the relation of the criminal acts to war precluded a finding that they were ethnically motivated, in particular given the permissibility of entering cumulative convictions for war crimes and crimes against humanity.[1717]

(b) Karemera's and Ngirumpatse's Awareness of Rapes and Sexual Assaults

627. The Appeals Chamber recalls that an accused can be held responsible for crimes beyond the common purpose of a joint criminal enterprise if they were a natural and foreseeable consequence thereof.[1718] However, as recalled by the Appeals Chamber, what is natural and foreseeable to one person participating in a joint criminal enterprise, might not be natural and foreseeable to another, depending on the information available to them.[1719] Thus, participation in a joint criminal enterprise does not necessarily entail criminal responsibility for all crimes which, though not within the common purpose of the enterprise, were a natural or foreseeable consequence of the enterprise.[1720]

628. In finding that Karemera and Ngirumpatse were aware that sexual violence was the natural and foreseeable consequence of the joint criminal enterprise, the Trial Chamber relied principally on circumstantial evidence related to their leadership positions and participation in high-level meetings, which would have allowed them access to information concerning rapes and sexual assaults, as well as the open and notorious nature of these crimes.[1721] The Trial Chamber noted, in particular, that Karemera was in Rwanda during the entire genocide and took part in meetings with the population on several occasions.[1722]

629. A trial chamber must be satisfied that the only reasonable inference is that the accused, through his knowledge and through the level of his involvement in the joint criminal enterprise would foresee that the extended crime would possibly be perpetrated.[1723] The Appeals Chamber further recalls that a trial chamber may infer the existence of a particular fact upon which the guilt

[1717] *See*, *e.g.*, *Semanza* Appeal Judgement, para. 369.
[1718] *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-AR72.4, Decision on Prosecution's Motion Appealing Trial Chamber's Decision on JCE III Foreseeability, 25 June 2009, paras. 15, 16; *Kvočka et al.* Appeal Judgement, para. 86; *Krstić* Appeal Judgement, paras. 148-151. *See also* Appeal Decision of 12 April 2006, para. 17.
[1719] *Kvočka et al.* Appeal Judgement, para. 86.
[1720] *Kvočka et al.* Appeal Judgement, para. 86.
[1721] Trial Judgement, paras. 1481-1486.
[1722] Trial Judgement, para. 1485.
[1723] *Kvočka et al.* Appeal Judgement, para. 86; *Krstić* Appeal Judgement, paras. 147-151. The Appeals Chamber further recalls that the third form of joint criminal enterprise *mens rea* standard does not require an understanding that a deviatory crime would probably be committed. It does, however, require that the possibility that a crime could be committed is sufficiently substantial as to be foreseeable to an accused. *See Karadžić* Appeal Decision of 25 June 2009, para. 15. *See also Gotovina and Markač* Appeal Judgement, para. 90.

of the accused depends from circumstantial evidence only if it is the only reasonable conclusion that could be drawn from the evidence presented.[1724]

630. The Appeals Chamber recalls that an individual's high-ranking position, coupled with the open and notorious manner in which criminal acts unfold, can provide a sufficient basis for inferring knowledge of the crimes.[1725] Accordingly, the Appeals Chamber is not convinced that Karemera and Ngirumpatse have shown that there was insufficient proof for the Trial Chamber to find that it was foreseeable to them that rapes and sexual assaults would occur as a result of the joint criminal enterprise. Furthermore, a review of the Trial Judgement reflects that, contrary to Karemera's contention, the Trial Chamber expressly mentioned his role in the Interim Government and presence in Rwanda.[1726]

631. The Appeals Chamber also finds no merit in Karemera's contention that the Trial Chamber conflated elements of superior responsibility with joint criminal enterprise. The Trial Chamber considered Karemera's contention that he sent a report to the Ministry of Defence recommending the sanction of soldiers who raped women.[1727] Such report, if true, could have possibly had an impact on the question whether Karemera willingly took the risk that further crimes would be committed. In this context, the Appeals Chamber considers it reasonable that the Trial Chamber discussed the report, or the absence thereof, when assessing Karemera's liability pursuant to the extended form of joint criminal enterprise.

632. Furthermore, Ngirumpatse misinterprets the Trial Judgement in stating that the Trial Chamber considered that he willingly took the risk to facilitate the commission of rapes and sexual assaults because he remained in his functions until he fled Rwanda. Rather, the Trial Chamber concluded that despite the widespread nature of the crimes, Ngirumpatse "continued to participate in the JCE to destroy the Tutsi population of Rwanda".[1728] The Appeals Chamber recalls that knowledge of crimes combined with continued participation in a joint criminal enterprise can be conclusive as to a person's intent,[1729] and therefore finds that Ngirumpatse has failed to demonstrate any error.

[1724] *Bagosora and Nsengiyumva* Appeal Judgement, para. 515; *Nchamihigo* Appeal Judgement, para. 80, *citing Stakić* Appeal Judgement, para. 219. *See also Karera* Appeal Judgement, para. 34; *Ntagerura et al.* Appeal Judgement, para. 306.
[1725] *See*, *e.g.*, *Ntabakuze* Appeal Judgement, para. 253.
[1726] Trial Judgement, para. 1485.
[1727] Trial Judgement, para. 1489.
[1728] Trial Judgement, para. 1483.
[1729] *Krajišnik* Appeal Judgement, para. 697.

633. Accordingly, Karemera and Ngirumpatse have not demonstrated that the Trial Chamber erred in finding that it was foreseeable to them that rapes and sexual violence could be committed as a result of the joint criminal enterprise.

(c) *Mens Rea* Standard of Extended Joint Criminal Enterprise

634. The Appeals Chamber finds no merit in Ngirumpatse's contention that the Trial Chamber failed to "characterize" his criminal intent. The Appeals Chamber recalls that, for the extended form of joint criminal enterprise, the accused may be found responsible provided that he participated in the common criminal purpose with the requisite intent and that, in the circumstances of the case: (i) it was foreseeable that such a crime might be perpetrated by one or more of the persons used by him (or by any other member of the joint criminal enterprise) in order to carry out the *actus reus* of the crimes forming part of the common purpose; and (ii) the accused willingly took that risk.[1730] In its findings on the basic form of joint criminal enterprise, the Trial Chamber found that the members of the joint criminal enterprise shared the common purpose of destroying the Tutsi population in Rwanda and that this constituted genocidal intent.[1731] Accordingly, Ngirumpatse's arguments are dismissed.

(d) Ngirumpatse's Remaining Claims

635. The Appeals Chamber dismisses Ngirumpatse's additional arguments in relation to his conviction under the extended form of joint criminal enterprise. The Appeals Chamber notes his claims that he did not have "specific knowledge of the crimes nor that he could have ended them", that the evidence does not show that the rapes and sexual assaults were not committed in isolation of the common purpose in the course of the armed conflict, and that the Trial Chamber failed to indicate when and how the rapes and sexual assaults expanded the common objective of the joint criminal enterprise. However, the Appeals Chamber recalls that the jurisprudence does not require any of these factors to be established in order to find an accused liable under the extended form of joint criminal enterprise.[1732]

[1730] *See*, *e.g.*, *Martić* Appeal Judgement, para. 168.
[1731] Trial Judgement, para. 1454.
[1732] *See supra* paras. 623, 627, 634. Regarding Ngirumpatse's claim that the Trial Chamber failed to indicate when and how the rapes and sexual assaults expanded the common objective of the joint criminal enterprise, the Appeals Chamber finds Ngirumpatse's reference to the *Krajišnik* case to be misguided. *See* Ngirumpatse Appeal Brief, para. 684, fn. 1100. The Appeals Chamber observes that the concept of "expanded" crimes in *Krajišnik* is not synonymous with "extended" crimes for the third form of joint criminal enterprise liability. Indeed, the Trial Chamber in *Krajišnik* did not find the accused liable under the third form of joint criminal enterprise. *See Krajišnik* Appeal Judgement, paras. 167-169. The Appeals Chamber was rather discussing in that case how new or "expanded" crimes could be incorporated into the common objective to become part of the basic form of joint criminal enterprise liability. *See Krajišnik* Appeal Judgement, paras. 162, 163, 170-178.

4. Conclusion

636. Accordingly, the Appeals Chamber dismisses Karemera's Thirty-Fourth Ground of Appeal, Thirty-Eighth Ground of Appeal, in part, as well as Ngirumpatse's Forty-First and Forty-Third Ground of Appeal, Forty-Seventh Ground of Appeal, in part, and Forty-Eighth Ground of Appeal.

M. Conspiracy to Commit Genocide (Karemera Ground 36; Ngirumpatse Grounds 28 and 45)

637. The Trial Chamber found Karemera and Ngirumpatse guilty of conspiracy to commit genocide.[1733] The Trial Chamber, however, declined to enter convictions for conspiracy against them based on the principles of cumulative convictions.[1734] The Appeals Chamber, Judge Afande dissenting, has elsewhere determined that the Trial Chamber erred in failing to enter convictions.[1735] Accordingly, the Appeals Chamber considers Karemera's and Ngirumpatse's grounds of appeal related to the Trial Chamber's assessment of this crime.

638. In reaching this finding, the Trial Chamber considered that, during the genocide, Karemera and Ngirumpatse were "linked with the Interim Government" and "involved in its decision-making process".[1736] Specifically, it found that Ngirumpatse, as MRND Chairman, and Karemera, as MRND Vice-President, influenced decisions taken by the Interim Government.[1737] The Trial Chamber further observed that the MRND was the party of the Ministry of Defence and the Ministry of the Interior, which coordinated the civil defence.[1738] The Trial Chamber also noted that, as of 25 May 1994, Karemera became Minister of the Interior, "commanding the entire territorial administration in the part of Rwanda that was under the control of the Interim Government".[1739]

639. The Trial Chamber found that "[d]uring the period where the Accused were inextricably linked with the policies of the Interim Government", on 27 April 1994, Prime Minister Jean Kambanda issued an instruction, which was a "thinly-veiled attempt to deliver a false message of pacification" for the purpose of hiding the Interim Government's implicit approval of the genocide.[1740] In addition, the Trial Chamber noted that, on 25 May 1994, Kambanda and Karemera issued two civil defence documents that defined the organization and structure of the Civil Defence programme and that, in mid-June 1994, Karemera issued instructions on the use of funds for civil defence and a letter instructing the army to assist in the "mopping-up" operation in Bisesero where Tutsis had sought refuge.[1741] The Trial Chamber recalled its findings that these documents

[1733] Trial Judgement, paras. 1591, 1714, 1715. Elsewhere, the Appeals Chamber has determined that the Trial Chamber erred in failing to enter the convictions. *See infra* Section IV.A.
[1734] *See* Trial Judgement, paras. 1715, 1716.
[1735] *See infra* Section IV.A.
[1736] Trial Judgement, para. 1585. *See also* Trial Judgement, para. 1586.
[1737] Trial Judgement, para. 1585.
[1738] Trial Judgement, paras. 1589, 1590.
[1739] Trial Judgement, para. 1585.
[1740] Trial Judgement, para. 1586.
[1741] Trial Judgement, para. 1587.

"manifested an agreement to galvanise fear and loathing of Tutsis" and encouraged their killing at the height of the genocide.[1742]

640. After "[c]onsidering the concerted and coordinated actions of party leaders and the Interim Government that gave rise to this policy of genocide", the Trial Chamber was convinced that the only reasonable inference was that an agreement to destroy Rwanda's Tutsi population materialized prior to 25 May 1994 and manifested itself in the instructions of 25 May 1994.[1743] Bearing in mind Ngirumpatse's and Karemera's role in the MRND party and the Interim Government, the Trial Chamber found that they conspired among themselves and with others to commit genocide by at least 25 May 1994.[1744]

641. Karemera and Ngirumpatse challenge the Trial Chamber's findings on conspiracy to commit genocide.[1745] Specifically, Karemera and Ngirumpatse note that there is no direct evidence that they entered into an agreement to commit genocide.[1746] Moreover, they argue that the circumstantial evidence relied on by the Trial Chamber, namely the various documents and letters surrounding the Civil Defence programme, did not evince a plan to commit genocide.[1747] Ngirumpatse further submits that the Trial Chamber failed to identify the concerted action on the part of political parties and government officials, failed to establish his intent, and that the record does not support the Trial Chamber's conclusion that either he or Karemera held meetings with government ministers or influenced them prior to cabinet meetings.[1748] In particular, Ngirumpatse submits that the Trial Chamber distorted the evidence of Karemera and Defence Witness Pauline Nyiramasuhuko, who gave only limited evidence with respect to political party involvement in meetings held on 12 and 13 May 1994, and failed to address the evidence of Defence Witness PR, who expressly disputed that ministers received instructions from the MRND party.[1749] Ngirumpatse also argues that the Trial Chamber contradicted itself by finding him liable as a conspirator while at the same time excluding his personal contribution to the Civil Defence Documents when assessing his joint criminal enterprise liability.[1750]

642. The Prosecution responds that the Trial Chamber's consideration of the totality of the evidence, including the Civil Defence Documents, and its findings were reasonable and showed the

[1742] Trial Judgement, para. 1587.
[1743] Trial Judgement, para. 1588.
[1744] Trial Judgement, paras. 1589-1591.
[1745] Karemera Notice of Appeal, paras. 149-151; Karemera Appeal Brief, paras. 385-390; Ngirumpatse Notice of Appeal, paras. 136-139, 272-282; Ngirumpatse Appeal Brief, paras. 502-517, 722-739. *See also* AT. 10 February 2014 pp. 30, 31.
[1746] Karemera Appeal Brief, para. 386; Ngirumpatse Appeal Brief, para. 723.
[1747] Karemera Appeal Brief, paras. 388, 389; Ngirumpatse Appeal Brief, paras. 727, 728, 733, 735.
[1748] Ngirumpatse Appeal Brief, paras. 724-726, 732, 734. *See also* Ngirumpatse Reply Brief, para. 128.
[1749] Ngirumpatse Appeal Brief, paras. 503-508.

existence of concerted actions between Karemera, Ngirumpatse, and others. It therefore submits that the Trial Chamber reasonably found that Karemera and Ngirumpatse fulfilled the requisite *actus reus* of conspiracy to commit genocide.[1751] Moreover, according to the Prosecution, while Ngirumpatse was not a member of the Interim Government, he participated in government meetings, consented to the distribution of weapons by the Ministry of Defence to the *Interahamwe* at roadblocks, supported the policies of the Interim Government, served as its international envoy and was appointed presidential advisor and *chargé de mission* to the Interim Government in May 1994.[1752] The Prosecution further argues that the Trial Chamber did not distort the testimonies of Karemera and Witness Nyiramasuhuko and did not ignore evidence from Witness PR.[1753]

643. The Appeals Chamber recalls that "the *actus reus* of the crime of conspiracy to commit genocide is a concerted agreement to act for the purpose of committing genocide".[1754] The Trial Chamber expressly noted that the Prosecution did not present any evidence of an express agreement between Karemera, Ngirumpatse, and others to jointly pursue the destruction of the Tutsi population in Rwanda.[1755] In addition, the Trial Chamber noted that there was limited evidence with respect to many of the alleged co-conspirators regarding their roles in planning the alleged conspiracy.[1756] In holding Karemera and Ngirumpatse responsible, the Trial Chamber based its findings on circumstantial evidence.[1757] The Appeals Chamber recalls that a conviction for

[1750] Ngirumpatse Appeal Brief, para. 727.
[1751] Prosecution Response Brief (Karemera), paras. 228-240; Prosecution Response Brief (Ngirumpatse), paras. 203-221. The Prosecution also submits that, besides the three Civil Defence Documents, Karemera also actively participated in the conspiracy through his involvement in the 18 April 1994 and 3 May 1994 Murambi and Kibuye meetings, as well as through ordering a "mopping-up" operation in mid-June 1994 in the Bisesero area. *See* Prosecution Response Brief (Karemera), para. 239. In relation to Ngirumpatse, the Prosecution submits that, besides the three Civil Defence Documents, Ngirumpatse also actively participated in the conspiracy through his involvement in the distribution of weapons on 11 April 1994, the meeting at the Murambi Training School on 18 April 1994, as well as through his involvement as a superior and as a joint criminal enterprise member. *See* Prosecution Response Brief (Ngirumpatse), paras. 215-220. Karemera replies that, according to the Trial Chamber's findings, the agreement materialized through the three Civil Defence Documents only and not through other actions. *See* Karemera Reply Brief, para. 76. The Appeals Chamber agrees with Karemera that the Trial Chamber's findings focus on the three Civil Defence Documents to conclude that Karemera and Ngirumpatse acted in a concerted and coordinated manner with the Interim Government to conduct a policy of genocide. *See* Trial Judgement, paras. 1584-1591. Therefore, the Appeals Chamber will restrain its analysis to the Trial Chamber's findings underpinning Karemera's and Ngirumpatse's convictions for the crime of conspiracy, namely, their links with the Interim Government, through their respective positions and through the issuance of the three Civil Defence Documents.
[1752] Prosecution Response Brief (Ngirumpatse), paras. 216, 217, 219.
[1753] Prosecution Response Brief (Ngirumpatse), paras. 189-194.
[1754] *Nahimana et al.* Appeal Judgement, para. 896.
[1755] Trial Judgement, para. 1444.
[1756] Trial Judgement, para. 1583.
[1757] Trial Judgement, para. 1588 ("[c]onsidering the concerted and coordinated actions of party leaders and the Interim Government that gave rise to this policy of genocide, the Chamber is convinced beyond a reasonable doubt that *the only reasonable inference* based on the credible evidence is that an agreement with the specific intent to destroy Rwanda's Tutsi population in whole or in part had materialised prior to 25 May 1994 and manifested itself in the instructions of 25 May 1994.") (emphasis added).

conspiracy to commit genocide may be based on circumstantial evidence provided that the inference of guilt drawn is the only reasonable inference available from the evidence.[1758]

644. The Trial Chamber determined that the Civil Defence Documents, issued by the Interim Government, manifested an agreement to mobilize extremist militiamen and armed civilians to attack, kill, and destroy Rwanda's Tutsi population.[1759] According to the Trial Chamber, documents issued on 25 May 1994 by Kambanda and Karemera, as Minister of Interior, defined the structure of the genocidal civil defence plan,[1760] and the Mid-June 1994 Instructions, issued by Karemera, stipulated the use of civil defence funds and instructed the army to assist in the killing of Tutsis seeking refuge in Bisesero Hills.[1761]

645. Karemera and Ngirumpatse dispute the Trial Chamber's interpretation of the documents issued by Karemera and Kambanda related to the Civil Defence programme. The Appeals Chamber has rejected these arguments elsewhere in the Judgement and concluded that they failed to demonstrate that the Trial Chamber erred in interpreting the intent behind these documents.[1762] Accordingly, Karemera has failed to demonstrate that the Trial Chamber erred in holding him responsible for conspiracy to commit genocide.

646. The Trial Chamber inferred that Ngirumpatse agreed to commit genocide based exclusively on his role as Chairman of the MRND party and on the conclusion that party officials influenced government decisions.[1763] The Trial Chamber's finding that MRND leaders were linked with the Interim Government and influenced its decision-making process was based on the testimonies of Karemera and Witness Nyiramasuhuko.[1764] It found that, according to these testimonies, MRND leaders, including Ngirumpatse and Karemera, held meetings with Interim Government ministers from their party prior to cabinet meetings of the Interim Government in order to discuss the party's viewpoints on the issues dealt with during the cabinet meetings.[1765] The Trial Chamber also relied on its previous finding that Ngirumpatse and Karemera actually controlled the MRND party.[1766] It further stated that "the fact that the MRND supported what the Interim Government approved

[1758] *Mugenzi and Mugiraneza* Appeal Judgement, para. 88. *See also Nahimana et al.* Appeal Judgement, para. 896.
[1759] Trial Judgement, paras. 1037-1045, 1051-1056, 1063-1068, 1074-1079, 1080, 1084, 1450(7), 1587, 1631-1644. *See also supra* paras. 512, 527.
[1760] Trial Judgement, paras. 1450(7), 1587. *See also* Trial Judgement, paras. 1051-1056, 1063-1068, 1631-1633, 1635-1637. *See also supra* paras. 512, 513 .
[1761] Trial Judgement, paras. 1074-1079, 1080, 1229, 1234, 1587, 1640-1642, 1655. *See also supra* Section III.K.
[1762] *See supra* Section III.J.2.
[1763] Trial Judgement, paras. 1585, 1588, 1589.
[1764] Trial Judgement, para. 938.
[1765] Trial Judgement, para. 938.
[1766] Trial Judgement, para. 938. *See also* Trial Judgement, para. 162.

cannot mean that the MRND did not influence the government's decisions. Otherwise, there would have been little reason to have consultations *before* cabinet meetings".[1767]

647. A review of the Trial Judgement shows that Karemera did not testify generally that MRND leaders held meetings with Interim Government ministers from their party prior to cabinet meetings of the Interim Government.[1768] Both the Defence and the Prosecution seem to agree that Karemera testified specifically to meetings that were held on 12 and 13 May 1994.[1769] The Appeals Chamber is not convinced, however, that this misstatement of the record by the Trial Chamber obviates its conclusion, given that Karemera's specific reference corroborates Witness Nyiramasuhuko's general observation that "each member of government held discussions with members of their political party before coming to cabinet meetings".[1770] Witness Nyiramasuhuko further confirmed that ministers presented the viewpoints of their respective parties in cabinet meetings.[1771]

648. Although the Trial Chamber did not address the contradiction between the evidence of Witnesses PR and Nyiramasuhuko regarding the fact that ministers would receive instructions from their political parties before coming to cabinet meetings, it did consider Witness PR's evidence and was therefore seised of the issue.[1772] In this regard, the Appeals Chamber recalls that a trial chamber is not required to refer to the testimony of every witness or every piece of evidence on the trial record.[1773] Given that the Trial Chamber was seised of the issue, it is reasonable to assume that the Trial Chamber took Witness PR's evidence in this regard into account.[1774]

649. However, the Appeals Chamber is not convinced that the general finding that MRND leaders were linked with the Interim Government and influenced its decision-making process is sufficient to conclude that Ngirumpatse, as Chairman of the MRND, must have influenced ministers from his party and the Interim Government in relation to the Civil Defence programme. In that regard, the Appeals Chamber recalls that the only evidence supporting the general finding that MRND leaders were linked with the Interim Government and influenced its decision-making process relates to meetings that were held on 12 and 13 May 1994. According to Karemera, "the government had solicited that all the parties, not only the MRND, express themselves on the matter of the organisation of civil defence for the population".[1775] He also reported that the conclusions of

[1767] Trial Judgement, para. 938.
[1768] Trial Judgement, para. 929. *See also* Karemera, T. 20 May 2009 p. 17.
[1769] Ngirumpatse Appeal Brief, paras. 503-506, 508; Prosecution Response Brief (Ngirumpatse), para. 192.
[1770] Witness Nyiramasuhuko, T. 4 May 2010 p. 5.
[1771] Witness Nyiramasuhuko, T. 4 May 2010 p. 5.
[1772] Trial Judgement, para. 923.
[1773] *Rukundo* Appeal Judgement, para. 102; *Nchamihigo* Appeal Judgement, para. 121; *Karera* Appeal Judgement, para. 20, *citing Kvočka et al.* Appeal Judgement, para. 23.
[1774] *Rukundo* Appeal Judgement, para. 102.
[1775] Karemera, T. 20 May 2009 p. 17. *See also* Trial Judgement, para. 929.

these meetings were communicated to the Interim Government.[1776] Witness Nyiramasuhuko attended the meetings as well and reported that these were the only MRND Political Bureau meetings that had been organized following the death of President Habyarimana.[1777]

650. The Trial Judgement does not refer to any other meetings than the ones that occurred on 12 and 13 May 1994 nor to any evidence showing how and to which extent the MRND, and more particularly Ngirumpatse, would have influenced the decisions taken by the Interim Government. Especially, there is no evidence that Ngirumpatse might have influenced the instructions issued by Kambanda on 27 April 1994, the documents issued by Kambanda and Karemera on behalf of the Interim Government on 25 May 1994, or the instructions issued by Karemera in mid-June 1994.

651. Even assuming that Ngirumpatse wielded authority over ministers from his political party, his mere position of authority cannot suffice to infer, as the only reasonable conclusion, that he influenced the decisions taken by them and in fact agreed or intended to agree to their ultimate decisions. Therefore, the Appeals Chamber is not persuaded that the only reasonable inference to be drawn from the evidence on the record is that Ngirumpatse conspired with Karemera or with others to commit genocide. Consequently, the Appeals Chamber is not convinced that a reasonable trier of fact could have reached the conclusion that Ngirumpatse, because of his link with the Interim Governement and his position as Chairman of the MRND, conspired with Karemera or with others to commit genocide.

652. Based on the foregoing, the Appeals Chamber finds that the Trial Chamber erred in finding Ngirumpatse guilty pursuant to Article 6(1) of the Statute for conspiring with Karemera and others to commit genocide. Accordingly, the Appeals Chamber grants Ngirumpatse's Twenty-Eighth Ground of Appeal, in part, as well as his Forty-Fifth Ground of Appeal, in part, and reverses the Trial Chamber's finding in relation to his responsibility under Count 1 of the Indictment. The impact of this finding, if any, on Ngirumpatse's sentence is addressed below. The Appeals Chamber dismisses Karemera's Thirty-Sixth Ground of Appeal in its entirety and upholds the Trial Chamber's finding that Karemera conspired with others to commit genocide by at least 25 May 1994.

[1776] Karemera, T. 21 May 2009 pp. 63, 64.
[1777] Witness Nyiramasuhuko, T. 3 May 2010 pp. 19, 20. This information is corroborated by Karemera's testimony that: "[i]n fact, it's the only meeting which we were able to call throughout the period which I mentioned a moment ago". *See* Karemera, T. 20 May 2009 p. 17.

N. Extermination as a Crime Against Humanity and Murder as a Serious Violation of Article 3 Common to the Geneva Conventions and of Additional Protocol II (Karemera Grounds 39 and 40; Ngirumpatse Grounds 49, in Part, and 50)

653. The Trial Chamber convicted Karemera and Ngirumpatse of extermination as a crime against humanity and murder as a serious violation of Article 3 common to the Geneva Conventions and of Additional Protocol II based on the same events and forms of responsibility underpinning their respective convictions for genocide.[1778]

654. Karemera and Ngirumpatse submit that the Trial Chamber erred in entering these convictions.[1779] In this section, the Appeals Chamber considers whether the Trial Chamber erred in its findings related to: (i) extermination as a crime against humanity; and (ii) murder as a serious violation of Article 3 common to the Geneva Conventions and of Additional Protocol II.

1. Extermination as a Crime Against Humanity

655. Ngirumpatse submits that the Trial Chamber erred in convicting him of extermination as a crime against humanity.[1780] In particular, Ngirumpatse argues that the Trial Chamber erred in finding that he had knowledge of the widespread and systematic attacks against Tutsis given the evidence from "several witnesses" that the victims were from all ethnic groups and that their deaths resulted from the war.[1781] He also submits that the Trial Chamber erred in finding "without reason or proof beyond reasonable doubt" that the crimes were politically motivated.[1782] Moreover, according to Ngirumpatse, the Trial Chamber improperly relied on an aggregation of acts in different locations and at different times to find that the element of "large scale" killings had been satisfied.[1783] Finally, Ngirumpatse contends that the Trial Chamber failed to determine his form of responsibility and his contribution to the crimes.[1784]

656. Karemera challenges his conviction for extermination as a crime against humanity for the same reason as his genocide conviction in relation to the same underlying events, namely the circumstantial nature of the evidence and his lack of superior responsibility over the assailants.[1785]

[1778] Trial Judgement, paras. 1691, 1692, 1704-1706, 1714, 1715. The basis of Karemera's and Ngirumpatse's respective convictions for genocide are set forth in detail above. *See supra* paras. 4, 5. *See also supra* fn. 25.
[1779] Karemera Notice of Appeal, paras. 157-159; Karemera Appeal Brief, paras. 398-406; Ngirumpatse Notice of Appeal, paras. 346-363; Ngirumpatse Appeal Brief, paras. 763-774.
[1780] Ngirumpatse Appeal Brief, paras. 763-768; Ngirumpatse Reply Brief, paras. 190, 191.
[1781] Ngirumpatse Appeal Brief, para. 765. *See also* Ngirumpatse Reply Brief, para. 191 (arguing that no evidence of Ngirumpatse's *mens rea* for extermination as a crime against humanity was adduced at trial).
[1782] Ngirumpatse Appeal Brief, para. 767.
[1783] Ngirumpatse Appeal Brief, para. 766.
[1784] Ngirumpatse Appeal Brief, paras. 763, 764.
[1785] Karemera Appeal Brief, paras. 399, 400.

657. The Prosecution responds that the Trial Chamber did not err in convicting Karemera and Ngirumpatse of extermination as a crime against humanity.[1786]

658. The Trial Chamber concluded that, from April to July 1994, unarmed Tutsis were killed on a massive scale in Rwanda.[1787] The Appeals Chamber finds that a reasonable trier of fact could have inferred on that basis that Ngirumpatse was aware that the killings were ethnically motivated and formed part of a widespread and systematic attack. Ngirumpatse does not challenge the massive scale of the killing of Tutsis. His cursory mention of several witnesses testifying about the killing of members of other ethnic groups, without any reference to the record, does not call into question the reasonableness of the Trial Chamber's overall characterization of the nature of the killings and Ngirumpatse's knowledge of them. Moreover, the Trial Chamber expressly recognized that the killings took place in the context of a civil war.[1788] Ngirumpatse has failed to show how this precludes the finding that they were ethnically motivated.

659. The Appeals Chamber also finds no merit in Ngirumpatse's contention that the Trial Chamber erred in concluding that the killings were politically motivated. Contrary to Ngirumpatse's submissions, the Trial Chamber explained how the crimes were politically motivated in its findings on rape as a crime against humanity.[1789] In particular, the Trial Chamber noted that the crimes occurred "in the context of a civil war for the control of Rwanda between the predominantly Tutsi RPF and predominantly Hutu political parties" and that "Tutsis were targeted in the civil war because they were assumed to be the power base of the RPF".[1790] The Trial Chamber incorporated this reasoning into its findings on extermination as a crime against humanity.[1791] Ngirumpatse has not challenged this aspect of the Trial Judgement and has thus not identified any error in the Trial Chamber's conclusion that the killings were politically motivated.

660. The Appeals Chamber recalls that extermination as a crime against humanity is the act of killing on a large scale.[1792] In making findings on extermination, the Trial Chamber recalled specifically the killings at Kigali area roadblocks by 12 April 1994, the massacres in the Bisesero region, and more generally "the killings on a massive scale of unarmed Tutsis, including women,

[1786] Prosecution Response Brief (Karemera), paras. 247-250; Prosecution Response Brief (Ngirumpatse), paras. 352-356.
[1787] Trial Judgement, para. 1688.
[1788] Trial Judgement, para. 1680.
[1789] Trial Judgement, para. 1680.
[1790] Trial Judgement, para. 1680.
[1791] Trial Judgement, para. 1688. The Appeals Chamber notes that the Trial Chamber mistakenly indicated that its reasoning on the political motivation for the crimes was given in the "discussion regarding rapes and sexual assaults as *genocide*" as opposed to rape as a crime against humanity. *See* Trial Judgement, para. 1688 (emphasis added).
[1792] *Bagosora and Nsengiyumva* Appeal Judgement, para. 394; *Rukundo* Appeal Judgement, para. 185; *Seromba* Appeal Judgement, para. 189; *Ntakirutimana* Appeal Judgement, para. 516.

and children by mid-July 1994", which it concluded constituted genocide.[1793] In view of "the sheer number of victims", the Trial Chamber found that these killings met the requirement of killings on a large scale.[1794]

661. The Appeals Chamber is mindful that, as a general matter, the element of killing on a large scale cannot be satisfied by a collective consideration of distinct events committed in different prefectures, in different circumstances, by different perpetrators, and over an extended period of time.[1795] Although the Trial Chamber appears to have aggregated some of the killings in making findings on extermination, the Appeals Chamber is not convinced that Ngirumpatse has shown that this was impermissible in the context of this case. Initially, in its factual and legal findings, the Trial Chamber found that "thousands of civilians" were killed by 12 April 1994 at Kigali area roadblocks.[1796] In addition, the Trial Chamber observed that thousands of Tutsis were killed following the mid-May and June 1994 attacks in Bisesero Hills.[1797] The Appeals Chamber considers that these facts as found by the Trial Chamber reflect that these incidents individually satisfy the element of killings on a large scale.

662. With respect to the remaining massive killings throughout Rwanda by mid-July 1994, the Appeals Chamber notes that, in its legal findings on genocide, the Trial Chamber connected sets of massive killings to specific acts of a member of the joint criminal enterprise or a particular group of assailants.[1798] Ngirumpatse has not demonstrated that in this context the Trial Chamber impermissibly aggregated the killings in order to meet the large scale requirement. Accordingly, the Appeals Chamber is not convinced that the Trial Chamber committed any error invalidating the verdict or resulting in a miscarriage of justice in relation to the finding that the element of large-scale killing was proven.

663. The Appeals Chamber also finds no merit in Ngirumpatse's argument that the Trial Chamber failed to identify the form of his responsibility for the crime of extermination as a crime

[1793] Trial Judgement, para. 1688. The Trial Chamber concluded that the following incidents constituted extermination: (i) the killings which occurred in Kigali by 12 April 1994 following the distribution of weapons to *Interahamwe* on 11 and 12 April 1994; (ii) the killings that followed the meeting at the Murambi Training School on 18 April 1994; (iii) the killings that followed the replacement of the Prefects of Butare; (iv) the killings that occurred following the issuance of the 27 April 1994 Letter, the 25 May 1994 Directive, the 25 May 1994 Letter, the mid-June 1994 Instructions, and the creation of the Fund; (v) the massacre at Bisesero Hills, including the "mopping-up" operation; and (vi) the killings related to the speeches held in Kibuye on 3 and 16 May 1994. *See* Trial Judgement, para. 1691, *referring to* Trial Judgement, paras. 1610-1664.
[1794] Trial Judgement, para. 1690.
[1795] *Bagosora and Nsengiyumva* Appeal Judgement, para. 396.
[1796] Trial Judgement, paras. 1294, 1612, 1662.
[1797] Trial Judgement, para. 1199. The Trial Chamber only held Karemera and Ngirumpatse criminally responsible for killings in Bisesero on or about 13 May 1994. *See* Trial Judgement, paras. 1652, 1653. The Trial Chamber also found that "scores of Tutsis" were killed in June 1994 as a result of the "mopping-up" operation ordered by Karemera and attributed to the joint criminal enterprise. *See* Trial Judgement, paras. 1655, 1657.
[1798] Trial Judgement, paras. 1619-1648.

against humanity. The Trial Chamber clearly noted his form of responsibility in relation to each incident in its findings on genocide, including joint criminal enterprise and superior responsibility.[1799] Given that these findings were incorporated into the findings on extermination,[1800] it follows that the same form of responsibility applies for extermination as a crime against humanity.

664. Finally, the Appeals Chamber notes that it has already addressed Karemera's arguments as to the circumstantial nature of the evidence and his lack of superior responsibility elsewhere in this Judgement.[1801]

665. Accordingly, Karemera and Ngirumpatse have not identified any error in their convictions for extermination as a crime against humanity.

2. Murder as a Serious Violation of Article 3 Common to the Geneva Conventions and of Additional Protocol II

666. Ngirumpatse submits that the Trial Chamber erred in convicting him of murder as a serious violation of Article 3 common to the Geneva Conventions and of Additional Protocol II.[1802] Specifically, Ngirumpatse argues that the Trial Chamber erred in making its factual and legal findings on the killings and his form of responsibility in relation to the crime of genocide, which form the basis of his conviction for murder.[1803] In addition, Ngirumpatse submits that the Trial Chamber failed to determine beyond reasonable doubt "the victims of the offence" or consider the prevailing context of war and chaos in which the crimes were committed.[1804] In addition, he argues that the Trial Chamber provided no explanation for its conclusion that either he or the principal perpetrators possessed the requisite *mens rea* for murder.[1805]

667. Karemera equally challenges his conviction for murder as a serious violation of Article 3 common to the Geneva Conventions and of Additional Protocol II.[1806] Specifically, Karemera contends that the Trial Chamber erred in convicting him as a superior for killings between 17 April and mid-July 1994, arguing that he lacked notice of these killings and that they are not discussed in

[1799] *See generally* Trial Judgement, paras. 1610-1659, 1662-1664.
[1800] Trial Judgement, paras. 1668, 1691, 1692.
[1801] *See supra* Sections III.D, III.F, III.H, III.J, III.K.
[1802] Ngirumpatse Appeal Brief, paras. 769-774. The Appeals Chamber notes Ngirumpatse's contention that the Trial Chamber erred in cumulatively convicting him under Article 6(1) of the Statute and as superior under Article 6(3) of the Statute. *See* Ngirumpatse Appeal Brief, para. 773. The Appeals Chamber has addressed this argument elsewhere in this Judgement. *See supra* Section III.D.5.
[1803] Ngirumpatse Appeal Brief, paras. 770, 771.
[1804] Ngirumpatse Appeal Brief, para. 769.
[1805] Ngirumpatse Appeal Brief, para. 772.
[1806] Karemera Appeal Brief, paras. 401-406.

the Trial Judgement.[1807] In addition, Karemera reiterates his challenges to the circumstantial nature of the evidence underpinning his convictions.[1808]

668. The Prosecution responds that the Trial Chamber did not err in convicting Karemera and Ngirumpatse of murder as a serious violation of Article 3 common to the Geneva Conventions and of Additional Protocol II.[1809]

669. The Appeals Chamber finds no merit in Ngirumpatse's contention that the Trial Chamber failed to determine who the victims were or to consider the prevailing context of war and chaos. The Appeals Chamber notes that, in its legal findings on serious violations of Article 3 common to the Geneva Conventions and of Additional Protocol II, the Trial Chamber described the victims as "primarily unarmed civilians who were attacked either in their homes, at places of refuge such as religious sites and schools, or at roadblocks while fleeing the hostilities and other attacks".[1810] Furthermore, the Trial Chamber incorporated by reference its findings underpinning Ngirumpatse's conviction for genocide[1811] where it identified the victims of the killings in relation to each incident and further made reference to the specific factual findings related to the events.[1812] The Trial Chamber also expressly considered that the crimes were committed in a context of war given that this is an element of the offence.[1813]

670. The Appeals Chamber recalls that the *mens rea* for murder as a serious violation of Article 3 common to the Geneva Conventions and of Additional Protocol II is the intent of the accused or of the person or persons for whom he is criminally responsible to kill the victim or to wilfully cause serious bodily harm which the perpetrator should reasonably have known might lead to death.[1814] In the legal findings section on genocide, the Trial Chamber explained the basis of its findings that Ngirumpatse and the physical perpetrators of the killings acted with genocidal intent.[1815] The Appeals Chamber considers that these findings equally provide the necessary reasoning and basis for the Trial Chamber's conclusion that the perpetrators acted with the intent to kill.[1816]

671. The Appeals Chamber also finds no merit in Karemera's contention that the Trial Chamber failed to discuss and that he lacked notice of his responsibility as a superior for killings in Rwanda from 17 April to mid-July 1994. In this respect, the Appeals Chamber considers that the general

[1807] Karemera Appeal Brief, paras. 404, 405.
[1808] Karemera Appeal Brief, para. 406.
[1809] Prosecution Response Brief (Karemera), paras. 251-256; Prosecution Response Brief (Ngirumpatse), paras. 357-364.
[1810] Trial Judgement, para. 1701.
[1811] Trial Judgement, paras. 1704, 1705.
[1812] *See generally* Trial Judgement, paras. 1610-1660, 1662-1664.
[1813] Trial Judgement, paras. 1695-1700.
[1814] *Setako* Appeal Judgement, para. 257.
[1815] Trial Judgement, paras. 1610-1660, 1662-1664.

statement made by the Trial Chamber in its legal findings section on murder must be read together with the Trial Chamber's more specific findings on Karemera's superior responsibility and its legal findings on genocide which identify the specific basis for this conclusion.[1817] Moreover, the Indictment put Karemera on clear notice that the Prosecution sought to hold him responsible for murder based on the killings in Rwanda from 18 April to 17 July 1994 because it explicitly and consistently referred to proven killings between 6 April and 17 July 1994.[1818]

672. Finally, the Appeals Chamber recalls that Karemera's and Ngirumpatse's remaining challenges to the underlying incidents, the nature of the evidence, and their modes of liability have been dealt with elsewhere.[1819]

673. Accordingly, Karemera and Ngirumpatse have not identified any error in their convictions for murder as a serious violation of Article 3 common to the Geneva Conventions and of Additional Protocol II.

3. Conclusion

674. For the foregoing reasons, the Appeals Chamber dismisses Karemera's Thirty-Ninth and Fortieth Grounds of Appeal, as well as Ngirumpatse's Forty-Ninth and Fiftieth Grounds of Appeal.

[1816] Trial Judgement, para. 1705.
[1817] *See generally* Trial Judgement, paras. 1542, 1624, 1654, 1659.
[1818] *See*, *e.g.*, Indictment, Count 7, Introduction; Trial Judgement, paras. 1196, 1234, 1295, 1333, 1528, 1531, 1534, 1663, 1664, 1688, 1689. *See also* Indictment, paras. 32, 33, Counts 3 and 4, Introduction, paras. 37, 38, 40-42, 47, 48, 50-52, 54-57, 59-61, Count 6, Introduction, para. 71.
[1819] *See supra* Sections III.D, III.F, III.H, III.J, III.K.

O. Sentence (Karemera Grounds 42 and 43; Ngirumpatse Ground 51)

675. The Trial Chamber sentenced Karemera and Ngirumpatse each to life imprisonment for their convictions for direct and public incitement to commit genocide (Count 2), genocide (Count 3), rape and extermination as crimes against humanity (Counts 5 and 6), and murder as a serious violation of Article 3 common to the Geneva Conventions and of Additional Protocol II (Count 7).[1820]

676. Karemera and Ngirumpatse have appealed their sentences.[1821] The Appeals Chamber addresses their appeals in turn, recalling 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 accused and the gravity of the crimes.[1822] 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.[1823]

1. Karemera's Sentencing Appeal

677. In this section, the Appeals Chamber considers whether the Trial Chamber erred in: (i) imposing a single sentence;[1824] and (ii) considering his superior responsibility as an aggravating factor.[1825]

(a) Single Sentence

678. Karemera submits that, by imposing a single sentence, the Trial Chamber violated Rule 87(C) of the Rules which requires trial chambers to impose a sentence in respect of each finding of guilt.[1826] The Prosecution responds that the Trial Chamber acted within its discretion in imposing a single sentence against Karemera.[1827]

[1820] Trial Judgement, paras. 1714-1716, 1761-1763. The Trial Chamber also concluded that Karemera and Ngirumpatse were guilty of conspiracy to commit genocide. However, in light of its findings on cumulative convictions, it did not enter a conviction against Karemera and Ngirumpatse for the count of conspiracy to commit genocide. *See* Trial Judgement, paras. 1714-1716. *See also* Trial Judgement, paras. 1707-1713.
[1821] Karemera Notice of Appeal, paras. 163-167; Karemera Appeal Brief, paras. 407-411; Ngirumpatse Notice of Appeal, paras. 364-380; Ngirumpatse Appeal Brief, paras. 21, 775-788.
[1822] *Gatete* Appeal Judgement, para. 268; *Hategekimana* Appeal Judgement, para. 288; *Kanyarukiga* Appeal Judgement, para. 270.
[1823] *Gatete* Appeal Judgement, para. 268; *Hategekimana* Appeal Judgement, para. 288; *Kanyarukiga* Appeal Judgement, para. 270.
[1824] Karemera Appeal Brief, paras. 407, 408. *See also* Karemera Reply Brief, para. 81.
[1825] Karemera Appeal Brief, paras. 409-411. *See also* Karemera Reply Brief, para. 81.
[1826] Karemera Appeal Brief, paras. 407, 408.
[1827] Prosecution Response Brief (Karemera), paras. 260, 261.

679. The Appeals Chamber recalls that Rule 87(C) of the Rules provides that "[i]f the Trial Chamber finds the accused guilty on one or more of the counts contained in the indictment, it shall impose a sentence in respect of each finding of guilt […] unless it decides to exercise its power to impose a single sentence reflecting the totality of the criminal conduct of the accused".[1828] The Trial Chamber decided to impose a single sentence on the ground that Karemera's convictions were based largely on the same underlying criminal acts.[1829] Karemera has not identified any error in this assessment. Accordingly, the Appeals Chamber considers that Karemera has failed to demonstrate that the Trial Chamber committed a discernible error in the exercise of its sentencing discretion in imposing a single sentence against him.

(b) Aggravating Factor

680. Karemera submits that the Trial Chamber erred in considering his position of authority as an aggravating factor given that he was convicted under Article 6(1) of the Statute on the basis of the same facts.[1830] Moreover, he argues that the Trial Chamber erroneously found his position of authority to be an aggravating factor in relation to all crimes for which he was convicted.[1831]

681. The Prosecution responds that Karemera failed to demonstrate how the Trial Chamber erred.[1832] The Prosecution also notes that the Trial Chamber specifically considered the gravity of Karemera's crimes, his degree of liability, and his individual circumstances in determining his sentence.[1833]

682. The Appeals Chamber has already dismissed Karemera's arguments pertaining to cumulative convictions under Articles 6(1) and 6(3) of the Statute.[1834] The Appeals Chamber further finds that Karemera has failed to identify any error in the Trial Chamber's consideration of the abuse of the influence that derived from his various positions of authority as an aggravating factor in sentencing.[1835] The Appeals Chamber recalls that a trial chamber may consider the abuse of a convicted person's influence as an aggravating factor in sentencing.[1836]

[1828] The Appeals Chamber notes that Rule 87(C) of the Rules was amended on 14 March 2008 to expressly provide for the imposition of single sentences. *See*, *e.g.*, *Ntabakuze* Appeal Judgement, para. 276. Prior to this rule amendment, the Appeals Chamber confirmed the propriety of this practice. *See Nahimana et al.* Appeal Judgement, paras. 1042, 1043; *Kambanda* Appeal Judgement, paras. 111, 112.
[1829] Trial Judgement, paras. 1761, 1762.
[1830] Karemera Appeal Brief, paras. 410, 411.
[1831] Karemera Appeal Brief, paras. 409, 411.
[1832] Prosecution Response Brief (Karemera), para. 259.
[1833] Prosecution Response Brief (Karemera), para. 259.
[1834] *See supra* Section III.D.5.
[1835] Trial Judgement, para. 1746.
[1836] *See*, *e.g.*, *Simba* Appeal Judgement, para. 310.

683. Accordingly, Karemera has not demonstrated any error in the Trial Chamber's assessment of the aggravating factors.

2. Ngirumpatse's Sentencing Appeal

684. In this section, the Appeals Chamber considers whether the Trial Chamber erred in: (i) imposing a single sentence;[1837] (ii) its consideration and weighing of certain mitigating circumstances;[1838] and (iii) imposing a manifestly excessive sentence.[1839]

(a) Single Sentence

685. Ngirumpatse submits that the Trial Chamber erred in imposing upon him a single sentence for convictions on all five counts.[1840] He argues that, since the Trial Chamber failed to enter a specific sentence for each count, the invalidation of a conviction on one count would void the entire sentence.[1841] The Prosecution responds that Ngirumpatse wrongfully seeks to re-litigate issues that failed at trial without demonstrating how the Trial Chamber erred in exercising its sentencing discretion.[1842]

686. As discussed above, the Appeals Chamber recalls that a trial chamber has the discretion to impose a single sentence in order to reflect the totality of the criminal conduct of a convicted person. Ngirumpatse has not shown that the Trial Chamber committed a discernible error in the exercise of its sentencing discretion by imposing a single sentence.

(b) Mitigating Factors

687. Ngirumpatse submits that the Trial Chamber incorrectly found that he failed to make any sentencing submissions because he made such submissions during his closing arguments.[1843] Ngirumpatse also submits that the Trial Chamber erred in according insufficient weight to several factors that justify mitigation.[1844] In particular, Ngirumpatse argues that the Trial Chamber failed to explain how the sentence of life imprisonment was warranted in light of the fact that he was out of Rwanda for almost the entire period of the genocide and considering that his participation in the crimes was not direct.[1845]

[1837] Ngirumpatse Appeal Brief, para. 777.
[1838] Ngirumpatse Appeal Brief, paras. 780, 782, 783, 785. *See* Ngirumpatse Reply Brief, para. 198.
[1839] Ngirumpatse Appeal Brief, paras. 781, 783, 786.
[1840] Ngirumpatse Appeal Brief, para. 777.
[1841] Ngirumpatse Appeal Brief, para. 777.
[1842] Prosecution Response Brief (Ngirumpatse), paras. 368, 370.
[1843] Ngirumpatse Appeal Brief, paras. 779, 783. *See also* Ngirumpatse Reply Brief, para. 195.
[1844] Ngirumpatse Appeal Brief, paras. 780, 782, 783, 785, 786. *See also* Ngirumpatse Reply Brief, para. 198.
[1845] Ngirumpatse Appeal Brief, para. 780.

688. Ngirumpatse further submits that the Trial Chamber, despite its observations on the matter, failed to accord sufficient weight to his exemplary prior conduct, his substantial assistance to Tutsis during the genocide, and the sincerity of his commitment to genuine reconciliation.[1846] Ngirumpatse adds that the Trial Chamber failed to consider his personal situation, age, and health as well as the physical and psychological suffering caused by the 15 years he spent in detention.[1847]

689. The Prosecution responds that the Trial Chamber did not disregard Ngirumpatse's sentencing submissions.[1848] It submits that Ngirumpatse is attempting to re-litigate arguments that failed at trial.[1849] The Prosecution contends that the Trial Chamber properly considered and weighed "multiple factors" which Ngirumpatse raised in mitigation.[1850] In addition, it argues that the existence of mitigating factors does not automatically imply a reduction of a sentence because the primary consideration in sentencing is the gravity of the crime.[1851] It also submits that age and health are factors that can only be considered in mitigation in extreme circumstances.[1852] On the matter of pre-trial detention and proceedings, the Prosecution argues that their lengths were not *undue*, and that the Trial Chamber correctly accorded no mitigation in this regard.[1853]

690. In examining Ngirumpatse's submissions, the Trial Chamber noted that:

> Although Ngirumpatse did not present any submissions in his closing brief that expressly concern sentencing, the Chamber has noticed that the chapter in his closing brief titled 'M. Ngirumpatse's Actions and Character' contains several assertions that could be regarded as an attempt to submit mitigating circumstances. Therefore, in the interests of justice, the Chamber will consider the following when determining the appropriate sentence for Ngirumpatse.[1854]

691. Specifically, the Trial Chamber considered that, prior to the tension in Rwanda surrounding the Arusha Accords, Ngirumpatse appeared to have been a peaceful and dedicated civil servant and politician.[1855] The Trial Chamber further acknowledged that Ngirumpatse had no history of ethnic discrimination before 1994 and worked to preserve Tutsi traditional culture.[1856] The Trial Chamber

[1846] Ngirumpatse Appeal Brief, paras. 782, 785. Ngirumpatse particularly refers to his advocacy for peace, for ethnic reconciliation, and for the rejection of discrimination. He adds that he always showed morality, ethical conduct, as well as commitment to voluntary service in noble causes and that he has an unblemished social and professional background. *See* Ngirumpatse Appeal Brief, para. 785.
[1847] Ngirumpatse Appeal Brief, paras. 783, 786. Ngirumpatse further asserts that the time he spent in custody constitutes prejudice *per se* and represents irreparable injustice. *See* Ngirumpatse Reply Brief, para. 198.
[1848] Prosecution Response Brief (Ngirumpatse), para. 368.
[1849] Prosecution Response Brief (Ngirumpatse), para. 368.
[1850] Prosecution Response Brief (Ngirumpatse), paras. 369-373.
[1851] Prosecution Response Brief (Ngirumpatse), paras. 370, 374.
[1852] Prosecution Response Brief (Ngirumpatse), para. 373.
[1853] Prosecution Response Brief (Ngirumpatse), para. 372.
[1854] Trial Judgement, para. 1737.
[1855] Trial Judgement, para. 1756.
[1856] Trial Judgement, para. 1756.

also noted that Ngirumpatse provided assistance to refugees after President Habyarimana's death and expressed his remorse for the genocide on multiple occasions.[1857]

692. The Appeals Chamber recalls that Rule 86(C) of the Rules clearly indicates that "[t]he parties shall also address matters of sentencing in closing arguments". The Appeals Chamber observes that Ngirumpatse specified in the conclusion of his closing brief that matters of sentencing would be addressed in his closing arguments and that in his closing arguments he submitted several alleged mitigating factors.[1858] As recalled above, the Trial Chamber expressly considered and accorded "some weight" to a number of the mitigating factors that Ngirumpatse raised.[1859] However, in its summary of his submissions or in the determination of the sentence in the Trial Judgement, the Trial Chamber did not refer to other factors which Ngirumpatse raised during closing arguments, such as his advanced age, poor health, or family situation.[1860]

693. The Appeals Chamber recalls that personal and family circumstances, as well as poor health condition may be considered as mitigating factors.[1861] Although the Trial Chamber did not expressly consider these factors in mitigation, in other parts of the Trial Judgement, the Trial Chamber recalled Ngirumpatse's age, the fact that he was in exile at the time of his arrest, as well as his health condition, thereby demonstrating that it was clearly appraised of these factors.[1862] 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.[1863]

694. The Trial Chamber did not discuss Ngirumpatse's separation from his family or his and their suffering during the events in Rwanda and while in exile. The Appeals Chamber recalls, however, that an accused bears the burden of establishing mitigating factors by a preponderance of the evidence.[1864] As Ngirumpatse merely alluded to these factors without identifying any support for

[1857] Trial Judgement, para. 1756.
[1858] Ngirumpatse Closing Brief, p. 210; Closing Arguments, T. 24 August 2011 pp. 2-5.
[1859] Trial Judgement, para. 1756. *See also* Trial Judgement, paras. 1738-1740.
[1860] In his closing arguments, Ngirumpatse referred to "[h]is age, his illness, the need for him to seek treatment freely […] his separation from his family, the suffering suffered by his wife and five children during the Rwandan tragedy and during the time in exile, living constantly under the stress of utterly unfair charges". Closing Arguments, T. 24 August 2011 p. 4. Ngirumpatse further argued that a sentence higher than the time he already spent in detention would be unfair. *See* Closing Arguments, T. 24 August 2011 pp. 3, 4.
[1861] *Simba* Appeal Judgement, para. 287; *Ntakirutimana* Appeal Judgement, para. 569. *See also Blaškić* Appeal Judgement, para. 696.
[1862] Trial Judgement, paras. 6, 11, 38, 39 (noting Ngirumpatse's date of birth, his arrest in Mali, as well as his health condition).
[1863] *Rukundo* Appeal Judgement, para. 267; *Nchamihigo* Appeal Judgement, para. 157. *See also Martić* Appeal Judgement, para. 19.
[1864] *Rukundo* Appeal Judgement, para. 255; *Muhimana* Appeal Judgement, para. 231; *Kajelijeli* Appeal Judgement, para. 294.

them in the record, the Appeals Chamber cannot identify any error in the Trial Chamber's failure to consider them in mitigation.

695. The Appeals Chamber observes that, in determining his sentence, the Trial Chamber did not expressly recall Ngirumpatse's absence from Rwanda during the period of the genocide.[1865] Nonetheless, the Trial Chamber noted in its legal findings that "despite his absence from Rwanda during part of the genocide, Ngirumpatse had actual knowledge"[1866] of his subordinates' actions and that he "was an influential person with substantial *de facto* authority in Rwanda during the genocide".[1867] It also determined that his "effective control over the Kigali and Gisenyi *Interahamwe* and administrative personnel in the ministries controlled by the MRND existed throughout the entirety of the genocide because he remained Chairman of the MRND Executive Bureau throughout this period".[1868] In light of these findings, Ngirumpatse has failed to demonstrate how the Trial Chamber erred in not expressly considering his absence from Rwanda in determining his sentence.

696. Contrary to Ngirumpatse's argument, the Trial Chamber did consider the length of his detention and the length of the proceedings.[1869] The Trial Chamber however found that these factors did not warrant mitigation, as it found no *undue* delay or any violation of Ngirumpatse's rights in this respect.[1870] The Appeals Chamber recalls that, elsewhere in this Judgement,[1871] it has rejected Ngirumpatse's challenges to the Trial Chamber's findings that the length of his detention was not *undue*. His argument in connection with his sentencing appeal thus lacks merit and is dismissed.

697. The Trial Chamber also considered several individual and mitigating factors, including: (i) Ngirumpatse's apparent peaceful and dedicated character as a civil servant and politician prior to the Arusha Accords; (ii) his work to preserve the Tutsi traditional culture; (iii) the fact that he provided refuge to several persons in need regardless of their ethnicity; and (iv) his expressed remorse.[1872] The Appeal Chamber finds that Ngirumpatse's mere assertion that the Trial Chamber failed to give sufficient weight to these mitigating factors does not suffice to demonstrate a discernible error.[1873]

[1865] Trial Judgement, paras. 1717-1728, 1737-1740, 1751-1760.
[1866] Trial Judgement, para. 1558.
[1867] Trial Judgement, para. 1550.
[1868] Trial Judgement, para. 1557.
[1869] Trial Judgement, para. 1759.
[1870] Trial Judgement, para. 1759. *See also* Trial Judgement, paras. 33-43.
[1871] *See supra* Section III.A.5.
[1872] Trial Judgement, para. 1756.
[1873] *Rukundo* Appeal Judgement, para. 267.

698. The Appeals Chamber underscores that the sentence must reflect the gravity of the crimes.[1874] In assessing the gravity of Ngirumpatse's offences, the Trial Chamber took into consideration the circumstances of the case, as well as the form and degree of Ngirumpatse's participation in the crimes.[1875] It noted that he was found responsible for serious crimes, including conspiracy to commit genocide, direct and public incitement to commit genocide, and genocide, which require genocidal intent.[1876] The Trial Chamber further noted Ngirumpatse's contribution to the crimes.[1877] It also found him responsible as a superior for genocide, rape as a crime against humanity, extermination as a crime against humanity, and serious violations of Article 3 common to the Geneva Conventions and of Additional Protocol II.[1878] In the same vein, the Trial Chamber found that Ngirumpatse incurred basic joint criminal enterprise liability, as well as liability for instigating and for aiding and abetting genocide, extermination as a crime against humanity, and murder as a serious violation of Article 3 common to the Geneva Conventions and of Additional Protocol II, and incurred extended joint criminal enterprise liability for rapes and sexual assaults as crimes against humanity.[1879] Finally, the Trial Chamber considered that Ngirumpatse committed the offences over a period of time, that he played a key role in extending the atrocities to a relatively peaceful area, and that he was aware of the consequences of his acts.[1880] For the foregoing reasons, the Appeals Chamber finds that Ngirumpatse has failed to demonstrate that the Trial Chamber committed a discernible error in the weight it accorded to his mitigating circumstances.

(c) Manifestly Excessive Sentence

699. Ngirumpatse contends that his sentence of life imprisonment is unfair, inhumane, and manifestly excessive in light of the sentences imposed by the Tribunal in other cases.[1881] Ngirumpatse also asserts that the Trial Chamber erred when it qualified several factors as aggravating without proof beyond a reasonable doubt.[1882]

[1874] *Ntabakuze* Appeal Judgement, para. 302; *Muhimana* Appeal Judgement, para. 234; *Ndindabahizi* Appeal Judgement, para. 138. *See also Stakić* Appeal Judgement, para. 380.
[1875] *See*, *e.g.*, *Munyakazi* Appeal Judgement, para. 185; *Rukundo* Appeal Judgement, para. 243; *Nahimana et al.* Appeal Judgement, para. 1038.
[1876] Trial Judgement, para. 1752.
[1877] Trial Judgement, para. 1752.
[1878] Trial Judgement, para. 1758. The Trial Chamber considered Ngirumpatse's responsibility as a superior under Article 6(3) of the Statute as an aggravating circumstance in the determination of the sentence.
[1879] Trial Judgement, para. 1753. Moreover, the Trial Chamber concluded in its legal findings that Ngirumpatse's "contributions were significant to the furtherance of the common purpose of the JCE". *See* Trial Judgement, para. 1458.
[1880] Trial Judgement, para. 1755.
[1881] Ngirumpatse Appeal Brief, paras. 781, 784, 786, *referring to Seromba* Trial Judgement, *Serugendo* Trial Judgement, *Bagaragaza* Trial Judgement, *Ruggiu* Trial Judgement, *Serushago* Trial Judgement.
[1882] Ngirumpatse Appeal Brief, para. 784.

700. The Prosecution responds that Ngirumpatse fails to identify the aggravating factors that should not have been considered by the Trial Chamber.[1883] It also maintains that Ngirumpatse fails, when claiming that his sentence was inhumane and unfair in comparison to other cases, to elaborate on how his sentence relates to any other sentence imposed by the Tribunal.[1884] The Prosecution further adds that comparing cases is of limited assistance, as trial chambers are entitled to a margin of discretion in sentencing.[1885]

701. The Appeals Chamber recalls that drawing comparisons with other cases is of limited assistance in challenging a sentence.[1886] This is particularly so when the sentences of other convicted persons are based on different circumstances. Ngirumpatse made no attempt to identify factual similarities with respect to the specific underlying criminal conduct and the attendant individual, aggravating, and mitigating circumstances. Furthermore, the Appeals Chamber observes that unlike the present case, the accused in the *Serushago*, *Serugendo*, *Ruggiu*, and *Bagaragaza* cases, to which Ngirumpatse points, pleaded guilty, which constituted a significant mitigating factor.[1887] With respect to the *Seromba* case, Ngirumpatse fails to appreciate that the Appeals Chamber entered additional convictions and imposed a sentence of life imprisonment.[1888] Based on the above, the Appeals Chamber finds that Ngirumpatse has not demonstrated how his sentence is disproportionate or how the Trial Chamber erred by failing to consider sentences imposed in other cases. Indeed, the mere assertion that the sentence is excessive in light of international jurisprudence is insufficient to demonstrate that the Trial Chamber erred in imposing a life sentence.

702. The Appeals Chamber recalls that aggravating circumstances must be proven beyond a reasonable doubt.[1889] The Appeals Chamber observes, however, that Ngirumpatse merely refers to "circumstances that were not proven beyond reasonable doubt" without specifying in respect of which circumstances the standard of proof was not met.[1890] The Appeals Chamber therefore finds that Ngirumpatse has failed to demonstrate that the Trial Chamber erred in considering some circumstances as aggravating.

[1883] Prosecution Response Brief (Ngirumpatse), para. 375.
[1884] Prosecution Response Brief (Ngirumpatse), para. 377.
[1885] Prosecution Response Brief (Ngirumpatse), para. 378.
[1886] *Rukundo* Appeal Judgement, para. 263; *Muhimana* Appeal Judgement, para. 232. *See also Milošević* Appeal Judgement, para. 326; *Blagojević and Jokić* Appeal Judgement, para. 333.
[1887] *Bagaragaza* Trial Judgement, paras. 14-16, 24-27, 38-40, 44; *Serugendo* Trial Judgement, paras. 6, 50, 52-62, 91, 93, p. 19; *Ruggiu* Trial Judgement, paras. 10, 53-55, 57, 58, pp. 18, 19; *Serushago* Trial Judgement, paras. 4-9, 35, pp. 14, 15.
[1888] *Seromba* Appeal Judgement, para. 239.
[1889] *Nahimana et al*. Appeal Judgement, para. 1038; *Kajelijeli* Appeal Judgement, para. 294.
[1890] Ngirumpatse Appeal Brief, para. 784.

703. Accordingly, Ngirumpatse has failed to demonstrate that the Trial Chamber imposed a manifestly excessive sentence or erred in its consideration of aggravating factors.

3. Conclusion

704. For the foregoing reasons, the Appeals Chamber dismisses Karemera's Forty-Second and Forty-Third Grounds of Appeal, as well as Ngirumpatse's Fifty-First Ground of Appeal.

IV. APPEAL OF THE PROSECUTION

A. Cumulative Convictions (Ground 1)

705. The Trial Chamber found Karemera and Ngirumpatse guilty of genocide and conspiracy to commit genocide.[1891] However, having considered the principles relating to cumulative convictions, the Trial Chamber decided not to enter a conviction against Karemera and Ngirumpatse for the count of conspiracy to commit genocide.[1892]

706. The Prosecution submits that the Trial Chamber erred in law by finding that cumulative convictions for conspiracy to commit genocide and genocide are impermissible and by failing to enter a conviction against Karemera and Ngirumpatse for conspiracy to commit genocide.[1893] The Prosecution submits that the Trial Chamber failed to correctly apply the law on cumulative convictions as set out in the *Delalić et al.* case.[1894] According to the Prosecution, genocide and conspiracy to commit genocide each have a materially distinct element, and thus, even when based on the same underlying conduct, cumulative convictions for both crimes are permissible.[1895] The Prosecution contends that a conviction for genocide alone does not capture the full scope of Karemera's and Ngirumpatse's criminal conduct because it leaves unpunished their agreement to commit genocide and argues that the Trial Chamber abused its discretion by deciding not to enter convictions for both crimes.[1896] Moreover, the Prosecution argues that the Trial Chamber erred by considering unwarranted factors such as "the position favourable to the accused" and the fact that the same evidence formed the basis of convictions for genocide and conspiracy to commit genocide.[1897]

707. In the Prosecution's view, a proper application of the *Delalić et al*. test would have led to cumulative convictions for both conspiracy to commit genocide and genocide.[1898] The Prosecution therefore requests the Appeals Chamber to correct the Trial Chamber's error by entering a conviction for the crime of conspiracy to commit genocide.[1899] The Prosecution does not seek an

[1891] Trial Judgement, paras. 1591, 1613, 1616, 1617, 1621, 1623, 1628, 1634, 1636, 1638, 1639, 1641, 1643, 1644, 1648, 1653, 1657, 1658, 1663, 1670, 1709, 1714, 1715.
[1892] Trial Judgement, paras. 1707-1713, 1715, 1716.
[1893] Prosecution Notice of Appeal, paras. 1-3; Prosecution Appeal Brief, paras. 2, 18-40. *See also* AT. 11 February 2014 pp. 21, 22.
[1894] Prosecution Appeal Brief, paras. 2, 19, 22, 29-33, 36-39.
[1895] Prosecution Appeal Brief, paras. 30-32.
[1896] Prosecution Appeal Brief, paras. 34, 35, 39, 40.
[1897] Prosecution Appeal Brief, paras. 19, 35, 36.
[1898] Prosecution Appeal Brief, paras. 21, 32.
[1899] Prosecution Appeal Brief, paras. 21, 39, 40.

increase in the sentences because Karemera and Ngirumpatse were sentenced to the maximum punishment.[1900]

708. Ngirumpatse and Karemera respond that the Trial Chamber did not err in setting aside the application of the test on cumulative convictions.[1901] In particular, Ngirumpatse submits that the test could not apply here because the crimes of genocide and conspiracy to commit genocide are not based on the same conduct.[1902] In this respect, Ngirumpatse contends that the Trial Chamber correctly relied on this aspect of the *Popović et al*. and *Gatete* trial judgements which was not overturned on appeal.[1903] He further contends that the aim of criminalizing an inchoate offence is the prevention of its commission, therefore, where a conviction for genocide is entered, a conviction for the inchoate offence of conspiracy to commit genocide is redundant.[1904]

709. Karemera argues that the Prosecution's assumption that cumulative convictions for genocide and conspiracy to commit genocide are always possible reflects its misinterpretation of the jurisprudence.[1905] Karemera recalls that the cumulative convictions test applies only to distinct crimes and argues that, in the present case, the crimes of genocide and conspiracy to commit genocide are not different, but rather that the first crime is the "continuation" of the latter, both of them relying on the joint criminal enterprise.[1906] According to Karemera, the Trial Chamber rightly exercised its discretion in deciding not to apply the cumulative convictions test[1907] and correctly relied on the *Popović et al*. Trial Judgement, as the crime in that case were also "continuous" and the agreement was inferred from a joint criminal enterprise.[1908] Karemera further argues that entering a new conviction for conspiracy to commit genocide would be redundant in light of his conviction for committing genocide through a joint criminal enterprise and thus unfair.[1909] He finally submits that should the Appeals Chamber enter an additional conviction for the crime of conspiracy to commit genocide, it would deny him the right to have his conviction and sentence reviewed.[1910]

710. The Appeals Chamber recalls that convictions entered under different statutory provisions but based on the same conduct are permissible only if each statutory provision involved has a

[1900] Prosecution Appeal Brief, para. 40.
[1901] Ngirumpatse Response Brief, paras. 94, 102; Karemera Response Brief, paras. 12, 24.
[1902] Ngirumpatse Response Brief, paras. 95-97, 101. Ngirumpatse submits that the test may only be applied in the case where the same acts or omissions (or conduct) of the accused constitute distinct crimes. *See* Ngirumpatse Response Brief, para. 95. *See also* AT. 11 February 2014 pp. 34, 35.
[1903] Ngirumpatse Response Brief, paras. 105-107.
[1904] Ngirumpatse Response Brief, para. 109.
[1905] Karemera Response Brief, paras. 9, 15, 18.
[1906] Karemera Response Brief, paras. 8, 10, 11, 20, 24, 25.
[1907] Karemera Response Brief, paras. 12, 24.
[1908] Karemera Response Brief, paras. 16, 17, 19.
[1909] Karemera Response Brief, paras. 25-27.

materially distinct element not contained in the other.[1911] Moreover, genocide and conspiracy to commit genocide are distinct crimes under Articles 2(3)(a) and 2(3)(b) of the Statute. As the Trial Chamber correctly observed, the crime of genocide has a materially distinct *actus reus* from the crime of conspiracy to commit genocide and both crimes are based on different underlying conduct.[1912] The crime of genocide requires the commission of one of the enumerated acts in Article 2(2) of the Statute,[1913] while the crime of conspiracy requires the act of entering into an agreement to commit genocide.[1914] The Appeals Chamber finds that the Trial Chamber did not err in concluding that the crimes are distinct and that the conduct underlying each crime is not the same.

711. The Appeals Chamber recalls the duty of a trial chamber to enter convictions for all distinct crimes which have been proven in order to fully reflect the criminality of the convicted person.[1915] The Appeals Chamber finds that the Trial Chamber considered unwarranted factors in deciding not to enter convictions against Karemera and Ngirumpatse for conspiracy to commit genocide. As recently held in the *Gatete* Appeal Judgement, the Appeals Chamber considers that the inchoate nature of the crime of conspiracy does not obviate the need to enter a conviction for this crime when genocide has also been committed by the accused, since the crime of genocide does not punish the agreement to commit genocide.[1916] The Appeals Chamber, Judge Afande dissenting, therefore finds that the Trial Chamber erred in law when, having concluded that genocide and conspiracy to commit genocide are distinct crimes and after finding Karemera and Ngirumpatse guilty of both crimes, it declined to enter a conviction for conspiracy.

712. The Appeals Chamber recalls that it has elsewhere reversed the Trial Chamber's findings on Ngirumpatse's responsibility for conspiracy to commit genocide and upheld the finding that Karemera conspired with others to commit genocide by at least 25 May 1994.[1917] The Appeals Chamber further notes that Karemera was sentenced to life imprisonment and that the Prosecution has not sought to reflect in the sentence any possible additional conviction.[1918]

713. Accordingly, the Appeals Chamber dismisses the Prosecution's First Ground of Appeal in relation to Ngirumpatse. However, the Appeals Chamber, Judge Afande dissenting, grants, in part,

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[1910] Karemera Response Brief, paras. 28, 29.
[1911] *Delalić et al.* Appeal Judgement, para. 412. *See also Gatete* Appeal Judgement, para. 259; *Ntabakuze* Appeal Judgement, para. 260; *Bagosora and Nsengiyumva* Appeal Judgement, para. 413.
[1912] Trial Judgement, para. 1709.
[1913] *Gatete* Appeal Judgement, para. 260, *referring to Nahimana et al.* Appeal Judgement, para. 492.
[1914] *Gatete* Appeal Judgement, para. 260, *referring to Seromba* Appeal Judgement, para. 218; *Nahimana et al.* Appeal Judgement, para. 894; *Ntagerura et al.* Appeal Judgement, para. 92.
[1915] *Gatete* Appeal Judgement, para. 261, *referring to Strugar* Appeal Judgement, para. 324; *Stakić* Appeal Judgement, para. 358.
[1916] *Gatete* Appeal Judgement, para. 262.
[1917] *See supra* para. 652.
[1918] Prosecution Appeal Brief, para. 40.

the Prosecution's First Ground of Appeal in relation to Karemera and finds that the Trial Chamber erred in not entering a conviction for conspiracy to commit genocide. However, in the circumstances of this case, the Appeals Chamber, Judge Ramaroson dissenting, does not find it necessary to enter this conviction on appeal.[1919]

[1919] *Cf. Šainović et al.* Appeal Judgement, para. 1604, fn. 5269; *Krstić* Appeal Judgement, paras. 219-227, p. 87; *Stakić* Appeal Judgement, paras. 359, 360, 362, 364, 366, 367, pp. 141, 142; *Naletilić and Martinović* Appeal Judgement, paras. 588-591, p. 207.

B. Contribution of Karemera's Speech at the 3 May 1994 Meeting to the Bisesero Killings (Ground 2)

714. The Trial Chamber found that regular attacks against Tutsis occurred in the Bisesero region of Kibuye Prefecture from 9 April until about 30 June 1994.[1920] The Trial Chamber further found that, on 3 May 1994, Karemera and other authorities, including Prime Minister Jean Kambanda and Eliézer Niyitegeka, the Minister of Information, addressed the public at the 3 May 1994 Meeting at the Kibuye Prefecture office.[1921] The Trial Chamber noted that the meeting was held in close proximity to a mass grave containing the bodies of a large number of people who had been recently massacred by the *Interahamwe* and the military.[1922] The Trial Chamber found that Karemera "called on the *Interahamwe* to continue being vigilant in flushing out, stopping, and fighting the enemy" during the meeting.[1923] According to the Trial Judgement, on or about 13 May 1994, national and regional authorities, including Niyitegeka and Kayishema, ordered, instigated, and directed large-scale attacks against Tutsis in the Bisesero region.[1924]

715. The Trial Chamber convicted Karemera and Ngirumpatse pursuant to a joint criminal enterprise in the basic form for committing genocide, extermination as a crime against humanity, and murder as a serious violation of Article 3 common to the Geneva Conventions and Additional Protocol II in relation to, in part, the killings which occurred in Bisesero on or about 13 May 1994.[1925] In this respect, the Trial Chamber found that the organization of the killings furthered the common purpose of the joint criminal enterprise, that they were organized by members of the joint criminal enterprise, including Niyitegeka and Kayishema, and that Karemera and Ngirumpatse significantly contributed to the furtherance of the common purpose of the joint criminal enterprise.[1926] Among Karemera's several contributions to the joint criminal enterprise, the Trial Chamber highlighted his speech at the 3 May 1994 Meeting.[1927]

716. The Trial Chamber also convicted Karemera and Ngirumpatse of direct and public incitement to commit genocide based, in part, on Karemera's speech at the 3 May 1994 Meeting.[1928] The Trial Chamber further examined whether Karemera's speech on 3 May 1994 amounted to instigating genocide specifically in relation to the attacks in Bisesero.[1929] The Trial Chamber noted,

[1920] Trial Judgement, paras. 1141, 1210, 1649. *See also* Trial Judgement, para. 257.
[1921] Trial Judgement, paras. 992, 1450(5), 1596. *See also* Trial Judgement, paras. 794, 949, 951, 984, 1599, 1600.
[1922] Trial Judgement, para. 989.
[1923] Trial Judgement, para. 987.
[1924] Trial Judgement, paras. 1142, 1199, 1210, 1649.
[1925] Trial Judgement, paras. 1653, 1691, 1706. *See also* Trial Judgement, para. 1142.
[1926] Trial Judgement, para. 1653. *See also* Trial Judgement, paras. 1600, 1649.
[1927] Trial Judgement, paras. 1450(5), 1457.
[1928] Trial Judgement, paras. 1596, 1599, 1600.
[1929] Trial Judgement, para. 1661.

however, that Karemera's speech was a "general [call] for killings and not directly related to Bisesero" and concluded, partly on this basis, that his speech did not substantially contribute to specific attacks.[1930]

717. The Prosecution contends that the Trial Chamber acquitted Karemera of genocide and other crimes relating to killings in Bisesero on or about 13 May 1994 on the basis of his speech at the 3 May 1994 Meeting.[1931] It submits that the Trial Chamber erred in failing to find that Karemera's speech substantially contributed to the killings of Tutsis in Bisesero.[1932] The Prosecution further submits that the Trial Chamber erred in failing to convict Karemera and Ngirumpatse of instigating genocide, extermination as a crime against humanity, and murder as a serious violation of Article 3 common to the Geneva Conventions and of Additional Protocol II based on the attacks in Bisesero around 13 and 14 May 1994.[1933] The Prosecution contends that the record amply supports entering a conviction against Karemera for ordering, instigating, and aiding and abetting the killings based on his speech of 3 May 1994.[1934] The Prosecution further argues that Ngirumpatse should be convicted of the killings in Bisesero as a participant in the joint criminal enterprise.[1935]

718. Karemera and Ngirumpatse respond that they should not incur liability for the killings in Bisesero on the basis of Karemera's speech on 3 May 1994.[1936]

719. As noted above, the Trial Chamber found that the organization of the killings in Bisesero furthered the common purpose of the joint criminal enterprise. It specifically held Karemera and Ngirumpatse liable under the basic form of joint criminal enterprise for these attacks and killings on or about 13 May 1994, and found them guilty of genocide, crimes against humanity, and serious violations of Article 3 common to the Geneva Conventions and of Additional Protocol II pursuant to Article 6(1) of the Statute.[1937] The Trial Chamber also found that Karemera's speech of 3 May 1994 was one of his contributions to the joint criminal enterprise and its criminal acts in relation to Bisesero could be attributed to Ngirumpatse as a member of the joint criminal enterprise.[1938] Therefore, the Prosecution's contention that the Trial Chamber erred in not

[1930] Trial Judgement, para. 1661.
[1931] Prosecution Appeal Brief, para. 41. *See also* AT. 11 February 2014 pp. 22-24, 39.
[1932] Prosecution Appeal Brief, paras. 45-49, 89.
[1933] Prosecution Notice of Appeal, paras. 4-9; Prosecution Appeal Brief, paras. 41-89; Prosecution Reply Brief (Ngirumpatse), para. 25.
[1934] Prosecution Appeal Brief, paras. 45-82, 89.
[1935] Prosecution Appeal Brief, paras. 86-89.
[1936] Karemera Response Brief, paras. 30-53; Ngirumpatse Response Brief, paras. 118-163. *See also* AT. 11 February 2014 pp. 29-32.
[1937] Trial Judgement, paras. 1653, 1688, 1691, 1699, 1704, 1706. *See also supra* para. 569.
[1938] Trial Judgement, para. 1457. *See also supra* para. 472.

convicting Karemera and Ngirumpatse for these killings is without merit and amounts to a misreading of the Trial Judgement.[1939]

720. The Appeals Chamber is mindful that joint criminal enterprise and instigating, ordering, and aiding and abetting are distinct categories of responsibility and that an accused can be convicted for a crime on the basis of several categories of responsibility.[1940] However, the Prosecution seeks to hold Karemera responsible for this crime through ordering, instigating, or aiding and abetting on the basis of the same essential facts that already underpin his conviction for this crime through his participation in a joint criminal enterprise, namely his speech in Bisesero at the 3 May 1994 Meeting and the killings that took place in Bisesero on or about 13 May 1994. In these circumstances, the Appeals Chamber finds that Karemera's responsibility for this crime through his participation in a joint criminal enterprise fully encapsulates his criminal conduct and concludes that a finding that he ordered, instigated, or aided and abetted the killings in Bisesero would have no impact on the verdict.[1941]

721. Accordingly, the Appeals Chamber dismisses the Prosecution's Second Ground of Appeal.

[1939] Prosecution Notice of Appeal, para. 4; Prosecution Appeal Brief, para. 43; Prosecution Reply Brief (Ngirumpatse), para. 25.
[1940] *Ndindabahizi* Appeal Judgement, para. 122.
[1941] *Munyakazi* Appeal Judgement, para. 163; *Kamuhanda* Appeal Judgement, para. 77.

C. Superior Responsibility of Ngirumpatse for the Bisesero "Mopping-Up" Operation (Ground 3)

722. The Trial Chamber found that, around 18 June 1994, Karemera, as Minister of the Interior for the Interim Government, ordered a "mopping-up" operation against Tutsis in the Bisesero region of Kibuye Prefecture and that the operation resulted in the deaths of scores of Tutsi civilians.[1942] The Trial Chamber considered that the "mopping-up" operation and the resulting killings of Tutsi civilians in this region furthered the common purpose of the joint criminal enterprise and convicted Karemera and Ngirumpatse of genocide on this basis pursuant to Article 6(1) of the Statute.[1943]

723. Moreover, the Trial Chamber found that *Interahamwe* from Gisenyi Prefecture participated in the "mopping-up" operation in Bisesero and considered Karemera's superior responsibility for killings committed by these subordinates as of 25 May 1994 as an aggravating factor in sentencing.[1944] However, with respect to Ngirumpatse's superior responsibility in relation to the "mopping-up" operation , the Trial Chamber noted that he was away on mission from 1 June to around 26 June 1994, and again from 9 July 1994.[1945] The Trial Chamber reasoned that, given this absence, Ngirumpatse had little time to hold his subordinates responsible and thus concluded that there was an insufficient basis to conclude that he bears responsibility as a superior in relation to this event.[1946]

724. The Prosecution submits that the Trial Chamber erred in concluding that Ngirumpatse was not liable as a superior in connection with the "mopping-up" operation and further attacks against Tutsis in Bisesero in June 1994 perpetrated, *inter alia*, by the Gisenyi *Interahamwe*.[1947] In particular, the Prosecution argues that the Trial Chamber erred in acquitting Ngirumpatse on the basis that he was away on mission during the "mopping-up" operation and had little time to hold his subordinates responsible.[1948] The Prosecution submits that such a conclusion is irreconcilable with the Trial Chamber's own findings that all the elements to incur superior responsibility, including Ngirumpatse's failure to prevent or punish the Gisenyi *Interahamwe*, were established.[1949] The

[1942] Trial Judgement, paras. 1234, 1655.
[1943] Trial Judgement, paras. 1657, 1658.
[1944] Trial Judgement, para. 1659.
[1945] Trial Judgement, para. 1660.
[1946] Trial Judgement, para. 1660.
[1947] Prosecution Notice of Appeal, paras. 10-13; Prosecution Appeal Brief, paras. 4, 90-124. *See also* AT. 11 February 2014 pp. 18, 20, 21. The Appeals Chamber notes that the Prosecution refers to "mopping-up operations", while the Trial Chamber refers to "mopping-up" operation .
[1948] Prosecution Notice of Appeal, paras. 11, 12, *referring to* Trial Judgement, para. 1660; Prosecution Appeal Brief, paras. 4, 90, 109, 123, 124.
[1949] Prosecution Appeal Brief, paras. 91-109, 124. To support its submission that Ngirumpatse was the superior and had effective control over the Gisenyi *Interahamwe* at the time of the "mopping-up" operation in June 1994, the Prosecution

Prosecution further submits that the fact that Ngirumpatse was away on mission is irrelevant to his material ability to prevent or punish the crimes committed by his subordinates during the "mopping-up" operation.[1950] It contends that Ngirumpatse had the ability to punish the crimes when he was in Rwanda between 26 June and 9 July 1994.[1951] The Prosecution also notes that Ngirumpatse's superior responsibility for the Bisesero attacks was pleaded in the Indictment.[1952]

725. Ngirumpatse responds that this ground of appeal is inadmissible since the Prosecution does not explain how this alleged error invalidates the decision.[1953] He submits that the only error committed by the Trial Chamber was in making any findings with respect to his superior responsibility for the "mopping-up" operation and further attacks against the Tutsis in Bisesero in June 1994 since this charge is not contained in the Indictment.[1954] Considering that the elements required under Article 6(3) of the Statute were not established, Ngirumpatse argues that the Prosecution's arguments lack merit.[1955] Ngirumpatse also notes that the Prosecution does not present any evidence on the elements of superior responsibility specific to the facts under this ground of appeal.[1956] He further contends that the Prosecution fails to show that he had the means to punish the perpetrators of the crimes and how the punishment would have prevented the commission of crimes.[1957] Finally, he submits that the contradictory findings made by the Trial Chamber should lead to the reversal of the findings not favorable to him.[1958]

726. The Appeals Chamber observes that there are clear differences between the Trial Chamber's general findings on Ngirumpatse's superior responsibility over the Gisenyi *Interahamwe* and its specific findings on his responsibility over them in relation to the "mopping-up" operation and the resulting killings in the Bisesero region. Specifically, in its general findings on his superior

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compares Ngirumpatse's position with that of Barayagwiza in the *Nahimana et al.* case. *See* Prosecution Appeal Brief, para. 94, *referring to Nahimana et al.* Appeal Judgement, para. 606, *Bagosora and Nsengiyumva* Appeal Judgement, paras. 451-503.

[1950] Prosecution Appeal Brief, paras. 110-124. In support of its argument that Ngirumpatse could have taken reasonable and necessary measures to punish his subordinates upon his return to Rwanda between 26 June and 9 July 1994, the Prosecution points to the *Bagosora and Nsengiyumva* Appeal Judgement in which, it argues, the Appeals Chamber found that a time-frame of approximately 65 hours would have been sufficient for Bagosora to at least initiate some measures aimed at discharging his duty to punish. *See* Prosecution Appeal Brief, para. 121, *referring to Bagosora and Nsengiyumva* Appeal Judgement, paras. 685-688.

[1951] Prosecution Appeal Brief, paras. 113-124. Among the examples of the necessary and reasonable measures that Ngirumpatse could have taken between his return to Rwanda on 26 June 1994 and his next mission on 9 July 1994, the Prosecution mentions the outright public condemnation of the massacres and the reporting of the killings to relevant authorities in the government. *See* Prosecution Appeal Brief, para. 122.

[1952] Prosecution Reply Brief (Ngirumpatse), para. 34.

[1953] Ngirumpatse Response Brief, paras. 164-167. *See also* AT. 11 February 2014 pp. 37, 38. Karemera also responds that the Trial Chamber committed no errors when it found Ngirumpatse not liable as a superior for genocide in the "mopping-up" operation and that therefore this ground of appeal should be dismissed. *See* Karemera Response Brief, paras. 56-65.

[1954] Ngirumpatse Response Brief, paras. 168-173.

[1955] Ngirumpatse Response Brief, para. 177.

[1956] Ngirumpatse Response Brief, paras. 175, 183, 186, 187, 189, 190, 195.

[1957] Ngirumpatse Response Brief, para. 197.

responsibility, the Trial Chamber found that Ngirumpatse had effective control over the Gisenyi *Interahamwe*, in particular the material ability to prevent and punish offences throughout the various stages of the genocide, regardless of their location.[1959] It further concluded that he bears superior responsibility for the crimes committed notably by the Gisenyi *Interahamwe* "throughout the entirety of the genocide".[1960]

727. Bearing this in mind, the Appeals Chamber finds that the Trial Chamber failed to provide a reasoned opinion in its legal findings on genocide when it determined that it had an insufficient basis to conclude that Ngirumpatse bore superior responsibility for the "mopping-up" operation and the resulting killings. In so concluding, the Trial Chamber reasoned that, given his absences from Rwanda, Ngirumpatse had a limited time to hold his subordinates responsible for these crimes.[1961] This finding stands in stark contrast to the Trial Chamber's general finding that Ngirumpatse had the material ability to punish the Gisenyi *Interahamwe* throughout the entirety of the genocide.[1962] In view of this, the Appeals Chamber, Judges Tuzmukhamedov and Afande dissenting, finds that the Trial Chamber did not adequately explain why the nearly 12-day period during which Ngirumpatse was in Rwanda following the operation was insufficient to address the crimes. Finally, the Appeals Chamber notes that the Trial Chamber did not discuss in its legal findings on genocide its conclusion that Ngirumpatse failed to prevent and punish the crimes committed by the Gisenyi *Interahamwe* throughout the entirety of the genocide.[1963]

728. Finally, the Appeals Chamber finds no merit in Ngirumpatse's contention that this ground is inadmissible given the Prosecution's failure to demonstrate how it invalidates the verdict. Ngirumpatse fails to appreciate the importance of a trial chamber expressing the full scope of an accused's culpability. Moreover, the Appeals Chamber has already addressed and rejected his contention that his superior responsibility was not pleaded and that there was insufficient evidence connecting him to the crime.[1964]

729. In sum, the Appeals Chamber, Judges Tuzmukhamedov and Afande dissenting, considers that the Trial Chamber erred in finding that it had an insufficient basis to conclude that Ngirumpatse bore superior responsibility for the crimes of the Gisenyi *Interahamwe* during the "mopping-up" operation resulting in the deaths of scores of Tutsi civilians and reverses this finding. The Appeals

[1958] Ngirumpatse Response Brief, para. 199.
[1959] Trial Judgement, paras. 1556, 1557.
[1960] Trial Judgement, para. 1571. *See also* Trial Judgement, para. 1570.
[1961] Trial Judgement, para. 1660.
[1962] Trial Judgement, paras. 1556, 1557. The Trial Chamber found that Ngirumpatse could have sanctioned offenders politically, removed them from the ranks of the organization, disabled their benefits and privileges, publicly humiliated them, or demoted them within the organization, among other measures. *See* Trial Judgement, para. 1553.
[1963] Trial Judgement, para. 1660.
[1964] *See supra* Sections III.B.3, III.D.

Chamber, Judges Tuzmukhamedov and Afande dissenting, is satisfied that the Trial Chamber made sufficient findings to establish this form of responsibility in its legal findings on superior responsibility.[1965] Accordingly, the Appeals Chamber, Judges Tuzmukhamedov and Afande dissenting, finds that Ngirumpatse bears superior responsibility for the "mopping-up" operation and the resulting killings. The Appeals Chamber notes that Ngirumpatse was already convicted of this incident pursuant to Article 6(1) of the Statute,[1966] that his responsibility as a superior was generally considered as an aggravating circumstance in sentencing,[1967] and that, in any event, the Prosecution has not sought an increase in sentence with respect to this additional finding of responsibility.[1968] The Appeals Chamber therefore declines to consider any potential impact on sentencing that this new finding of responsibility under Article 6(3) of the Statute might have had.

730. The Appeals Chamber, Judges Tuzmukhamedov and Afande dissenting, therefore grants the Prosecution's Third Ground of Appeal.

[1965] Trial Judgement, paras. 1543-1571.
[1966] Trial Judgement, para. 1658.
[1967] Trial Judgement, para. 1758.
[1968] Prosecution Appeal Brief, para. 124.

D. Pre-8 April 1994 Allegations and Conspiracy to Commit Genocide (Ground 4)

731. The Trial Chamber found that, by at least 25 May 1994, Karemera and Ngirumpatse conspired among themselves and with others to commit genocide.[1969] The Trial Chamber also found that no conviction could be made with respect to a range of events prior to 6 April 1994, given that the only reasonable inference was not that Karemera and Ngirumpatse intended that crimes covered by the Statute be committed.[1970] The Trial Chamber also concluded that the Prosecution failed to prove that, prior to the genocide, Ngirumpatse was involved in the preparation of lists of Tutsis to be killed.[1971] Accordingly, the Trial Chamber did not enter a conviction for conspiracy to commit genocide on the basis of pre-8 April 1994 events.

732. The Prosecution submits that the Trial Chamber erred in finding that the allegations concerning pre-8 April 1994 events did not support the count of conspiracy to commit genocide.[1972] Specifically, the Prosecution highlights the Trial Chamber's findings that Karemera and Ngirumpatse were involved in stock-piling and concealing weapons, training and arming of the *Interahamwe*, and participating in public rallies prior to 8 April 1994.[1973] In its view, no reasonable trier of fact could have failed to find that these activities constituted further evidence of Karemera's and Ngirumpatse's involvement in a conspiracy to commit genocide.[1974] The Prosecution adds that the Trial Chamber failed to consider the pre-8 April 1994 evidence in a holistic manner, together with the other circumstantial evidence in the case, and therefore failed to fully characterize Karemera's and Ngirumpatse's criminal conduct.[1975] Accordingly, the Prosecution requests the Appeals Chamber to find that pre-8 April 1994 events, that the Trial Chamber found proven, also support Karemera's and Ngirumpatse's convictions for conspiracy to commit genocide.[1976]

[1969] Trial Judgement, para. 1591.
[1970] Trial Judgement, para. 1572.
[1971] Trial Judgement, paras. 497-501.
[1972] Prosecution Notice of Appeal, paras. 14-16; Prosecution Appeal Brief, paras. 125-141. *See also* AT. 11 February 2014 pp. 24, 25.
[1973] Prosecution Appeal Brief, paras. 126, 127, 132-134, 138.
[1974] Prosecution Appeal Brief, paras. 130, 132, 136, 137, 141.
[1975] Prosecution Appeal Brief, paras. 130, 132, 136-138, 141; Prosecution Reply Brief (Ngirumpatse), paras. 44-47. In addition, the Prosecution challenges the Trial Chamber's rejection of Prosecution witnesses' evidence supporting the allegation that, prior to April 1994, Ngirumpatse was involved in the preparation of lists of persons to be killed as part of a plan to kill Tutsis and moderate Hutus. *See* Prosecution Appeal Brief, paras. 129, 139, 140. The Appeals Chamber notes that this argument exceeds the scope of the Prosecution Notice of Appeal. It further observes that Ngirumpatse did not respond to this allegation and finds that addressing the Prosecution's argument could cause unfairness in this respect. In any event, the Appeals Chamber recalls that it is within the discretion of the Trial Chamber to evaluate any inconsistencies, to consider whether the evidence taken as a whole is reliable and credible and to accept or reject the "fundamental features" of the evidence. *See Munyakazi* Appeal Judgement, para. 71; *Renzaho* Appeal Judgement, para. 355; *Rukundo* Appeal Judgement, para. 207. In the Appeals Chamber's view, the Prosecution has failed to demonstrate that the Trial Chamber exceeded the scope of its discretion in weighing the evidence related to the preparation of lists of Tutsis to be killed and in rejecting it. Therefore the Appeals Chamber need not consider this argument further.
[1976] Prosecution Appeal Brief, para. 141.

733. Ngirumpatse responds that this ground of appeal should be dismissed.[1977] In particular, he argues that the Prosecution does not seek to reduce, increase, or amend the impugned decision.[1978] He adds that the Prosecution neither alleges an error of law invalidating the decision nor an error of fact occasioning a miscarriage of justice with respect to the Trial Chamber's finding that criminal intent and liability were not established in respect of the pre-8 April 1994 events.[1979] Ngirumpatse further submits that the Trial Chamber rightly refused to infer genocidal intent from the pre-8 April 1994 evidence and recalls that an inference of guilt must be the only reasonable inference available from the evidence.[1980] Ngirumpatse also claims that the Prosecution relies solely on portions of testimonies which were not credible to support its position.[1981]

734. Ngirumpatse further adds that the events highlighted by the Prosecution occurred in a context of war[1982] and that in previous cases the Tribunal has already determined that such evidence did not prove the existence of a genocidal plan to kill Tutsis.[1983]

735. Karemera responds that the Prosecution fails to demonstrate any error on the part of the Trial Chamber and only attempts to relitigate adjudicated issues.[1984] He submits that the Trial Chamber correctly concluded that the pre-8 April 1994 evidence did not establish his intent to commit crimes covered by the Statute.[1985] According to him, the holistic approach proposed by the Prosecution would ultimately lead to convictions for crimes which were not proven beyond reasonable doubt.[1986]

736. The Prosecution replies that a trial chamber is not bound by decisions of other trial chambers and that findings related to pre-8 April 1994 events in other cases could not preclude the Trial Chamber from making different findings in the present case.[1987]

737. The Appeals Chamber recalls that, as a general rule, it does not address alleged errors that have no impact on the conviction or sentence.[1988] However, the Appeals Chamber considers that the

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[1977] Ngirumpatse Response Brief, paras. 201-247.
[1978] Ngirumpatse Response Brief, para. 202.
[1979] Ngirumpatse Response Brief, paras. 205, 206, 236, 237.
[1980] Ngirumpatse Response Brief, paras. 219-222.
[1981] Ngirumpatse Response Brief, paras. 223-230. With respect to the arguments related to Witnesses ALG, UB, GOB, Frank Claeys, and GBU, Ngirumpatse repeats the arguments that he raises in his appeal brief. *See generally*, Ngirumpatse Appeal Brief, paras. 82-195. The Appeals Chamber has dealt with them elsewhere in this Judgement.
[1982] Ngirumpatse Response Brief, para. 207.
[1983] Ngirumpatse Response Brief, paras. 210-218, 231, *referring to* the *Bagosora et al.* Trial Judgement, *Ndindiliyimana et al.* Trial Judgement, *Bizimungu et al*. Trial Judgement, *Ntagerura et al.* Trial Judgement, *Renzaho* Trial Judgement.
[1984] Karemera Response Brief, paras. 66, 71.
[1985] Karemera Response Brief, paras. 68-70. *See also* AT. 11 February 2014 pp. 32-34.
[1986] Karemera Response Brief, para. 68.
[1987] Prosecution Reply Brief (Ngirumpatse), paras. 44-49. The Prosecution further adds that Ngirumpatse's submissions as to the credibility of its witnesses were already raised in Ngirumpatse Appeal Brief and addressed in the Prosecution Response Brief (Ngirumpatse). *See* Prosecution Reply Brief (Ngirumpatse), para. 50.

question whether Karemera and Ngirumpatse should be held responsible for the crime of conspiracy also on the basis of conduct prior to 8 April 1994 might have an impact on the scope of their convictions. Therefore, contrary to Ngirumpatse's claim, the Appeals Chamber considers that the Prosecution's Fourth Ground of Appeal is admissible.

738. The Trial Chamber found that Ngirumpatse was involved in the decision-making process resulting in the training of the *Interahamwe*, the distribution of weapons to the *Interahamwe*, and the stockpiling of weapons for distribution to the *Interahamwe* but it concluded that the Prosecution had not proved beyond a reasonable doubt that these actions were aimed at killing Tutsi civilians.[1989] The Trial Chamber further found that Karemera and/or Ngirumpatse participated in several rallies with other authorities and the *Interahamwe* between October 1993 and January 1994.[1990] However, the Trial Chamber found that the Prosecution failed to establish that, during this period, Karemera and/or Ngirumpatse either supported or delivered speeches calling for the killing of all Tutsis or speeches serving more generally a genocidal ideology to massacre Tutsis.[1991]

739. The Trial Chamber also observed that the term "Hutu Power" was to be understood as reflecting a general opposition to the Arusha Accords.[1992] However, the Trial Chamber did not consider "Hutu Power" to be synonymous with a genocidal ideology to massacre Tutsis and concluded that: "[i]f the Prosecution intended the term to be interpreted in this manner, it should have expressly stated this in the Indictment".[1993]

740. The Appeals Chamber recalls that, when based on circumstantial evidence, the finding of a conspiracy must be the only reasonable inference based on the totality of the evidence.[1994] The

[1988] *See*, *e.g.*, *Renzaho* Appeal Judgement, para. 251; *Krajišnik* Appeal Judgement, para. 20; *Martić* Appeal Judgement, para. 17.
[1989] Trial Judgement, paras. 444, 448, 450, 454.
[1990] Trial Judgement, paras. 502-599.
[1991] Trial Judgement, paras. 535, 537, 552, 553, 567, 568, 598, 599. The Trial Chamber found that Ngirumpatse did not attend and Karemera "arrived late and did not address the audience" at the rally held at Nyamirambo Stadium in Kigali on or about 23 October 1993, where speeches were made that characterized Tutsis as accomplices of "the enemy". *See* Trial Judgement, paras. 535, 537. The Trial Chamber found that, sometime between October and November 1993, Karemera and Ngirumpatse participated in a rally at Umuganda Stadium in Gisenyi together with Colonel Théoneste Bagosora and thousands of people but the Prosecution failed to prove that those who addressed the crowd spoke of their opposition to the Arusha Accords and exhorted the crowd to combat the enemy. *See* Trial Judgement, paras. 552, 553. The Trial Chamber found that an MRND party rally, espousing the cause of Hutu Power, took place at Nyamirambo Stadium in Kigali on 7 November 1993. It found that Karemera, Ngirumpatse, and leading MRND politicians addressed the public and the *Interahamwe* provided entertainment. The Trial Chamber also accepted that a rally took place on 16 January 1994 at Nyamirambo Stadium and that Karemera and Ngirumpatse attended the rally and addressed the audience. Members of the *Interahamwe* participated in the rally and the rally espoused the cause of Hutu Power. The Trial Chamber however decided that the Prosecution failed to prove that the rally called for the killing of all Tutsis or that "*Tumbatsembatsembe*" was chanted during the rally. *See* Trial Judgement, paras. 567, 568, 598, 599.
[1992] Trial Judgement, paras. 513-514.
[1993] Trial Judgement, para. 514.
[1994] *Seromba* Appeal Judgement, para. 221; *Nahimana et al.* Appeal Judgement, para. 896.

Appeals Chamber observes that the Trial Chamber considered evidence of the pre-8 April 1994 events but expressly declined to find that the only reasonable inference to be drawn from this evidence was that Karemera and Ngirumpatse intended the crimes covered by the Statute to be committed. The Trial Chamber explained its reasoning as follows:

> In light of the ongoing conflicts with other political parties and the RPF, and the assassination of political leaders, the Chamber considers that it is also reasonable to infer that the Accused and other MRND leaders were merely seeking to protect themselves and their supporters from attacks from other opposition political parties, or the RPF, by forming, expanding, training, and arming the *Interahamwe* prior to 8 April 1994.[1995]

741. The Appeals Chamber is satisfied that the considerations identified by the Trial Chamber reasonably support its finding on the reasonable possibility that Karemera's and Ngirumpatse's involvement in the pre-8 April 1994 events had not been conducted with the intent that crimes covered by the Statute be committed. Consequently, the Trial Chamber did not err in concluding that it was not the only reasonable inference that could be drawn from the circumstantial evidence that Karemera and Ngirumpatse possessed the requisite *mens rea* for a conviction for conspiracy to commit genocide in relation to the pre-8 April 1994 events.

742. For the foregoing reasons, the Appeals Chamber finds that the Prosecution has failed to demonstrate that the Trial Chamber committed any error in the assessment of the evidence which would occasion a miscarriage of justice. Accordingly, the Prosecution's Fourth Ground of Appeal is dismissed.

[1995] Trial Judgement, para. 1446.

V. IMPACT OF THE APPEALS CHAMBER'S FINDINGS ON KAREMERA'S AND NGIRUMPATSE'S SENTENCES

743. The Appeals Chamber recalls that it has reversed, Judges Pocar and Ramaroson dissenting, Ngirumpatse's conviction for aiding and abetting genocide, extermination as a crime against humanity, and murder as a serious violation of Article 3 common to the Geneva Conventions and of Additional Protocol II for the killings of Tutsis at roadblocks in Kigali through the distribution of weapons to the *Interahamwe* at the *Hôtel des Diplomates* on 11 April 1994. Accordingly, the Appeals Chamber has set aside, Judges Pocar and Ramaroson dissenting, Ngirumpatse's convictions, pursuant to Article 6(1) of the Statute, for genocide, extermination as a crime against humanity, and murder as a serious violation of Article 3 common to the Geneva Conventions and of Additional Protocol II for the killings of Tutsis at roadblocks in Kigali through the distributions of weapons in Kigali on 11 and 12 April 1994, and it has affirmed these convictions pursuant to Article 6(3) of the Statute for the killings of Tutsis committed by the Kigali *Interahamwe* at roadblocks in Kigali by 12 April 1994.

744. The Appeals Chamber has further reversed the finding that Karemera and Ngirumpatse are responsible, pursuant to Article 6(3) of the Statute, for failing to prevent or punish Théoneste Bagosora's criminal conduct in distributing weapons on 11 and 12 April 1994. However, the Appeals Chamber has affirmed Karemera's convictions for genocide, extermination as a crime against humanity, and murder as a serious violation of Article 3 common to the Geneva Conventions and of Additional Protocol II, pursuant to Article 6(3) of the Statute, for the killings of Tutsis committed by the Kigali *Interahamwe* at roadblocks in Kigali by 12 April 1994.

745. The Appeals Chamber has reversed the Trial Chamber's finding that Ngirumpatse was responsible for conspiracy to commit genocide, but has upheld the Trial Chamber's finding that Karemera was responsible for conspiracy to commit genocide by at least 25 May 1994.

746. The Appeals Chamber notes that is has affirmed Karemera's and Ngirumpatse's convictions, pursuant to Article 6(1) of the Statute, for genocide, extermination as a crime against humanity, and murder as a serious violation of Article 3 common to the Geneva Conventions and of Additional Protocol II for: (i) the killings at Bisesero from about 13 May 1994; (ii) the "mopping-up" operations in Bisesero Hills around 18 May 1994; (iii) the killings of Tutsis in Gitarama that followed the Murambi Training School meeting on 18 April 1994; (iv) the killings in Butare prefecture which followed the speech of President Théodore Sindikubwabo at the installation on 19 April 1994 of Sylvain Nsabimana as the Prefect of Butare Prefecture, Judge Tuzmukhamedov dissenting; (v) the continued killings that resulted from the 27 April 1994 Letter

and the 25 May 1994 Directive; (vi) the further killings of Tutsis that resulted from the 25 May 1994 Letter; (vii) the further killings of Tutsis that resulted from Karemera's Mid-June 1994 Instructions for the use of funds; and (viii) the continued killings of Tutsis that resulted from the creation of the Fund. The Appeals Chamber has reversed the Trial Chamber's finding that Karemera and Ngirumpatse are responsible, pursuant to Article 6(3) of the Statute, for the killings committed in Gitarama by the Kigali *Interahamwe* following the Murambi Training School meeting on 18 April 1994.

747. The Appeals Chamber has also upheld, Judge Tuzmukhamedov dissenting in part, Karemera's and Ngirumpatse's convictions pursuant to Article 6(1) of the Statute for direct and public incitement to commit genocide in relation to the 3 May 1994 Meeting and the 16 May 1994 Meeting.

748. The Appeals Chamber has further upheld Karemera's and Ngirumpatse's convictions, pursuant to Article 6(1) of the Statute, for genocide for the rapes and sexual assaults committed against Tutsi women in Ruhengeri prefecture during early-mid April 1994, Kigali-*ville* prefecture during April 1994, Butare prefecture during mid-late April 1994, Kibuye prefecture during May-June 1994, Gitarama prefecture during April and May 1994, and elsewhere throughout Rwanda. The Appeals Chamber has also affirmed Karemera's and Ngirumpatse's convictions, pursuant to Article 6(1) of the Statute, for rape as a crime against humanity for the rapes committed against Tutsi women in Ruhengeri prefecture during early-mid April 1994, Kigali-*ville* prefecture during April 1994, Butare prefecture during mid-late April 1994, Kibuye prefecture during May-June 1994, Gitarama prefecture during April and May 1994, and elsewhere throughout Rwanda. The Appeals Chamber has reversed the Trial Chamber's finding that Karemera and Ngirumpatse are responsible, pursuant to Article 6(3) of the Statute, for the rapes and sexual assaults of Tutsi women committed by the Kigali and Gisenyi *Interahamwe* outside Kigali from April to June 1994. However, it has affirmed the Trial Chamber's finding that they are responsible, pursuant to Article 6(3) of the Statute, for the rapes and sexual assaults of Tutsi women committed by the Kigali *Interahamwe* in Kigali from April to June 1994.

749. The Appeals Chamber notes that the reversal of very serious crimes in some instances could provide a reason to review and to reduce the sentence. The Appeals Chamber considers, however, that Karemera and Ngirumpatse remain convicted of extremely serious crimes including genocide, direct and public incitement to commit genocide, extermination and rape as crimes against humanity, and murder as a serious violation of Article 3 common to the Geneva Conventions and of Additional Protocol II. In these circumstances, the Appeals Chamber considers that its findings do not impact upon Karemera's sentence. Accordingly, the Appeals Chamber affirms Karemera's

sentence of life imprisonment. Similarly, the Appeals Chamber, Judges Tuzmukhamedov and Afande dissenting, considers that its findings do not impact upon Ngirumpatse's sentence. As a consequence, the Appeals Chamber, Judges Tuzmukhamedov and Afande dissenting, affirms Ngirumpatse's sentence of life imprisonment.

VI. DISPOSITION

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

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

NOTING the written submissions of the parties and their oral arguments presented at the appeal hearing on 10 and 11 February 2014;

SITTING in open session;

GRANTS Karemera's Thirty-First Ground of Appeal, in part, and Ngirumpatse's Forty-Fourth Ground of Appeal, in part, and **REVERSES** the Trial Chamber's finding that Karemera and Ngirumpatse bear superior responsibility over the Kigali and/or Gisenyi *Interahamwe* in relation to killings following the Murambi Training School meeting on 18 April 1994 and the rapes and sexual assaults of Tutsi women committed outside Kigali from April to June 1994;

GRANTS, Judges Pocar and Ramaroson dissenting, Ngirumpatse's Forty-Second and Forty-Seventh Grounds of Appeal, in part, **SETS ASIDE** the finding that he is responsible pursuant to Article 6(1) of the Statute as an aider and abettor and a member of a joint criminal enterprise based on the distributions of weapons in Kigali on 11 and 12 April 1994, and **AFFIRMS** Ngirumpatse's convictions for genocide, extermination as a crime against humanity, and murder as a serious violation of Article 3 common to the Geneva Conventions and of Additional Protocol II pursuant to Article 6(3) of the Statute for the killings committed by the Kigali *Interahamwe* in Kigali by 12 April 1994;

GRANTS, in part, Karemera's Twelfth and Thirteenth Grounds of Appeal, and Ngirumpatse's Forty-Seventh Ground of Appeal, in part, and **REVERSES** the finding that Karemera and Ngirumpatse are responsible pursuant to Article 6(3) of the Statute for the distribution of weapons by Bagosora;

GRANTS Ngirumpatse's Twenty-Eighth Ground of Appeal, in part, as well as his Forty-Fifth Ground of Appeal, in part, and **REVERSES** the Trial Chamber's finding that he could be held responsible under Count 1 of the Indictment for conspiracy to commit genocide;

REVERSES, *proprio motu*, Karemera's and Ngirumpatse's convictions on the basis of aiding and abetting in relation to the events at the Murambi Training School as the convictions on the basis of joint criminal enterprise fully encapsulate their responsibility;

REVERSES, *proprio motu*, Karemera's convictions on the basis of aiding and abetting in relation to the issuance of the 25 May 1994 Letter and the mid-June 1994 Instructions as the convictions on the basis of instigating fully encapsulate his responsibility;

DISMISSES, Judge Tuzmukhamedov dissenting in part, Karemera's and Ngirumpatse's appeals in all other respects;

GRANTS, in part, the Prosecution's First Ground of Appeal and **FINDS** that the Trial Chamber erred in not entering a conviction against Karemera under Count 1 of the Indictment for conspiracy to commit genocide;

GRANTS, Judges Tuzmukhamedov and Afanđe dissenting, the Prosecution's Third Ground of Appeal and **FINDS** that Ngirumpatse bears superior responsibility for the "mopping-up" operation and the resulting killings in Bisesero Hills;

DISMISSES the Prosecution's appeal in all other respects;

AFFIRMS Karemera's sentence of life imprisonment imposed by the Trial Chamber, subject to credit being given under Rules 101(C) and 107 of the Rules for the period he has already spent in detention since his arrest on 5 June 1998;

AFFIRMS, Judges Tuzmukhamedov and Afanđe dissenting, Ngirumpatse's sentence of life imprisonment imposed by the Trial Chamber, subject to credit being given under Rules 101(C) and 107 of the Rules for the period he has already spent in detention since his arrest on 5 June 1998;

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

ORDERS that, in accordance with Rule 103(C) and Rule 107 of the Rules, Karemera and Ngirumpatse are to remain in the custody of the Tribunal pending the finalization of arrangements for their transfer to the State or States where their sentences will be served.

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

Theodor Meron	Fausto Pocar	Arlette Ramoroson
Presiding Judge	Judge	Judge

Bakhtiyar Tuzmukhamedov	Koffi Kumelio A. Afande
Judge	Judge

Judge Pocar appends partially dissenting and separate opinions.

Judge Ramaroson appends a partially dissenting opinion.

Judge Tuzmukhamedov appends a partially dissenting opinion.

Judge Afande appends separate, partially dissenting, and dissenting opinions.

Done this 29th day of September 2014 at Arusha, Tanzania.

[Seal of the Tribunal]

VII. PARTIALLY DISSENTING AND SEPARATE OPINIONS OF JUDGE POCAR

A. Partially Dissenting Opinion

1. In this Judgement, the Appeals Chamber reverses Ngirumpatse's conviction for aiding and abetting genocide, extermination as a crime against humanity, and murder as a serious violation of Article 3 common to the Geneva Conventions and of Additional Protocol II for the killings of Tutsis at roadblocks in Kigali through the distribution of weapons to the *Interahamwe* at the *Hôtel des Diplomates* in Kigali on 11 April 1994.[1] Moreover, given that the Trial Chamber concluded that Ngirumpatse's consent to the distribution of weapons represented one of his two significant contributions to the furtherance of the common purpose of the joint criminal enterprise,[2] the Appeals Chamber further finds that the Trial Chamber erred in finding that Ngirumpatse participated in a joint criminal enterprise as of 11 April 1994 and, therefore, sets aside his conviction for committing, through a joint criminal enterprise, genocide, extermination as a crime against humanity, and murder as a serious violation of Article 3 common to the Geneva Conventions and of Additional Protocol II for the killings at roadblocks in Kigali that resulted from the distribution of weapons by other members of the joint criminal enterprise on 12 April 1994.[3] I respectfully disagree with both the reasoning and the conclusions of the Majority of the Appeals Chamber and its consequent reversal of Ngirumpatse's convictions for the killings that resulted from the distribution of weapons.

2. The reversal of Ngirumpatse's convictions is based on the Majority's conclusion that the Trial Chamber erred in finding that the only reasonable inference to be drawn from the circumstantial evidence was that, on 11 April 1994, Ngirumpatse consented to the distribution of weapons to the *Interahamwe*.[4] In particular, the Majority claims that "the Trial Chamber did not explain why or how the knowledge that persons manning roadblocks had requested weapons or his

[1] Appeal Judgement, paras. 386, 387.
[2] The Trial Chamber found that Ngirumpatse made a significant contribution to the common purpose of the joint criminal enterprise through: (i) his consent to the distribution of weapons to the *Interahamwe* at the *Hôtel des Diplomates* in Kigali on 11 April 1994 despite the foreseeabilitiy that the weapons would also be used to kill Tutsi civilians; and (ii) his intimidation, during a meeting at the Murambi Training School on 18 April 1994, of local officials of the territorial administration of Gitarama Prefecture to stop protecting Tutsis and to allow the *Interahamwe* to continue killings Tutsis. *See* Trial Judgement, paras. 745, 860, 1450(1), 1450(3), 1458. *See also* Appeal Judgement, para. 137.
[3] Appeal Judgement, paras. 386, 387. Consequently, the Appeals Chamber also reverses Ngirumpatse's conviction for committing, through his participation in a joint criminal enterprise, genocide, exterminations as a crime against humanity, and murder as a serious violation of Article 3 common to the Geneva Conventions and of Additional Protocol II for the killings that followed the removal of Habyalimana as Prefect of Butare Prefecture, which occurred at a meeting of the Interim Government on 17 April 1994. *See* Appeal Judgement, paras. 402, 403.
[4] Appeal Judgement, para. 386.

staying at the hotel at the relevant time could lead to the only reasonable inference that Ngirumpatse consented to the distribution of weapons on 11 April 1994."[5]

3. In its legal findings, the Trial Chamber found that "weapons were distributed to the *Interahamwe* at the *Hôtel des Diplomates* in Kigali on 11 April 1994" and that "[t]he distribution occurred with the consent of Ngirumpatse".[6] It further considered "the only reasonable inference to be that Ngirumpatse, as Chairman of the MRND Executive Bureau, aided and abetted the killings at roadblocks in Kigali through the distribution of weapons on 11 April 1994" and that "[t]he provision of weapons on 11 April 1994 substantially contributed to the genocide by providing the physical perpetrators of the killings with the material means to kill Tutsis."[7] In support of its legal findings, the Trial Chamber found – in its factual findings – that weapons were distributed to *Interahamwe secteur* leaders on 11 April 1994 at the *Hôtel des Diplomates* in the presence of Colonel Théoneste Bagosora, Callixte Nzabonimana – an MRND minister of the Interim Government – and others.[8] It further found that Ngirumpatse was present at the *Hôtel des Diplomates* on that day[9] and, therefore, that Ngirumptase consented to the distribution of weapons.[10] The Trial Chamber was convinced that "weapons could not have been distributed to the *Interahamwe* without the consent of the MRND Executive Bureau."[11] To arrive to this conclusion, the Trial Chamber considered its findings that: (i) the MRND Executive Bureau controlled the *Interahamwe* in Kigali; and (ii) MRND leaders were informed by *Interahamwe* leaders that persons manning roadblocks had requested weapons.[12]

1. <u>The Majority's reasoning is wholly unconvincing</u>

4. In paragraphs 383 through 385 of the Appeal Judgement, the Majority simply notes some of the Trial Chamber's findings without itself finding that the Trial Chamber erred. Only with respect to two of the Trial Chamber's findings, the Majority states that the Trial Chamber did not discuss or explain its findings. However, even in these two instances, the Majority does not find that the Trial Chamber erred. Subsequently, however, the Majority comes to the conclusion, in paragraphs 386 of the Appeal Judgement, that the Trial Chamber erred in finding that the only reasonable inference to be drawn from the circumstantial evidence was that, on 11 April 1994, Ngirumpatse consented to

[5] Appeal Judgement, para. 385.
[6] Trial Judgement, para. 1610.
[7] Trial Judgement, para. 1613.
[8] Trial Judgement, paras. 739, 745. *See also* Appeal Judgement, para. 381.
[9] Trial Judgement, para. 739. *See also* Appeal Judgement, para. 381.
[10] Trial Judgement, para. 745.
[11] Trial Judgement, para. 740. *See also* Appeal Judgement, para. 382.
[12] Trial Judgement, para. 740, *referring to* Trial Judgement sections IV.1.3 (Factual Findings – Events prior to 8 April 1994: Expansion, Structure and Control of the *Interahamwe* Nationwide) and V.1.4.1 (Factual Findings – Events from 8 April to Mid-July 1994: Pacification Tours to Roadblocks). *See also* Appeal Judgement, para. 382.

the distribution of weapons to the *Interahamwe*, without explaining why a reasonable trier of fact could not have come to this conclusion. Accordingly, I am of the view that the Majority's reasoning is wholly unconvincing, given that it does not properly explain the basis of its conclusion.

5. In particular, it seems that the Majority principally attacks the Trial Chamber's findings that the MRND Executive Bureau controlled the *Interahamwe* in Kigali and that MRND leaders were informed by *Interahamwe* leaders that persons manning roadblocks had requested weapons to reach the conclusion that the Trial Chamber erred in finding that the only reasonable inference to be drawn from the circumstantial evidence was that, on 11 April 1994, Ngirumpatse consented to the distribution of weapons to the *Interahamwe*.[13] However, for the reasons expressed below, the Majority falls short of demonstrating that the Trial Chamber erred. Moreover, its analysis fails to discuss some relevant other circumstantial evidence on which the Trial Chamber relied and suffers from several deficiencies.

(a) Trial Chamber's finding that the MRND Executive Bureau, including Ngirumpatse, controlled the *Interahamwe* in Kigali

6. With respect to the first Trial Chamber's finding that the MRND Executive Bureau controlled the *Interahamwe* in Kigali, the Trial Chamber found that Ngirumpatse was the ultimate authority over the Kigali *Interahamwe* and exerted his authority as National President of the MRND and head of its Executive Bureau.[14] While the Majority raises three challenges with respect to this finding, it does not demonstrate that the Trial Chamber erred in reaching this finding.

7. First, the Majority claims that "Article 51 of the MRND Statute enumerates several political functions such as the duty to advise, direct, and represent the political party, but does not refer to any power or authority to either consent to or forbid the distribution of weapons."[15] However, this remark is irrelevant as the Trial Chamber did not find that Ngirumpatse had *de jure* authority over the Kigali *Interahamwe*.[16]

8. Second, with respect to Ngirumpatse's *de facto* authority over the Kigali *Interahamwe*, the Majority only mentions evasively that "the Trial Chamber addressed Ngirumpatse's *de facto* authority".[17] In my view, this does not amount to finding that the Trial Chamber erred in this respect. Moreover, the Majority fails to consider that the Trial Chamber explicitly found that

[13] Appeal Judgement, paras. 383-385.
[14] Trial Judgement, paras. 269, 271.
[15] Appeal Judgement, para. 383, *referring to* Trial Judgement, para. 1544, *referring to* Ngirumpatse Defence Exhibit 2 (MRND Statute).
[16] Trial Judgement, para. 1545.
[17] Appeal Judgement, para. 383.

"Ngirumpatse was an influential person with substantial *de facto* authority in Rwanda during the genocide" and "that he was the individual with the greatest *de facto* authority over the *Interahamwe* in Kigali […] and that he possessed considerable *de facto* authority over administrative personnel in the ministries controlled by the MRND, such as Col[onel] Théoneste Bagosora."[18]

9. Third, the Majority criticises the evidence which forms one of the basis of the Trial Chamber's finding that Ngirumpatse was the individual with the greatest *de facto* authority over the *Interahamwe* in Kigali and that he possessed considerable *de facto* authority over administrative personnel in the ministries controlled by the MRND, such as Colonel Théoneste Bagosora.[19] More specifically, the Majority submits that, while the Trial Chamber refers to Ngirumpatse's "involvement in the distribution of weapons to the *Interahamwe* and the stockpiling and concealment of weapons in Kigali for later distribution to the *Interahamwe*" to support its finding that Ngirumpatse had *de facto* authority over the Kigali *Interahamwe*, the evidence underpinning this Trial Chamber's finding is discussed elsewhere in the Trial Judgement and pertains to events prior to 8 April 1994.[20] The Majority further contends that, "while the Trial Judgement refers to evidence showing, *inter alia*, that *Interahamwe* received military training and weapons with the knowledge and endorsement of the MRND Executive Bureau, the Trial Chamber never expressly discussed whether the only reasonable conclusion to be drawn from the evidence was that Ngirumpatse's agreement to such activities was essential for their occurence."[21] The Majority, however, does not explain why the Trial Chamber should have stated that Ngirumpatse's agreement to such activities was essential for their occurrence. This criticism of the Majority remains therefore unclear. Moreover, the Majority ignores the Trial Chamber's further findings that "weapons were concealed at the instigation of Ngirumpatse and the MRND Executive Bureau".[22]

[18] Trial Judgement, para. 1550.
[19] Trial Judgement, para. 1550. *See also* Trial Judgement, para. 1546-1549, *referring*, *inter alia*, *to* Trial Judgement, paras. 153-162 (where the Trial Chamber found that the President of the party, Ngirumpatse, had actual control over the MRND), 206-271 (where the Trial Chamber found, *inter alia*, that the Kigali *Interahamwe* were well-organised along party structures and that Ngirumpatse represented the ultimate authority over the Kigali *Interahamwe* over which he exerted his authority), 273-358 (where the Trial Chamber found, *inter alia*, that starting in 1993, military training was provided to Interahamwe in military camps and elsewhere pursuant to an agreement or understanding between Ngirumpatse, other national MRND leaders, authorities in the terrestrial administration, the Minister of Defence, Bizimana, his chef de cabinet, and elements in the Rwandan Armed Forces), and 388-454 (where the Trial Chamber found, *inter alia*, that: (i) starting in 1993, weapons were widely distributed by military authorities to the *Interahamwe* – not solely for the protection of members of the Provisional National Committee – and also stockpiled for later distribution to the *Interahamwe* ; and (ii) Ngirumpatse and the MRND Executive Bureau agreed with the military authorities to distribute arms to the *Interahamwe* and stockpile arms for later distribution to the *Interahamwe*).
[20] Appeal Judgement, paras. 383, 384.
[21] Appeal Judgement, para. 384, *referring*, *inter alia*, *to* Trial Judgement, para. 446 (where the Trial Chamber held that "[t]hese circumstances, therefore, strongly suggest that the MRND Executive Bureau agreed with the military authorities to distribute arms to the *Interahamwe* and stockpile arms for later distribution. The testimony of several Prosecution witnesses supports this conclusion.").
[22] Trial Judgement, para. 450.

10. In addition, it is important to note that the Trial Chamber's finding that Ngirumpatse was the individual with the greatest *de facto* authority over the *Interahamwe* in Kigali and that he possessed considerable *de facto* authority over administrative personnel in the ministries controlled by the MRND, such as Colonel Théoneste Bagosora, is not only based on the fact that Ngirumpatse was involved in the distribution of weapons to the *Interahamwe* as well as the stockpiling and concealment of weapons in Kigali for later distribution prior to 8 April 1994, but also on the Trial Chamber's further findings that Ngirumpatse: (i) was the Chairman of the Executive Bureau of the MRND – the ultimate *de facto* authority over the *Interahamwe* in Kigali throughout the genocide – and therefore the individual in Rwanda with the most *de facto* power, influence, and authority over the *Interahamwe* during the genocide; (ii) carried out numerous activities before and during the genocide that furthered his status, influence, and *de facto* authority in Rwanda during that period, particularly over the *Interahamwe*; and (iii) in his capacity of Chairman of the Executive Bureau, agreed to provide military training to the *Interahamwe* from 1993.[23] However, the Majority fails to take into account in its reasoning these other basis underpinning the Trial Chamber's finding.

11. Accordingly, I believe that the Majority fails to demonstrate that the Trial Chamber erred in finding that Ngirumpatse was the ultimate authority over the Kigali *Interahamwe* and exerted his authority as National President of the MRND and head of its Executive Bureau.

(b) Trial Chamber's finding that the MRND leaders were informed by *Interahamwe* leaders that persons manning roadblocks had requested weapons

12. Regarding the fact that the MRND leaders were informed by *Interahamwe* leaders that persons manning roadblocks had requested weapons, the Majority claims that the "the *Interahamwe* leaders reported this information following a request made by senior officials, including Ngirumpatse, that they conduct a tour in order to 'persuade the *Interahamwe* and others manning the roadblocks to stop the killings'."[24] However, the Majority ignores the Trial Chamber's further finding that it was "convinced that Ngirumpatse, Karemera, and the other political leaders behind

[23] *See* Trial Judgement, para. 1546-1550, *referring*, *inter alia*, *to* Trial Judgement, paras. 153-162 (where the Trial Chamber found that the President of the party, Ngirumpatse, had actual control over the MRND), 206-271 (where the Trial Chamber found, *inter alia*, that the Kigali *Interahamwe* were well-organised along party structures and that Ngirumpatse represented the ultimate authority over the Kigali *Interahamwe* over which he exerted his authority), and 273-358 (where the Trial Chamber found, *inter alia*, that starting in 1993, military training was provided to Interahamwe in military camps and elsewhere pursuant to an agreement or understanding between Ngirumpatse, other national MRND leaders, authorities in the terrestrial administration, the Minister of Defence, Bizimana, his chef de cabinet, and elements in the Rwandan Armed Forces).
[24] Appeal Judgement, para. 385, *referring to* Trial Judgement, para. 714.

the Interim Government were motivated by reasons other than their genuine concern for the Tutsi population when they ordered the *Interahamwe* leaders to stop the killings at the roadblocks."[25]

13. The Majority also states that "the Trial Chamber did not explain why or how the knowledge that persons manning roadblocks had requested weapons or his staying at the hotel at the relevant time could lead to the only reasonable inference that Ngirumpatse consented to the distribution of weapons on 11 April 1994."[26] However, here again, the Majority does not consider all the circumstantial evidence underpinning the Trial Chamber's finding, which is not limited to Ngirumpatse's presence at the *Hôtel des Diplomates* in Kigali on 11 April 1994 or to his knowledge that person manning roadblocks had requested weapons.[27]

14. For the foregoing reasons, I believe that the Majority fails to demonstrate that the Trial Chamber erred in finding that the MRND leaders were informed by *Interahamwe* leaders that persons manning roadblocks had requested weapons. Thus, it also fails to demonstrate that the Trial Chamber erred in finding that the only reasonable inference to be drawn from the circumstantial evidence was that, on 11 April 1994, Ngirumpatse consented to the distribution of weapons to the *Interahamwe*.

2. A reasonable trier of fact could have concluded that the only reasonable inference to be drawn from the circumstantial evidence was that, on 11 April 1994, Ngirumpatse consented to the distribution of weapons to the *Interahamwe*

15. For the reasons explained below, I am convinced that a reasonable trier of fact could have found that the only reasonable inference to be drawn from the circumstantial evidence was that, on 11 April 1994, Ngirumpatse consented to the distribution of weapons to the Interahamwe and, therefore, that he aided and abetted the killings of Tutsis at roadblocks in Kigali through the distribution of weapons to the *Interahamwe* at the *Hôtel des Diplomates* in Kigali on 11 April 1994.

16. At the outset, I recall that "the *actus reus* of aiding and abetting 'consists of practical assistance, encouragement, or moral support which has a substantial effect on the perpetration of the crime.'"[28] Moreover, it has been clarified that "'specific direction' is not an element of aiding

[25] Trial Judgement, para. 711.
[26] Appeal Judgement, para. 385.
[27] *See infra*, paras. 15-20.
[28] *Šainović et al.* Appeal Judgement, para. 1649, *quoting Blaškić* Appeal Judgement, para. 46, in turn quoting *Blaškić* Trial Judgement, para. 283, in turn quoting *Furundžija* Trial Judgement, para. 249.

and abetting liability under customary international law."[29] I further recall that the mens rea of aiding and abetting is "the knowledge that these acts assist the commission of the offense."[30]

17. The Trial Chamber did not explain what it meant by "consent". I consider that the Trial Chamber should have given such an explanation. However, I am not convinced that the Trial Chamber's failure to fully explain its reasoning invalidates the Trial Judgement. Indeed, while the term "consent" does not feature in the Tribunal's jurisprudence on aiding and abetting, it is clear that the Trial Chamber's use of the word "consent" in the circumstances of the present case referred to providing encouragement or moral support. In other words, it is clear from the context of the Trial Chamber's finding that what it meant is that, through his consent to the distribution of weapons, Ngirumpatse encouraged the killings of Tutsis at roadblocks and that his consent to the distribution of weapons had a substantial effect on the perpetration of the crime, given that, in Kigali, the provision of weapons on 11 April 1994 substantially contributed to the genocide by providing the physical perpetrators of the killings with the material means to kill Tutsis[31] and that, as found by the Trial Chamber, thousands of Tutsi civilians were killed by the *Interahamwe* by 12 April 1994.[32]

18. In my view, a reasonable trier of fact could have found that Ngirumpatse consented to the distribution of weapons to the *Interahamwe* at the *Hôtel des Diplomates* in Kigali on 11 April 1994. In reversing Ngirumpatse's conviction for aiding and abetting the killings of Tutsis at roadblocks in Kigali through the distribution of weapons to the *Interahamwe* at the *Hôtel des Diplomates* in Kigali on 11 April 1994, the Majority focuses exclusively on a few inferences on which the Trial Chamber relied. It disregards the totality of the circumstantial evidence on which the Trial Chamber based its findings, namely that:

(i) Ngirumpatse was present at the *Hôtel des Diplomates* on 11 April 1994;[33]

(ii) weapons were distributed to *Interahamwe secteur* leaders on 11 April 1994 at the *Hôtel des Diplomates* in the presence of Colonel Théoneste Bagosora, Callixte Nzabonimana – an MRND minister of the Interim Government – and others;[34]

(iii) the MRND Executive Bureau controlled the *Interahamwe* in Kigali;[35] and

[29] *Šainović et al.* Appeal Judgement, para. 1649. *See also Šainović et al.* Appeal Judgement, paras. 1617-1648, 1650.
[30] *Šainović et al.* Appeal Judgement, para. 1649, *quoting Blaškić* Appeal Judgement, para. 46, in turn quoting *Blaškić* Trial Judgement, para. 283, in turn quoting *Furundžija* Trial Judgement, para. 249.
[31] Trial Judgement, para. 1613.
[32] Trial Judgement, para. 1612.
[33] Trial Judgement, para. 739. *See also* Appeal Judgement, para. 381.
[34] Trial Judgement, paras. 739, 745. *See also* Appeal Judgement, para. 381.

(iv) MRND leaders were informed by *Interahamwe* leaders that persons manning roadblocks had requested weapons.[36]

On the basis of this evidence, the Trial Chamber concluded that "weapons could not have been distributed to the *Interahamwe* without the consent of the MRND Executive Bureau" and Ngirumpatse.[37] In this regard, the Trial Chamber elsewhere in the Trial Judgement found that:

(i) *Interahamwe* committees were established in Kigali according to MRND party structures;[38] and

(ii) Ngirumpatse was the ultimate authority over the Kigali *Interahamwe* and exerted his authority as National President of the MRND and head of its Executive Bureau.[39] In other words, Ngirumpatse "was the individual with the greatest *de facto* authority over the *Interahamwe* in Kigali […] and […] possessed considerable *de facto* authority over administrative personnel in the ministries controlled by the MRND, such as Col[onel] Théoneste Bagosora". Moreover, he "had effective control over these groups of subordinates";[40]

19. The Trial Chamber further found that Ngirumpatse carried out numerous activities before and during the genocide that furthered his status, influence, and *de facto* authority in Rwanda during that period, particularly over the *Interahamwe*.[41] In particular, the Trial Chamber found that:

(i) in his capacity of Chairman of the Executive Bureau, Ngirumpatse agreed to provide military training to the *Interahamwe* from 1993; and[42]

(ii) Ngirumpatse was involved in the distribution of weapons to the *Interahamwe* as well as the stockpiling and concealment of weapons in Kigali for later distribution prior to

[35] Trial Judgement, para. 740, *referring to* Trial Judgement section IV.1.3 (Factual Findings – Events prior to 8 April 1994: Expansion, Structure and Control of the *Interahamwe* Nationwide). *See also* Appeal Judgement, para. 382.
[36] Trial Judgement, para. 740, *referring to* Trial Judgement section V.1.4.1 (Factual Findings – Events from 8 April to Mid-July 1994: Pacification Tours to Roadblocks). *See also* Appeal Judgement, para. 382.
[37] Trial Judgement, para. 740. *See also* Appeal Judgement, para. 382.
[38] Trial Judgement, para. 270.
[39] Trial Judgement, paras. 269, 271.
[40] Trial Judgement, paras. 1550, 1556.
[41] Trial Judgement, para. 1547.
[42] *See* Trial Judgement, paras. 1546-1550, *referring*, *inter alia*, *to* Trial Judgement, paras. 153-162 (where the Trial Chamber found that the President of the party, Ngirumpatse, had actual control over the MRND), 206-271 (where the Trial Chamber found, *inter alia*, that the Kigali *Interahamwe* were well-organised along party structures and that Ngirumpatse represented the ultimate authority over the Kigali *Interahamwe* over which he exerted his authority), and 273-358 (where the Trial Chamber found, *inter alia*, that starting in 1993, military training was provided to *Interahamwe* in military camps and elsewhere pursuant to an agreement or understanding between Ngirumpatse, other national MRND leaders, authorities in the terrestrial administration, the Minister of Defence, Bizimana, his chef de cabinet, and elements in the Rwandan Armed Forces).

8 April 1994.[43] In particular, prior to 8 April 1994, "Ngirumpatse and the MRND Executive Bureau agreed with the military authorities to distribute arms to the *Interahamwe* and stockpile arms for later distribution to the *Interahamwe*"[44] and "weapons were concealed at the instigation of Ngirumpatse and the MRND Executive Bureau" prior to 8 April 1994.[45]

20. The Trial Chamber did not expressly discuss other possible inferences. However, the Trial Chamber did not have to discuss other inferences as long as it was satisfied that the one it retained was the only reasonable one. Ngirumpatse's reference to evidence that members of other ethnic groups were killed, that the weapons were used for protection, and that a civil war was being fought against the RPF, does not call into question the fact that Ngirumpatse knew that the distribution of weapons to the *Interahamwe* at the *Hôtel des Diplomates* in Kigali on 11 April 1994 would assist the killings of Tutsis at roadblocks in Kigali and that he consented to it.

3. Conclusion

21. Consequently, I find that a reasonable trier of fact could have concluded that the only reasonable inference available from the evidence was that Ngirumpatse consented to the distribution of weapons to the *Interahamwe* at the *Hôtel des Diplomates* in Kigali on 11 April 1994 and that his consent substantially contributed to the killing of thousands of Tutsi civilians in Kigali by 12 April 1994. In light of the above, I would have upheld Ngirumpatse's conviction for aiding and abetting the killings of Tutsis at roadblocks in Kigali through the distribution of weapons to the *Interahamwe* at the *Hôtel des Diplomates* in Kigali on 11 April 1994. Given that the Trial Chamber concluded that Ngirumpatse's consent to the distribution of weapons represents one of his two significant contributions to the furtherance of the common purpose of the joint criminal enterprise,[46] I would have further upheld the Trial Chamber's finding that Ngirumpatse participated in a joint criminal enterprise as of 11 April 1994 and, therefore, upheld his conviction for committing, through a joint criminal enterprise, the killings of Tutsis at roadblocks in Kigali that resulted from the distribution of weapons by other members of the joint criminal enterprise on 12 April 1994.

B. Separate Opinion

22. The Trial Chamber convicted Karemera and Ngirumpatse of genocide, extermination as a crime against humanity, and murder as a serious violation of Article 3 common to the Geneva Conventions and of Additional Protocol II for *aiding and abetting* **and** *committing, through their*

[43] Trial Judgement, para. 448.
[44] Trial Judgement, para. 448. *See also* Trial Judgement, para. 1548.
[45] Trial Judgement, paras. 450, 1548.
[46] *See supra*, para. 1 and fn. 2.

participation in a joint criminal enterprise, the killing of Tutsi civilians in Gitarama Prefecture, which followed their participation in a meeting on 18 April 1994 at the Murambi Training School.[47] In this Judgement, the Appeals Chamber notes that the Trial Chamber's conclusion that Karemera and Ngirumpatse *aided and abetted* the killing of Tutsis in Gitarama are based *on the same facts* as its conclusion regarding Karemera's and Ngirumpatse's *liability pursuant to a joint criminal enterprise*.[48] Accordingly, the Appeals Chamber *proprio motu* finds that Karemera's and Ngirumpatse's responsibility for participating in a joint criminal enterprise fully encompasses their criminal conduct and thus does not warrant a conviction on the basis of aiding and abetting the same crimes.[49]

23. While I am in agreement with paragraph 448 of this Judgement and the Appeals Chamber's *proprio motu* overturning of these convictions for *aiding and abetting* these crimes, I feel compelled to write separately in order to clarify a number of points.

24. I believe that entering convictions for the *same crimes* and the *exact same facts* under two different modes of liability pursuant to Article 6(1) of the Statute is not possible, especially with regard to joint criminal enterprise I and aiding and abetting, given that the first mode of liability (joint criminal enterprise I) is a form of commission and the second mode of liability (aiding and abetting) is a form of assistance to the commission of a crime. Indeed, I believe that someone cannot be convicted as both a principal and an accomplice for the exact same crimes and the exact same facts. Moreover, given that these two modes of liability request different levels of *mens rea*, I find it absurd – especially in the case of a conviction for genocide – to convict someone for having genocidal intent, on one hand, and for not having it, on the other hand, with respect to the exact same facts.

25. In my view, while the Trial Chamber was correct in making legal findings on both joint criminal enterprise I and aiding and abetting, it committed an error of law in *entering convictions* under both modes of liability. Accordingly, I do not believe that the reversal of the convictions for aiding and abetting is left to the discretion of the Appeals Chamber as the language of paragraph 448 of this Judgement suggests. When faced with such an error of law, the Appeals Chamber is compelled to *proprio motu* overturn the convictions for *aiding and abetting* the crimes.

[47] Trial Judgement, paras. 1619, 1621, 1623, 1691, 1704-1706. *See also* Appeal Judgement, para. 426.
[48] Appeal Judgement, para. 448.
[49] Appeal Judgement, para. 448.

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

Done this twenty-ninth day of September 2014,
at Arusha,
Tanzania.

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Judge Fausto Pocar

[Seal of the Tribunal]

VIII. OPINION PARTIELLEMENT DISSIDENT DE LA JUGE RAMAROSON

1. Mon opinion partiellement dissidente portera sur deux points. Premièrement, la Chambre d'appel aurait dû confirmer les condamnations de Ngirumpatse basées sur la distribution d'armes le 11 avril 1994. Deuxièmement, la Chambre d'appel aurait dû condamner Karemera pour entente en vue de commettre le génocide.

Première partie

La Chambre d'appel aurait dû confirmer les condamnations de Ngirumpatse basées sur la distribution d'armes le 11 avril 1994

2. Je voudrais d'abord noter, en ce qui concerne la distribution d'armes, que j'adhère entièrement aux observations et aux conclusions faites par le Juge Pocar dans son opinion partiellement dissidente.

3. La Chambre d'appel annule la condamnation de Ngirumpatse relatif aux tueries de Tutsis aux barrages routiers à Kigali pour aide et encouragement au génocide, à l'extermination en tant que crime contre l'humanité et au meurtre en tant que violation grave de l'Article 3 commun aux Conventions de Genève et du Protocole additionnel II, à travers la distribution d'armes aux *Interahamwe* à l'Hôtel des diplomates à Kigali le 11 avril 1994.[1] En outre, compte tenu du fait que la Chambre de première instance a conclu que le consentement de Ngirumpatse à la distribution d'armes représentait une de ses contributions significatives à la mise en œuvre du but commun de l'entreprise criminelle commune, la Chambre d'appel conclut que la Chambre de première instance a erré en concluant que Ngirumpatse a participé à une entreprise criminelle commune à partir du 11 avril 1994.[2] Elle a, en conséquence, écarté la conclusion selon laquelle il est responsable au titre de l'Article 6(1) du Statut pour aide et encouragement et en tant que membre d'une entreprise criminelle commune concernant les crimes de génocide, extermination en tant que crime contre l'humanité et meurtre en tant que violation grave de l'Article 3 commun aux Conventions de Genève et du Protocole additionnel II relatif aux tueries de Tutsis aux barrages routiers de Kigali résultant de la distribution d'armes les 11 et 12 avril 1994.[3]

[1] Arrêt, par. 386, 387, 750. Cf. Opinion partiellement dissidente du Juge Pocar.
[2] Arrêt, par. 386, 387, 750. Cf. Opinion partiellement dissidente du Juge Pocar.
[3] Arrêt, par. 387, 750. Cf. Opinion partiellement dissidente du Juge Pocar.

4. Je ne peux souscrire au raisonnement et aux conclusions de la majorité relatives à la distribution d'armes. J'estime que la Chambre de première instance n'a pas commis d'erreur en concluant que Ngirumpatse a consenti à la distribution d'armes le 11 avril 1994.

5. Les conclusions de la majorité sont basées sur le fait que la Chambre de première instance aurait erré en concluant que la seule déduction raisonnable pouvant être tirée des éléments de preuve circonstancielle était que Ngirumpatse avait consenti à la distribution d'armes aux *Interahamwe* le 11 avril 1994. Je ne suis pas convaincue par le raisonnement de la majorité et je souscris entièrement aux observations faites par le Juge Pocar sur ce point.

6. Son opinion partiellement dissidente soulève à juste titre que la majorité ne parvient pas à démontrer que la Chambre de première instance a erré en concluant que Ngirumpatse avait l'autorité sur les *Interahamwe* de Kigali. La Chambre de première instance ne prétend pas que Ngirumpatse avait une autorité *de jure*, mais une autorité *de facto* sur les *Interahamwe* de Kigali. Elle a d'ailleurs expressément conclu que Ngirumpatse était une personne d'influence avec une autorité *de facto* importante au Rwanda pendant le génocide, qu'il était la personne détenant l'autorité *de facto* la plus importante sur les *Interahamwe* à Kigali et qui jouissait d'une autorité *de facto* considérable sur les membres du personnel administratif des ministères dirigés par le MRND, tel le colonel Théoneste Bagosora.[4] En outre, la Chambre de première instance s'est fondée sur les conclusions selon lesquelles (i) Ngirumpatse était le Président du bureau exécutif du MRND ; (ii) il a effectué de nombreuses activités avant et pendant le génocide pour renforcer sa stature, son influence et son autorité *de facto* au Rwanda, en particulier sur les *Interahamwe* ; et (iii) en tant que Président du bureau exécutif du MRND, il a donné son accord à l'entraînement militaire des *Interahamwe* à partir de 1993.[5]

7. L'opinion partiellement dissidente soulève également à bon droit que la majorité n'arrive pas à démontrer que la Chambre de première instance a erré en concluant que les dirigeants du MRND avaient été informés par les dirigeants des *Interahamwe* que les personnes occupant les barrages routiers avaient demandé des armes.[6] Je me réfère à la démonstration du Juge Pocar sur ce point.

8. Enfin, je souscris à la conclusion que la seule déduction raisonnable pouvant être tirée des éléments de preuve circonstancielle était que Ngirumpatse avait consenti à la distribution d'armes aux *Interahamwe* le 11 avril 1994 et, qu'en conséquence, Ngirumpatse avait aidé et encouragé les

[4] Jugement, par. 1550.
[5] Jugement, par. 1546-1550. Cf. Opinion partiellement dissidente du Juge Pocar.
[6] Opinion partiellement dissidente du Juge Pocar, par. 12-14.

tueries de Tutsis aux barrages routiers de Kigali à travers la distribution d'armes aux *Interahamwe* à l'Hôtel des diplomates à Kigali le 11 avril 1994.[7]

9. Comme l'opinion partiellement dissidente le fait remarquer, en annulant les condamnations de Ngirumpatse pour aide et assistance des tueries de Tutsis aux barrages routiers de Kigali à travers la distribution d'armes le 11 avril 1994, la majorité ne s'est appuyée que sur quelques déductions de la Chambre de première instance et n'a pas examiné d'autres éléments importants de preuve circonstancielle tels que (i) la présence de Ngirumpatse à l'Hôtel des diplomates le 11 avril 1994[8] ; (ii) la distribution d'armes aux dirigeants de secteurs des *Interahamwe* le 11 avril 1994 à l'Hôtel des diplomates en présence du colonel Bagosora, Nzabonimana – un ministre du MRND faisant partie du gouvernement intérimaire - et autres[9] ; (iii) le fait que le bureau exécutif du MRND contrôlait les *Interahamwe* de Kigali[10] ; et (iv) les dirigeants du MRND ont été informés par les dirigeants des *Interahamwe* que des personnes occupant les barrages routiers avaient demandé des armes[11]. Or, sur la base de ces éléments, la Chambre de première instance avait conclu que les armes n'auraient pas pu être distribuées aux *Interahamwe* sans le consentement du bureau exécutif du MRND et de Ngirumpatse.[12]

10. Au vu de l'ensemble des éléments de preuve circonstancielle soumis à l'appréciation de la Chambre, je suis convaincue que la seule déduction raisonnable était que Ngirumpatse a consenti à la distribution d'armes aux *Interahamwe* le 11 avril 1994 et que ce consentement a contribué significativement aux tueries de milliers de civils tutsis à Kigali autour du 12 avril 1994. La Chambre d'appel aurait donc dû confirmer la condamnation de Ngirumpatse pour avoir aidé et encouragé les tueries de Tutsis aux barrages routiers de Kigali à travers la distribution d'armes aux *Interahamwe* à l'Hôtel des diplomates à Kigali le 11 avril 1994. Pour ces mêmes raisons, j'aurai maintenu sa condamnation pour avoir commis, dans le cadre d'une entreprise criminelle commune, les tueries de Tutsis aux barrages routiers de Kigali autour du 12 avril 1994.

Deuxième partie

La Chambre d'appel aurait dû condamner Karemera pour entente en vue de commettre le génocide

11. Par ailleurs, la Chambre d'appel constate dans le présent arrêt que la Chambre de première instance a erré en omettant de prononcer une condamnation pour le crime d'entente en vue de

[7] Opinion partiellement dissidente du Juge Pocar, par. 15-20.
[8] Jugement, par. 739. Cf. Opinion partiellement dissidente du Juge Pocar, par. 18.
[9] Jugement, par. 739, 745. Cf. Opinion partiellement dissidente du Juge Pocar, par. 18.
[10] Jugement, par. 740. Cf. Opinion partiellement dissidente du Juge Pocar, par. 18.
[11] Jugement, par. 740, faisant référence à la section V.1.4.1 du Jugement. Cf. Opinion partiellement dissidente du Juge Pocar, par. 18.
[12] Jugement, par. 740.

commettre le génocide.[13] Je me rallie aux conclusions de la Chambre d'appel en ce qui concerne la question du cumul des déclarations de culpabilité pour les crimes de génocide et le crime d'entente en vue de commettre le génocide. Cependant, j'estime que la Chambre d'appel aurait dû entrer une condamnation pour entente en vue de commettre le génocide, au lieu de se limiter au constat de l'erreur de la Chambre de première instance.

I. Sur le cumul des déclarations de culpabilité pour génocide et entente en vue de commettre le génocide

12. La Chambre de première instance a observé que le crime d'entente en vue de commettre le génocide a un *actus reus* différent du crime de génocide et que les actes ou omissions qui sous-tendent ces deux crimes sont distincts.[14] La Chambre d'appel, d'accord avec ce raisonnement, a cependant conclu que la Chambre de première instance a erré en droit en refusant d'entrer en condamnation à l'encontre de Karemera sous le chef 1 de l'acte d'accusation pour entente en vue de commettre le génocide.[15]

13. La Chambre d'appel estime à juste titre que la Chambre de première instance n'a pas erré en concluant que ces crimes étaient distincts au titre des Articles 2(3)(a) et 2(3)(b) du Statut et que les comportements qui caractérisent les deux crimes sont différents.[16] Ce faisant, elle s'est référée à l'arrêt *Gatete* rendu le 9 octobre 2012. En citant cet arrêt, la Chambre d'appel a considéré que le caractère formel du crime d'entente en vue de commettre le génocide n'élimine pas la nécessité de prononcer une déclaration de culpabilité du chef de ce crime lorsque le génocide a aussi été commis par l'accusé, la répression du crime de génocide ne revenant pas à punir aussi l'accord conclu en vue de commettre le génocide.[17]

14. Le Statut a d'ailleurs expressément incriminé l'entente en vue de commettre le génocide qui postule une résolution d'agir sur laquelle des personnes se sont accordées en vue de commettre le génocide.[18] Tandis que le crime de génocide postule la commission des actes énumérés dans l'Article 2(2) Statut.[19] La Chambre de première instance était donc tenue de prononcer les déclarations de culpabilité pour les crimes distincts d'entente en vue de commettre le génocide et de génocide dont la preuve a été rapportée afin de rendre pleinement compte des actes criminels de Karemera.

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[13] Arrêt, par. 713, 750.
[14] Jugement, par. 1709.
[15] Arrêt, par. 710, 711.
[16] Arrêt, par. 710.
[17] Arrêt, par. 711. *Voir également* Arrêt *Gatete*, par. 262.
[18] Arrêt *Seromba*, par. 218.
[19] Arrêt *Nahimana*, par. 492.

15. Or, bien que concluant à l'existence de deux crimes distincts, je ne suis pas d'accord sur le fait que la majorité estime que « dans les circonstances de la présente affaire » il n'est pas nécessaire de prononcer une condamnation pour entente en vue de commettre le génocide en appel.[20]

II. L'entrée en condamnation pour la première fois en appel

16. J'estime que la Chambre d'appel aurait dû entrer une condamnation pour entente en vue de commettre le génocide à l'encontre de Karemera, au lieu de se limiter au constat de l'erreur de la Chambre de première instance. Non seulement la Chambre d'appel a la compétence pour infirmer les acquittements, mais il est de plus d'une importance primordiale que cette déclaration de culpabilité soit reportée dans le dispositif, car seul au dispositif s'attache l'autorité de la chose jugée.[21] En outre, il convient de noter que le Procureur a à juste titre demandé que Karemera soit déclaré coupable d'entente.[22] Mais compte tenu du fait que Karemera encourt la peine maximale d'emprisonnement à vie, il n'a pas demandé « l'alourdissement » de la peine.[23] Ce qui à mon sens paraît logique. En conséquence, j'adopte son point de vue, estimant que la condamnation à vie englobe la condamnation pour entente en vue de commettre le génocide.

Fait en français et en anglais, la version française faisant foi.

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Juge Arlette Ramaroson

Le 29 septembre 2014
Arusha (Tanzanie)

[Sceau du Tribunal]

[20] Arrêt, par. 713.
[21] Voir mon opinion dissidente relative à l'arrêt *Šainović et al.*, notamment par. 5, 8.
[22] Mémoire d'appel du Procureur, par. 40.
[23] Mémoire d'appel du Procureur, par. 40.

IX. PARTIALLY DISSENTING OPINION OF JUDGE TUZMUKHAMEDOV

A. Introduction

1. In this Judgement the Majority upholds, *inter alia*, Karemera's and Ngirumpatse's convictions, pursuant to the basic form of joint criminal enterprise (JCE), with regard to the killings in Butare Prefecture following the speech of Interim President Théodore Sindikubwabo at the installation ceremony of Sylvain Nsabimana as the new Prefect of Butare Prefecture.

2. The Majority, furthermore, confirms Ngirumpatse's conviction of direct and public incitement to commit genocide, *inter alia*, in relation to a speech delivered by Sindikubwabo at a meeting in Kibuye on 16 May 1994.

3. Moreover, the Majority posits that the Trial Chamber erred in finding that Ngirumpatse was not to be held responsible as a superior for the crimes committed by the Gisenyi *Interahamwe* during the "mopping-up" operation in Bisesero around 18 June 1994.

4. Finally, notwithstanding the outcome of this Judgement regarding the scope of Ngirumpatse's criminal liability, the Majority declines to reduce Ngirumpatse's sentence.

5. For the reasons I shall elaborate upon herein, I respectfully disagree with the Majority's conclusions as set out above.

B. The Killings Following the Installation Ceremony on 19 April 1994

6. The Majority upholds the convictions of Karemera and Ngirumpatse, pursuant to the basic form of JCE, with regard to the killings that occurred in Butare Prefecture following the Interim President Sindikubwabo's speech at Nsabimana's installation ceremony as the new Prefect of Butare Prefecture on 19 April 1994.[1] Respectfully, I disagree that Sindikubwabo's speech, which urged the population of Butare to kill Tutsis, may be attributed to the same JCE of which the appellants were found to be members.

7. According to the Majority, Karemera and Ngirumpatse's membership in the JCE commenced with their participation in the meeting at Murambi Training School in Gitarama Prefecture on 18 April 1994.[2] However, the Trial Chamber found that the Interim Government's decision to replace the former Prefect of Butare, Jean-Baptiste Habyalimana, which is inherently

[1] Appeal Judgement Section III.G.
[2] Appeal Judgement paras. 156, 387, 402.

linked to Nsabimana's installation ceremony at which Sindikubwabo made his speech,[3] had already been made on 17 April 1994.[4] In other words, when Karemera and Ngirumpatse joined the JCE, just one day before the installation ceremony, the plan to replace the prefect had already been set in motion. Nothing in the trial record evinces any involvement by either appellant facilitating or modifying this plan that was to come to fruition the very next day. In fact, although they were high-ranking members of the MRND party at the time, neither appellant was a member of the Interim Government that was responsible for the replacement of the Prefect of Butare Prefecture, nor were they present during the installation ceremony or aware of the content of Sindikubwabo's speech.

8. This absence of an evidentiary nexus between the appellants joining the JCE on 18 April 1994 and the criminal acts carried out as a result of the installation on 19 April 1994 is problematic for their convictions and renders them unsafe. It is to be recalled that only criminal acts carried out in furtherance of the common criminal plan are imputable to an accused under the basic form of JCE, which is the mode of responsibility employed by the Trial Chamber to hold the appellants responsible for the killings that ensued from the installation ceremony.

9. In this vein, I recall this Appeals Chamber's verdict in the case of *Mugenzi and Mugiraneza,*[5] which involved similar factual findings concerning the removal of the prefect of Butare Prefecture and the installation ceremony of his successor on 19 April 1994.[6] In my view, it is particularly germane to note the Appeals Chamber's conclusion that no reasonable trier of fact could have concluded that the only reasonable inference available from the circumstantial evidence adduced by the Prosecution was that Mugenzi and Mugiraneza - both of whom were in fact *ministers* within the Interim Government who were *physically present* during the installation ceremony[7] - shared a common criminal purpose of killing Tutsis in Butare Prefecture.[8] Applying this standard to the circumstantial evidentiary record in the case at bar, I find it beggars belief to conclude that any reasonable trier of fact could find that the appellants, who were even more politically and physically remote from the events of 19 April 1994, could be held responsible beyond reasonable doubt for the events of that day.

10. Finally, it should be underscored that a careful reading of the evidentiary record in this case reveals that the Trial Chamber's finding that Interim President Sindikubwabo was already a

[3] Trial Judgement, paras. 889, 892, 1625.
[4] Trial Judgement, paras. 861, 863, 1450(2).
[5] *Justin Mugenzi and Prosper Mugiraneza v. The Prosecutor*, Case No. ICTR-99-50-A, Judgement, 4 February 2013.
[6] *Cf. The Prosecutor v. Casimir Bizimungu et al.,* Case No. ICTR-99-50-T, Judgement, 30 September 2011, paras. 1222, 1223, 1237, 1241, 1246, 1322, 1364, 1366, 1367.
[7] *Ibid* paras. 7, 16, 1882, 1946, 1986.
[8] *Justin Mugenzi and Prosper Mugiraneza v. The Prosecutor*, Case No. ICTR-99-50-A, Judgement, 4 February 2013, paras. 138, 139.

member of the same JCE as Karemera and Ngirumpatse on 19 April 1994 is unsubstantiated.[9] In my reading of the Trial Judgement, it would appear that the Trial Chamber reached that conclusion based simply on the close chronology of the events of 18 and 19 April 1994, the prominence of the appellants within the MRND party and the existence of genocidal intent in relation to both events. I have already commented on what I view to be the negligible probative value of Karemera and Ngirumpatse's positions as high-ranking party members, who were not members of the Interim Government and who did not even attend the installation ceremony, in my treatment of the *Mugenzi and Mugiraneza* judgement above. To this I would add that given the tragically chaotic circumstances that prevailed throughout Rwanda during April 1994, whereby multiple acts of genocide were occurring in parallel throughout the country by or at the behest of numerous perpetrators operating with varying degrees of coordination, the mere temporal proximity of Karemera and Ngirumpatse's decision to join a particular JCE on 18 April 1994 cannot lead to the ineluctable conclusion that an event the following day was carried out pursuant to that self-same JCE. Considering the fact that several political figures had similar genocidal intent during the relevant period,[10] it would be difficult to accept, on the basis of the findings of the Trial Chamber, that the only possible conclusion is that they *shared* their genocidal intent. It is important to recall that in order to prove that a JCE for committing genocide exists, it is not sufficient to show that the co-perpetrators had the *same* genocidal intent but rather that they also *shared* it.[11]

11. Consequently, I cannot concur with the Majority's position that the Trial Chamber's factual findings substantiate Karemera's and Ngirumpatse's convictions, on the basis of their participation in the imputed JCE, for the killings following Interim President Sindikubwabo's speech during the installation ceremony of Nsabimana on 19 April 1994. I would therefore reverse the convictions entered by the Trial Chamber in this regard.

C. Ngirumpatse's Conviction for Direct and Public Incitement to Commit Genocide

12. The Trial Chamber convicted Ngirumpatse of direct and public incitement to commit genocide, pursuant to the JCE mode of liability, *inter alia*, in relation to a speech delivered by Interim President Sindikubwabo at a meeting held in Kibuye on 16 May 1994.[12] I respectfully disagree with the Majority's conclusion that the Trial Chamber did not err in this regard. For

[9] *See* Trial Judgement, paras. 1451, 1603, 1627, 1628.
[10] *See*, *e.g.*, Trial Judgement, paras. 194, 249, 341, 437, 831, 936.
[11] *Prosecutor v. Ntakirutimana and Ntakirutimana*, Cases Nos. ICTR-96-10-A and ICTR-96-17-A, Judgement, December 13, 2004, para. 467; *Prosecutor v. Brdanin*, Case No. IT-99-36-A, Judgement, 3 April 2007, para. 430; *Prosecutor v. Krajišnik*, Case No. IT-00-39-A, Judgement, 17 March 2009, paras. 711-713.
[12] Trial Judgement, paras. 1009, 1010, 1601-1604. Ngirumpatse was also convicted of direct and public incitement to commit genocide on the basis of speeches delivered by Karemera and others at a meeting in Kibuye on 3 May 1994. *See* Appeal Judgement, Section III.I.

reasons that I shall expound presently, in my reading of the trial record, I find the circumstantial evidence underpinning this conviction, with regard to Sindikubwabo's speech, to be so lacking that no reasonable trier of fact could have found Ngirumpatse guilty of this charge as the only reasonable inference available from the evidence.

13. To this end, I recall that the meeting on 16 May 1994 was a "security meeting" that Interim President Sindikubwabo held with Prefect Clément Kayishema and others.[13] However, the Trial Chamber concluded that Ngirumpatse was liable for the speech that was delivered by Sindikubwabo during this meeting, since it found that they were all members of the same JCE. For reasons similar to those that I have expressed with regard to my opposition to the convictions entered in relation to the installation ceremony on 19 April 1994, I take issue with such overarching application of JCE that would allow for a conviction for direct and public incitement against someone who did not attend the meeting and for whom there is no evidence that he was either connected to it or even aware that such a meeting took place.[14] Stated differently, it seems to me farfetched, on the basis of the Trial Chamber's factual findings, to find beyond reasonable doubt that the "security meeting" held by Interim President Sindikubwabo is related to the JCE to which Ngirumpatse contributed on 18 April 1994. To conclude otherwise would mean accepting that all the political figures affiliated with the MRND party or with the Interim Government and who contributed at some stage to the genocide were necessarily members of the same JCE. Such a conclusion is without merit and lacking a factual basis, especially since the Trial Chamber refused to find that the appellants and others formed the Interim Government with genocidal intent.[15]

14. I recognize that the Trial Chamber found that the *modus operandi* of the JCE was to prompt non-members of the JCE to perpetrate the killings, and, as a result, the intent of the participants in the JCE would have included the specific intent to engage in direct and public incitement to commit genocide.[16] However, recalling that the tragic events that unfolded in Rwanda between April and July 1994 involved a multitude of often overlapping actors, many of them committing their crimes in parallel, some link between the JCE and the specific act of direct and public incitement to genocide must be established beyond reasonable doubt. My review of the trial record in this case gives rise to no evidence of any such link.

15. Consequently, I disagree with the Majority's position that Ngirumpatse's conviction for direct and public incitement to commit genocide can be based on Interim President Sindikubwabo's

[13] *See,* e.g., Trial Judgement, paras. 1009, 1601.
[14] *See* Trial Judgement, paras. 1009, 1010, 1601, 1604.
[15] Trial Judgement, paras. 666-672, 1573(4).
[16] Trial Judgement, para. 1455.

speech during the "security meeting" that was held on 16 May 1994. I would therefore reverse his conviction in relation to that event.

D. Ngirumpatse's Superior Responsibility

16. The Trial Chamber found that Ngirumpatse was responsible as a superior for several crimes committed by the Kigali and Gisenyi *Interahamwe* from April to June 1994.[17] However, the Trial Chamber refused to find Ngirumpatse responsible as a superior for the participation of the Gisenyi *Interahamwe* in the "mopping-up" operation around 18 June 1994, since Ngirumpatse "was away on mission from 1 June until around 26 June and again from 9 July until the end of the genocide" and therefore he "had little time to hold his subordinates responsible" for their crimes.[18]

17. The Majority, nonetheless, disagrees with the Trial Chamber's conclusion since "the Trial Chamber did not adequately explain why the nearly 12-day period during which Ngirumpatse was in Rwanda following the operation was insufficient to address the crimes".[19] I respectfully disagree with the Majority that the Trial Chamber erred in this regard.

18. Ngirumpatse's superior responsibility over crimes committed by the *Interahamwe* in Kigali and Gisenyi is based on his *de facto* authority rather than *de jure* authority.[20] His effective control is inferred from his position as Chairman of the Executive Bureau of the MRND, and the findings that he "was an influential person"[21] and that he "could have punished offenders among the Kigali and Gisenyi *Interahamwe* on account of his status and authority over those organisations".[22]

19. It stands to reason that Ngirumpatse would have had difficulties exerting such *de facto* authority when abroad. According to the Trial Chamber, Ngirumpatse was not present in Rwanda from approximately 23 April 1994 to 15 May 1994; 1 June 1994 to 25 or 27 June 1994; and, finally, he left Rwanda on 9 July 1994 permanently.[23] When the "mopping-up" operation took place he was not present in Rwanda, and upon his return a week later, he had a 12-day period to wield his authority. Considering this timeline, the prevailing circumstances in Rwanda at that time and the nature of Ngirumpatse's authority, it was reasonable for the Trial Chamber to conclude that Ngirumpatse did not have sufficient time to exercise his influence and punish his subordinates. The Majority fails to explain why it was unreasonable for the Trial Chamber to reach that conclusion. Rather, it appears to have substituted its own judgement as to whether Ngirumpatse was capable of

[17] *See* Trial Judgement, paras. 1664, 1671, 1683, 1692, 1704, 1706, 1758.
[18] Trial Judgement, para. 1660.
[19] Appeal Judgment, para. 727.
[20] Trial Judgement, para. 1545.
[21] Trial Judgement, para. 1550.
[22] Trial Judgement, para. 1553.

disciplining members of the Gisenyi *Interahamwe*, without affording the Trial Chamber's findings the margin of deference to which they are owed in accordance with the appropriate standard of appellate review.

20. The Majority simply states that the Trial Chamber's finding "stands in stark contrast to the Trial Chamber's general finding that Ngirumpatse had the material ability to punish the Gisenyi *Interahamwe* throughout the entirety of the genocide".[24] However, considering the finding that from 8 April 1994 until 9 July 1994 Ngirumpatse was only present in Rwanda approximately 50 days in total, it is rather the generalized finding that is not explained in the Trial Judgement. This general finding of the Trial Chamber is also problematic since the Trial Chamber recognized that Ngirumpatse's *de facto* authority could be limited by time constraints, as it found with regard to Ngirumpatse's ability to hold his subordinates responsible for crimes committed during the "mopping-up" operation.

21. For the reasons stated above, I find it entirely reasonable for the Trial Chamber to have concluded that Ngirumpatse could not be responsible as a superior for the crimes committed by his subordinates for which he had only a 12-day window to address, and I remain unpersuaded by the Majority's substitution of its own judgement in this regard, without demonstrating how the Trial Chamber acted unreasonably. Consequently, I endorse the Trial Chamber's conclusion that Ngirumpatse could not be liable, based on his superior responsibility, for any crimes committed by Kigali and Gisenyi *Interahamwe* after 1 June 1994.

E. Ngirumpatse's Sentence

22. In this Appeal Judgment the scope of Ngirumpatse's criminal responsibility is considerably abridged. The Majority concludes that Ngirumpatse's responsibility, pursuant to Articles 6(1) or 6(3) of the Statute, for the killings of Tutsis at roadblocks in Kigali through the distribution of weapons on 11 and 12 April 1994 was not proven beyond reasonable doubt. Consequently, the period of Ngirumpatse's participation in the JCE is also reduced. The Appeals Chamber also finds, contrary to the Trial Chamber's findings, that Ngirumpatse cannot bear superior responsibility for the killings following the meeting at Murambi Training School on 18 April 1994 and for the rapes and sexual assaults committed by *Interahamwe* outside Kigali and Gisenyi. Finally, the Appeals Chamber finds that the Trial Chamber erred in finding Ngirumpatse guilty for conspiring with others to commit genocide.

[23] *See* Trial Judgement, paras. 930-935, 1660.
[24] Appeal Judgment, para. 727.

23. Notwithstanding the above, the Majority declines to give effect to such substantial changes in Ngirumpatse's scope of criminal responsibility and to amend his sentence accordingly. Respectfully, I am of the view that the Majority errs in not intervening in Ngirumpatse's sentence so as to reflect the scope of his guilt according to the legal conclusions in this Judgement.[25]

24. According to the consistent jurisprudence of the Tribunal, a sentence must be individualized.[26] The Chamber has to consider the totality of the conduct of the accused and to take into account the particular circumstances of the case, including the form and degree of the accused's participation.[27] A sentence has to be tailored to fit the individual circumstances of the accused. In this regard, I recall that the crux of Ngirumpatse's conviction is based on his participation in the meeting at Murambi Training School in Gitarama Prefecture on 18 April 1994 and his *de facto* authority over the *Interahamwe* in Kigali and Gisenyi.

25. I note in this context that the Trial Chamber did not expressly consider Ngirumpatse's advanced age and continued ill-health nor did it consider the fact that his right to be promptly informed of the reasons for his arrest was violated as mitigating factors during its sentencing process.[28]

26. Finally, I also take note of Ngirumpatse's closing statement at the appeal hearing in which he candidly expressed his wish to contribute to the reconciliation and unification of Rwanda in commemoration of the victims and the tragedy suffered by his nation. Ngirumpatse's closing statements during the trial and the appeal hearings are indicative of his compassion to his compatriots and his hard-won determination to assist in closing the dark chapter in his country's history.

27. In conclusion, for all of the above reasons, I am of the view that a reduction in Ngirumpatse's sentence was in order.

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[25] *Cf. Bagosora et al. v. Prosecutor*, Case No. ICTR-98-41-A, Judgement, 14 December 2011, paras. 428-430, 739-741; *Prosecutor v. Blagojević et al.*, Case No. IT-02-60-A, Judgement (AC) 9 May 2007, para 142.
[26] *See, e.g., Simba v. The Prosecutor*, Case No. ICTR-01-76-A, Judgement, 27 November 2007, para. 336; *Kamuhanda v. The Prosecutor*, Case No. ICTR-99-54A-A, Judgement, 19 September 2005, para., 357; *Delalić et al. v. The Prosecutor*, Case No. IT-96-21-A, Judgement, 20 February 2001, para. 717.
[27] *Ntawukulilyayo v. Prosecutor*, Case No. ICTR-05-82-A, Judgement, 14 December 2011, para. 245.
[28] *See* Appeal Judgement, Section III.A.4 and Section III.O.2(b).

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

Done this 29th day of September 2014,
at Arusha,
Tanzania.

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Judge Bakhtiyar Tuzmukhamedov

[Seal of the Tribunal]

X. SEPARATE, PARTIALLY DISSENTING AND DISSENTING OPINIONS OF JUDGE KOFFI KUMELIO A. AFANĐE

A. Separate Opinion: Prosecution's Violations of Rules 66 and 68 of the Rules

1. I agree with the Appeals Chamber's conclusion that Karemera has failed to demonstrate that he was prejudiced by the Trial Chamber's decisions relating to alleged Prosecution's violations of Rules 66 and 68 of the Rules.[1] However, I feel compelled to write separately as I am deeply concerned with the Appeals Chamber's reluctance to continue reminding the Prosecution of its disclosure obligations under Rule 68 of the Rules.[2] I believe that the Appeals Chamber should have seised this opportunity to remind the Prosecution that it is expected to comply with its positive and continuous disclosure obligations which are essential for the fair administration of justice. It is the duty of the Appeals Chamber to ensure the fairness of the proceedings, which includes that the Prosecution adheres to its disclosure obligations even after the conclusion of the appellate proceedings.

2. I note that, pursuant to Rule 68 of the Rules, notwithstanding the completion of the trial and any subsequent appeal, the Prosecution has the duty to disclose to the Defence any material which in its actual knowledge may suggest the innocence or mitigate the guilt of the accused or affect the credibility of the Prosecution evidence. It could be argued that at this late stage of the Tribunal's existence, it is superfluous to continue reminding the Prosecution of its obligation under Rule 68 of the Rules. In my view, such an argument does not fully appreciate that the Prosecution's disclosure obligation shall go beyond the closing date of the Tribunal as the International Residual Mechanism for Criminal Tribunals will continue the essential functions of the Tribunal and may have to deal with Rule 68 disclosure issues in the context of future review proceedings.[3] Therefore, it is of paramount importance that the Prosecution abides strictly by its disclosure obligations at all stages of the Tribunal's existence.

3. Further, the history of the present case reveals numerous violations by the Prosecution of its disclosure obligations. Indeed, as observed in this Appeal Judgement, the Trial Chamber already described the Prosecution's conduct at trial with regard to its disclosure obligations as "completely unacceptable".[4] In fact, the violations were so recurrent, that the Trial Chamber issued a decision warning the Prosecution, pursuant to Rule 46 of the Rules, and even requested that a copy of the

[1] Appeal Judgement, para. 88.
[2] *See* Appeal Judgement, para. 87.
[3] *See* United Nations Security Council Resolution S/RES/1966 (2010), 22 December 2010, para. 4; Annex 1, Statute of the International Residual Mechanism for Criminal Tribunals, Article 2 "Functions of the Mechanism" and Article 24 "Review Proceedings".

decision be personally served onto the Prosecutor.[5] The Appeals Chamber should not create the impression that these issues were sufficiently addressed at trial and are exempted from further scrutiny. To the contrary, in light of the Prosecution's persistent failure, it is important that the Appeals Chamber remain consistent in reminding the Prosecution of its continuous disclosure obligations.

4. Finally, in my view this Appeal Judgement creates the impression that the Appeals Chamber is departing from its well-established practice of reminding the Prosecution of its positive and continuous obligation to disclose exculpatory evidence.[6] Failing to remind the Prosecution of this important duty at a critical stage of the Tribunal's existence may be read to suggest that the Prosecution is henceforth exempted of its continuous disclosure obligations. Moreover, I am deeply concerned that it may give the wrong impression that the Appeals Chamber deems lightly the Prosecution's persistent failure to disclose material that may suggest the innocence or mitigate the guilt of the accused. I am firmly of the view that any such appearance must be avoided.

B. Partially Dissenting Opinion: Prosecution Witnesses G and T

5. In this Judgement, the Majority dismisses the arguments of Karemera and Ngirumpatse that, in assessing the credibility of Witnesses G and T, the Trial Chamber failed to take into account the benefits which the witnesses had received from the Prosecution.[7] For the reasons set out below, I respectfully disagree with the Majority.

6. In relation to the Trial Chamber's assessment of the credibility of Witnesses G and T, the Majority states that: "[a]s the Trial Chamber determined, the benefits provided to the witnesses warrant that their evidence be viewed with caution."[8] The Majority thus concludes that the Trial Chamber acted within its discretion in not holding that, on account of the benefits received, the evidence of Witnesses G and T "was *per se* unreliable or that it had to be corroborated."[9] I respectfully disagree with the Majority's reasoning. As further explained below, I am of the view

[4] Appeal Judgement, para. 87, *referring to* T. 24 May 2006 p. 36 (Oral Trial Decision).
[5] *See The Prosecutor v. Édouard Karemera et al.,* Case No. ICTR-98-44-T, Decision on Prosecutor's Rule 68(D) Application and Joseph Nzirorera's 12th Notice of Rule 68 Violation, *Rule 68 of the Rules of Procedure and Evidence,* 26 March 2009, p. 11.
[6] *See, e.g., Édouard Karemera and Matthieu Ngirumpatse v. The Prosecutor,* Case No. ICTR-98-44-A, Decision on Karemera's and Ngirumpatse's Motions Under Rules 68 and 115 of the Rules, 6 February 2014, para. 21; *Justin Mugenzi and Prosper Mugiraneza v. The Prosecutor,* Case No. ICTR-99-50-A, Decision on Motions for Relief for Rule 68 Violations, 24 September 2012, para. 40; *Ephrem Setako v. The Prosecutor*, Case No. ICTR-04-81-A, Decision on Ephrem Setako's Motion to Amend his Notice of Appeal and Motion to Admit Evidence, 23 March 2011 (public redacted version), para. 42; *Jean De Dieu Kamuhanda v. The Prosecutor,* Case No. ICTR-99-54A-R68, Decision on Motion for Disclosure, 4 March 2010, para. 46.
[7] Appeal Judgement, para. 411, *referring to* AT. 11 February 2014 pp. 9-10, 28-29, 36, 43; Karemera Appeal Brief, paras. 233-235; Ngirumpatse Appeal Brief, paras. 78-81, 176-177.
[8] Appeal Judgement, para. 411. *See also* Trial Judgement, paras. 175, 178,
[9] Appeal Judgement, para. 411.

that the Trial Chamber either failed to asses the impact that the benefits received by Witnesses G and T had on the reliability of their evidence, or if it did conduct such an assessment, it failed to provide a reasoned opinion as to why it nevertheless considered their evidence reliable.

7. At the outset, I acknowledge that the Trial Chamber was live to the issue of the benefits received by Witnesses G and T. While, in my view, the real nature and extent of these benefits remains unclear, I note that the issue was explicitly raised at trial[10] and repeatedly referenced by the Trial Chamber in the Trial Judgement. In particular, under the sub-heading "Cautionary Issues", on numerous occasions the Trial Chamber stated that it had taken into account that the witnesses had received extensive benefits, financial and otherwise, from the Prosecution in exchange for their testimony.[11] Taken alone, this statement suggests that the Trial Chamber had conducted a reliability assessment of the evidence of Witnesses G and T in light of the benefits they had received. However, immediately following this statement, the Trial Chamber routinely held that "it *will* apply the requisite degree of caution to each [witness] when assessing the credibility and the weight of their evidence."[12] The language used by the Trial Chamber suggests that, contrary to what it had stated before, a reliability assessment of the evidence of Witnesses G and T was not conducted and was still pending.

8. Regrettably, there is no other paragraph in the Trial Judgement which refers to a reliability assessment of the evidence of Witnesses G and T in light of the benefits the witnesses had received from the Prosecution in exchange for their testimony. Therefore, it remains unknown whether the Trial Chamber, in fact, conducted such an assessment, what level of caution it applied, and what factors it considered, if any, in deciding that, despite the benefits received from the Prosecution, the evidence of Witnesses G and T was reliable. In view of this lack of clarity in the Trial Judgement, I am unable to join the Majority in its conclusion that the Trial Chamber "determined" that the benefits provided to the witnesses required that their evidence be viewed with caution.

9. I am certainly aware that trial chamber's have full discretionary power in assessing the credibility of witnesses and in determining the weight to be accorded to their testimony.[13] I also acknowledge that a trial chamber is not required to set out in detail why it accepted or rejected a particular testimony.[14] However, I do not believe that, in circumstances where witnesses have

[10] *See* Trial Judgement, paras. 175, 178, and references cited therein.
[11] Trial Judgement, para. 735. *See* Trial Judgement, paras. 194, 249, 341, 437, 470, 495, 530, 591, 623, 701, 878, 1281, 1331, 1352.
[12] Trial Judgement, paras. 195, 250, 342, 438, 471, 496, 531, 592, 624, 702, 736, 879, 1282, 1332, 1353 (emphasis added).
[13] *Kanyarukiga* Appeal Judgement, para. 121, *referring to Bikindi* Appeal Judgement, para. 114, *Nchamihigo* Appeal Judgement, para. 47, *Nahimana et al*. Appeal Judgement, para. 194.
[14] *Krajišnik* Appeal Judgement, para. 139, *citing Musema* Appeal Judgement, para. 20.

received benefits in exchange for testimony, a general statement, indicating that the trial chamber has taken or will take into account such benefits as a factor affecting the witnesses' credibility, suffices. Rather, I believe that, particularly in such cases, a trial chamber should clearly explain the reasons why it accepts the evidence of a witness whose credibility has been fundamentally questioned. Though I appreciate that there are many factors that go to the assessment of witness credibility, I believe that an issue regarding the receipt of benefits in exchange for testimony, particularly where one of the parties has direct involvement, should be dealt with utmost care and clarity by the trial chamber.

10. I further note that the trial chamber's duty to provide a reasoned opinion is fundamental to the fairness of the proceedings. A reasoned opinion ensures that the accused can exercise his right of appeal and that the Appeals Chamber can carry out its statutory duty to review his appeal.[15] In the present case, the Trial Chamber had a responsibility not only to assess, but also to clearly articulate its reasoning as to why it found reliable the evidence of Witnesses G and T given the nature of their involvement with the Prosecution, which, in my view, was sensitive and controversial. Absent such a discussion in the Trial Judgement, I cannot appreciate how the Majority arrives at the conclusion that the Trial Chamber acted within its discretion in this regard.[16]

11. For the foregoing reasons, I find that the Trial Chamber erred in failing to assess the impact that the benefits received by Witnesses G and T had on the reliability of their evidence, or if it did conduct such an assessment, erred in failing to provide a reasoned opinion as to why it nevertheless considered their evidence reliable.

C. Partially Dissenting Opinion: The Application of the Notion of Cumulative Convictions to Genocide and Conspiracy to Commit Genocide

12. In this Judgement, the Appeals Chamber finds that it is not necessary to enter a conviction against Karemera for conspiracy to commit genocide.[17] While I am in agreement with this outcome, for the reasons briefly set out below, I respectfully disagree with the Majority's conclusion that the Trial Chamber erred in not entering convictions for both genocide and conspiracy to commit genocide against Karemera.[18]

[15] *Krajišnik* Appeal Judgement, para. 139, *citing Limaj et al.* Appeal Judgement, para. 81.
[16] *See* Appeal Judgement, para. 411.
[17] Appeal Judgement, para. 713.
[18] Appeal Judgement, paras. 711, 713. I note that the Trial Chamber's reasons for not entering cumulative convictions for genocide and conspiracy to commit genocide were equally applicable to Ngirumpatse. *See* Trial Judgement, paras. 1707-1713, 1715, 1716.

13. I acknowledge that, according to the Tribunal's jurisprudence, the crime of genocide requires the commission of one of the acts enumerated in Article 2(2) of the Statute,[19] whereas the crime of conspiracy to commit genocide requires a concerted agreement to act for the purpose of committing genocide.[20] Under this definition, an agreement to act for the purpose of committing genocide is not an element of the crime of genocide. I further note that the Tribunal has accepted that the existence of a plan or policy is not a legal ingredient of the crime of genocide.[21] I wish to emphasize, however, that, in contrast to the Tribunal's Statute and jurisprudence, some legal systems define genocide in the context of *exécution d'un plan concerté*.[22] I share this approach and consider that genocide presupposes the existence of a "concerted plan". Logically, the "concerted" nature of the plan can only result from an agreement, involving more than one person, akin to what is required for conspiracy to commit genocide. Accordingly, in my view, the legal elements of genocide include all, but are not limited to, the legal elements of conspiracy.

14. I further note that, although for different reasons, there is divergent trial chambers' jurisprudence as to whether it is appropriate to enter cumulative convictions for genocide and conspiracy to commit genocide.[23] In this regard, while under the Tribunal's jurisprudence cumulative convictions for genocide and conspiracy to commit genocide are permissible,[24] some trial chambers, including the Trial Chamber in this case, have been troubled by the application of this principle.[25] The issue was addressed by the Appeals Chamber for the first time in *Gatete*. In that case, the Appeals Chamber considered that the criminalisation of conspiracy to commit genocide, as an inchoate offence, aims not only to prevent the commission of genocide, but also to

[19] *Nahimana et al.* Appeal Judgement, para. 492.
[20] *Nahimana et al.* Appeal Judgement, para. 896.
[21] *Prosecutor v. Édouard Karemera et al.*, Case No. ICTR-98-44-AR73(C), Decision on Motions for Reconsideration, 1 December 2006, para. 21, *citing Krstić* Appeal Judgement, para. 225, *Jelisić* Appeal Judgement, para. 48; *See also Nchamihigo* Appeal Judgement, para. 363; *Semanza* Appeal Judgement, para. 260; *Kayishema and Ruzindana* Appeal Judgement, para. 138.
[22] *See, e.g.*, *Code pénal français*, Article 211-1; *Code pénal du Burkina Faso*, Article 313.
[23] *See, e.g.*, *Nahimana et al.* Trial Judgement, para. 1043 (The Trial Chamber found that cumulative convictions for genocide and conspiracy to commit genocide were permissible); *Musema* Trial Judgement, para. 198 (The Trial Chamber adopted the definition of conspiracy most favourable to Musema, whereby an accused cannot be convicted of both genocide and conspiracy to commit genocide on the basis of the same acts); *Popović et al.* Trial Judgement, para. 2127 (The Trial Chamber concurred with the *Musema* Trial Judgement and considered that the full criminality of the accused was accounted for by a conviction for genocide); *Gatete* Trial Judgement, paras. 661-662 (The Trial Chamber decided to follow the approach adopted by the *Popović et al.* and *Musema* Trial Judgments and declined to enter a conviction for both genocide and conspiracy to commit genocide). In at least three other cases, ICTR trial chambers have entered cumulative convictions for genocide and conspiracy to commit genocide without, however, engaging into a detailed discussion of this issue. *See Kambanda* Trial Judgement, paras. 39-40(2); *Niyitegeka* Trial Judgement, paras. 420, 429, 480, 502; *Kajelijeli* Trial Judgement, paras. 787-793.
[24] I note that, under the Tribunal's jurisprudence, convictions entered under different statutory provisions but based on the same conduct are permissible only if each statutory provision involved has a materially distinct element not contained in the other. *See, e.g., Delalić et al.* Appeal Judgement, para. 412; *Ntabakuze* Appeal Judgement, para. 260; *Bagosora and Nsengiyumva* Appeal Judgement, para. 413; *Nahimana et al.* Appeal Judgement, para. 1019; *Ntakirutimana* Appeal Judgement, para. 542.
[25] *Musema* Trial Judgement, para. 198; *Popović et al.* Trial Judgement, para. 2127; *Gatete* Trial Judgement, paras. 661-662; Trial Judgement, paras. 1709-1713.

punish the collaboration of a group of individuals resolved to commit genocide.[26] Consequently, it found that the inchoate nature of the crime of conspiracy does not obviate the need to enter a conviction for this crime when genocide has also been committed by the accused, since the crime of genocide does not punish the agreement to commit genocide.[27] In addition, the Appeals Chamber emphasised that a trial chamber is bound to enter convictions for all distinct crimes which have been proven in order to fully reflect the criminality of the convicted person.[28]

15. In addition to my observations above as to the legal elements of genocide, in my view, the approach of the Appeals Chamber in *Gatete* fails to acknowledge that often conspiracy is the preparatory act preceding the actual commission of genocide. In such circumstances, it is only logical that the substantive offence will subsume the preparatory acts performed in furtherance of its commission. Therefore, I am firmly of the view that, once genocide has been committed, *i.e.*, the substantive offence has been accomplished, the accused should only be convicted of that offence and not of the agreement to act for the purpose of the commission of that same substantive offence. However, where the substantive offence has not been accomplished, the accused will remain liable for the crime of conspiracy.

16. It follows that where the substantive offence subsumes the agreement for its commission, the issue of cumulative convictions does not arise. In other words, once the accused proceeds from a conspiracy to commit genocide to the commission of genocide, the conspiracy ceases to exist as a separate offence and becomes a preparatory stage in the actual commission of genocide. Hence, it would be illogical to apply the standard of cumulative convictions to conduct that has ceased to exist as a distinct offence. I am of the view that, in such circumstances, a conviction for genocide would sufficiently ensure that the accused is held responsible for the totality of his criminal conduct.

17. In the present case, the Trial Chamber found that the full criminality of Karemera was accounted for by a conviction for genocide and therefore a further conviction for conspiracy to commit genocide would be "duplicative and unfair".[29] For the reasons set out above, I cannot but agree with the Trial Chamber.

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[26] *Gatete* Appeal Judgement, para. 262.
[27] *Gatete* Appeal Judgement, para. 262.
[28] *Gatete* Appeal Judgement, para. 261. *See also Gatete* Appeal Judgement, Dissenting Opinion of Judge Agius.
[29] Trial Judgement, para. 1713. Similarly, the ICTR Trial Chamber in *Musema* and the ICTY Trial Chamber in *Popović et al.* cases declined to enter cumulative convictions against the accused for genocide and conspiracy to commit genocide taking into consideration the fundamental principle of fairness to the accused. *See Musema* Trial Judgement, paras. 193-194, 196-198; *Popović* Trial Judgement, paras. 2123, 2127.

D. Dissenting Opinion: Ngirumpatse's Superior Responsibility for the Bisesero "Mopping-Up" Operation and Ngirumpatse's Sentence

18. In this Judgement, the Majority grants the Prosecution's Third Ground of Appeal and finds that Ngirumpatse bears superior responsibility for the mopping-up operation in Bisesero around 18 June 1994 and the resulting attacks and killings.[30] For the following reasons, I respectfully dissent from the Majority's finding.

19. The Trial Chamber found that Ngirumpatse, who was the Chairman of the Executive Bureau of the MRND, bore superior responsibility for the crimes committed by the Gisenyi *Interahamwe* during the genocide.[31] In reaching this conclusion, the Trial Chamber stated that Ngirumpatse had effective control over the Gisenyi *Interahamwe* "throughout the entirety of the genocide".[32] Nonetheless, elsewhere in the Trial Judgement, the Trial Chamber found that Ngirumpatse did not incur superior responsibility in relation to the participation of the Gisenyi *Interahamwe* in the mopping-up operation in Bisesero around 18 June 1994 and the resulting attacks and killings.[33] In reaching this conclusion, the Trial Chamber considered that Ngirumpatse was away on mission from 1 June 1994 until around 26 June 1994 and again from 9 July 1994 until the end of the genocide, and thus had limited time to hold his subordinates responsible for the crimes.[34]

20. The Majority holds that the Trial Chamber failed to provide a reasoned opinion since it did not adequately explain why the nearly 12-day period during which Ngirumpatse was in Rwanda following the mopping-up operation was insufficient for him to address the crimes committed by the Gisenyi *Interahamwe*.[35] The crux of the Majority's reasoning lies in what it perceives as "stark contrast" in the Trial Chamber's findings that, on the one hand, Ngirumpatse had the material ability to punish the Gisenyi *Interahamwe* throughout the entirety of the genocide, and on the other hand, that there was insufficient basis to conclude that Ngirumpatse bore superior responsibility specifically for the mopping-up operation and the resulting killings.[36]

21. It is well established in the jurisprudence that, in order for an accused to incur criminal responsibility under Article 6(3) of the Statute, the Prosecution must prove that the accused exercised effective control over his subordinates, in the sense that he had the material ability to prevent or punish the commission of the crime by the subordinates.[37] As the Appeals Chamber has

[30] Appeal Judgement, para. 729-730.
[31] Trial Judgement, para. 1571. *See* Trial Judgement, para. 1546.
[32] Trial Judgment, para. 1557.
[33] Trial Judgement, paras. 1659-1660.
[34] Trial Judgement, para. 1660. *See also* Trial Judgement, paras. 934-935, 1481.
[35] Appeal Judgement, para. 727.
[36] Appeal Judgement, para. 727.
[37] *Nahimana et al.* Appeal Judgement, para. 484, *referring to, inter alia, Halilović* Appeal Judgement, paras. 59, 210.

held, "[i]ndicators of effective control are more a matter of evidence than of substantive law, and those indicators are limited to showing that the accused had the power to prevent [or] punish."[38]

22. In its general findings on Ngirumpatse's responsibility, the Trial Chamber concluded that he had effective control over the Gisenyi *Interahamwe* "throughout the entirety of the genocide".[39] In this regard, the Trial Chamber considered that, given his status and authority over the Gisenyi *Interahamwe,* Ngirumpatse "could have sanctioned offenders politically, removed them from the ranks of the organisation, disabled their benefits and privileges, publically [*sic*] humiliated them, or demoted them within the organisation, among other measures."[40] It is indicative, however, that the Trial Chamber's observations in this regard are rather general, without reference to specific incidents in relation to which Ngirumpatse failed to discharge his duty to punish his subordinates by resorting to any of the measures identified by the Trial Chamber.[41]

23. In contrast, in relation to the mopping-up operation in Bisesero around 18 June 1994 and the resulting attacks and killings, the Trial Chamber scrutinized specifically Ngirumpatse's material ability to hold his subordinates responsible in relation to this particular incident. Having considered Ngirumpatse's absence during the mopping-up operation and the limited amount of time that he was present in Rwanda following the operation, the Trial Chamber found that the evidence was insufficient to conclude that Ngirumpatse incurred superior responsibility for this specific incident.[42] Rather than showing an inconsistency, the Trial Chamber's finding reveals its careful approach in determining whether the only reasonable inference from the evidence was that, particularly in relation to the mopping-up operation, Ngirumpatse had sufficient time and opportunity to take measures against the offenders.[43]

24. I do not find the Trial Chamber's general and specific findings cited above to be in "stark contrast" and certainly not irreconcilable. In my view, it would be erroneous to interpret the preposition "throughout" used by the Trial Chamber in its general finding to mean that Ngirumpatse had the material ability to punish the commission of crimes by the Gisenyi *Interahamwe* every single moment during the period of the genocide, irrespective of whether he was present in Rwanda or not. Having taken into account all the relevant circumstances as they existed at the time, the Trial Chamber provided sufficient reasons and was entitled to find that there was a brief period of time during which Ngirumpatse lacked the material ability to punish the Gisenyi *Interahamwe*

[38] *Ndahimana* Appeal Judgement, para. 53, *citing Perišić* Appeal Judgement, para. 87.
[39] Trial Judgement, para. 1557. *See also* Trial Judgement, para. 1571.
[40] Trial Judgement, para. 1553.
[41] *See* Trial Judgement, para. 1569.
[42] Trial Judgement, para. 1660.
[43] *Cf. Blagojević and Jokić* Appeal Judgement, paras. 301-303.

specifically in relation to their involvement in the mopping-up operation and the resulting attacks and killings in Bisesero region. Consequently, I would have dismissed the Prosecution's Third Ground of Appeal.

25. In light of the above and taking into account the reversal of certain findings regarding Ngirumpatse's superior responsibility, which the Trial Chamber took into account as aggravating factors,[44] as well as the purpose of sentencing and the duty to individualise the sentence, I find that a reduction of Ngirumpatse's sentence would have been appropriate. Therefore, I am reluctant to join the Majority in its decision to affirm Ngirumpatse's sentence.

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

Done this twenty-ninth day of September 2014,
At Arusha,
Tanzania

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Judge Koffi Kumelio A. Afande

[Seal of the Tribunal]

[44] Appeal Judgement, paras. 744, 746, 748.

XI. ANNEX A – PROCEDURAL HISTORY

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

A. Notices of Appeal and Briefs

2. The Trial Chamber rendered the judgement in this case on 21 December 2011 and issued the written Trial Judgement on 2 February 2012. Karemera, Ngirumpatse, and the Prosecution appealed.

1. Karemera's and Ngirumpatse's Appeal

3. In accordance with the Decision of 17 February 2012,[1] Karemera and Ngirumpatse filed their respective notices of appeal on 19 March 2012.[2] On 25 April 2012, the Pre-Appeal Judge granted in part Karemera's motion seeking, *inter alia*, an extension of time for the filing of his Appeal Submissions. On the ground of good cause and considering that it was in the interests of justice to allow Karemera adequate time to read the Trial Judgement, the Pre-Appeal Judge ordered Karemera to file his Appellant's brief no later than 40 days from the filing of the French translation of the Trial Judgement.[3] The translation was filed on 1 December 2012.

4. On 21 May 2012, the Pre-Appeal Judge partly granted, due to exceptional circumstances, Ngirumpatse's motion for an extension of words for his Appellant's brief, which could not exceed 40,000 words.[4] The Pre-Appeal Judge, on 14 June 2012, denied Ngirumpatse's motion to reconsider the decision of 21 May 2012. In the same decision, the Pre-Appeal Judge denied his motion to have the Prosecution file a separate Respondent's brief.[5] On 3 January 2013, the Pre-Appeal Judge granted, in part, Karemera's motion for an extension of words for his Appellant's brief and authorized him to file a brief not exceeding 40,000 words.[6] On 8 February 2013, the Pre-Appeal

[1] Decision on Motions for Extension of Time for the Filing of Appeal Submissions, 17 February 2012; Decision on Request for Reconsideration, 8 March 2012. On 17 February 2012, the Pre-Appeal Judge granted in part Karemera's motion and fully granted Ngirumpatse's motion, both requesting an extension of time for the filing of their appeal submissions. The Pre-Appeal Judge thereby ordered Karemera and Ngirumpatse to file their notices of appeal by 19 March 2012 and additionally ordered Ngirumpatse to file his Appellant's Brief by 2 July 2012. On 8 March 2012, the Pre-Appeal Judge dismissed the motion filed by Karemera seeking reconsideration of the Decision on Motions for Extension of Time for the filing of Appeal Submissions of 17 February 2012.

[2] *L'acte d'appel de Monsieur Édouard Karemera*, 19 March 2012; *L'acte d'appel de M. Ngirumpatse contre le jugement et la sentence du 2 février 2012*, 19 March 2012.

[3] Decision on Édouard Karemera's Motion for Extension of Time for the Filing of Appeal Submissions and other Relief, 25 April 2012.

[4] Decision on Matthieu Ngirumpatse's Motion for an Extension of the Word Limit for his Appellant's Brief, 21 May 2012.

[5] Decision on Matthieu Ngirumpatse's Motion for Reconsideration and Other Relief, 14 June 2012.

[6] Decision on Édouard Karemera's Motion for an Extension of the Word Limit for his Appellant's Brief, 3 January 2013.

Judge denied the Prosecution's motion for an extension of words to respond to Karemera's Appellant's brief.[7]

5. Ngirumpatse filed his Appellant's brief on 2 July 2012.[8] Karemera's Appellant's brief was filed on 10 January 2013.[9]

6. On 13 August 2012, the Prosecution filed its Respondent's brief to Ngirumpatse's appeal.[10] On 19 February 2013, it filed the response to Karemera's Appeal.[11]

7. On 22 August 2012, the Pre-Appeal Judge granted, in part, Ngirumpatse's motion for an extension of time to file his brief in reply and allowed him until 17 September 2012 to file it.[12] On 17 September 2012, Ngirumpatse filed his Reply Brief.[13] On 5 March 2013, the Pre-Appeal Judge also granted, in part, Karemera's motion for a 14-day extension to file his brief in reply and allowed him until 20 March 2013 to file it.[14] On 20 March 2013, Karemera filed his brief in reply.[15]

2. Prosecution's Appeal

8. The Prosecution filed its notice of appeal on 5 March 2012.[16] The Prosecution filed its Appellant's brief on 21 May 2012.[17]

9. On 25 April 2012, the Pre-Appeal Judge granted, in part, Karemera's motion and, considering that it was in the interests of justice to allow Karemera adequate time to review the Prosecutor's Appellant's brief, ordered Karemera to file his Respondent's brief no later than 20 days after the filing of the French version of the Trial Judgement or the French version of the Prosecution's Appellant's brief, whichever is later.[18]

10. On 14 June 2012, the Pre-Appeal Judge granted Ngirumpatse's motion for an extension of time for the filing of his Respondent's brief. Given the complexity of the case, the fact that the main working language of his counsel is French, the fact that the overall briefing in this case was not

[7] Decision on the Prosecution's Motion for an Extension of the Word Limit for its Response Brief to Édouard Karemera's Appellant's Brief, 8 February 2013.
[8] Ngirumpatse Appeal Brief. *See also Corrigendum au Mémoire d'Appelant de M. Ngirumpatse*, 24 July 2012.
[9] *Le mémoire d'appel de Monsieur Édouard Karemera*, 10 January 2013.
[10] Prosecutor's Brief in Response to Matthieu Ngirumpatse's Appeal, 13 August 2012.
[11] Prosecution's Brief in Response to Édouard Karemera Appeal, 19 February 2013.
[12] Decision on Matthieu Ngirumpatse's Motion for an Extension of Time for the Filing of his Brief in Reply, 22 August 2012.
[13] *Réplique de M. Ngirumpatse au mémoire d'intimé du Procureur*, 17 September 2012.
[14] Decision on Édouard Karemera's Motion for an Extension of Time for the Filing of his Reply Brief, 5 March 2013.
[15] *Mémoire en duplique de Monsieur Édouard Karemera*, 20 March 2013.
[16] Prosecutor's Notice of Appeal, 5 March 2012.
[17] Prosecutor's Appellant's Brief, 21 May 2012. The French translation of the Prosecution's Appeal Brief was filed on 8 February 2013.

anticipated shortly, the Pre-Appeal Judge was satisfied that it was in the interests of justice to allow an extension of time, and ordered Ngirumpatse to file his Respondent's brief before 3 September 2012.[19] Ngirumpatse filed his response on 3 September 2012.[20] Karemera filed his response on 28 February 2013.[21] The Prosecution filed its brief in reply to Ngirumpatse on 18 September 2012[22] and did not file a reply to Karemera's Response brief.

B. Assignment of Judges

11. On 10 January 2012, the Presiding Judge of the Appeals Chamber, Judge Theodor Meron, assigned himself and the following Judges to hear the appeal: Judge Patrick Robinson, Judge Fausto Pocar, Judge Arlette Ramaroson, and Judge Carmel Agius.[23] On 27 January 2012, Judge Theodor Meron designated himself as Pre-Appeal Judge.[24] On 5 July 2012, the Presiding Judge replaced Judge Carmel Agius with Judge Bakhtiyar Tuzmukhamedov.[25] On 16 December 2013, the Presiding Judge replaced Judge Patrick Robinson with Judge Koffi Kumelio A. Afande.[26]

C. Motion Related to the Admission of Additional Evidence

12. On 3 October 2012, the Pre-Appeal Judge granted Ngirumpatse's motion in relation to obtaining a written statement from Théoneste Bagosora.[27]

D. Hearing on the Appeals

13. On 10 and 11 February 2014, the parties presented their oral arguments at a hearing held in Arusha, Tanzania, in accordance with the Scheduling Order of 19 December 2013.[28]

[18] Decision on Édouard Karemera's Motion for Extension of Time for the Filing of Appeal Submissions and other Relief, 25 April 2012.
[19] Decision on Matthieu Ngirumpatse's Motion for an Extension of Time for the Filing of his Respondent's Brief, 14 June 2012.
[20] Ngirumpatse Brief in Response to the Prosecution's Appeal, 13 August 2012.
[21] *Mémoire de l'intime Monsieur Édouard Karemera*, 28 February 2013.
[22] Prosecutor's Reply to Ngirumpatse's Respondent Brief, 18 September 2012.
[23] Order Assigning Judges to a Case Before the Appeals Chamber, 10 January 2012.
[24] Order Assigning a Pre-Appeal Judge, 27 January 2012.
[25] Order Replacing Judge in a Case before the Appeals Chamber, 5 July 2012.
[26] Order Replacing Judge in a Case before the Appeals Chamber, 16 December 2013.
[27] On 13 September 2012, Ngirumpatse filed a motion to obtain a written statement from Bagosora in Mali. *See Requête urgente de M. Ngirumpatse aux fins d'être autorisé à recueillir une déclaration écrite, préalable à une requête en admission de moyens de preuves Additionnels*, 13 September 2012 ("Motion of 13 September 2012"), paras. 7, 28-32. He filed another motion on 28 September 2012 to withdraw the Motion of 13 September 2012. *See Demande de retrait de la Requête urgente de M. Ngirumpatse aux fins d'être autorisé à recueillir une déclaration écrite, préalable à une requête en admission de moyens de preuves Additionnels*, 28 September 2012, p. 2. This second motion was granted by the Pre-Appeal Judge on 3 October 2012. *See* Decision on the Withdrawal of Matthieu Ngirumpatse's Motion Seeking Authorization to Obtain a Written Statement, 3 October 2012.
[28] Scheduling Order, 19 December 2013.

XII. ANNEX B

A. Jurisprudence

1. ICTR

AKAYESU

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

BAGARAGAZA

The Prosecutor v. Michel Bagaragaza, Case No. ICTR-05-86-S, Sentencing Judgement, 17 November 2009 ("*Bagaragaza* Trial Judgement").

BAGILISHEMA

The Prosecutor v. Ignace Bagilishema, Case No. ICTR-95-1A-T, Judgement, 7 June 2001 ("*Bagilishema* Trial Judgement").

BAGOSORA and NSENGIYUMVA

Théoneste Bagosora and Anatole Nsengiyumva v. The Prosecutor, Case No. ICTR-98-41-A, Judgement, 14 December 2011 ("*Bagosora and Nsengiyumva* Appeal Judgement").

The Prosecutor v. Théoneste Bagosora et al., Case No. ICTR-98-41-T, Judgement and Sentence, 18 December 2008 ("*Bagosora et al*. Trial Judgement").

GACUMBITSI

Sylvestre Gacumbitsi v. The Prosecutor, Case No. ICTR-01-64-A, Judgement, 7 July 2006 ("*Gacumbitsi* Appeal Judgement").

GATETE

Jean-Baptiste Gatete v. The Prosecutor, Case No. ICTR-00-61-A, Judgement, 9 October 2012 ("*Gatete* Appeal Judgement").

HATEGEKIMANA

Ildephonse Hategekimana v. The Prosecutor, Case No. ICTR-00-55B-A, Judgement, 8 May 2012 ("*Hategekimana* Appeal Judgement").

KAJELIJELI

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

KALIMANZIRA

Callixte Kalimanzira v. The Prosecutor, Case No. ICTR-05-88-A, Judgement, 20 October 2010 ("*Kalimanzira* Appeal Judgement").

KANYARUKIGA

Gaspard Kanyarukiga v. The Prosecutor, Case No. ICTR-02-78-A, Judgement, 8 May 2012 ("*Kanyarukiga* Appeal Judgement").

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-A, Judgement (Reasons), 1 June 2001 (the English translation of the French original was filed on 4 December 2001) ("*Kayishema and Ruzindana* Appeal Judgement").

MUGENZI and MUGIRANEZA

Justin Mugenzi and Prosper Mugiraneza v. The Prosecutor, Case No. ICTR-99-50-A, Judgement, 4 February 2013 ("*Mugenzi and Mugiraneza* Appeal Judgement").

The Prosecutor v. Casimir Bizimungu et al., Case No. ICTR-99-50-T, Judgement and Sentence, 30 September 2011 ("*Bizimungu et al.* Trial Judgement").

MUNYAKAZI

The Prosecutor v. Yussuf Munyakazi, Case No. ICTR-97-36A-A, Judgement, 28 September 2011 ("*Munyakazi* Appeal Judgement").

MUVUNYI

Tharcisse Muvunyi v. The Prosecutor, Case No. ICTR-00-55A-A, Judgement, 29 August 2008 ("*Muvunyi I* Appeal Judgement").

Tharcisse Muvunyi v. The Prosecutor, Case No. ICTR-00-55A-A, Judgement, 1 April 2011 ("*Muvunyi II* Appeal Judgement").

NAHIMANA *et al.*

Ferdinand Nahimana et al. v. The Prosecutor, Case No. ICTR-99-52-A, Judgement, 28 November 2007 (the English translation of the French original was filed on 16 May 2008) ("*Nahimana et al.* Appeal Judgement").

NCHAMIHIGO

Siméon Nchamihigo v. The Prosecutor, Case No. ICTR-01-63-A, Judgement, 18 March 2010 ("*Nchamihigo* Appeal Judgement").

NDAHIMANA, Grégoire

Grégoire Ndahimana v. The Prosecutor, Case No. ICTR-01-68-A, Judgement, 16 December 2013 ("*Ndahimana* Appeal Judgement").

NDINDILIYIMANA *et al.*

The Prosecutor v. Augustin Ndindiliyimana et al., Case No. ICTR-00-56-T, Judgement and Sentence, 17 May 2011 ("*Ndindiliyimana et al.* Trial Judgement").

Augustin Ndindiliyimana, François-Xavier Nzuwonemeye and Innocent Sagahutu v. The Prosecutor, Case No. ICTR-00-56-A, Judgement, 11 February 2014 ("*Ndindiliyimana et al.* Appeal Judgement").

NIYITEGEKA

Eliézer Niyitegeka v. The Prosecutor, Case No. ICTR-96-14-A, Judgement, 9 July 2004 ("*Niyitegeka* Appeal Judgement").

NTABAKUZE

Aloys Ntabakuze v. The Prosecutor, Case No. ICTR-98-41A-A, Judgement, 8 May 2012 ("*Ntabakuze* Appeal Judgement").

NTAGERURA *et al.*

The Prosecutor v. André Ntagerura et al., Case No. ICTR-99-46-A, Judgement, 7 July 2006 (the English translation of the French original was filed on 29 March 2007) ("*Ntagerura et al.* Appeal Judgement").

NTAKIRUTIMANA

The Prosecutor v. Elizaphan Ntakirutimana and Gérard Ntakirutimana, Case Nos. ICTR-96-10-A & ICTR-96-17-A, Judgement, 13 December 2004 ("*Ntakirutimana* Appeal Judgement").

NTAWUKULILYAYO

Dominique Ntawukulilyayo v. The Prosecutor, Case No. ICTR-05-82-A, Judgement, 14 December 2011 ("*Ntawukulilyayo* Appeal Judgement").

RENZAHO

Tharcisse Renzaho v. The Prosecutor, Case No. ICTR-97-31-A, Judgement, 1 April 2011 ("*Renzaho* Appeal Judgement").

The Prosecutor v. Tharcisse Renzaho, Case No. ICTR-97-31-T, Judgement and Sentence, 14 July 2009 ("*Renzaho* Trial Judgement").

RUGGIU

The Prosecutor v. Georges Ruggiu, Case No. ICTR-97-32-I, Judgement and Sentence, 1 June 2000 ("*Ruggiu* Trial Judgement").

RUKUNDO

Emmanuel Rukundo v. The Prosecutor, Case No. ICTR-01-70-T, Judgement, 13 March 2009 ("*Rukundo* Trial Judgement").

Emmanuel Rukundo v. The Prosecutor, Case No. ICTR-01-70-A, Judgement, 20 October 2010 ("*Rukundo* Appeal Judgement").

RUTAGANDA

Georges Anderson Nderubumwe Rutaganda v. The Prosecutor, Case No. ICTR-96-3-A, Judgement, 26 May 2003 (the English translation of the French original was filed on 9 February 2004) ("*Rutaganda* Appeal Judgement").

SEROMBA

The Prosecutor v. Athanase Seromba, Case No. ICTR-01-66-A, Judgement, 12 March 2008 ("*Seromba* Appeal Judgement").

The Prosecutor v. Athanase Seromba, Case No. ICTR-01-66-I, Judgement, 13 December 2006 (the English translation of the French original was filed on 25 September 2007) ("*Seromba* Trial Judgement").

SERUGENDO

The Prosecutor v. Joseph Serugendo, Case No. ICTR-05-84-I, Judgement and Sentence, 12 June 2006 ("*Serugendo* Trial Judgement").

SERUSHAGO

The Prosecutor v. Omar Serushago, Case No. ICTR-98-39-S, Sentence, 5 February 1999 (the English translation of the French original was filed on 25 February 1999) ("*Serushago* Trial Judgement").

SETAKO

Ephrem Setako v. The Prosecutor, Case No. ICTR-04-81-A, Judgement, 28 September 2011 ("*Setako* Appeal Judgement").

SIMBA

Aloys Simba v. The Prosecutor, Case No. ICTR-01-76-A, Judgement, 27 November 2007 ("*Simba* 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

Prosecutor v. Vidoje Blagojević and Dragan Jokić, Case No. IT-02-60-A, Judgement, 9 May 2007 ("*Blagojević and Jokić* Appeal Judgement").

BLAŠKIĆ

Prosecutor v. Tihomir Blaškić, Case No. IT-95-14-A, Judgement, 29 July 2004 ("*Blaškić* Appeal Judgement").

BOŠKOSKI and TARČULOVSKI

Prosecutor v. Ljube Boškoski and Johan Tarčulovski, Case No. IT-04-82-A, Judgement, 19 May 2010 ("*Boškoski and Tarčulovski* Appeal Judgement").

BRĐANIN

Prosecutor v. Radoslav Brđanin, Case No. IT-99-36-A, Judgement, 3 April 2007 ("*Brđanin* Appeal Judgement").

DELALIĆ *et al.*

Prosecutor v. Zejnil Delalić et al., Case No. IT-96-21-A, Judgement, 20 February 2001 ("*Delalić et al.* Appeal Judgement").

ĐORĐEVIĆ

Prosecutor v. Vlastimir Đorđević, Case No. IT-05-87/1-A, Judgement, 27 January 2014 ("*Đorđević* Appeal Judgement").

FURUNDŽIJA

Prosecutor v. Anto Furundžija, Case No. IT-95-17/1-A, Judgement, 21 July 2000 ("*Furundžija* Appeal Judgement").

GOTOVINA and MARKAČ

Prosecutor v. Ante Gotovina and Mladen Markač, Case No. IT-06-90-A, Judgement, 16 November 2012 ("*Gotovina and Markač* Appeal Judgement").

HADŽIHASANOVIĆ and KUBURA

Prosecutor v. Enver Hadžihasanović and Amir Kubura, Case No. IT-01-47-A, Judgement, 22 April 2008 ("*Hadžihasanović and Kubura* Appeal Judgement").

HALILOVIĆ

Prosecutor v. Sefer Halilović, Case No. IT-01-48-A, Judgement, 16 October 2007 ("*Halilović* Appeal Judgement").

HARADINAJ et al.

Prosecutor v. Ramush Haradinaj et al., Case No. IT-04-84-A, Judgement, 19 July 2010 ("*Haradinaj et al.* Appeal Judgement").

HARAQIJA and MORINA

Prosecutor v. Astrit Haraqija and Bajrush Morina, Case No. IT-04-84-R77.4-A, Judgement, 23 July 2009 ("*Haraqija and Morina* Appeal Judgement").

KUNARAC *et al.*

Prosecutor v. Dragoljub Kunarac et al., Case No. IT-96-23 & IT-96-23/1-A, Judgement, 12 June 2002 ("*Kunarac et al*. Appeal Judgement").

KRNOJELAC

Prosecutor v. Milorad Krnojelac, Case No. IT-97-25-A, Judgement, 17 September 2003 ("*Krnojelac* Appeal Judgement").

KRSTIĆ

Prosecutor v. Radislav Krstić, Case No. IT-98-33-A, Judgement, 19 April 2004 ("*Krstić* Appeal Judgement").

KUPREŠKIĆ *et al.*

Prosecutor v. Zoran Kupreškić et al., Case No. IT-95-16-A, Appeal Judgement, 23 October 2001 ("*Kupreškić et al.* Appeal Judgement").

KVOČKA et al.

Prosecutor v. Miroslav Kvočka et al., Case No. IT-98-30/1-A, Judgement, 28 February 2005 ("*Kvočka et al.* Appeal Judgement").

LUKIĆ and LUKIĆ

Prosecutor v. Milan Lukić and Sredoje Lukić, Case No. IT-98-32/1-A, Judgement, 4 December 2012 ("*Lukić and Lukić* Appeal Judgement").

MARTIĆ

Prosecutor v. Milan Martić, Case No. IT-95-11-A, Judgement, 8 October 2008 ("*Martić* Appeal Judgement").

MILOŠEVIĆ

Prosecutor v. Dragomir Milošević, Case No. IT-98-29/1-A, Judgement, 12 November 2009 ("*Milošević* Appeal Judgement").

MRKŠIĆ and ŠLJIVANČANIN

Prosecutor v. Mile Mrkšić and Veselin Šljivančanin, Case No. IT-95-13/1-A, Judgement, 5 May 2009 ("*Mrkšić and Šljivančanin* Appeal Judgement").

ORIĆ

Prosecutor v. Naser Orić, Case No. IT-03-68-A, Judgement, 3 July 2008 ("*Orić* Appeal Judgement").

PERIŠIĆ

Prosecutor v. Momčilo Perišić, Case No. IT-04-81-A, Judgement, 28 February 2013 ("*Perišić* Appeal Judgement").

STAKIĆ

Prosecutor v. Milomir Stakić, Case No. IT-97-24-A, Judgement, 22 March 2006 ("*Stakić* 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-A, Judgement, 15 July 1999 ("*Tadić* Appeal Judgement").

VASILJEVIĆ

Prosecutor v. Mitar Vasiljević, Case No. IT-98-32-A, Judgement, 25 February 2004 ("*Vasiljević* Appeal Judgement").

B. Defined Terms and Abbreviations

AT.

Transcript from the appeal hearing in the present case. All references are to the official English transcript, unless otherwise indicated

fn. (fns.)

footnote (footnotes)

FAR

Forces armées rwandaises (Rwandan Armed Forces)

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. Édouard Karemera and Matthieu Ngirumpatse, Case No. ICTR-98-44-I, Amended Indictment of 23 August 2010 (French translation filed on 23 August 2010)

Karemera Appeal Brief

Le mémoire d'appel du Monsieur Édouard Karemera, 10 January 2013 (English translation filed on 7 June 2013)

Karemera Closing Brief

The Prosecutor v. Édouard Karemera and Matthieu Ngirumpatse, Case No. ICTR-98-44-T, *Mémoire final de Karemera conformement a l'article 86 B) du Règlement de procédure et de preuve,* 2 June 2011 (English translation filed on 2 August 2011)

Karemera Notice of Appeal

L'Acte d'appel de Monsieur Édouard Karemera, 19 March 2012 (English translation filed on 12 September 2012)

Karemera Reply Brief

Mémoire en duplique de Monsieur Édouard Karemera, 20 March 2013 (English translation filed on 11 July 2013)

Karemera Response Brief

Mémoire de l'intimé Monsieur Édouard Karemera, 28 February 2013 (English translation filed on 15 May 2013)

MRND

Mouvement révolutionnaire national pour la démocratie et le développement (prior to 5 July 1991) and *Mouvement républicain national pour la démocratie et le développement* (from 5 July 1991)

Ngirumpatse Appeal Brief

Mémoire d'Appelant de M. Ngirumpatse, 2 July 2012; *Corrigendum au Mémoire d'Appelant de M. Ngirumpatse*, 24 July 2012 (English translations filed on 12 June 2013)

Ngirumpatse Closing Brief

The Prosecutor v. Édouard Karemera and Matthieu Ngirumpatse, Case No. ICTR-98-44-T, *Mémoire final pour M. Ngirumpatse*, 2 June 2011 (English translation filed on 15 August 2011); *Mémoire final corrigé pour M. Ngirumpatse*, 29 June 2011

Ngirumpatse Notice of Appeal

Acte d'appel de M. Ngirumpatse contre le jugement et la sentence du 2 février 2012 (with confidential annex), 19 March 2012 (English translation filed on 11 September 2012)

Ngirumpatse Reply Brief

Réplique de M. Ngirumpatse au mémoire d'intimé du Procurer, 17 September 2012 (English translation filed on 18 April 2013)

Ngirumpatse Response Brief

Mémoire en réponse de M. Ngirumpatse contre l'appel du Procureur du judgement du 2 février 2012, 3 September 2012 (English translation filed on 9 January 2013)

p. (pp.)

page (pages)

para. (paras.)

paragraph (paragraphs)

Prosecution

Office of the Prosecutor

Prosecution Appeal Brief

Prosecutor's Appellant's Brief, 21 May 2012 (French translation filed on 8 February 2013)

Prosecution Closing Brief

The Prosecutor v. Édouard Karemera and Matthieu Ngirumpatse, Case No. ICTR-98-44-T, Prosecutor's Final Brief (confidential), 2 June 2011 (French translation filed on 15 August 2011)

Prosecution Notice of Appeal

Prosecutor's Notice of Appeal, 5 March 2012 (French translation filed on 8 May 2012)

Prosecution Pre-Trial Brief

The Prosecutor v. Édouard Karemera et al., Case No. ICTR-98-44-PT, Prosecutor's Pre-Trial Brief, 27 June 2005 (French translation filed on 29 August 2005)

Prosecution Reply Brief (Ngirumpatse)

Prosecutor's Reply to Ngirumpatse's Respondent Brief, 18 September 2012 (French translation filed on 11 July 2013)

Prosecution Response Brief (Karemera)

Prosecutor's Brief in Response to Édouard Karemera Appeal, 19 February 2013 (French translation filed on 25 September 2013)

Prosecution Response Brief (Ngirumpatse)

Prosecutor's Brief in Response to Matthieu Ngirumpatse's Appeal, 13 August 2012 (French translation filed on 17 May 2013)

RPF

Rwandan (also Rwandese) Patriotic Front

Rules

Rules of Procedure and Evidence of the International Criminal Tribunal for Rwanda

Statute

Statute of the International Criminal Tribunal for Rwanda established by Security Council Resolution 955 (1994)

T.

Transcript from hearings at trial in the present case. All references are to the official English transcript, unless otherwise indicated

Trial Chamber

Trial Chamber III of the Tribunal

Trial Judgement

The Prosecutor v. Édouard Karemera and Matthieu Ngirumpatse, Case No. ICTR-98-44-T, Judgement and Sentence, pronounced on 21 December 2011, filed in writing on 2 February 2012 (French translation filed on 1 December 2012, updated translation filed on 11 January 2013)

Tribunal *or* 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

UN

United Nations

UNAMIR

United Nations Assistance Mission for Rwanda