

RWANDA / JUDGMENT

Callixte Nzabonimana v. The Prosecutor

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@ 2238/H Tribunal P6naII nternationalp our le Rwanda T InternationalC riminal'fribunal for Rwanda tGTR-98-44D-A 29th Sept. 2014 IN THE APPEALS CHAMBBR l2238tH - 2051lHl Before: JudgeM ehmet Gi.ineyP, residing JudgeW illiam H. Sekule JudgeA rlette Ramaroson JudgeK halida Rachid Khan JudgeK offi Kumelio A. Afande Registrar: Mr. BonganiM ajola Judgement: 29 September2 014 CALLIXTE NZABONIMANA Y. THB PROSECUTOR CaseN o.lCTR-98-44D-A JUDGEMENT ICTRA ppealsC haq[er Counsel for Callixte Nzabonimana t.ss EzPo r w { Mr. Vincent Courcelle-Labrousse Mr. PhilippeL arochelle Detc: A4A^A K. Action: (/2*.LrG Office of the Prosecutor Copicrdo ,dil-trI*) t, Mr. HassanB ubacarJ allow Mr. JamesJ . Arguin Mr. Steffen Wirth Ms. Alison McFarlane 'l Intl'r:r.:rlinru(r lr 'irt;iri:ri i'ilrrrrt:;!ril; r l{rr:ttxta Ms. Mary DianaK aranja 'li'llrr n a I 1lc/ttl i itl r l tt: il lrrt :tl potn' lt' ll rlattrta

2237/H III. APPEAL OF NZABONIMANA A. ALLEGEEDn nOnSR rlarrNc ro NzaeoNIMANAR'Src ur ro a Fan Trual (Gnowo l) 5 B. Auecpn EnnonsR llarnqc ro TseAssESSMEoNFTT HEA ltnt (Gnolnt D2 , ru eanr) 7 C. Auecpo EnnonsR rLarnic ro rHEC yayr CsNrRsR NoT UsNYABIKENKCEo uuuut OFntce (Gnonro2 ,r Np ARTa,u o GnouND3).....9 1.N otice....!.....10 2.A ssessmeonf Et vidence.....13 3. Directa ndP ublicIn citementot CommiGt enocide... 41 4. Instigatioonf Genocidea ndE xterminationas a CrimeA gainsHt umanity.....48 5.C onclusion.....56 D. ALLEGEEDn nonsR -sr-arrxcro rHEB uranp TRaorNcC surRe(Gnouvo 4 aNo Gnouuo 5, tN 1.N otice....!.....57 2. Assessmeonft E videnc.e.. !.....60 3. Directa ndP ublicI ncitementto CommitG enocide... !.....79 4. Conclusio..n.. !.....83 E. Allpcro EnnonsR rlartNc ro MuRAMB(IG RoLTN5D, r Nr nnr) 84 1.N otice.... ".....!.....84 2.A ssessmeonf Et vidence..... !.....94 3. Directa ndF ublicI ncitementto CommitG enocide... I29 4. Conspiractoy C ommitGt enocide.!"I32 5.C onclusion..... ..-.-.....'142 F.A r,lpcpnE RRoRRsl lartltc ro NvaNaaev(nG r.ouND6) '.....143 G.A urcso EnnonsR ElarrNcr o TAMBwE(G nouNo7) 1.4 5 1.N otice.... I45 2. Conspiractoy CommitG enocide.!.....I49 3.C onclusion..... 153 H. Au-EcpoE nnonsR rlarrNc ro SeNrllclNc(GRouND8) !".1 54 1.P reliminarMya tters !.....1..5' 5 2. AllegedD ouble-CountingB etweenA ggravatingC ircumstanceasn d Elementso f the Crime..... 156 tV. APPEAL OF THE PROSECUTION..... 158 A. AT-ITcpnE nnon RTLRTTNTc o NZABONIMANA'CSO NVTCTTFOONR I NSTIGATINGGE NOCIDE aNo ExrprurrNArloNr NN yABIKENKEC oMMwE OEEtcE(G nolwo 1).....158 1.C ommitting.....!.....159 2. Ordering!.....162 3. Conclusion.,.....1..6. 3 B. Aupcgo ERn.onsR rlarruc To THER II.EA.SEO FP zuSONERINS RUTOBWEC OMMUNE (GnouN2o) 164 V.IMPACT OF THE APPEALS

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2235/H 1. The Appeals Chamber of the Intemational 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 RwandanC itizens Responsiblef or Genocidea nd
Other Such Violations Committed in the Territory of Neighbouring Statesb etween 1 January 1994
and 31 December 1994 ("Appeals Chamber" and "Tribunal", respectively) is seised of appeals by
Callixte Nzabonimana("Nzabonimana") and the Prosecutiona gainst the Judgementa nd Sentence
pronounced by Trial Chamber III of the Tribunal ("Trial Chamber") on 31 May 2012 in the case of
1 The P ros e c u t o r v. Ca llixte Nz abo n imana ("T ial Judgement"). I. INTRODUCTION A.

Background 2. Nzabonimana was bom in 1953 in Kavumu secteltr, Nyabikenke commune,
Gitarama prdfecture.2F rom 8 April 1994 to mid-July 1994, he was the Rwandan Minister of Youth
and AssociativeM ovements and serveda s the Chairmano f the Mouvementr dpublicain national
pour la ddmocratie et le ddveloppement("MRND") party in Gitarama prdfecture duingthe
events.3 3. The Trial Chamber convicted Nzabonimanap ursuant to Article 6(1) of the Statute of
the Tribunal ("Statute") for instigating genocide (Count 1) and extermination as a crime against
humanity (Count 4) at the Cyayi centre on 14 April 1994 resulting in the killings of Tutsis at the
Nyabikenke communeo ffice on 15 April lgg4.4 The Trial Chamberc onvictedh im for conspiracyt
o commit genocide(Count 2) basedo n two agreementsto commit genocidei n Gitarama prdfecture.s
Further, the Trial Chamber convicted him for direct and public incitement to commit
genocide (Count 3), basedo n his speechesa t the Butare trading centre on12 April 1994,a t the
Cyayi centre on 14 April 1994, and.a t the Murambi training centre on 18 April 1994I The charge of
murder as a crime againsth umanity (Count 5) was dismissed.TN zabonimanaw as sentencedto a
single term of life imprisonment.s ' The Prosecuto rv . CallbcteN zabonimanaC. aseN o.

ICTR-98-44D-T,J udgemenat nd Sentencep, ronouncedo n 31 May 2012, filed on 25 June2 012.F or
easeo f referencet,w o annexesa re appendedA: nnex A - ProceduralH istory; Annex B - Cited
Materialsa nd DefinedT erms. 2 Trial Judgementpt,a ra.4 . 'Trial Judgementpt,a ra.5 . Seea lsoi
bid.,p ara.89. o Trial Judgementpt,a ras.1 71 8, l'73 7, 178 6, 178 7,1790,1800, s Trial Judgementpt,
aras.1 '74 7, l'74 8, 1'74 9, 1800. " Trial Judgementpt,a ras.1 762,1 768,1 7'731, 775,18 00. "Trial
Judgementpt,a ras.1 796,1 800. " Trial Judgementtp, aras.1 821,1822. CaseN o.: ICTR-98-44D-A 29
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2234/H B. The Appeals 4. Nzabonimanap resentse ight groundso f appealc hallengingh is convictionsa nd sentence." He requestst he Appeals chamber to overturn the Trial Judgement,e nter acquittalso n all counts oI the Indictment, and order his immediater elease."In the alternative,N zabonimanar equestst he Appeals Chambert o reduceh is sentence."T he Prosecutionr espondst hat Nzabonimana'sa ppeal shouldb e dismissed.r2 5. The Prosecutiona dvancest wo grounds of appeal,I t challengest he Trial Chamber's finding that Nzabonimana instigated a massacrea t the Nyabikenke commune office on 15 April 1994, arguing that his conviction fbr this crime should be basedo n his committing or, in the alternative, ordering the massacre.'tT he Prosecutiona lso challengest he Trial Chamber's decision to not convict Nzabonimana of aiding and abetting genocide stemming from the killings of Tutsis in Rutobwe, o**urr.'o Nzabonimanar espondsth at the Prosecution'sa ppeals houldb e dismissed.l5 6. The Appeals Chamber heardo ral argumentsr egardingt hesea ppealso n 29 April2014. e NzabonimanNao ticeo f Appealp, p.7 -60;N zabonimanAap pealB rief,p aras2. l-395. '0 N zabonimanNao ticeo f Appealp, . 61;N zabonimanAap pealB rief,p ara'3 96. rr NzabonimanNao ticeo f Appealp, . 61. rr ProsecutioRne sponsBer ief,p aras.53, 15. r3p rosecutioNn oticeo f Appeal.p ara.2P: rosecutioAnp pealB rief,p aras2. -4,23-5'7,69. ra P rosecutioNn oticeo f Appeal,p ara.3 ; ProsecutioAn ppealB rief' paras5. , 58-69. rs N zabonimanRae sponsBer ief,p iua.1 2,p .32. CaseN o.:I CTR-98-44D-A 29 Septembe2r0 14 il*\

2233/H II. STANDARDSO F APPELLATE REVIEW 7. The Appeals Chamber recalls the applicable standardso f appellate review pursuant to Article 24 of the Statute.T he Appeals Chamberr eviews only errorso f law which have the potential to invalidate the decision of the trial chamber and errors of fact which have occasioned a l6 miscarriageo f justice. 8. Regarding errors of law, the Appeals Chamber has stated: Wherea party allegest hat therei s an error of law, that party musta dvancea rgumentsin supporto f the submissiona nd explainh ow the error invalidatest he decisionH. owever,i f the appellant's a-rgumentdso not supportt he contention,t hat party doesn ot automaticallylo se its point sincet he AppealsC hamberm ay stepi n and,f or other reasonsf,i nd in favour of the contentio n that therei s ane rro r of law.- 9. Where the Appeals Chamber finds an error of law in the trial judgement arising from the application of an incorrect legal standard,i t will articulate the correct legal standard and review the relevant factual findings of the trial chambera ccordingly.tt In so doing, the Appeals Chamber not only corrects the legal effor, but, when necessary,a lso applies the correct legal standardt o the evidence contained in the trial record and determines whether it is itself convinced beyond reasonabled oubt as to the factual finding challenged by the appellant before that finding may be confirmed on appeal.le 10. Regarding rrors of fact, it is well-establishedt hat the Appeals Chamber will not lightly overturn findines of fact made bv 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-,enoneousf inding will be revoked or revised only if the enor occasioneda miscarriageo f iustice.20 The same standardo f reasonablenessa nd the same deferencet o factual findings of the trial chamber apply when the Prosecutiona ppealsa gainsta n acquittal." The Appeals Chamberw ill only hold that an

error of fact was committed when it determines that no reasonable trier of fact could have made
 16 See, e.g., Bizimungu Appeal Judgment, para. 8; Ndindiliyimana et al. Appeal Judgment, para. 8; Ndahimana Appeal Judgment, para. 7. See also Dordević Appeal Judgment, para. 13. 11 Ntakirutimana Appeal Judgment, para. 11 (internal reference omitted). See also, e.g., Bizimungu Appeal Judgment, para. 9; Ndindiliyimana et al. Appeal Judgment, para. 9; Ndahimana Appeal Judgment, para. 8. 17 Bloikii Appeal Judgment, para. 15. See also, e.g., Bitumun Appeal Judgment, para. 10; Ndindiliyimana et al. Appeal Judgment, para. 10. 18 'N- il tokt Appeal Judgment, para. 15. See also, e.g., Bizimungu Appeal Judgment, para. 10; Ndindiliyimana et al. Appeal Judgment, para. 10. 19 Krstić Appeal Judgment, para. 40 (internal references omitted). See also, e.g., Bizimungu Appeal Judgment, para. 11; Ndindiliyimana et al. Appeal Judgment, para. 11; Ndahimana Appeal Judgment, para. 10. 20 Srr, r.g.. Bizimungu Appeal Judgment, para. 11; Ndindiliyimana et al. Appeal Judgment, para. 11; Ntakirutina Appeal Judgment, para. 10. See also Dordević Appeal Judgment, para. 18. a.*^/- rJv Case No.: ICTR-98-44D-A 29 September 2014

the impugned finding.²¹ However, considering that it is the Prosecution that bears the burden 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.²³ A convicted person must show that the trial chamber's factual errors create a reasonable doubt as to his guilt.²⁴ The Prosecution must show that, when account is taken of the errors of fact committed by the trial chamber, a reasonable doubt of the accused's guilt has been eliminated.²⁵ 1. 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.²⁶ 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.²⁷ 12. In order for the Appeals Chamber to assess arguments on appeal, the appealing party must provide precise reference to relevant transcript pages or paragraphs in the decision or judgement to which the challenge is made.²⁸ 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.²⁹ Finally, the Appeals Chamber has inherent discretion in selecting which submissions merit a detailed reasoned opinion in writing, and it will dismiss arguments which are evidently unfounded without providing detailed reasoning.³⁰ 13. Srr, r.g., Bizimungu Appeal Judgment, para. 11; Ndindiliyimana et al. Appeal Judgment, para. 11; Ndahimana Appeal Judgment, para. 10. See also Dordević Appeal Judgment, para. 18 't' St', e.g., Bizimungu Appeal Judgment, para. 11; Ndindiliyimana et al. Appeal Judgment, para. 11; Ndahimana Appeal Judgment, para. 10. See also Dordević Appeal Judgment, para. 18 'o, S'e. e.g.. Bizimungu Appeal Judgment, para. 11; Ndindiliyimana et al. Appeal Judgment, para. 11; Ndahimana Appeal Judgment, para. 10. See also Dordević Appeal Judgment, para. 18 'tt, S'r. e.g., Bizimungu Appeal Judgment, para. 11; Ndindiliyimana et al. Appeal Judgment, para. 11; Ndahimana Appeal Judgment, para. 10. See also Dordević Appeal Judgment, para. 18. 26 Kuprekić et al. Appeal Judgment, para. 27. See also,

e.g., Bizimungu Appeal Judgement, para. 12; Ndindiliyimuna et al. Appeal Judgement, para. 12. See, e.g., Bizimungu Appeal Judgement, para. 12; Ndindiliyimuna et al. Appeal Judgement, para. 12; Ndahimana Appeal Judgement, para. 11. See also Dordevi Appeal Judgement, para. 20. rE Practice Direction on Formal Requirements for Appeals Appeal Judgement, 15 June 2007, para. 4(b). See also, e.g., Bizimungu Appeal Judgement, para. 13; Ndindiliyimuna et al. Appeal Judgement, para. 13; Ndahimana Appeal Judgement, para. 12. 2e Kunuruc et al. Appeal Judgement, para. 43. See also, e.g., Bizimungu Appeal Judgement, para. 13; Ndindiliyimuna et al. Appeal Judgement, para. 13; Ndahimana Appeal Judgement, para. 12. 30 Krtanjek Appeal Judgement, para. 16. See also, e.g., Bizimungu Appeal Judgement, para. 13; Ndindiliyimuna et al. Appeal Judgement, para. 13; Ndahimana Appeal Judgement, para. 12. Case No. I CTR-98-44D-A 29 September 2014 Cv*,

2231/H III. APPEAL OF NZABONIMANA A. Alleged Errors Relating to Nzabonimana's Right to a Fair Trial (Ground 1) 13. Nzabonimana submits that the Trial Chamber erred in fact and in law in its assessment of his right to a fair trial, in light of the Prosecution's conduct during its investigations and the trial proceedings. In particular, Nzabonimana argues that the Prosecution violated its disclosure obligations concerning material disclosed: (i) in relation to Prosecution Witnesses CNA and CNAC; (ii) from various other trials before the Tribunal; (iii) in relation to Prosecution Witness CNA; and (iv) in relation to Prosecution Exhibit 135. Nzabonimana also lists other issues related to the Prosecution's conduct that the Trial Chamber allegedly failed to take into account. He requests that all findings of the Trial Chamber delivered after a manifestly unfair trial be reversed, so that his sentence be significantly reduced as a result of repeated violations of his basic rights. 14. The Prosecution responds that Nzabonimana's submissions should be summarily dismissed. 15. The Appeals Chamber recalls that it has inherent discretion to determine which of the parties' submissions merit a reasoned opinion in writing and that it may dismiss arguments which are evidently unfounded without providing detailed reasoning. In particular, the Appeals Chamber may summarily dismiss submissions that are either: (i) a mere repetition of arguments that were unsuccessful at trial without any demonstration that their rejection by the Trial Chamber constituted an error warranting the intervention of the Appeals Chamber; or (ii) mere assertions unsupported by any evidence, undeveloped assertions, or assertions that fail to articulate any error. 16. With respect to the alleged disclosure violations, the Appeals Chamber considers that Nzabonimana merely raises issues on appeal that the Trial Chamber already addressed and ruled upon without attempting to demonstrate an error in the Trial Chamber's reasoning in the relevant 3rd Nzabonimana Notice of Appeal, para. 11; Nzabonimana Appeal Brief, paras. 21-28. 32 Nzabonimana Appeal Brief, para. 25. "Nzabonimana Appeal Brief, para. 26. 3a Nzabonimana Appeal Brief, para. 27. "Nzabonimana Appeal Brief, para. 28. 36 Nzabonimana Notice of Appeal, para. 11(1)-(10N); Nzabonimana Appeal Brief, paras. 21-24. 37 Nzabonimana Appeal Brief, para. 29. 38 Prosecution Response Brief, paras. 12-24. "Jesupra, para. 11. See, e.g., Dordevi Appeal Judgement, para. 2015. See also, e.g., Stugar Appeal Judgement, para. 16. Case No. I CTR-98-44D-A 29 September 2014

Indinssal or decisions. At no point does Nzabonimana substantiate any prejudice he contends was incurred as a result of an alleged violation of his right to a fair trial. Consequently, his submissions related to the alleged violations of disclosure obligations are summarily dismissed. The Appeals Chamber also dismisses Nzabonimana's remaining submissions related to his right to a fair trial as he fails to provide any argument in support. For the foregoing reasons, the Appeals Chamber dismisses Nzabonimana's First Ground of Appeal. See Trial Judgement, paras. 45-48, 58-60, fn. 94. The Appeals Chamber notes the following Trial Chamber's decisions for: (i) the documents from the Ngirabutware trial, in *Protrrrtor v. Callixte Nzabonimana*, Case No. ICTR-98-44D-T, Decision on Defence Motion for Appropriate Relief in Light of Exculpatory Material Disclosed by the Prosecution on 15 November 2011, 3 (1 April 2012, p. 14); (ii) the statement of Witness CNAL, in *The Prosecutor v. Callixte Nzabonimana*, Case No. ICTR-98-44D-T, Decision on Defence Motion to Recall Witness CNAL, 17 December 2009; and (iii) the 22 February 2012 statements, in *The Prosecutor v. Callixte Nzabonimana*, Case No. ICTR-98-44D-T, Decision on Defence Motion for Appropriate Relief in Light of Exculpatory Material Disclosed by the Prosecution on 23 February 2012 Relating to Witness T'77, 30 April 2012, paras. 40, 49, 52 in which the Trial Chamber concluded that the Prosecution was not in violation of its Rule 68 of the Rules obligations. As to the disclosed documents on 18 July 2012, the Appeals Chamber notes that Nzabonimana refers to a motion that was already adjudicated by the Appeals Chamber. See Decision on Callixte Nzabonimana's New Motion for Remedies, 16 October 2013; Callixte Nzabonimana's New Motion for Appropriate Remedies on Account of Further Violations of Rules 66(A)(ii) and 68 of the Rules of Procedure and Evidence, 12 July 2013 (original French version filed on 25 June 2013) (public with confidential and public annexes). The Appeals Chamber notes that Nzabonimana merely enumerates issues related to the conduct of the Prosecution with reference in footnotes to paragraphs of the Trial Judgement or decisions from the Trial Chamber. See Nzabonimana Appeal Brief, paras. 21-24, fn. 34-40. The Appeals Chamber observes, however, that Nzabonimana's contentions regarding the Trial Chamber's erroneous assessment of evidence are considered in this Judgement where Nzabonimana provides the required specifications. See *Id.*, paras. 69, 70, 74-7189, 7, 203, 285, 287. Case No.: ICTR-98-44D-A 29 September 2014 'j;

2229/H B. Alleged Errors Relating to the Assessment of the Alibi (Ground 2. in part) 18. Nzabonimana presented an alibi according to which he was in Kigali from 6 to 12 April 1994, and therefore could not have participated in meetings and distributed weapons in Nyabikenke commune, itaramardefecture, between 8 and 12 April 1994, as alleged in paragraphs 16, 17, 35, 37, and 52 of the Indictment. The Trial Chamber did not reject the alibi in its entirety, but concluded that it was "not sufficiently credible to raise a reasonable doubt in the Prosecution's case [and] not reasonably possibly true in relation to the relevant paragraphs of the Indictment". As 19. Nzabonimana submits that, although he was not convicted of any crime within the period covered by the alibi, the Trial Chamber applied the wrong standard of proof in assessing each alibi witness and the Prosecution's evidence. Nzabonimana argues that this shifting in the burden of proof and the failure to assess the Defence evidence in its entirety were prejudicial to him as it affected his right to a fair trial and impacted the Defence evidence as a

whole. At 20. The Prosecution responds that Nzabonimana's submissions should be summarily dismissed, as he was not convicted of any crime falling within the alibi period. As 2L The Appeals Chamber finds that Nzabonimana fails to sufficiently elaborate his submissions, as he merely refers to paragraphs of the Trial Judgement. Furthermore, his submission related to his right to a fair trial is broad and does not refer to any finding or decision. Consequently, his challenges are summarily dismissed. In any event, the Appeals Chamber observes that the Trial Chamber correctly recalled the applicable law on the assessment of alibi evidence. 50 The Appeals Chamber also notes that the Trial Chamber considered the alibi evidence in conjunction with the Prosecution's evidence when assessing paragraphs 16, 17, 35, 37, and 52 of the Indictment, and recalled its finding that the alibi was not reasonably possibly true in relation to each paragraph examined. 51 The Trial Chamber held that "[d]espite this finding that Nzabonimana's alibi cannot be reasonably possibly true, [...] the burden of proof remains on the Prosecution to establish the events alleged in the Indictment beyond reasonable doubt". 53 The Trial Chamber acquitted Nzabonimana of the charges in question as it concluded that the Prosecution failed to * Trial Judgement, paras. 293, 294. of Trial Judgement, para. 458. of Nzabonimana's Notice of Appeal, paras. 2.1N; Nzabonimana's Appeal Brief, para. 30. of Nzabonimana's Appeal Brief, para. 31. as Prosecution's Response Brief, para. 25. See Nzabonimana's Appeal Brief, para. 31. 50 See Trial Judgement, paras. 386-389, 92. of Trial Judgement, paras. 296, 462, 509, 553, 578, 639, and fn. 591's 45, 692, 726, 804. of Trial Judgement, paras. 462, 509, 553, 578, 639, and fn. 591, 645, 692, 126, 804. " Trial Judgement, para. 459. Case No.: ICTR-98-14D-A 29 September 2014

prove beyond reasonable doubt the relevant allegations of the Indictment. so The Appeals Chamber is therefore not persuaded that the Trial Chamber shifted the burden of proof or applied the wrong standard of proof to assess Nzabonimana's alibi evidence. 22. For the foregoing reasons, the Appeals Chamber dismisses in part Nzabonimana's Second Ground of Appeal. ss to Trial Judgement, paras. 506, 550, 575, 635, 636, 662. See Indictment, paras. 16, 17, 35, 37, 52. ss Nzabonimana's allegations related to the Trial Chamber's assessment of his influence (see Nzabonimana's Notice of Appeal, paras. 2.2N; Nzabonimana's Appeal Brief, section 2.2) are examined below. See infra, paras. 136, 137, 141-144. Case No.: ICTR-98-14D-A 29 September 2014 G:

2227/H.C. (Ground 2. in Part. and Ground 3) 23. The Trial Chamber convicted Nzabonimana of direct and public incitement to commit genocide by, inter alia, encouraging, on 14 April 1994, a crowd of persons at the Cyayi centre near the Nyabikerke commune office to kill Tutsis (Count 3). 56 Additionally, it convicted Nzabonimana of genocide (Count 1) and extermination as a crime against humanity (Count 4) for instigating, by his speech at the Cyayi centre, the killings of Tutsis at the Nyabikenke commune office on 15 April 1994. In particular, the Trial Chamber determined that Nzabonimana held a meeting in the afternoon of 14 April 1994 at the Cyayi centre, located approximately 250 to 300 metres away from the Nyabikenke commune office. 58 It found that approximately 30 people were present at the centre and that Nzabonimana said to those gathered: "I know that Hutus do not heed instructions. Do not continue to eat the cows of Tutsi who have sought refuge at the communal office. What really matters is not the cows; it is rather, the owners of the cows that matter." The Trial Chamber also found that Nzabonimana threatened a Tutsi, Evariste Munyagatare, who was among those seeking refuge at the Nyabikenke

commune office.⁶⁰ The Trial Chamber further determined that, following Nzabonimana's address on 14 April 1994 at the Cyayi centre, the first successful attack against the Nyabikenke commune office occurred between 3.00 and 4.00 a.m. and resumed during the day on 15 April 1994. The Trial Chamber found that during these attacks on the commune office, between 15 and 60 Tutsi refugees were killed, including Munyagatare.⁶² 24. Nzabonimana submits that the Trial Chamber erred in fact and in law in convicting him in connection with the events at the Cyayi centre and the Nyabikenke commune office.⁶³ In this section, the Appeals Chamber considers Nzabonimana's arguments in relation to: (i) notice; (ii) the assessment of evidence; (iii) direct and public incitement to commit genocide; and (iv) instigation of genocide and extermination as a crime against humanity. The Trial Judgement, paras. 1763, 1768, 1775, 1800. The Trial Judgement, paras. 1718, 1737, 1786, 1787, 1790, 1800. Based on its findings related to the Nyabikenke commune office attacks, the Trial Chamber also found Nzabonimana responsible for murder as a crime against humanity. However, recalling the law on cumulative convictions and the fact that Nzabonimana was convicted of extermination as a crime against humanity, the Trial Chamber dismissed the charge of murder as a crime against humanity. See Trial Judgement, paras. 1795, 1799, 1800. The Trial Judgement, paras. 87, 938. See also ibid., para. 1710. The Trial Judgement, paras. 87, 938. See also ibid., para. 1710. The Trial Judgement, paras. 936, 939. See also ibid., para. 1117. The Trial Judgement, paras. 936, 939. See also ibid., para. 1711. 63 Nzabonimana Notice of Appeal, paras. 3.1-3.5N; Nzabonimana Appeal Brief, paras. 3.3-116. The 9th Case No.: ICTR-98-44D-A 29 September 2014

2226/H.L. Notice 25. Nzabonimana submits that he did not receive clear and sufficient notice in paragraphs 19 and 20 of the Indictment of allegations that he threatened Munyagatare and of Munyagatare's death.⁶⁴ He argues that while the Trial Chamber acknowledged that Munyagatare's death was not pleaded in the Indictment or in the Prosecution Pre-Trial Brief, it failed to determine whether he was put on notice.⁶⁵ Although the Trial Chamber decided not to convict him on the basis of Munyagatare's death, Nzabonimana claims that it considered the death as evidence of the contextual background and a material element of his conviction for genocide, extermination, and direct and public incitement to commit genocide.⁶⁶ Nzabonimana further avers that he was not notified of the alleged threat he made against Munyagatare, which was a material element for his convictions of genocide and direct and public incitement to commit genocide.⁶⁷ Nzabonimana argues that he suffered prejudice because he was unable to prepare for his cross-examination of Prosecution Witnesses CNAI or CNAX, did not research Gacaca judicial documents related to Munyagatare's death, and did not request to call eye-witnesses with respect to this event.⁶⁸ 26. The Prosecution responds that Munyagatare's death and Nzabonimana's threat against him did not have to be pleaded because they are part of the evidence and, for the death, contextual background to the allegations in the Indictment.⁶⁹ Furthermore, the Prosecution argues that only Witness CNAX testified to Munyagatare's death and that Nzabonimana received, a year before his testimony, his prior statement detailing the death and the threat.⁷⁰ Regarding both Witnesses CNAI and CNAX, the Prosecution submits that Nzabonimana did not object to their testimonies because of lack of notice.⁷¹ Paragraph 19 of

the Indictment reads: On or about 4 April 1994, Callixte NZABONIMANA held a meeting at Cyayic ellule, Kiyumba secteur, Nyabikenke commune, Gituramup refecture. He asked the population to prioritize the massacre of Tutsi before taking their properties. As a result of this meeting, Tutsi were killed at the Nyabikenke commune office by Interahamwe, Hutu civilians and communapolicemen. 28. Paragraph 20 of the Indictment reads: 6a Nzabonimana Notice of Appeal, para. 3.4; Nzabonimana Appeal Brief, paras. 113-115 6s Nzabonimana Appeal Brief, para. 113. 68 Nzabonimana Appeal Brief, para. 113' ('7 Nzabonimana Appeal Brief, para. 115. 68 Nzabonimana Appeal Brief, para. 114, re. finding to, inter alia, Callixte Nzabonimana's Motion to Present Additional Evidence on Repeat, 4 July 2013 (confidential) original French version filed on 5 June 2013) ("Rule 115 Motion"). 6e Prosecution Response Brief, paras. 101' 103. 70 Prosecution Response Brief, paras. 101' 103. 7r Prosecution Response Brief, paras. 101' 102' 10 Case No.: ICTR-98-44D-A 29 September 2014 G\

2225/H On or about 15 April 1994, following the orders of Callixte NZABOMMANA, Tutsi refugees at Nyabikenke commune office were attacked by Interahamwe, Hutu civilians, soldiers and communapolicemen. Many Tutsi were killed including Spegiose K. ARUHONGO, Jeanne UJENEZA and Gabriel AMMBA. On or about 15 April 1994, after the attack at the Nyabikenke commune office, Callixte NZABONIMANA served a letter to the attacker at his home in Kavumu secteur, Nyabikenke commune. 29. The Appeals Chamber recalls that the Prosecution is required to state the charges and the material facts underpinning those charges in the indictment with sufficient precision, but not the evidence by which such facts are to be proven.⁷² In reaching its judgment, a trial chamber can only convict the accused of crimes that are charged in the indictment. T3A n indictment which fails to set forth material facts in sufficient detail is defective;⁷⁴ however, the defect may be cured if the Prosecution provides the accused with timely, clear, and consistent information detailing the factual basis underpinning the charges.⁷⁵ 30. Objections based on lack of notice should be specific and timely. When an appellant raises a defect in the indictment for the first time on appeal, he or she bears the burden of showing that his or her ability to prepare his or her defence was materially impaired. When, however, an accused has previously raised the issue of lack of notice before the Trial Chamber, the burden rests on the Prosecution to prove on appeal that the ability of the accused to prepare his or her defence was not materially impaired. Ts 31. With respect to Munyagatare's death, the Appeals Chamber notes that neither paragraphs 19 or 20 of the Indictment identify Munyagatare as a victim of the commune office attacks on 15 April 1994. Contrary to Nzabonimana's submission, the Trial Chamber determined that he did not receive sufficient notice of Munyagatare's death.⁷⁶ Consequently, the Trial Chamber stated that it would not consider his killing as a basis for conviction but could take "this evidence into account as contextual background to further corroborate properly pleaded allegations in the Indictment".⁸¹ 72 Sainovii et al. Appeal Judgment, para. 213; Kanyarukiga Appeal Judgment, para. 73; Kupreikii et al. Appeal Judgment, para. 8. 8. "Srr, ,g1, Biri*ungu Appeal Judgment, para. 363i Mugenzi and Mugiraneza Appeal Judgment, para. 111; Ntawukuliyayo Appeal Judgment, para. 189. 7a See, e.g., Bizimungu Appeal Judgment, para. 46; Kanyarukiga Appeal Judgment, para. 73; Kupreikii et al. Appeal Judgment, para. 14. " See, e.g., Bizimungu Appeal Judgment, para. 46; Ntawukuliyayo et al. Appeal Judgment, para. 1

76; Mugenzia nd Mugiraneza Appeal Judgment, para. 17. 'u Srr, t.g., Mugenzia nd Mugiraneza Appeal Judgment, para. 122; Renzaho Appeal Judgment, para. 56; Muvunyi I Appeal Judgment, para. 23. 77 See Ndindiliyimana et al. Appeal Judgment, para. 176; Renzaho Appeal Judgment, para. 56; Ntagerura et al. Appeal Judgment, para. 31. '8" See n atailiyimina et al. Appeal Judgment, para. 116; Renzaho Appeal Judgment, para. 56; Ntagerura et al. Appeal Judgment, para. 31. " See Nzabonimana Appeal Brief, para. 13. Judgment, para. 35. Il tlq " Trial Judgment, para. 935. /---v- \ \ 11 \ Case No.: ICTR-98-44D-A 29 September 2014

32. According to paragraph 20 of the Indictment: "Many Tutsis were killed including Sffiel/E KARUHONGO, JeanneU JENEZA and Gabriel KANIMBA". The Appeals Chamber observes that although the paragraph lists specific victims, this is only by way of example as shown through the use of the word "including". The material fact for Nzabonimana's conviction of instigation is that Tutsis were killed following his course of conduct.* The Appeals Chamber considers that the names listed after "including" only serve as examples of the material fact that Tutsis were killed at the Nyabikenke commune office during the 15 April 1994 attacks. Indeed, the Trial Chamber found that "during these attacks on the commune office, between 15 and 60 Tutsi refugees were killed, including Evariste Munyagatare".³³ The Appeals Chamber observes that the Trial Chamber did not convict Nzabonimana for Munyagatare's killing but referred to his death in finding that Tutsi refugees were killed at the commune office during the 15 April 1994 attacks. ^{Ea} The Appeals Chamber therefore finds that Munyagatare's killing is not a material fact that should have been pleaded in the Indictment. Accordingly, the Appeals Chamber dismisses Nzabonimana's argument. 34. Turning to the threat, the Appeals Chamber notes that neither paragraph 19 nor 20 of the Indictment specifies that Nzabonimana threatened Munyagatare on 14 April 1994. The Trial Chamber found that Nzabonimana prompted others to act and to continue the genocidal attack upon the Nyabikenke commune office, and that he intended to do so "by threatening a Tutsi and saying that Tutsis should be massacred at Cyayi centre on 14 April 1994".⁸⁵ Accordingly, in the Trial Chamber's view, Nzabonimana's criminal conduct consisted of his threat against Munyagatare and his statement at the Cyayi centre.⁸⁶ His threat thus amounted to a material fact, which along with his statement, underpinned Nzabonimana's conviction for instigation. The Appeals Chamber recalls that when the accused is charged with instigation, the Prosecution is required to identify the "particular acts" or the "particular course of conduct" on the part of the accused which forms the basis for the charge in question. On this basis, the Appeals Chamber finds that the threat should have been pleaded in the Indictment. In this respect, the Indictment was defective. ^{Rr} With respect to direct and public incitement to commit genocide, the Appeals Chamber notes the inchoate nature of this offence. As the material fact for this conviction cannot be based on the killings at the commune office but only on Nzabonimana's conduct at the Cyayi centre on 14 April 1994, the Appeals Chamber therefore limits its analysis to his convictions for genocide and extermination as a crime against humanity. ^{tt} Trial Judgment, para. 939 (emphasis added). ^{Ea} See Trial Judgment, paras. 935, 1711, fn. 2167. * Trial Judgment, para. 1717. The Appeals Chamber observes that the Trial Chamber did not refer to Nzabonimana's threat against M

unyagatare in its findings on direct and public incitement. See Trial Judgement, paras. 1763-1768. In Trial Judgement, para. 171, 1. The Trial Chamber, Ntindiliyimana et al., para. 172; Ntuwukulyayo Appeal Judgement, para. 188; Renz, uho Appeal Judgement, para. 53. In Case No.: ICTR-98-44D-A 29 September 2014,

2223/H 35. Having reviewed the trial record, the Appeals Chamber observes that at no point did Nzabonimana object to allegations of threatening Munyagatare prior to or during the testimonies of Witnesses CNAI and CNAX. The Nzabonimana Pre-Defence Brief makes no reference to Munyagatare and does not argue lack of notice with respect to paragraphs 19 and 20 of the Indictment. Furthermore, the Trial Chamber noted that "the Defence did not file any motion prior to its Closing Brief that alleged defects in the Indictment". The Appeals Chamber therefore considers that Nzabonimana raised the alleged lack of notice on his threat against Munyagatare for the first time on appeal. Accordingly, Nzabonimana bears the burden of showing that his ability to prepare his defence was materially impaired. 36. Nzabonimana has failed to meet this burden. The Appeals Chamber finds that, Nzabonimana was not able to challenge the credibility of Witnesses CNAI and CNAX. Furthermore, the Appeals Chamber notes that the Defence cross-examined Witnesses CNAI and CNAX on the threat, and presented Defence witnesses to contradict the testimonies of Witnesses CNAI and CNAX on this issue. In these circumstances, the Appeals Chamber finds that Nzabonimana has not shown that the failure to plead the threat against Munyagatare materially impaired his defence and therefore dismisses his argument. 37. For the foregoing reasons, the Appeals Chamber dismisses Nzabonimana's arguments in relation to notice under his Third Ground of Appeal. 2. Assessment of Evidence 38. On the basis of Prosecution and Defence evidence, the Trial Chamber determined that on 13 April 1994 there was an attempted attack on the Nyabikenke commune office which was repelled by Defence Witness T24 and commune policemen and during which Tutsi refugees were not killed. Witness CNAI, T. 26 November 2009 pp. 61-65; Witness CNAI, T. 27 November 2009 pp. 22, 28-33, 31 (closed session); Witness CNAX, T. 23 November 2009 pp. 60, 61; Witness CNAX, T. 24 November 2009 pp. 32-31 (closed session). See also Closing Arguments; T. 20 October 2011, T. 21 October 2011; The Prosecutor v. Callixte Nzabonimana, Case No. ICTR-98-44D-T, Nzabonimana's Amended Final Brief, 13 July 2011 (confidential) ("Nzabonimana Closing Brief"), paras. 201-237, 251-287, 425, 426, 431, 555. See The Prosecutor v. Callixte Nzabonimana, Case No. ICTR-98-44D-T, Revised and Amended Pre-Defence Brief, 2010 (original French version filed on 12 March 2010) ("Nzabonimana Pre-Defence Brief"), paras. 31-41. 38 April 2014 Trial Judgement, para. 36. See Trial Judgement, paras. 73, 768, 77. See Witness CNAI, T. 27 November 2009 pp. 28-32 (closed session); Witness CNAX, T. 24 November 2009 p. 33 (closed session). See Witness T24, T. 28 April 2010 p. 10. Moreover, Witness T24 testified that he knew Munyagatare and never heard of an incident where Munyagatare challenged Nzabonimana (see also Trial Judgement, para. 784); see Witness T193, T. 9 March 2010 pp. 15, 22 (closed session) where, however, Witness T24, who also knew Munyagatare, denied being present with Kamali, Witness CNAI, and Munyagatare during Nzabonimana's remarks at the Cyayi centre (see also Trial Judgement, para. 816). 131, Case No.: ICTR-98-44D-A 29 September 2014

harmed. eaB ased on the evidence of Prosecution Witnesses C NAI and CNAX, the Trial Chamber/H found that, on the afternoon of 14 April 1994, Nzabonimana held a meeting at the Cyayi centre, located approximately 250 to 300 metres from the commune office, where approximately 30 people were present, including Isaac Kamali, Munyagatare, Witnesses CNAI, CNAX, and Defence Witness T 193. esA ccording to the Trial Chamber, Nzabonimana said to those gathered: "I know that Hutus do not heed instructions. Do not continue to eat the cows of Tutsi who have sought refuge at the communal office. What really matters is not the cows; it is, rather, the owners of the cows that matter". e6I t also determined that after Nzabonimana's poke, Munyagatare, who was among those seeking refuge at the commune office, challenged him and that Nzabonimana then threatened Munyagatare. eT 39. Relying primarily on the evidence of Witnesses CNAI and CNAX, the Trial Chamber determined that on the night of 14 to 15 April 1994, between 3.00 and 4.00 a.m. ("Night Attack"), Hutu civilians and commune policemen, armed with firearms, grenades, and traditional weapons, attacked the commune office. e8 It further held that, starting at approximately 10.00 a.m. on 15 April 1994 ("Day Attack") and lasting until the afternoon, commune policemen, the Interahamwe, and civilians armed with traditional weapons, firearms, and grenades attacked the commune office. eeT he Trial Chamber concluded that during the attacks, approximately 15 to 60 Tutsi refugees, including Munyagatare, were killed. l00 40. In its findings relating to the Cyayi centre and the Nyabikenke commune office, the Trial Chamber considered Defence evidence "in conjunction with the Defence claims that the Prosecution witnesses fabricated their evidence", and concluded that the Defence did not raise a reasonable doubt in the Prosecution's case. l01 41. The Appeals Chamber will first consider Nzabonimana's submission on the assessment of Prosecution evidence, l02 and then turn to the assessment of Defence evidence. l03 It does so bearing " Trial Judgement, paras. 866, 938. The Trial Chamber made these findings on the basis of evidence from Witnesses CNAI, T24, T28, T 193, and Ndayisaba. " Trial Judgement, paras. 87, 938. 'o Trial Judgement, paras. 87, 938. " Trial Judgement, paras. 87, 938. e8 Trial Judgement, paras. 910-913, 939. ea lsoi bid., paras. 88-898. 'frial " Judgement, paras. 9. 27, 936, 939. "n Trial Judgement, paras. 36, 939. "" Trial Judgement, para. 940. See lsoi bid., para. 256. r02 Nzabonimana Nao ticeo f Appeal, paras. 3.1.1, 3.1.2; abonimana Appeal Brief, paras. 33-60. '03 Nzabonimana Nao ticeo f Appeal, paras. 3.1.3; abonimana Appeal Brief, paras. 61-79. t4 Case No. I CTR-98-44D-A 29 September 2014

2221/H in mind that it will only find an error of fact if it determines that no reasonable trier of fact could l04 have made the impugned finding. '- (a) Alleged Errors in Assessing Prosecution Evidence 42. The Trial Chamber relied on Witnesses CNAI and CNAX with respect to the events at the Cyayi centre on 14 April 1994 and it relied primarily on these witnesses in making its findings related to the Night and the Day Attacks at the Nyabikenke commune office. l05 Furthermore, the Trial Chamber's finding that Munyagatare was killed during the commune office attacks was based solely on Witness CNAX's testimony. l06 43. Nzabonimana submits that the Trial Chamber erred in assessing Witnesses CNAI's and CNAX's credibility and should not have relied upon them to make findings about the events at the Cyayi centre and the Nyabikenke commune office. l07 44. The Prosecution responds that the Trial Chamber correctly relied on the corroborating evidence of Witnesses CNAI and CNAX. l08 45. The Appeals Chamber recalls that trial chambers are best

placed to assess the evidence, including the demeanour of witnesses.¹⁰ Therefore, trial chambers have full discretionary power in assessing the credibility of a witness and in determining the weight to be accorded to his or her testimony. In this assessment, based on a number of factors, including the witness's demeanour in court, his or her role in the events in question, the plausibility and clarity of the witness's testimony, whether there are contradictions or inconsistencies in his or her successive statements or between his or her testimony and other evidence, any prior examples of false testimony, any motivation to lie, and the witness's responses during cross-examination. In addition, the Appeals Chamber has previously stated that it is within a trial chamber's discretion to accept or reject a witness's statement, *pro*, para. 10. of the Trial Judgment, paras. 867-8788, 87-8908, 92-8959, 90-902, 910-9139, 15, 923, 925-929, 9369, 38-940. The Appeals Chamber will use the singular form of the word "attack" in relation to 15 April 1994, noting that the Trial Chamber uses the plural (see Trial Judgment, paras. 914, 921, and 924) and the singular (see Trial Judgment, paras. 924-925).¹¹ Trial Judgment, paras. 932, 935, 939. 10 N 7 zabonimana Notice of Appeal, paras. 3.1.1, 3.1.2; Nzabonimana Appeal Brief, para. 42. 10 P 8 Prosecution Response Brief, para. 38. 10 S rr, e.g., Karyirukiga Appeal Judgment, para. 121; Simba Appeal Judgment, para. 9; Ntagerura et al. Appeal Judgment, paras. 12, 213. In this case, e.g., N-dinditiyimuna et al. Appeal Judgment, para. 331; Ndahimana Appeal Judgment, para. 431. Kanyirukiga Appeal Judgment, para. 121. Trial Judgment, para. 121. Trial Judgment, para. 121; Bikindi Appeal Judgment, para. 14; Nchamihigo Appeal Judgment, para. 47. 15 29 September 2014 q.r.t, Case No.: ICTR-98-44D-A

testimony, after seeing the witness, hearing the testimony, and observing him or her under cross-examination.¹² (i) Witness CNAI's Credibility 46. Nzabonimana submits that no reasonable trier of fact could have rejected some parts of Witness CNAI's testimony, while accepting other parts with respect to the same event.¹³ Nzabonimana claims that the Trial Chamber's rejection of Witness CNAI's testimony in relation to Kamali's knowledge of his ethnicity as a Tutsi, and on Witness T193's participation in the attacks, undermined Witness's CNAI credibility as a whole. As to Kamali's knowledge of Witness CNAI's ethnicity, Nzabonimana argues that, by finding one crucial aspect of his testimony implausible, the Trial Chamber considered that the witness could lie under oath.¹⁶ On Witness T193's participation in the attacks, Nzabonimana contends that Witness CNAI's explanations of contradictions, going as far as questioning the authenticity of a Gitarama court judgment, adversely impacted his credibility. Nzabonimana submits that the Trial Chamber could not rely on Witness CNAI's old age to explain contradictions because: (i) the witness gave a different explanation for discrepancies between his testimony at trial and previous statements; and (ii) the Trial Chamber treated age differently between Witness CNAI and Defence Witness Straton Sibomana. Nzabonimana further claims that the Trial Chamber failed to assess the implausible fact that Witness CNAI, after hearing Nzabonimana's speech in the Cyayi centre, returned to buy cigarettes from Germain Karangwa, the leader of the Interahamwe. The Prosecution responds that Nzabonimana merely repeats unsuccessful trial arguments without showing how the Trial Chamber's assessment of Witness CNAI's credibility was unreasonable.¹²⁰ 48. The Trial Chamber considered one aspect of Witness CNAI's testimony implausible - that Kamali did not know that he was a Tutsi. It recalled that the witness testified

to being related to, see e.g., Kanyurukiga Appeal Judgement, para. 121; Nchamihig, Appeal Judgement, para. 210; Serombu Appeal Judgement, para. 116. i., frubonirnanan Notice of Appeal, para. 3.1.2(8); Nzabonimana Appeal Brief, para. 51. See also AT.29 April, 2014 pp. 6-8.

In Nzabonirnanan Appeal Brief, para. 51, referring to Trial Judgement, paras. 875, 904-908. See also ibid., paras. 52'53, 57. Nzabonimana further argues that the Trial Chamber's successive rejections of Witness CNAI's testimony can only undermine his credibility. See ibid., para. 55. In Nzabonimana Appeal Brief, para. 54, referring to Trial Judgement, paras. 903-908. See also ibid., para. 51. In Nzabonimana Appeal Brief, paras. 51, 53. In Nzabonimana Appeal Brief, para. 54. In Nzabonimana Appeal Brief, paras. 56-58, referring to Trial Judgement, para. 1290. In Nzabonimana Appeal Brief, para. 59, referring to Trial Judgement, paras. 757-759. In Prosecution Response Brief, para. 46. In Trial Judgement, para. 875. In 29 September 2014 Case No.: ICTR-98-44D-A C* \

2219/H Kamali and that they knew each other well. The Trial Chamber did not believe Witness CNAI on this aspect, but considered that this did not undermine the witness's credibility as a whole because: [t]he Chamber calls into question the evidence established by the Prosecution, including Evarist Munyagata and Witnesses NAX. Evarist Kamali and Witnesses NAIWasa Tutsi, this does not lead to the conclusion that Witness CNAI was not present at Cyayi to witness Nzabonimana's speech and its aftermath. 123 49. The Appeals Chamber considers that it was reasonable for the Trial Chamber to accept Witness CNAI's testimony of his presence, as well as of Nzabonimana's speech and its aftermath. The Appeals Chamber notes that the Trial Chamber found that Witness CNAI, along with Witness CNAX, provided internally credible and consistent accounts of the "Cyayi meeting". 220 Recalling that the Trial Chamber has the discretion to accept some but reject other parts of a witness's testimony, 121 the Appeals Chamber rejects Nzabonimana's argument that by finding one aspect of Witness CNAI's testimony implausible and not credible, the Trial Chamber would necessarily have considered the witness to lie under oath. Accordingly, Nzabonimana fails to demonstrate that the Trial Chamber erred in its assessment of Witness CNAI's credibility. 50. In its deliberations on the perpetrators of the Night Attack, the Trial Chamber held that: Given the contradictions in Witness CNAI's accounts as to the participation of Witness T193 in the attack, and the difficult conditions for identification, the Chamber does not find that the evidence proves that Witness T193 carried a machete and participated in the attack. 126 51. After recalling that Witness CNAI questioned the authenticity of the Gitarama court judgement and denied stating that Witness T193 threw grenades, 221 The Trial Chamber did not find Witness CNAI's explanation for the discrepancies sufficient and also noted that conditions at the time of the attack made identification of assailants difficult. 228 Therefore, the Appeals Chamber notes that the Trial Chamber did not accept Witness CNAI's explanation. The Appeals Chamber is not convinced that the rejection of his explanation prevented the Trial Chamber from reasonably relying on the witness's evidence. 52. With respect to Nzabonimana's argument on Witness CNAI's age, the Appeals Chamber observes that the Trial Chamber relied on his age, the minor nature of the discrepancies, and the passage of time between the 1994 events and the witness's testimony, to find that the discrepancies Judgment, para. 875. In Trial Judgement, para. 875. In Trial Judgement,

an.872. "t Sre Ndahirnana Appeal Judgement,p ara. 183; Kanyarukiga Appeal Judgement,p ara. 187; Bagosora and Nse ngiyumva Appeal Judgement,p ara. 243. "o Trial Judgement,p ara.9 08. ttt Trial Judgementp, ara.9 06. "t TnalJudgement,p aras.9 06, 907. LI CaseNo.: ICTR-98-44D-A 29 Septembe2r0 14

between Witness CNAI's testimony and previous statements did not undermine his credibility. The Appeals Chamber finds no error in this approach. The fact that Witness CNAI justified the discrepancies as mistakes made by people who recorded his statements did not prevent the Trial Chamber from taking into account the witness's age among other factors. The Appeals Chamber is also not persuaded that the Trial Chamber erred in treating the ages of Witness CNAI and Witness Sibomana differently since circumstances of the two witnesses are distinguishable. After noting that Witness Sibomana was serving a prison sentence for his involvement in the genocide and was 82 years of age and in failing health, the Trial Chamber explicitly stated that it treated Witness Sibomana's testimony with appropriate caution. In comparison, Witness CNAI was not convicted for participating in the genocide, and he provided eyewitness accounts of events at the Cyayi centre and the Nyabikenke commune office. In view of the foregoing, Nzabonimana fails to demonstrate that the Trial Chamber could not rely on Witness CNAI's age, among other factors, to find that the discrepancies did not undermine his credibility. 53. Finally, in summarising Witness CNAI's testimony, the Trial Chamber noted Witness CNAI's evidence that he returned to Karangwa's bar at around 8.00 p.m. and asked Karangwa if he sold cigarettes. The Trial Chamber was therefore aware of this aspect of the testimony. Nzabonimana fails to demonstrate that the Trial Chamber erred in not expressly addressing this aspect of the evidence in assessing Witness CNAI's credibility. Nzabonimana also fails to explain how this aspect of the evidence was implausible. Accordingly, the Appeals Chamber dismisses Nzabonimana's argument that the Trial Chamber failed to assess this "implausible" fact. 54. In light of the above, the Appeals Chamber finds that the Trial Chamber did not err in the assessment of Witness CNAI's credibility. (ii) Witness CNAI's Credibility 55. Nzabonimana submits that Witness CNAI lacked credibility because: (i) he was convicted and imprisoned for embezzlement; (ii) having witnessed events involving Nzabonimana in 1994, the witness knew crucial information that could have saved Tutsis but refrained from warning them or any authority; (iii) he testified that he waited until 2008 to reveal his knowledge of events, see Trial Judgement, para.874. r30 See Trial Judgement, paras. 73, 874. 't Trial Judgementp, ara.1 290. r3t Trial Judgementp, ara.1 290, re Jerring to Trial Judgementp, ara.8. 0-82. r33 See Trial Judgementp, ara.151-156, '160,, '7'6614. "o Trial Judgementp, ara.759. r3t Nzabonimana Appeal Brief, para.4 3; Nzabonimana Reply Brief, para.2 2. See also AT.29 April 2014p. 50. 116 Nzabonimana Appeal Brief, paras.4 3, 46 Nzabonimana Reply Brief, para.22. See also AT.29 April 2014p. 55, 56. 18 CaseNo.: ICTR-98-44D-A 29 Septembe2r0 14

2217/H while his declaration of Rwandan police made in 1996, which does not mention Nzabonimana or Munyagatare, is how the contrary; and (iv) the Trial Chambers should have treated his silence as it did with Prosecution Witness CNBA. 138 Nzabonimana adds that the Trial Chamber erred in assessing Witness CNAI's credibility since his alibi and the Prosecution evidence for the Kabimbura centre on 11 April 1994 should have cast doubt on his credibility. 13e

56. Nzabonimanas ubmitst hat no reasonabletr ier of fact could have acceptedW itness CNAX's testimonyt hat Munyagatared ied during the attacksb ecause:(i) Witness CNAX's testimony, that he was in chargeo f identifying the victims in the middle of the attack,i s implausible; and (ii) the Trial Chamber erroneously rejected Witness T193's testimony as hearsay, did not take Defence WitnessT28's evidencei nto account,d espit ec iting it, and disregardedW itness CNAI's testimony who had doubtsa bout the death.rao 51. The Prosecutionr esponds that Nzabonimana's submissionsf ail to provide arguments,rat ignore evidencea cceptedb y the Trial Chamber,l4za nd rely on evidencen ot on the record.lotI t adds that the Trial Chamber rejected Nzabonimana's alibi for 11 April 1994, and acquitted him in relation to the Kabimbura meeting.la The Prosecution also responds that the Trial Chamber reasonably found that Munyagatare was killed at the commune offrce,tasa nd that Nzabonimana's altemativea ccounto f Munyagatare'sd eathi s basedo n material not on the record.la6 58. The Appeals Chamber dismissesN zabonimana's argument relating to Witness CNAX's imprisonment for embezzlementa s he merely raisest he issue without elaboration.'otW ith respect to Witness CNAX's failure to warn refugees,t he Appeals Chamber notes that the Trial Chamber explicitly consideredt his issue and acceptedt he witness's explanation, of not wanting to cause r37 NzabonimanaA ppealB rief, para.M , referring /o Rule I 15 Motion. r38 N zabonimanaA ppealB rief, para. 45,r eferring toT1ralJ udgementp, ara.1 038.A ccordingt o Nzabonimanat,h e Trial Chambers houldh ave found that WitnessC NAX's credibility was underminedb y his silence,a s it did for two witnessesS.e ea lsoN zabonimanRa eplyB rief, para.22w, hereN zabonimansap ecifiesth ati t is WitnessC NBA. r3e N zabonimanaA ppeal Brief, paras.4 7-50; NzabonimanaR eply Brief, para. 23. Nzabonimanaa lso arguest hat the Trial Chambere rredi n finding that he breachedR ule 67(A)(ii) of the Rules on notice of alibi and in excluding alibi witnessesS. eeN zabonimanNa otice of Appeal,p ara.3 .1.2(5).N oting that this argumentis not developedfu rtheri n NzabonimanaA ppealB rief, the AppealsC hamberc onsiderst hat it hasb eenw ithdrawn.N zabonimanafu rther submits that, in light of his alibi and ProsecutionW itnessC NRI's testimony,h e was not at the Kabimburae ntre., See NzabonimanAap pealB rief,p ara.9 1.S eea lso AT.29 April 2014p p.8,9. 140 NzabonimanAap pealB rief,p ara.7 8. lal ProsecutioRn esponsBe rief, paras4. 0, 42. '02 ProsecutioRn esponsBe rief,p ara.3 9. ""Prosecution ResponsBer ief,p ara4. 1. r4 ProsecutioRn esponsBe rief,p aras.4 4,4 5. Seea lsoA T. 29 April 2014p p.3 4, 35. ra5 ProsecutionR esponseB ief , pata.7 2 . ra6 ProsecutionR esponseB ief , paru.14. r47 The AppealsC hambero bservest hat the Trial Chambern oted WitnessC NAX's imprisonmentw hen assessingth e witness'sc redibilityo n allegationtso whichh e testifiedS. eeT rial Judgementp,a ras2. 86, 653,877.T heT rial Chamber noted that the crime was unrelatedt o the genocidea nd that a criminal convictionu nrelatedt o the facts of the present cased id notp er se indicatet hat the witnessl ackedc redibility.S eei dem. t9 C\ CaseN o.:I CTR-98-44D-A 29 Septembe2r 014

further insecurity among frightened refugees.la8N zabonimana makes no attempt to demoBffi6/ H how the Trial Chamber erred in finding Witness CNAX's explanation plausible. As for WitnessC NAX's failure to warn authoritiesa t the time of the events,l4eN zabonimanap rovidesn o references in support of his argument and fails to explain the alleged impact on the witness's credibility. The Appeals Chambera lso dismissesN zabonimana'sa rgumento n Witness CNAX's testimonyt hat he waited until 2008 to revealh is knowledgeo f events,a s he relies on a document

50 which is not part of the record in this case. 59. Further, the Appeals Chamber is not convinced by Nzabonimana's contention that the Trial Chamber erred in treating the silence of Witnesses CNAX and CNBA differently. 59. Nzabonimana fails to explain how the situation of these witnesses warranted similar treatment. The Trial Chamber found that Witness CNBA's silence undermined his credibility because he was a local official, had a role in the ongoing investigations into the genocide, and given his official position would have provided relevant information during Gacaca sessions. 60. This is distinguishable from circumstances surrounding Witness CNAX, who had no role in genocide investigations. 60. The Appeals Chamber now turns to Nzabonimana's challenge against Witness CNAX's credibility based on events on 11 April 1994 at the Kabimburu centre. 61. In this context, the Appeals Chamber notes that, according to Witness CNAX, Nzabonimana was seen attending a meeting at the Kabimburu centre in Nyabikenke on 11 April 1994, around 5.00 p.m. However, the Trial Chamber noted Witness CNAX's evidence that around 3.00 p.m. the witness left Gitarama prefecture with Nzabonimana to return to Kigali. 62. The Trial Chamber examined this contradiction in relation to events at the Kabimburu centre and concluded that the allegations against Nzabonimana in this respect were not established as Witness CNAX's evidence was uncorroborated, hearsay, and contradicted by Prosecution evidence. 63. The Appeals Chamber observes, however, that the Trial Chamber accepted Witness CNAX's testimony that he went to the 'Trial Judgement', para. 878. See Nzabonimana Appeal Brief, para. 46. See Decision on Callixte Nzabonimana's Motion for Admission of Additional Evidence on Appeal Pursuant to Rule 115 of the Rules, 22 April 2014 ("Rule 115 Decision"), para. 5. The Appeals Chamber recalls that it did not admit as additional evidence Witness CNAX's statement made in 1996, based, inter alia, on the fact it could not have been a decisive factor in reaching the decision at trial as Witness CNAX's testimony was found to be corroborated by Witness CNB's testimony. See ibid., para. 4. 64. See Nzabonimana Appeal Brief, para. 45, referring to Trial Judgement, para. 1038; Nzabonimana Reply Brief, para. 22. 65. Trial Judgement, para. 1038. 66. Nzabonimana points to testimonies of Prosecution Exhibits 1 and 2 as well as alibi Defence Witnesses T11 and Mechtild Mugiraneza to demonstrate that Witness CNAX's testimony on Nzabonimana's presence at the Kabimburu centre on 11 April 1994 was contradicted. See Nzabonimana Appeal Brief, paras. 47-50. 67. Witness CNAX, T. 23 November 2009 pp. 57-59. See also Trial Judgement, para. 642. 68. Trial Judgement, para. 453. 69. Trial Judgement, para. 662. 70. Case No.: ICTR-98-44D-A 29 September 2014, 11.

71. 11/H Kabimburu centre on 11 April 1994 for food. 72. The Trial Chamber did not find that Witness CNB's evidence rendered the whole of Witness CNAX's evidence not credible. The Trial Chamber considered that the evidence of Witnesses Mugiraneza and T11 only covered parts of 11 April 1994, and did not raise a reasonable doubt in the Prosecution evidence placing him at the scene of the alleged crime on 11 April 1994. 73. The Appeals Chamber does not detect any error in the Trial Chamber's assessment of Witness CNAX's credibility in light of Nzabonimana's alibi and Witness CNB's evidence. 74. The Appeals Chamber further finds that the Trial Chamber reasonably accepted Witness CNAX's testimony on Munyagatare's death at the commune office. 75. Despite being the only witness who testified that Munyagatare was killed during the attacks, the Trial Chamber considered that Witness CNAX provided credible and reliable testimony on the

death.¹⁶ N2z abonimanaa ppears to suggestt hat WitnessC NAX was in chargeo f identifying Tutsis killed at the communeo ffice and arguest hat this was implausibled uring an attack.¹⁶ T3h e Appeals Chambero bserve that, in cross- examination,t he Defences uggestedth e samet o Witness CNAX, who answered: When I was getting ready to run away, I passedn ear dead bodies. I even had to jump ovet some of - one of them. So under those conditions, it was when I was fleeing that I was able to identify Munyagatare'sb ody. Those people had been killed by grenades hrapnels.T hey could be identified. And since I was one of those in charge of refugees,I felt compelled to know the identity of some oI tne vlctrms.¹⁶ 64 62. The Appeals Chamber finds that it was reasonable for the Trial Chamber to accept Witness CNAX's testimonyo n Munyagatare'sd eath," given his position in chargeo f the refugees", and given that WitnessC NAX felt a responsibilityt o identify Munyagatare'sb ody.¹⁶ 5 63. The Appeals Chamberi s also not persuadedt hat the Trial Chamber's assessmenot f other evidence on Munyagatare'sd eath underminesW itness CNAX's overall credibility. Specifically, beyond disagreeingw ith the Trial Chamber's assessmenot f DefenceW itnessesT 28's and T193's testimonies,N zabonimanaf ails to demonstrateth ow the Trial Chamber erred. Indeed, the Trial ttt Trial Judgementp,a ra.⁶⁶ 2. 158,See Trial Judgementp,a ras4. 55,4 56. 15e ,SeeT rial Judgementp,a ra.457. t60 T he AppealsC hamberi s equallyn ot persuadedb y Nzabonimana'sc laim that, on the basiso f his alibi evidence,a nd WitnessC NR]'s testimonyN, zabonimanwaa sn otp resenat t theK abimburac entreo n 11A pril 1994.S eeN zabonimana Appeal Brief, para.9 1. Indeed,t he AppealsC hambero bserve that the Trial Chamberd id not find that Nzabonimana wai absenta t the Kabimburac entreo n 11 April 1994.T he AppealsC hamberf inds no error sinceW itnessesC NAX and CNR] placedN zabonimanian Gitaramaa t somep oint in the afternoono f 11 April 1994.S ee,e .g.,Trial Judgement, paras.4504, 53,659. 1ut Trial Judgementp,a ras9. 35,9 36. tut Trial Judgementp, was.9 32, 935. 163 NzabonimanaA ppealB rief, para.7 8. le WitnessC NAX, T. 24 Novembe2r 009p .36 (closed session)' t6t Trial Judgementp, an.932. The Trial Chambera lso consideredth at WitnessC NAX knew Munyagatarea s he saw him the previous daya t theC yayi centtea ndt hereforew ould haveb eenab let o reliably identify hrim'S eei dem. 11 CaseN o.: ICTR-98-44D-A 29S eptemb2e0r 14 tln

Chamber had the discretion to reject Witness T193's hearsay evidence, which it 29M/H implausible.¹⁶ T he AppealsC hambero bserve that the Trial Chamberc onsideredW itnessT 28's testimony that Munyagatared ied in the home of his parents-in-law,b ut provided no reasonf or not acceptingt his explanation.r6T H aving reviewed the transcripts,t he Appeals Chamber observest hat Witness T28 did not explain how he knew that Munyagatare died at the home of his parents-in- law.r68A s to Witness CNAI, the Trial Chambere xplicitly consideredh is testimony and at no point did Witness CNAI doubt Munyagatare'sd eath.t6eIt consideredW itness CNAI's statementf rom 2002, indicating that Munyagatarea nd his family were killed during the genocidea nd thrown into the NyabarongoR iver.rTnH oweuer, the Trial Chambern oted that fhe 2002 statementi s uncleara s to where Munyagatare was killed and that Witness CNAI was not present at the scene to confirm whether Munyagatarew as thrown into the river.tTl 64. In light of the above, the Appeals Chamber finds that the Trial Chamber did not err in the assessmenotf WitnessC NAX's credibility. (iii) WitnessesC NAI's and CNAX's Credibility in Relationt o Fabricatiof Evidence 65. On 8 December 2010, the Trial Chamber grantedN zabonimana'sm

otion in part requesting the appointment of an amicus curiae to investigate allegations that Witness CNAI, or a member of the Prosecution team, disclosed protected witness information in violation of Rule 77(A)(ii) and/or (iv) of the Rules. The Amicus Report concluded that "Witness CNAI did not at all disclose any protected information pertaining to Defence Witness T36" and "did not threaten and/or bribe and/or intimidate Witness T36 or at all". It further recommended that "there are no grounds or basis or at all for instigating proceedings for contempt of the Tribunal against Prosecution Witness CNAI". The Amicus Report reached the same conclusions regarding members of the Prosecution's office. The report did recommend that "the Chamber consider ordering further investigation on the need for supplementary protective measures for defence witnesses especially "" Trial Judgement, para. 934. 't' Trial Judgement, para. 934. 'ot Witness T 28, T. 2 June 2010 p. 44 (closed session). r6e See Nzabonimana Appeal Brief, para. 78. rt') Trial Judgement, para. 933. 't' Trial Judgement, para. 933. As for Nzabonimana's reliance on a 1996 statement from Witness CNAX and a declaration from Munyagatare's wife (see Nzabonimana Appeal Brief, para. 79), the Appeals Chamber notes that these materials are not part of the record in this case. See Rule 115 Decision, para. 112. See The Prosecution v. Callixte Nzabonimana, Case No. ICTR-98-44D-T, Decision on Nzabonimana's Renewed and Confidential Motion for Appointment of Amicus Curiae to Investigate Allegations of Contempt of the Tribunal Against Prosecution Witness CNAI, 8 December 2010. See also Trial Judgement, para. 1902. The Appeals Chamber notes that on 1 April 2011, the "Report of the Amicus Curiae on Allegations of Contempt of Tribunal by Witness CNAI and/or a Member [of] the Prosecution Office Pertaining to Defence Witness T36" ("Amicus Report") was filed confidentially. "" Amicus Report, para. 77. "oA- Amicus Report, para. 78. 't' Amicus Report, para. 79. 22 Case No.: ICTR-98-44D-A 29 September 2014 I'll,

2213/H where their status as defence witnesses is known in the community in the interests of justice and fair trial".¹⁷⁶ 66. On 21 October 2011, the Trial Chamber accepted the Amicus Report and declined to initiate contempt proceedings against any persons in the matter, including Witness CNA1. It noted that the Defence generally agreed with the conclusions of the amicus report particularly in regard to the need for the Tribunal to strengthen protective measures for Defence witnesses.¹⁷⁷ On 21 October 2011, the Trial Chamber also issued a decision admitting a statement by Witness CNA1 dated 8 March 2011 ("Witness CNA1 Statement of 8 March 2011"), which was annexed to the Amicus Report. In the same decision, the Trial Chamber rejected the admission of other documents annexed to the Amicus Report, including a statement by Prosecution Investigator Djibo Moumouni dated 8 March 2011 ("Prosecution Investigator Moumouni Statement"), and three statements by Defence Witness T 37 ("Defence Witness T 37 Statements").¹⁸⁰ 67. In assessing Defence allegations that Prosecution witnesses fabricated evidence, the Trial Chamber considered whether Rwandan authorities and Witness CNA1 recruited Prosecution witnesses.¹⁸¹ Specifically, the Trial Chamber examined if Witness CNA1 recruited witnesses, including Witness CNA2, to testify falsely for the Prosecution. In doing so, the Trial Chamber considered Defence arguments pointing to the Amicus Report.¹⁸¹ It also assessed whether Rwandan authorities and Prosecution witnesses obstructed Defence investigations and whether Defence witnesses were harassed.¹⁸² The Trial Chamber determined

that the Defence claim of alleged fabrication was based on mere speculation and that the Defence team, despite encountering "logistical problems, it was able to adequately defend the interest of Nzabonimana".¹⁸⁵ Furthermore, in making its factual findings on events at the Cyayi centre and the Nyabikenke commune office, the Trial Chamber explicitly recalled its findings on fabrication of evidence.¹⁸⁶ "6 Amicus Report, para. 80." The Prosecutor v. Callixte Nzabonimana, Case No. ICTR-98-44D-TD, Decision Following Amicus Curiae Report Pertaining to Allegations of Co[n]tempt of the Tribunal by Prosecution Witness CNAI and/or a Member of the Prosecution Office, 21 October 2011 (*21 October 2011 Decision Accepting Amicus Report"), p. 11. r78 21 October 2011 Decision Accepting Amicus Report, paras. 12, 25. After noting that he "Defence did not disagree with the amicus curiae conclusion that at Defence Witness T 36 was not intimidated, threatened or bribed by Prosecution witness CNAI" and that the "Defence accepted the amicus curiae conclusion that neither Witness CNAI nor any Prosecution official divulged protected information pertaining to Witness T 36", the Trial Chamber considered that the Defence did not challenge or object to the conclusion of the Amicus Report. See ibid., para. 25. "n Th, Prosecutor v. Callixte Nzabonimana, Case No. ICTR-98-44D-T, Decision on Defence Motion for Admission of Documents, 21 October 2011 (*21 October 2011 Decision on Admission of Documents") p. 4, para. 9. 18 2010 October 2011 Decision on Admission of Documents, para. 2. 5'21, p. 9. 181 Trial Judgement, paras. 4-156; 240-255. r8t Trial Judgement, para. 149-156. tt'Trial Judgement, para. 152, 155. t* Trial Judgement, paras. 240-255, ttt Trial Judgement, para. 255. See also ibid., para. 156. 186 Trial Judgement, paras. 7438, 56, 940. ZJ Case No.: ICTR-98-44D-A 29 September 2014

68. Nzabonimana submits that the Trial Chamber erred in assessing Prosecution Witness E#e/H CNAI's and CNAX's testimonies because it examined collusion and intimidation globally without specifically considering these issues in relation to Witnesses CNAI and CNAX, who were lying.¹⁸⁷ 69. Nzabonimana submits that the Trial Chamber ignored the impact of the Amicus Report and Witness CNAI Statement of 8 March 2011 on the credibility of Witnesses CNAI and CNAX.¹⁸⁸ With respect to Witness CNAI Statement of 8 March 2011, Nzabonimana notes that Witness CNAI explained that he assisted the Prosecution in finding witnesses and that he provided the names of Prosecution Witnesses CNAQ, CNBH, CNAK, CNAX, and CNAY.¹⁸⁹ According to Nzabonimana, this is contrary to the Trial Chamber's findings that Witness CNAI denied assisting the Prosecution to find witnesses and was solely the contact person because he was the only one with a phone.¹⁹⁰ He argues that, because Witness CNAI testified to the contrary, the witness lied before the Trial Chamber.¹⁹¹ Furthermore, in light of Witness CNAI Statement of 8 March 2011, Nzabonimana argues that the Trial Chamber ignored Witness CNAX's lies when finding that the witness denied that Witness CNAI proposed him as a witness to the Prosecution.¹⁹² Nzabonimana also contends that, unlike Prosecution Witnesses CNAQ, CNAY, and CNBU, Witness CNAX denied that Witness CNAI accompanied him on 4 October 2008 to meet with Prosecution investigators in Nyamabuye commune, Itaramba district.¹⁹³ Nzabonimana also argues that the Amicus Report established that Witness CNAI approached Witness T 36 to testify for the Prosecution.¹⁹⁴ 70. Nzabonimana further submits that the Trial Chamber

erred in refusing to admit Prosecution Investigator M. Oumouni's statements and Defence Witness T37's statements, all annexed to the Amicus Report, because they also impact Witness CNAI's credibility. N. Zabonimana points to the fact that the declaration of the investigator described Witness CNAI's supervisory role over Prosecution witnesses and that the investigator gave the witness names of individuals in Nyabikenke commune for background verification. N. Zabonimana also submits that the Trial Chamber erred in refusing to recall Prosecution investigators and witnesses involved, including Witness CNAI, after I87 Nzabonimana's Notice of Appeal, para. 3.1.1; Nzabonimana Appeal Brief, para. 33. re: EE Nzabonimana's Notice of Appeal, para. 3.1.1(2); Nzabonimana Appeal Brief, para. 36; Nzabonimana Reply Brief, para. 21. See also AT.29 April 2014 pp. 4-6. 50. 'n' Nzabonimana Appeal Brief, para. 38; Nzabonimana Reply Brief, para. 21. re: "Nzabonimana Appeal Brief, para. 38, referring to Trial Judgement, paras. 149, 151, 153. re: Nzabonimana Appeal Brief, para. 38. re: Nzabonimana Appeal Brief, para. 39, referring to Trial Judgement, para. 114. re: Nzabonimana Appeal Brief, para. 39, referring to Trial Judgement, fn. 220: Nzabonimana Reply Brief, para. 21. re: Nzabonimana Appeal Brief, para. 38. re: Nzabonimana's Notice of Appeal, para. 3.1.1(3); Nzabonimana Appeal Brief, para. 37. 'e6 Nzabonimana Appeal Brief, para. 40. 'tA Ca. se N o.: ICTR-98-44D-A 29 September 2014 'T\

221/H discovering that 245,000 Rwandan Francs were paid to Rwandan authorities for the "treatment of witnesses in Gitarama". 197 71. Finally, Nzabonimana submits that the Defence did not simply encounter "logistical" problems but that Defence witnesses were intimidated in relation to the Nyabikenke events. 1e8 I n this regard, Nzabonimana relies on the testimony of Defence Investigator Fernand Batard, the declaration of Defence Witness T 160, and the Amicus Report. 1ee 72. The Prosecution responds that: (i) Nzabonimana's argument on global assessment should be summarily dismissed; 2o (oii) the Amicus Report found Nzabonimana's allegation of intimidation to be unfounded, that Nzabonimana accepted his conclusion, and that he fails to demonstrate why Witness CNAX's evidence is false; 2or (iii) Nzabonimana fails to substantiate how the Trial Chamber erred in refusing to admit documents attached to the Amicus Report or how the documents affected Witness CNAI's credibility; 2o (iu) money transferred to Rwandan authorities was not for bribes but to cover witnesses' and (v) despite "logistical problems", Defence "xp" nr "r; 'o' Witness Batard was able to collect large volumes of evidence and Nzabonimana fails to explain the prejudice, if any, he suffered. 2oa 73. In its findings on the alleged fabrication of evidence, the Trial Chamber concluded that: Taking into account the Chamber's assessment of the credibility of the relevant Defence and Prosecution witnesses as a whole, the Chamber finds that the evidence led by the Defence relating to the alleged fabrication of evidence does not undermine the credibility of the Prosecution witnesses' testimony. 205 The Appeals Chamber recalls that the Trial Chamber did not initiate contempt proceedings against Witness CNAI and dismissed a allegation of fabrication against Witnesses CNAI and CNAX. 'ou Th' re? N. Zabonimana Appeal Brief, para. 41. See also ibid., para. 21. See also AT.29 April 2014 p. 50. 1e8 N. Zabonimana Appeal Brief, paras. 3, 4, 35; Nzabonimana Reply Brief, paras. 19, 20. See also AT.29 April 2014 p. 5, 6. re: Nzabonimana Appeal Brief, para. 34; Nzabonimana Reply Brief, para. 20. See also AT.29 April 2014 pp. 5-6. The Appeals Chamber notes that in his Notice of Appeal, N

zabonimana advances arguments relating to witness intimidation under the section on Defence witnesses, but fails to develop these arguments in his Appeal Brief. See Nzabonimana Notice of Appeal, para.3.1.3(5)(6). The Appeals Chamber also finds unsubstantiated his argument that the Trial Chamber excluded all Defence evidence without justification and failed to consider difficulties encountered throughout trial, except where evidence is corroborated by Prosecution evidence. See Nzabonimana Notice of Appeal, para.3.1.3(4). 2m Prosecution responses Brief, para.28. 201 Prosecution responses Brief, para.31. See also AT.29 April 2014 pp.32-34. 2@ Prosecution responses Brief, para.32. 203 Prosecution responses Brief, paras.36,31, referring to Prosecution reply Brief, paras.7,7,8. 2e Prosecution responses Brief, paras.29,30. See also AT.29 April 2014 p.31. tot Trial Judgement, para.256. t* Trial Judgement, paras.136-156,253-256. See also 21 October 2011 Decision Accepting Amicus Report. With respect to Witness C NAI specifically, the Trial Chamber considered and rejected Defence assertion that at this witness, along with Witnesses C NAI, CNAQ, CNAY, CNAF, CNAP, and CNBU all fabricated their testimony. See Trial Judgement, paras.154,156. 25 (\-. \$\ Case No.: ICTR-98-14D-A 29 September 2014

Trial Chamber explicitly recalled its findings on fabrication in its assessment of events at the EHO/H centre and the Nyabikenke commune office. 207 Thus, contrary to Nzabonimana's arguments, the Trial Chamber did not merely consider collusion and intimidation in a global manner, but also explicitly in assessing the credibility of Witnesses C NAI and CNAQ. 208 74. The Appeals Chamber is not convinced by Nzabonimana's submission that the Trial Chamber ignored the impact of the Amicus Report and Witness C NAI Statement of 8 March 2011 on the credibility of Witnesses C NAI and CNAQ. The Appeals Chamber observes that the Trial Chamber explicitly considered the Amicus Report when it examined the Defence allegation that Witness C NAI recruited witnesses to testify falsely for the Prosecution. In particular, the Trial Chamber noted the Defence submission, made in Nzabonimana Closing Brief, which pointed to the Amicus Report as evidence of Witness C NAI's recruitment and intimidation of witnesses. 210 The Trial Chamber recalled that it accepted conclusions contained in the Amicus Report and that the parties did not appeal this ruling. 211 Specifically, the Trial Chamber recalled the Amicus Report's conclusion that Witness T 36's allegations of being threatened, intimidated, and bribed by Witness C NAI were unfounded. 212 15. The Appeals Chamber notes that the Trial Chamber referenced sections of the Amicus Report that cited Witness C NAI Statement of 8 March 2011, thus showing that the Trial Chamber did take the statement into account. 213 Also, in its 21 October 2011 Decision on Admission of Documents, the Trial Chamber admitted the statement "for the sole purpose of challenging and assessing the credibility of Prosecution Witness C NAI". 214 In Witness C NAI Statement of 8 March 2011, Witness C NAI stated that he "sometimes assisted the Prosecution to look for witnesses when they requested". 215 The Trial Chamber noted that Witness C NAI denied recruiting Prosecution witnesses. 216 Witness C NAI testified that Prosecution investigators contacted the witness to, in turn, contact other witnesses because he had a phone. 217 When asked by Counsel: "[i]f I were to put it to you that a witness said you were the one who went to find them to come and testify here, would you deny that?", Witness C NAI answered: "I would contest that because I do not". Trial Judgement, paras.743, 856, 940. t* Trial Judgement, para.856. t** Trial Judgement, paras.152, 155. t*** Trial Judgement, para.152. 2" Trial Judgement,

para. 152. See also 21 October 2011 Decision Accepting Amicus Report, para. 11. The Trial Judgement, para. 152. The Trial Judgement, para. 227, referring to Amicus Report, paras. 42-46. The 21 October 2011 Decision on Admission of Documents, para. 24. The Amicus Report Annex A, para. 16. See Trial Judgement, para. 151, referring to Witness C NAI, T. 27 November 2009 pp. 18, 20 (closed session). The Appeals Chamber notes that in cross-examination Witness C NAI explicitly denied knowing any witness that he went to find. See Witness C NAI, T. 27 November 2009 p. 20 (closed session). rr7 ^ See Witness C NAI, T. 27 November 2009 p. 18 (closed session). 26 Case No.: ICTR-98-44D-A 29 September 2014 ir-?

2209/H not know any witness that I went to find". 218 The question posed by Counsel can be reasonably understood as referring to a recruiting role and not merely a contact role. The Appeals Chamber considers that a reasonable trier of fact could have found that Witness C NAI was consistent in his statement and his testimony on his role as contact person. The Appeals Chamber finds Nzabonimana's contention that Witness C NAI lied before the Trial Chamber unfounded. In any event, even if Witness C NAI did recruit Prosecution witnesses, there is no evidence that he recruited them "to testify falsely". The Trial Chamber considered that the mere fact that witnesses had contact, travelled together to interviews, or temporarily stayed together "does not lead to the conclusion that they colluded to fabricate their evidence". 219 The Trial Chamber then found the Defence claim of fabrication to be "based upon mere speculation" and that the "evidence does not support the conclusion that Witness C NAI recruited witnesses to testify falsely against Nzabonimana". 220 Nzabonimana fails to demonstrate how the Trial Chamber erred in its assessment of Witness C NAI's credibility in light of the Amicus Report and Witness C NAI Statement of 8 March 2011. 76. Turning to the impact of the Amicus Report and Witness C NAI Statement of 8 March 2011 on Witness C NAX's credibility, the Appeals Chamber first notes that the Trial Chamber explicitly considered differences between Witness C NAX's evidence and the testimonies of Witnesses C NAY, C NAO, C NBU, and C NAI on the presence of Witness C NAI when travelling to meet Prosecution investigators on 4 October 2008. 221 Second, the Appeals Chamber considers that Witness C NAX's testimony is not contradicted by Witness C NAI Statement of 8 March 2011. At trial, Witness C NAX testified that he knew Witness C NAI and denied that the latter put him in touch with Prosecution investigator. "According to Witness C NAX, "[i]t is simply because [Witness C NAI] had a telephone and the people who could contact me would call him and give the information for him to relay to me". 222 Consistent with this, the Appeals Chamber observes that Witness C NAI Statement of 8 March 2011 merely states that Witness C NAI knew Witness C NAX adduced evidence for the Prosecution and that they came from the same area. 223 Furthermore, there is no evidence that Witness C NAX was recruited by Witness C NAI to testify falsely against Nzabonimana. 224 Based on the foregoing, the Appeals Chamber finds no basis for Nzabonimana's 218 See Witness C NAI, T. 27 November 2009 p. 20 (closed session). The Trial Judgement, para. 153. The Trial Judgement, para. 156 (emphasis added). The Trial Judgement, para. 150, fn. 220. 222 Witness C NAX, T. 24 November 2009 p. 39 (closed session). See also Trial Judgement, para. 14. 223 Witness C NAX, T. 24 November 2009 p. 39 (closed session). 224 See Amicus Report Annex A. 225 See Amicus Report, Annex A. See also Trial Judgement, para. 156. The Trial Judgement, Case No.: ICTR-98-44D-A 29 September 2014

argument that the Trial Chamber ignored the impact of the Amicus Report or Witness? Statement of 8 March 2011 on the credibility of Witnesses CNAI and CNAX. 77. The Appeals Chamber now turns to Nzabonimana's submission that the Trial Chamber erred in refusing to admit Prosecution Investigator Moumouni Statement and Defence Witness T37 Statements, both of which have an alleged impact on Witness CNAI's credibility. 2011. The Appeals Chamber finds that Nzabonimana did not demonstrate how Prosecution Investigator Moumouni Statement and Defence Witness T37 Statements undermine the credibility of Witness CNAI. On 21 October 2011, the Trial Chamber denied Nzabonimana's motion to admit Prosecution Investigator Moumouni Statement and Defence Witness T37 Statements on the basis that Nzabonimana failed to show their relevance and probative value. 2011. With respect to Defence Witness T37 Statements, the Appeals Chamber finds that Nzabonimana is repeating arguments from trial without demonstrating how the Trial Chamber erred in its original assessment. 2011. As to Prosecution Investigator Moumouni Statement, the Appeals Chamber recalls that the Trial Chamber found that mere contact does not lead to collusion or fabrication of evidence. 2011. The Appeals Chamber finds no error in this. Furthermore, Witness CNAI's alleged recruitment of other Prosecution witnesses was already considered in relation to Witness CNAI Statement of 8 March 2011. 78. With respect to Nzabonimana's allegation concerning money paid to Rwandan authorities for the treatment of witnesses, the Trial Chamber stated that the concerns on disbursement of Tribunal funds to Prosecution witnesses had been extensively litigated. 2011. It determined, on the basis of Defence Witness Jean-Marie Vianney Mporanzi's testimony and Exhibit D125, that the money was used to pay for witnesses' travel and related expenses. 2011. The issue was thoroughly explored at trial. 2011. The Appeals Chamber finds that Nzabonimana fails to substantiate his 2011. Nzabonimana Appeal Brief, para. 37. 2011. See 21 October 2011 Decision on Admission of Documents, paras. 25-27, para. 9. 2011. Compare Nzabonimana Appeal Brief, para. 37 with The Prosecutor v. Callixte Nzabonimana, Case No. ICTR-98-44D-T, Motion for Admission of Documents, 24 May 2011 (confidential), para. 43. 2011. See Trial Judgment, para. 53. 2011. Trial Judgment, para. 62. 2011. Trial Judgment, paras. 144-146. See Exhibit D125 ("Payments made to Defence Witness Mporanzi"). 2011. Trial Judgment, paras. 144-146. See also ibid., para. 62, fn 10.

3. The Appeals Chamber recalls that it has upheld the Trial Chamber's determination to not initiate contempt proceedings against Prosecution investigators on this matter. See The Prosecutor v. Callixte Nzabonimana, Case No. ICTR-98-44D-AR91, Decision on Callixte Nzabonimana's Appeal Against the Trial Chamber's Decision on Motion for Rule 91 Proceedings Against Prosecution Investigators, 21 April 2012, para. 16; The Prosecutor v. Callixte Nzabonimana, Case No. ICTR-98-44D-T, Decision on Defence Motion for Proceedings Against OTP Investigators, 25 November 2011, para. 26. In a decision of 7 April 2011, the Trial Chamber denied Nzabonimana's request to summon Prosecution investigators in relation to the 245,000 Rwandan Francs. See The Prosecutor v. Callixte Nzabonimana, Case No. ICTR-98-44D-T, Decision on "Callixte Nzabonimana's Motion for Summon of OTP Investigators Adamou Allagouma and Almahamoud Sidibe, sous-président M. Immaculée Mukamasabo", 7 April 2011. 2011. Case No.: ICTR-98-44D-A 29 September 2014 {i*-\

2207/H allegation that the Trial Chamber erred in refusing to summon witnesses to testify on this matter. His argument is therefore dismissed. 79. As for Nzabonimana's argument that the Defence did not merely encounter "logistical" problems but faced intimidation,²³³ it is unclear to the Appeals Chamber how this affects the Trial Chamber's determination on the credibility of Witnesses CNAI and CNAX. Furthermore, Nzabonimana merely repeats his arguments from trial.²³⁴ The Appeals Chamber notes that the Trial Chamber explicitly considered difficulties encountered by Investigator Batard.²³⁵ It determined that, despite difficulties, Investigator Batard interviewed approximately 300 people, contacted approximately 500 people, took 2000 photographs of sites in Rwanda, gathered approximately 600 Gacaca documents, and shot videos without hindrance.²³⁶ The Trial Chamber concluded that Nzabonimana's Defence team "was able to adequately defend the interests of Nzabonimana" through "utilising the fruits of investigator Batard's labour".²³⁷ More significantly, the Trial Chamber considered that Witness Batard "was free to investigate in Rwanda" and that Nzabonimana's submissions of hindrance amounted to "mere speculation".²³⁸ The Appeals Chamber finds no error in the Trial Chamber's determination. 80. On the basis of the foregoing, the Appeals Chamber finds that the Trial Chamber did not err in its credibility assessment of Witnesses CNAI and CNAX in relation to the allegations of fabrication of evidence.²³⁹ (iv) Corroborative and Alleged Contradictions between Witnesses CNAI and CNAX 81. Nzabonimana submits that the Trial Chamber could not find that Witness CNAI was corroborated by Witness CNAX, who testified to having heard statements similar to those allegedly made by Nzabonimana at the Kabimbura centre on 11 April 1994.²⁴⁰ Nzabonimana further submits that the Trial Chamber ignored the Prosecution's withdrawal of paragraphs 18 and 43 of its Indictment five days before the filing of the Prosecution Final Trial Brief, which smoothed-out ²³³ Nzabonimana Appeal Brief, paras. 34, 35; Nzabonimana Reply Brief, paras. 19, 20. ²³⁴ See Nzabonimana Calling Brief, paras. 36-43; Trial Judgement, paras. 240, 241, 243-253-2. Trial Judgement, paras. 243-250, 253-255. ²³⁵ Trial Judgement, para. 254. ²³⁶ Trial Judgement, para. 255. ²³⁷ Trial Judgement, paras. 254, 255. ²³⁸ The Appeals Chamber also dismisses Nzabonimana's undeveloped arguments made in his Notice of Appeal that the Trial Chamber's errors in relation to assessment of fabrication of evidence amounted to a violation of his fair trial rights. See Notice of Appeal, paras. 3.1.1(3), 3.1.1(5), 3.1.1(6), 3.1.17(h)(e). The Appeals Chamber observes that these arguments were not developed in the Nzabonimana Appeal Brief. See Nzabonimana Appeal Brief, para. 91. See also Nzabonimana Notice of Appeal, para. 3.1.2(3). See also AT.29A p. 9. 29 i 1 J v "":c-2 Case No.: ICTR-98-44D-A 29 septembre 2014

contradictions between testimonies of Witnesses CNAI and CNAX, and impacted the credibility.²⁴² 82. The Prosecution responds that Nzabonimana's argument regarding corroborative evidence is difficult to understand and he fails to explain why the Trial Chamber would be forced to come to the same conclusion about two different events at the Kabimbura centre and the Cyayi centre.²⁴³ The Prosecution further responds that it withdrew paragraphs 18 and 43 of the Indictment in accordance with the Trial Chamber's request and not to conceal alleged contradictions in the evidence of Witnesses CNAI and CNAX.²⁴⁴ 83. With respect to Nzabonimana's argument on corroboration of Witnesses CNAI and CNAX,²⁴⁵ the Appeals

Chamber first observed that the Trial Chamber accepted Witness CNAI's testimony that Nzabonimana told those gathered to stop eating cows of Tutsi refugees and to focus on the Tutsis instead.²⁴⁵ It then found that Witness CNAX corroborated this by "stating that Nzabonimana had told the people that Tutsis were to be killed before their property was taken".²⁴⁶ Having reviewed the transcripts, the Appeals Chamber notes that Witness CNAX stated: [Nzabonimana] said in a vehicle and was saying that he said that the Kabimbura centre; namely, that the Tutsis had to be killed first before their property was taken and that anybody who acted in a contrary manner was mistaken.²⁴⁷ 84. Despite referencing Kabimbura, Witness CNAX's testimony reveals that he directly heard what Nzabonimana said at the Cyayi centre, unlike his hearsay testimony concerning Kabimbura centre.²⁴⁸ Therefore, the Appeals Chamber finds no error in the Trial Chamber's use of Witness CNAX's direct evidence to corroborate Witness CNAI's testimony in Nzabonimana's statement at the Cyayi centre. 85. The Appeals Chamber observed that the Trial Chamber specifically ordered the Prosecution to withdraw paragraphs of the Indictment that were unsubstantiated by evidence.²⁴⁹ In compliance with the Trial Chamber's order, on 30 June 2011, the Prosecution withdrew nine paragraphs from its Nzabonimana Appeal Brief, paragraph 60. ²⁵⁰ Prosecution Response Brief, para. 82. ²⁵¹ Prosecution Response Brief, para. 52, referring to *The Prosecutor v. Callixte Nzabonimana*, Case No. ICTR-98-44D-TO, Order of the Prosecution Review Indictment and to File Public Version, 8 April 2011 ("Order of 8 April 2011"). ²⁵² Nzabonimana Appeal Brief, paragraph 91. ²⁵³ Trial Judgment, paras. 870, 887. ²⁵⁴ Trial Judgment, paras. 870. ²⁵⁵ Witness CNAX, T. 23 November 2009 p. 60 (emphasis added). ²⁵⁶ Witness CNAX, T. 23 November 2009 p. 58, 59. ²⁵⁷ See also Trial Judgment, paras. 643, 769. ²⁵⁸ See Order of 8 April 2011, p. 2. ²⁵⁹ Case No. ICTR-98-44D-A 29 September 2014; Y\

2205/H the Indictment, including paragraphs 18 and 43. ²⁶⁰ Considering that the Prosecution's withdrawal was done in accordance with a Trial Chamber order, and that Nzabonimana provides no further justification for his claim, the Appeals Chamber dismisses Nzabonimana's arguments in this regard. (v) Conclusion 86. Based on the foregoing, the Appeals Chamber finds that Nzabonimana fails to demonstrate that the Trial Chamber erred in assessing the credibility of Witnesses CNAI and CNAX and in relying on their testimonies in respect of the events at the Cyayi centre and the Nyabikenke commune office on 14 and 15 April 1994. (b) Alleged Errors in Assessing Defence Evidence 8'1. In relation to the events at the Cyayi centre and the Nyabikenke commune office, the Trial Chamber assessed the testimonies of Defence Witnesses T24, T28, T31, T150, T193, and Bernard Ndayisaba as well as the evidence of Defence Witness BCB from the Rukundo trial.²⁶¹ Nzabonimana submits that the Trial Chamber excluded all the Defence evidence without justification.²⁶² In particular, Nzabonimana challenges the Trial Chamber's assessment of Defence evidence with respect to: (i) the Cyayi centre on 14 April 1994; (ii) the participation of commune policemen during the Night and the Day Attacks at the Nyabikenke commune office; and (iii) firearm use during the Night and the Day Attacks at the Nyabikenke commune office. (i) The Cyayi Centre 88. In relation to the event at the Cyayi centre, the Trial Chamber noted that all Defence witnesses denied that a meeting occurred.²⁶³ The Trial Chamber found the testimonies of Witnesses 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000.

Conviction under Paragraphs 8, 22, 27, 31, 32, 36, 43, 53 and 55 of the Indictment, 30 June 2011, paragraph 7. See also Prosecutor's Closing Brief, paragraph 2. "5" Trial Judgment, paragraphs 782-855, 879-888, 869, 901, 909, 911, 912, 914, 916-926, 928, 930, 932, 934, 935, 938-940. The Appeals Chamber notes that the Trial Chamber also examined excerpts of Father Lerusse's testimony from the Rukundo trial that the Defence sought to challenge the credibility of Witness CNA. See *id.*, paragraphs 918-924; see also *infra*, paragraph 12. 22 Nzabonimana Notice of Appeal, paragraph 3.1.3; Nzabonimana Appeal Brief, paragraphs 61-78. The Appeals Chamber notes that Nzabonimana submitted that the Trial Chamber erred in law and in fact in its assessment of the credibility of Defence Witnesses T24, T28, T150, and T193 by applying erroneous criteria. See Nzabonimana Notice of Appeal, paragraph 3.1.3(2)N; Nzabonimana Appeal Brief, paragraph 61. As Nzabonimana fails to articulate which criteria were allegedly applied erroneously, the Appeals Chamber will only examine his factual challenges. Also, while the contention that the Trial Chamber erroneously excluded evidence of pressure at Defence Witnesses T24 and Mporanzi's raised in his Notice of Appeal, the Appeals Chamber observes that he fails to develop this in his Appeal Brief. See Nzabonimana Notice of Appeal, paragraph 3.1.3(7). However, under Grounds 4 and 5, Nzabonimana challenges the Trial Chamber's credibility assessment of Witnesses T24 and Mporanzi. Accordingly, his argument will be examined below. See *Njira*, paragraphs 196-204, 285-291 2nd Trial Judgment, paragraph 819. *JI "r) Case No.: ICTR-98-44D-A 29 September 2014*

T24, Ndayisaba T28, and BCB of little or no probative value. 25. While the assessment of the evidence of Witnesses T193 and T150, the Trial Chamber held that: The Chamber recalls that Witness CNA testified that both Witnesses T150 and T193 were present at Cyayi centre during the meeting on 14 April 1994. Witness T193 was convicted by a Rwandan court for his role in the genocide and was sentenced to nine years' imprisonment. The Chamber considers that given that both witnesses are implicated as being affiliated with Nzabonimana at Cyayi centre, they may have reasons to distance themselves from this allegation. Witness T150 testified that he neither saw nor heard of a meeting held at Cyayi cell by Nzabonimana, and that no one mentioned the Cyayi meeting or Nzabonimana's words during the Cyayi Gacaca sessions. Witness T193 testified that on 14 April 1994, he passed through Cyayi centre at 2.00 p.m. but never saw Nzabonimana. Neither witness provided first hand testimony regarding what occurred at Cyayi centre at approximately 4.00 p.m. on 14 April 1994. The Chamber thus considers that the testimony of Witnesses T150 and T193 are of limited probative value. 89. Nzabonimana submitted that the Trial Chamber erred in treating Witnesses T193's and T150's testimonies with caution. 26. He argues that, since they had no involvement in criminal activities linked with Nzabonimana's alleged crimes, they had no objective reasons to distance themselves. 27. According to Nzabonimana, by stating that "both witnesses are implicated as being affiliated with Nzabonimana at Cyayi centre", the Trial Chamber considered their mere presence at the scene to be criminal and concluded his as the reasons to reject their testimonies. 28. However, he maintains that, as per Witness CNA's testimony, Witness T193 was at the Cyayi centre and his association was to protect Munyagatwe. 29. Nzabonimana also challenges the Trial Chamber's consideration of Witness T193's conviction as he was acquitted in relation to the attack at the commune office. 30. Furthermore, Witness T193's conviction was unrelated to events at the Cyayi centre or to Nzabonimana as it pertained to later

events.²⁶ N. zabonimana further submits that the Trial Chamber contradicted itself by rejecting the evidence of Witnesses T 193 and T150 on the basis that both witnesses may have had reason to distance themselves as they were implicated as being affiliated with the event at the Cyayi centre, while, at the same time, finding that their testimonies lacked probative value as they were not present.²⁶ N. zabonimana submits that, had the Trial Chamber correctly assessed the testimonies of Witnesses T 193 and T150, it could only have found that their testimony to the Trial Judgement, paras. 81, 84-886A. As to Witness T 24, the Trial Chamber relied on its finding that the witness's credibility was seriously undermined by his admission of lying to Prosecution investigators. See Trial Judgement, para. 80. The Trial Judgement, paras. 82, 83 (internal reference omitted).²⁶ N. zabonimana Appeal Brief, paras. 6. 2-65. See also AT.29 April 2014 p. 10: T. N. zabonimana Appeal Brief, paras. 6. 2, 63. See also AT.29 April 2014 p. 10. z. N. zabonimana Appeal Brief, paras. 6. 2, 64. See also AT. 29 April 2014 p. 10: N. zabonimana Appeal Brief, para. 6 3. T. N. zabonimana Appeal Brief, para. 6 5. 6. N. zabonimana Appeal Brief, para. 6 5. T. N. zabonimana Appeal Brief, para. 6 6, re. finding of Trial Judgement, para. 83. See also AT.29 April 2014 p. 10, 11. 32 Case No.: ICTR-98-44D-A 29 September 2014 i}\

2203/H testimonies rendered Witness C NAI's evidence implausible and, as a consequence, also undermined Witness C NAX's testimony, as it corroborated Witness C NAI.²⁶³ 90. The Prosecution responds that the Trial Chamber correctly rejected the claims of Witnesses T 193 and T150 that Nzabonimana was not at the Cyayi centre.²⁶⁴ The Prosecution submits that the Trial Chamber was entitled to assess the testimonies of Witnesses T 193 and T150 against that of Witness C NAI.²⁶⁵ It further argues that Nzabonimana fails to address the Trial Chamber's reasons for finding their testimonies of limited probative value.⁶⁶ 91. Nzabonimana replies that the Trial Chamber should not have found Witness C NAI, who testified to Witnesses T 193 and T150 being present at the Cyayi centre, credible because it had admitted as one alternative that both Witnesses T 193 and T150 were not at the Cyayi centre.²⁶⁶ He also contends that the reasons provided by the Prosecution for the Trial Chamber to disbelieve Witnesses T 150 and T193 are absent from the Trial Judgement.²⁶⁸ gZ. Witness C NAI testified that around 4.00 p.m. or 5.00 p.m. on 14 April 1994, after Nzabonimana's statement that the Cyayi centre, Witness T193 arrived in a car with Witness T150, he stopped behind Nzabonimana's vehicle, got out, and walked towards Witness C NAI.^{26e} Witness C NAI further testified that after Munyagatarewas threatened, Witnesses C NAI and T193 pushed Munyagatare down a slope away from the road.²⁷⁰ Subsequently, Nzabonimana called Witness T 193 and told him that they must go to the Remera centre "to finish off what they had started", Witness T 193 gave his vehicle to Witness T 150, who had been in Witness T 193's car, and Witness T193 left in a car with Kamali.²⁷¹ Since Witness C NAI placed both Witness T193 and Witness T150 at the scene in association with Nzabonimana, the Appeals Chamber finds it reasonable for the Trial Chamber to note that both Defence witnesses were implicated as being "affiliated" with Nzabonimana and "may have reason to distance themselves".²⁷² The Appeals Chamber also notes that at no point did the Trial Chamber consider their mere presence to be criminal. ²⁶³ Nzabonimana Appeal Brief, para. 6 7. 2. Prosecution Response Brief, para. 5 3. See also AT.29 April 2014 p. 35. ²⁶⁵ Prosecution Response Brief, para. 5 6. z. prosecution Response Brief, para. 58, referring to Prosecution Response Brief,

para. 54 where the Prosecution submitsthat the Trial Chamber has always reasonably disbelieved the testimony of the witness T50 and T193. 261 Nwabonimana Reply Brief, para.25. 268 Nwabonimana Reply Brief, para.25. 269 Witness C NAI, T. 26 November 2009 p.61, 65; Witness C NAI, T. 27 November 2009 p. 28 (closed session). See also Trial Judgment, paras. 751 - 753. 270 Witness C NAI, T. 26 November 2009 p.65; Witness C NAI, T. 27 November 2009 p.33 (closed session). See also Trial Judgment, paras. 755, 760 Witness C NAI, T. 26 November 2009 p.65; Witness C NAI, T. 27 November 2009 p. 31 (closed session). See also Trial Judgment, para. 756. 271 Trial Judgment, para. 882. JJ Case No.: ICTR-98-44D-A 29 September 2014, i"r,

93. The Appeals Chamber further observed that the Trial Chamber referred to Witness 2E02/H 273 conviction "by a Rwandan court for his role in the genocide" but was aware that the witness was acquitted of having a role in the commune office attack. The Appeals Chamber again recalls that a trial chamber has full discretion to assess witness credibility. The Trial Chamber notes that a witness's criminal history may be a factor in assessing credibility. The Trial Chamber fails to demonstrate how the Trial Chamber erred in noting Witness 193's conviction when it assessed his credibility. 94. The Appeals Chamber also dismisses the allegation that the Trial Chamber contradicted itself. The Trial Chamber's finding that Witnesses 193's and T150's testimonies are of limited probative value is based on the fact that neither of them provided first-hand testimony regarding what occurred at the Cyayi centre at the relevant time. The Appeals Chamber understands that the Trial Chamber considered that, even if they were found credible, it could not have relied upon them. The Trial Chamber determined that they were unable to account for what occurred at the Cyayi centre at 4 p.m. when the meeting was found to have taken place. In deed, before examining the probative value of their testimonies, the Trial Chamber already applied a cautious approach when it preferred the witness CNAI's testimony. Therefore, the Appeals Chamber finds no contradiction in the Trial Chamber's assessment. The Appeals Chamber dismisses the arguments alleging errors in assessing Defence evidence with respect to events at the Cyayi centre. (ii) Participation of Commune Policemen at the Nyabikenke Commune Office 95. Based on the evidence of Witnesses CNAI and CNAX, the Trial Chamber found that the perpetrators of the Night Attack were commune policemen and Hutu civilians. The Trial Chamber stated: Defence Witness T28, also an eyewitness, denied that commune policemen were involved. However, the Chamber notes that Witnesses T28 and BCB corroborated the Prosecution witnesses' testimony that commune policemen were present at the scene of the attack. The Chamber notes that while Witness T28 was not personally implicated in the attack, he was " Trial Judgment, para. 82. Trial Judgment, para. 904, referring to Exhibit D76B (Judgment of Gitarama Court of First Instance, 20 March 2003), paras. 45-46, 103-104. See Trial Judgment, para. 45. "Conclusion and Recommendations Appeal Judgment, para. 2641 K umuhanda Appeal Judgment, para. 142. Trial Judgment, para. 83. The Trial Chamber noted that Witness 193 testified that he passed through Cyayi centre at 2.00 p.m. but never saw Nzabonimana and Witness T150 testified that he neither saw nor heard of a meeting held at Cyayi cell. See Nzabonimana Appeal Judgment, para. 83. Trial Judgment, para. 8.

82. t** Trial Judgement, paras. 902, 910, 939. 34 Case No. ICTR-98-44D-A 29 September 2014 \.) v

2207/H indirectly implicated. The Chamber considers that, consequently, Witness T28 may have had a motive to distance himself from the allegation.²⁸² The Trial Chamber found that perpetrators of the Day Attack were commune policemen, Interahamwe, and civilians.²⁸² The Trial Chamber relied on Witness CNAX to find that commune policemen participated in the Day Attack. The Trial Chamber considered Witness BCB's testimony that around 2.00 p.m. a policeman threw a grenade into a crowd of refugees, and determined that this corroborated Witness CNAX's testimony that commune policemen were involved in the attack as perpetrators.²⁸³ 97. Concerning the Night Attack, Nzabonimana submits that the Trial Chamber rejected Witness T28's testimony on the basis that he was "indirectly implicated" without further consideration.²⁸⁴ Nzabonimana argues that the Trial Chamber could not reject Witness T28's testimony without explaining the meaning of "indirectly implicated" and by hypothetically finding that the witness could have something to hide, while at the same time, noting that he was not accused of anything.²⁸⁵ Nzabonimana avers that the lack of corroboration does not render Witness T28's testimony unreliable about the identity of assailants.²⁸⁶ Nzabonimana contends that the question of reliability about the identity of the assailants is distinguishable from the question of other commune policemen.²⁸⁷ Nzabonimana also asserts that the Trial Chamber failed to consider Witness BCB's testimony that it was night time and that his colleagues fired into the air to repel the assailants.²⁸⁸ In light of the Defence evidence, Nzabonimana submits that the Trial Chamber should not have believed Witnesses CNAI and CNAX that commune policemen participated in the Night Attack.²⁸⁹ 98. With respect to the Day Attack, Nzabonimana submits that the Trial Chamber failed to find that the testimony of Father Lerusse, who saw two policemen aiming their guns to prevent an attack, corroborated Witness BCB.²⁹⁰ He further submits that the Trial Chamber failed to consider Witness BCB's testimony that the policemen, save one, tried to protect the refugees from assailants.²⁹¹ He claims that Witness BCB's evidence, that Father Rukundo arrived with five ttt Trial Judgement, para. 900 (internal reference omitted). 282 Trial Judgement, paras. 927, 939. 283 Trial Judgement, para. 925. 29 Nzabonimana Appeal Brief, para. 68, referring to Trial Judgement, para. 900. See also AT. 29 April 2014 p. 51. 285 Nzabonimana Appeal Brief, para. 68, referring to Trial Judgement, para. 900. See also N|. 29 April 2014 p. 51. 286 Nzabonimana Appeal Brief, para. 69, referring to Trial Judgement, para. 901. Nzabonimana submits that the Trial Chamber found that only Witness T28 testified that it was raining during the Night Attack and that his evidence on this point was not corroborated. See also AT. 29 April 2014 pp. 51, 52. 287 Nzabonimana Appeal Brief, para. 71. Nzabonimana avers that no reasonable trier of fact could have found that Witness T28, who was present at the scene, ignored his participation of commune policemen. See also. 288 Nzabonimana Appeal Brief, para. 72. 289 Nzabonimana Appeal Brief, para. 72. 290 Nzabonimana Appeal Brief, para. 75. 291 Nzabonimana Appeal Brief, para. 75. Case No.: ICTR-98-44D-A 29 September 2014 \}'

soldiers or gendarmes, rendered Witness CNAX's testimony, that policemen were aiming guns at Father Rukundo's approaching vehicle, not plausible.2e2Nzabonimana adds that the Trial Chamber should have questioned the veracity of Witnesses CNAI's and CNAX's allegations concerning the behaviour of the commune policemen, in light of Witness T28 warning the communal authority after the attack, and Witnesses T28 and BCB assisting the wounded.2e399. As to the Night Attack, the Prosecution responds that Witness T28's evidence was rightly rejected.2e4It submits that Nzabonimana fails to demonstrate that the Trial Chamber should have believed the Defence evidence and that Witness T28 had strong motives to deny that policemen were involved.2e5With respect to the Day Attack, the Prosecution responds that the Trial Chamber rejected Witness BCB's denial that the commune policemen also perpetrated attacks during the day.2e6The Prosecution argues that Father Lerusse's testimony did not corroborate Witness BCB's evidence, and that Witness CNAX's evidence of police aiming firearms at Father Rukundo was not implausible.2e7The Prosecution adds that evidence from Witnesses BCB, T24, and T28 about moving injured refugees to a hospital, does not undermine the testimonies of Witnesses CNAX and CNAI that commune policemen participated in the Day Attack.2e8100. Nzabonimana replies that rejection of Witness T28's evidence is even less justifiable since the Trial Chamber admitted that conditions during the Night Attack rendered identification of assailants difficult.2e9With respect to Witness BCB, Nzabonimana submits that the Prosecution inappropriately discussed his evidence, whose credibility was never examined by the Trial Chamber, and whose testimony was communicated after the end of the trial.300101. Turning first to the Night Attack, the Appeals Chamber considers that, had the Trial Chamber explained what it meant by personal and indirect implication, it would have revealed protected information.301In these circumstances, it was reasonable for the Trial Chamber to consider that "Witness T28 may have had a motive to distance himself from the allegation".3022e2 Nzabonimana Appeal Brief, para. 75. 2e3Nzabonimana Appeal Brief, para. 73. 2e4Prosecution Response Brief, para. 60. 2e5Prosecution Response Brief, paras. 61, 63. 2e6Prosecution Response Brief, para. 65. 2e7Prosecution Response Brief, para. 66. 2e8Prosecution Response Brief, para. 67. 2e9Nzabonimana Reply Brief, para. 26. 2e0referring to Trial Judgement, para. 901. 2e1Nzabonimana Reply Brief, para. 21, referring to Prosecution Response Brief, paras. 59-67. 2e2See Exhibit D37 (Protected Information Sheet). The Appeals Chamber notes that the Trial Chamber was clearly aware of its duty to provide a reasoned opinion and to protect the identity of witnesses. 2e3See Trial Judgement, paras. 65, 66. 2e4Trial Judgement, para. 900. 2e5Case No. ICTR-98-44D-A 29 September 2014 ¶14.

2199/H102. As to identifying assailants, the Trial Chamber considered that the conditions at the time of the attack, even under bright moonlight as testified by Witness CNAI, would have rendered the identification of individual assailants difficult.303The Trial Chamber noted Witness T28's testimony that, as a result of the rainy weather, he could not identify assailants during the Night Attack.304The Appeals Chamber observes that, by finding identification of particular assailants difficult at the time, irrespective of weather conditions, the Trial Chamber did not rely on Witness CNAI's testimony as to the bright moonlight, or on Witness T28's testimony as to the heavy rain. In the Appeals Chamber's view, any error from the Trial Chamber's rejection of

Witness T28's evidence about the identity of assailants would not affect its reliance on Witnesses CNAI and CNAX to find that the perpetrator(s) of the Night Attack were comprised of commune policemen and Hutu civilians.³⁰⁵ Accordingly, Nzabonimana's arguments related to Witness T28 are dismissed.³⁰⁶ 103. As for the Trial Chamber's alleged failure to consider the testimony of Witness BCB, that commune policemen fired into the air to repel the assailants, the Appeals Chamber recalls that the fact that certain evidence has not been referred to in the Trial Judgement does not mean that the Trial Chamber did not take it into account in its assessment.³¹⁰ Nonetheless, the Appeals Chamber considers that Witness BCB's testimony on this matter is not incompatible with the finding that commune policemen participated in attacking Tutsi refugees. The Appeals Chamber further notes that, beyond stating his argument,³⁰⁸ Nzabonimana fails to substantiate how the Trial Chamber erred in this regard. Based on the above, the Appeals Chamber is not persuaded that the Trial Chamber unreasonably relied on the testimonies of Witnesses CNAI and CNAX to find that commune policemen were involved in the Night Attack. The Appeals Chamber therefore considers that Nzabonimana has failed to demonstrate that no reasonable trier of fact could have relied on their testimony to reach such findings. ³⁰¹ Trial Judgement, para. 901. ³⁰² Trial Judgement, para. 901. See also Witness T28, T.2 June 2010, p. 51, 52 (closed session). ³⁰³ Trial Judgement, paras. 902, 910, 939. ³⁰⁴ The Appeals Chamber rejects Nzabonimana's contention that no reasonable trier of fact could have found that Witness T28 ignored the participation of commune policemen. The Trial Chamber did not make such a finding and the Appeals Chamber recalls the reasonableness of the Trial Chamber's conclusion that Witness T28, might have had a motive to distance himself. ³⁰¹ See Kalimanzira Appeal Judgement, para. 195; Simba Appeal Judgement, para. 152. Without providing references, Nzabonimana maintains that Witness BCB's testimony was corroborated by Witness T28's testimony. The Appeals Chamber notes that the transcripts of Witness BCB's testimony were admitted in evidence and considered prima facie exculpatory. See *The Prosecutor v. Callixte Nzabonimana*, Case No. ICTR-98-44D-T, Consolidated Decision on Defence Motion for Appropriate Relief in Light of Prosecution's Delayed Disclosure of the Accused's Exculpatory Evidence, Defence Motion in Light of The Trial Chamber's Proper Motu Order of 15 March 2012, and Defence Motion Pursuant to the Trial Chamber's Order of 4 April 2012, 30 April 2012 (*30 April 2012 Decision*), para. 128. ³⁰⁸ Nzabonimana Appeal Brief, para. 12. The Appeals Chamber notes that Nzabonimana's implied reference to paragraph 844 of the Trial Judgement without further support for his argument is irrelevant. ³⁰⁹ Case No. ICTR-98-44D-A 29 September 2014.

¹⁰⁴. Turning to the Day Attack, the Appeals Chamber first recalls that the Trial Chamber had considered Father Lerusse's evidence, Exhibit D62, to be of "very little probative value".^{30e} It noted that the exhibit was not introduced into evidence under Rule 92(b) of the Rules, which would have afforded the Prosecution the opportunity to cross-examine Father Lerusse.^{31t} However, the Trial Chamber determined that, in the interests of justice, it would consider substantive aspects of Father Lerusse's testimony as contained in Exhibit D62 and insofar as it impacted the credibility of Witness CNAX.^{31f} When assessing the Defence's challenge to the Prosecution's evidence that commune policemen participated in the Day

Attack, the Trial Chamber explicitly considered the substance of Father Lerusse's testimony from the Rukundo case that two commune policemen defended the commune office.³²² In comparing the evidence of Witness C NAX and Father Lerusse, the Trial Chamber noted Father Lerusse's admission that he lost sight of the commune policemen and considered that he was unable to provide a reliable account of the commune policemen's activities that day.³²³ 105. The Appeals Chamber observes that the Trial Chamber did not explicitly consider that Witness BCB corroborated Father Lerusse's evidence on the role of commune policemen.³²⁴ However, as recalled above, the fact that certain evidence has not been referred to does not mean that it was not taken into account in the Trial Chamber's assessment.³²⁵ Furthermore, the Appeals Chamber notes that the Trial Chamber explicitly took into account Witness BCB's testimony that a policeman threw a grenade at refugees, thus corroborating Witness C NAX's evidence that commune policemen were involved in the Day Attack.³²⁶ Finally, the Trial Chamber explicitly considered that police officers assisted wounded refugees.³²⁷ In any event, the Appeals Chamber is unable to see how evidence of their assisting Tutsis undermines the reasonableness of the Trial Chamber's finding that commune policemen participated in the attack. 106. On the basis of the foregoing, the Appeals Chamber dismisses Nzabonimana's arguments that the Trial Chamber erred in its assessment of the Defence evidence to find that commune policemen participated in the Night and Day Attacks, 'u' Trial Judgement, para. 919. "' Trial Judgement, para. 919. i' Trial Judgement, para. 919. "' Trial Judgement, para. 923. "' Trial Judgement, para. 923. 328 See Trial Judgement, para. 923. ttt 5", surru, para. 103. The Appeals Chamber recalls that there is a presumption that a Trial Chamber has evaluated all the evidence presented to it, provided that there is no indication that the Trial Chamber completely disregarded any particular piece of evidence. See, e.g., Bizimungu Appeal Judgement, fn. 766; Ntubakuze Appeal Judgement, fn. 357; Bugosor and Nsenang Appeal Judgement, fn. 625. t'o Trial Judgement, para. 925. "' Trial Judgement, para. 917. 38 Case No.: I CTR-98-44D-A 29 September 2014 \-t),

2197/H (iii) Firearms Use at the Nyabikenke Commune Office 107. The Trial Chamber determined that Hutu civilians and commune policemen were armed with firearms, grenades, and traditional weapons during the Night Attack.³²⁸ It also found that the assailants used traditional weapons, as well as firearms and grenades during the Day Attack.³²⁹ 108. Nzabonimana submits that the Trial Chamber failed to provide a reasoned opinion on the use of firearms during the Night Attack.³³⁰ He argues that after finding that Witnesses BCB and T28 corroborated Witnesses C NAX and CNAI on the use of grenades, the Trial Chamber also made conclusions on the use of firearms without factual analysis.³³¹ Nzabonimana further submits that the Trial Chamber distorted the testimony of Witnesses T24 and Ndayisaba when using their evidence to corroborate the use of firearms in the Day Attack.³³² He argues that Witness Ndayisaba testified to not having seen or heard firearms and Witness T24 to not having been told about firearms.³³³ According to Nzabonimana, the Trial Chamber did not consider Witness BCB's evidence that Father Rukundo arrived and confiscated the assailants' traditional "weapons." 109. The Prosecution responds that the Trial Chamber reasonably concluded that after Nzabonimana's intervention attacks

escalated and attackers used firearms, as opposed to only traditional weapons." It submits that Defence witnesses corroborated the use of firearms and grenades.³²⁶ 110. Turning first to the Night Attack, the Appeals Chamber rejects Nzabonimana's submission that the Trial Chamber failed to provide a reasoned opinion. Having considered that Witnesses T 28 and BCB corroborated the testimony of Prosecution witnesses on the use of grenades, the Trial Chambers stated: "[t]herefore, the Chamber concludes that the assailants were armed with firearms, grenades and traditional weapon. [...]" It is clear that this sentence was a summary of the Trial Chamber's findings. Notably, in the preceding paragraph the Trial Chamber found that Witnesses C NAI and CNAX "both agreed that the assailants were armed with grenades and firearms".³²⁸ Nzabonimana fails to demonstrate that the Trial Chamber erred in that regard. 31. Trial Judgement, paras 9. 13, 939. 32. Trial Judgement, paras 9. 27, 939. 320 Nzabonimana Appeal Brief, para 7. 4. 321 Nzabonimana Appeal Brief, para 7. 4. 322 Nzabonimana Appeal Brief, para 7. 6. 323 Nzabonimana Appeal Brief, para 7. 6. Nzabonimana argues that this is corroborated by Witness T 28. See idem. 324 Nzabonimana Appeal Brief, para 7. 1, referring to Trial Judgement, para 8. 54. 325 Prosecution Response Brief, para 6. 8. 326 Prosecution Response Brief, paras 6. 8, 69. At the appeal hearing, the Prosecution submitted that Kamali distributed at least one grenade. See A T. 29 April 2014 p. 29. Trial Judgement, para 9. 12. 328 See Trial Judgement, para 9. 11. ^4 t) Case No.: I CTR-98-44D-A 29 September 2014

11. With respect to the Day Attack, Witness CNAX testified that the assailants used firearms. On According to the Trial Chamber, Witnesses T24 and Ndayisaba corroborated Witness CNAX's testimony that assailants employed "firearms and grenades" during this attack. 11. However, in coming to this conclusion, the Trial Chamber only noted that Witness Ndayisaba testified that he heard an explosion and that Witness T24 learned that Father Lerusse barely escaped a grenade attack.³³¹ As summarised in the Trial Judgement, Witness Ndayisaba denied that firearms were used and Witness T24 was not told that firearms were used.³³² Consequently, no reasonable trier of fact could find that the two Defence witnesses corroborated Witness CNAX on the use of firearms during the Day Attack and the Appeals Chamber finds that the Trial Chamber erred in this respect. 11.2. However, this error does not occasion a miscarriage of justice as it has no impact on the Trial Chamber's finding that firearms were used during the Day Attack. The Appeals Chamber recalls that it accepted the Trial Chamber's finding on the participation of commune police during the Night Attack.³³³ The Appeals Chamber also recalls evidence that policemen carried firearms during attacks at night³³⁴ and during the day.³³⁵ With respect to the Day Attack, the Trial Chamber explicitly considered Defence submission that Father Lerusse's evidence refuted Witness CNAX's testimony that two commune policemen were aiming their guns at Father Rukundo's approaching vehicle.³³⁶ In responding to Defence arguments, the Trial Chamber did not consider that Father Lerusse was able to provide a reliable account of the commune policemen's activities, given his admission that he lost sight of the commune policemen.³³⁷ Nzabonimana fails to demonstrate how the Trial Chamber erred in relying on Witness CNAX's evidence to find that firearms were used during the Day Attack. Based on the above, the Appeals Chamber finds it reasonable for the Trial Chamber to conclude that firearms were used by assailants, which included commune policemen, in the Day Attack.³³⁸ 11.3. Finally, in

2195/H any event, Nzabonimana fails to demonstrate how this evidence impacts the finding that firearms were used. 114. Accordingly, the Appeals Chamber dismisses Nzabonimana's arguments in relation to the use of firearms in the Night Attack at the commune office and finds that the Trial Chamber's error on the corroboration of witnesses T 24 and Ndayisabao on firearms use in the Day Attack does not occasion a miscarriage of justice. (iv) Conclusion 115. Based on the foregoing, the Appeals Chamber finds that Nzabonimana has failed to demonstrate that the Trial Chamber committed any error in its assessment of Defence evidence in relation to the events at the Cyayi centre and the Nyabikenke commune office on 14 and 15 April 1994 that would occasion a miscarriage of justice. 3a0 (c) Conclusion 116. The Appeals Chamber dismisses Nzabonimana's arguments in relation to the assessment of evidence under his Third Ground of Appeal. 3. Direct and Public Incitement to Commit Genocide 117. The Trial Chamber convicted Nzabonimana of direct and public incitement to commit genocide based, in part, on his conduct at the Cyayi centre on 14 April 1994. 341 In particular, it determined that Nzabonimana's speech, which consisted of an explicit call to kill Tutsis, constituted a direct call to commit genocide. 3aT2 The Trial Chamber found that Nzabonimana's conduct satisfied the public element of the crime. 3a3 The Trial Chamber further found that Nzabonimana had the requisite intent to destroy, in whole or in part, the Tutsi ethnic group and to directly incite those present to commit genocide. 3a 118. Nzabonimana submits that the Trial Chamber erred in law and in fact by characterising the incitement as "public". 3as Nzabonimana avers that the Trial Chamber erred in law by failing to take into account that the Appeals Chamber also dismisses Nzabonimana's general claim, raised in the Notice of Appeal but undeveloped in his Appeal Brief, that the Trial Chamber repeatedly violated his right to a fair trial in its assessment of Defence evidence. See Nzabonimana Notice of Appeal, para. 3.1.3(1). The Trial Judgement, paras. 1768, 1775, 1800. 302 Trial Judgement, para. 1165. The Trial Judgement, para. 1166. * Trial Judgement, para. 1767. 3as Nzabonimana Notice of Appeal, para. 3.2; Nzabonimana Appeal Brief, paras. 80-93. See also AT.29 April 2014 p. 11. Nzabonimana's argument on the corroboration between witnesses NAI and CNAX (see Nzabonimana Appeal Brief para. 91) has been examined in the previous section. See supra, paras. 81-84. The Appeals Chambers unanimously reject Case No.: ICTR-98-14D-A 29 September 2014

into account and properly apply the jurisprudence.^{3a16n} particular, he argues that the number of persons present, though not to be used strictly, is an essential factor that should be taken into account when assessing the public character of the incitement and that the Nahimana et al. and Kalimanzira Appeal Judgements characterise speeches from a vehicle as a "conversation".^{3aT} Nzabonimana submits that the Trial Chamber circumvented the elements of the crime when relying on Nzabonimana's intention to be heard by anyone in the area to determine that "he was not heard by an exclusive and limited group".^{348H} He considers that through this "a contrario" reasoning and the finding that "[t]he witnesses did not indicate the specific audience to whom the speech was addressed" the Trial Chamber admitted that the public element and the audience were not established.^{3teN} Nzabonimana asserts that the findings were vitiated from the start when the Trial Chamber considered it unreasonable to require Witnesses CNAI and CNAX to remember the exact number of people present and Nzabonimana's exact words.^{35F0} Further, Nzabonimana claims that the Trial Chamber inferred his intention from the fact that he summoned Witness CNAI, while at the same time not believing his aspect of the witness's evidence.^{3s: 119.} Nzabonimana submits that the facts correspond to private, rather than public, incitement as Witness CNAI described private discussions between Nzabonimana, seated in his car, and specific persons, including the witness.^{35N2} Nzabonimana submits that the Trial Chamber should have found that only Witness CNAI was the direct recipient of his words, and that his deputy, Kamali, Witness T 193, and Munyagata were indirect listeners.^{3s3 120.} The Prosecution responds that the Trial Chamber correctly convicted Nzabonimana of direct and public incitement to commit genocide for the event at the Cyayi centre.^{3s4T} The Prosecution dismisses Nzabonimana's undeveloped submission that the Trial Chamber rejected all testimonies of the witnesses who were in the area but who testified to not being informed of similar words (see Nzabonimana Appeal Brief, para. 88). It recalls that Nzabonimana's challenges to the assessment of Defence evidence have been examined in the previous section. See supra, paras. 88-94. ^{ra6} Nzabonimana Notice of Appeal, para. 3.2.1; Nzabonimana Appeal Brief, paras. 80-83. ^{ra7} See Nzabonimana Appeal Brief, paras. 81, 83. ³⁴⁸ Nzabonimana Appeal Brief, para. 86. See also Nzabonimana Reply Brief, para. 32; ^{rae} Nzabonimana Appeal Brief, para. 86 (French version). See also Nzabonimana Reply Brief, para. 3 | 3t) Nzabonimana Appeal Brief, para. 85. Nzabonimana further submits that the Trial Chamber distorted the testimony of Witness CNAX, who stated there were "less than" 30 people, when it determined that there was a "crowd" of "approximately" 30 people. See Nzabonimana Appeal Brief, para. 92, referring to Trial Judgement, paras. 769, 869, ¶763. See also AT.29 April 2014 p. 11. At the appeal hearing, Nzabonimana also argued that Witnesses CNAI and CNAX did not corroborate each other on Kamali's and Witnesses T 193's and T150's presence at the Cyayi centre. See AT.29 April 2014 p. 53. ^{r5r} Nzabonimana Appeal Brief, para. 86. See also Nzabonimana Reply Brief, para. 32; AT.29 April 2014 pp. 11, 12. ³⁵² Nzabonimana Notice of Appeal, para. 3.2.2; Nzabonimana Appeal Brief, paras. 89, 90, 93. See also AT.29 April 2014 p. 11. ^{3s3} Nzabonimana Appeal Brief, para. 90. See also Nzabonimana Reply Brief, para. 32. Nzabonimana argues that no public has been called, except Witness CNAI allegedly, and from its factual findings there was no "speech" made during a "meeting". See Nzabonimana Appeal Brief, para. 89. ^{rsa} Prosecution Response Brief, para. 76. ⁴² Case No.: ICTR-98-44D-A 29 September 2014 ^{a\^r}{. v "tj

2193/H submits that Nzabonimana ignores the law and evidence.'ssI t contends that Nzabonimana's incitement meets the Akayesu definition³⁵⁶ from the InternationalL aw Commission, according to which incitement is public if it is made "to a number of individuals in a public place".³⁵⁷ T he Prosecutions ubmits that Nzabonimana'sr eliance on the Nahimana et al. and Kalimanzira Appeal Judgementsis misplacedas in both casest he inciting remarks were given to restricted groups of militia members manning roadblocks."t The Prosecutiona rgues that Nzabonimana inconectly claims that he summonedW itness CNAI whereast he evidences hows that Kamali called Witness CNAI to listen to Nzabonimana'sa ddress."The Prosecutions ubmitst hat Nzabonimana'sc laim on the Trial Chamber'sf inding in relation to the exact numero f personsa t the Cyayi centre,o r on his exactw ords should be dismisseda s he providesn o reasont o supporti t.³⁶⁰ I21. The Appeals Chamber recalls that a person may be found guilty of direct and public incitement to commit genocide,p ursuant to Article 2(3)(c) of the Statute,i f he or she directly and publicly incited the commissiono f genocide(actus reus) andh ad the intent to directly and publicly incite others to commit genocide (mens rea).³⁶¹ S uch intent in itself presupposesa genocidal intent.³⁶² I22. The Appeals Chamber observest hat the Trial Chambere xplicitly consideredt he Appeals Chamber's jurisprudence noting that all convictions before the Tribunal for direct and public incitement to commit genocidei nvolve speechesm ade to large, fully public assemblies,m essages disseminatedb y the media, and communications made through a public address system over a broad public ar"a.³⁶³ It also recalled the holding in the Kalimanzira Appeal Judgement that the travauxp rdparatoires of the Genocide Convention confirmed that "public" incitement to genocide ocertainst o massc ommunications.³⁶⁴ 355 P rosecutioRne sponsBe ief , para.77. 356 ProsecutioRne sponsBe rief,b ara.7 8. 3s7 P rosecutioRne responseB rief, para.7 7, rejbring to Draft Codeo f Crimesa gainstt he Peacea nd Securityo f Mankind with commentaries¹, 1996,R eporto f the InternationalL aw Commissiono n the deliberationso f its forty eighth meeting, 5 I U.N. ORGA Supp.(No. 10), reproduceidn theY earbooko f InternationaLla w Commission¹, 1996,v ol. II (PartT wo) ("Draft Codeo f Crimesa gainstt he Peacea nd Securityo f Mankind"), p.22; AkayesuT rial Judgementp, aras.5 56,6 '74. The Prosecutions ubmitst hat the AkayesuT rial Chamberc onvictedA kayesuon the basis of this definition and the AppealsC hamberd id not disturb its findings. Seei dem. The Prosecutiona lso submitst hat whether Nzabonimana's wordsw erea remark,n ot a speechi,s irrelevant.S eei bid., para.7 8. 358 ProsecutionR esponseB rief, para.8 3. 35e P rosecutioRne responseB rief, para.7 9. According to the Prosecutiond uring the appealh earing,N zabonimanau sed the pluralf orm in his statemenat ndw as "addressinga plurality of persons"S. eeA T. 29 April 2014 p.31. 360 ProsecutioRne sponsBe rief,p ara.8 1. 361 K alimanzira Appeal Judgement,p ara. 155; Bikindi Appeal Judgement,p ara. 135; Nahimnna et al. Appeal Judgementp, u a.671. 362 N ahimara et at. AppealJ udgement,p an.671 , citing AkayesuT rial Judgementp, ara. 560. Seea lso Mugenzi and MugiraneTaA ppealJ udgementp, ara.1 35;B ikindi AppealJ udgementp, ara.1 35. 363 S eeTfraJl udgementp, ala. 1754,r efening to KalimanziraA ppealJ udgementp, aras.1 55, 156. 3e SeeTialJudgementp, a ra.1 754S. ee a lsoK alimanziraA ppealJ udgementp" a ra.1 58. 43 CaseN o.: ICTR-98-44D-A 29 Septembe2r0 14 ,J1,^? \J

123. The Trial Chamber further considered that in its assessment of the public element of the crime of direct and public incitement, it "may consider the surrounding circumstances, such as the place where the incitement 'public' occurred and whether the audience was selective or limited. Incitement is when conducted through speech, shouting or threats uttered in public places or at public gatherings".³⁶⁵
124. The Appeals Chamber turns to the Kalimanzira Appeal Judgement, which Nzabonimana relies on to argue that the number of persons is an indispensable factor to determine the public element.³⁶⁶ The Appeals Chamber observes that the Kalimanzira Appeals Chamber did not rule on the definition of the public element given by the Kalimanzira Trial Chamber, which recalled the definition from the Akayesu Trial Judgement, and did not specify whether the number of persons present is an essential factor. On the one hand, the Kalimanzira Appeals Chamber concluded that the Tribunal's jurisprudence and other sources indicated mass communication to be a factor, implying that the public element of direct and public incitement corresponds to a large audience.³⁶⁷ On the other hand, the Kalimanzira Appeals Chamber reversed the convictions on the basis that recipients of the incriminating message were not intended to be the general public.³⁶⁸ It is thus unclear whether the Kalimanzira Appeals Chamber considered the size of the audience to be a requirement of public and direct incitement as opposed to whether the audience can also be selected or limited. In fact, in both the Nahimana et al. and Kalimanzira cases, the Appeals Chamber opined that the "general public" was not the recipient of the message or considered that the message was not intended to be for the general public.³⁶⁹
- Considering that the jurisprudence of the Appeals Chamber does not specify whether a large audience is a requirement for direct and public incitement to commit genocide, the Appeals Chamber will turn to the definition given by trial chambers,³⁷⁰ which recalls the definition from the Akayesu Trial Judgement. Referring to various sources of international law, the Akayesu Trial Chamber elaborated on the definition of the public element of the crime of incitement to commit genocide. It noted a 1996 report of the International Law Commission that defined "public incitement" as "a call for criminal action to a number of individuals in a public place or to members of" Trial Judgement, para. 1755, referring to Muvunyi Trial Appeal Judgement, para. 21. The Appeals Chamber notes that the Trial Chamber mistakenly referred to the Appeal Judgement in the Muvunyi case, while the quote comes from the Trial Judgement in the same case rendered on retrial. See Muvunyi II Trial Judgement, para. 27.
- ³⁶⁶ See Nzabonimana Appeal Brief, para. 81, referring to Kalimanzira Appeal Judgement, paras. 151 - 165. See Kalimanzira Appeal Judgement, paras. 156, 160, fn. 410. See Kulimanzira Appeal Judgement, paras. 161-165. See Nahimana et al. Appeal Judgement, para. 862; Kulimanzira Appeal Judgement, paras. 161, 164. See Muvunyi Trial Judgement, para. 27. This Trial Judgement was rendered on retrial. The Appeals Chamber further notes that this passage of the Muvunyi Trial Judgement was in turn based on the Kalimanzira Trial Judgement. See Muvunyi I Trial Judgement, fn. 42, referring to Kalimanzira Trial Judgement, para. 515. The Kalimanzira Trial Judgement is in turn based on Akayesu Trial Judgement. See Kalimanzira Trial Judgement, para. 515, referring to Akayesu Trial Judgement, paras. 556, 559. See also Niyitegeka Trial Judgement, para. 431. M. Cisse No.: ICTR-98-44D-A 29 September 2014 at <

2191/H of the general public at large by such means as the mass media, for example, radio or television".³⁷¹ It also considered that the Civil Law systems understood words as being public when "spoken aloud in a place that were [sic] public by definition".³⁷² 126. Contrary to Nzabonimana's submissions, the Appeals Chamber does not consider that the incitement must necessarily be communicated through mass communication in order to amount to "public" incitement within the meaning of Article 2(3)(c) of the Statute. The number of individuals in the audience is not an element of the crime of direct and public incitement to commit genocide. Though the Kalimanzira Appeal Judgement noted that the Tribunal's jurisprudence includes convictions involving "speeches made to large, fully public assemblies", in the Appeals Chamber's view, it does not foreclose convictions based on communication to smaller audiences when the incriminating messages are given in a public space to an unselected audience. The Appeals Chamber notes that the travaux préparatoires of the Genocide Convention do not contradict, but support its position by stating that public incitement was understood as "public speeches or in the press, through the radio, the cinema or other ways of reaching the public", though it expressly excluded "private" incitement.³⁷³ The International Law Commission confirmed that the indispensable element of public incitement requires communicating "the call for criminal action to a number of individuals in a public place or to members of the general public at large. Thus, an individual may communicate the call for criminal action in person in a public place or by technical means of mass communication, such as by radio or television".³⁷⁴ 127. Consequently, the Appeals Chamber detects no error in the Trial Chamber applying the definition of "public" as stated in the Muvunyi, Niyitegeka, Kajelijeli, and Akayesu Trial Judgements. Indeed, though most convictions for direct and public incitement involve mass communication, a smaller audience is also consistent with international law according to which: [The Trial] Chamber may consider the surrounding circumstances, such as the place where the 'public' incitement occurred and whether the audience was selective [sic] or limited. Incitement is 31t Akayesu Trial Judgement, para. 556 (emphasis added), citing Draft Code of Crimes against the Peace and Security of Mankind. 372 Akayesu Trial Judgement, para. 556. The Appeals Chamber also notes that a court in a common law jurisdiction interpreted "public incitement" as a message "delivered in a public place at a public meeting". See *Mugesera v. Canada (Minister of Citizenship and Immigration)* 2005 FC 100, para. 94, where the Supreme Court of Canada stated that Mugesera's "message as delivered in a public place at a public meeting and would have been clearly understood by the audience". 373 Hirad Abtahi & Philippa Webb, *The Genocide Convention: The Travaux Préparatoires* (Leiden-Boston: Martinus Nijhoff Publishers, 2008), p. 986 (emphasis added). However, this exclusion does not result in the non-criminalisation of incitement on a smaller scale per se. 374 See Draft Code of Crimes Against the Peace and Security of Mankind, p. 22, commentary on Article 2(3)(c) (emphasis added). The International Law Commission also specifies that the "public appeal for criminal action increases the likelihood that at least one individual will respond to the appeal and, moreover, encourages the kind of 'mob violence' in which a number of individuals engage in criminal conduct". See *idem*. A-14 Case No.: ICTR-98-44D-A 29 September 2001 14

when conq_Uctethdr ough speechess houtingo r threatsu ttered in public placeso r at pubric 21QO/H gatherings" 128. It is clear from the legal findings in relation to the Cyayi centre that the Trial Chamber consideredt he place and the audiencea s factors to assessth e public element.37A6 s stateda bove,t he number of personsp resenti s not an essentialf actor in this assessmentA. s to speechesm ade from a vehicle, the Appeals Chamber notes that the Kalimanzira AppealJ udgementd id not qualify them as conversations.3tTl t was the nature of Kalimanzira's presence and exchanges with those at the roadblockst hat were in line with a conversationr ather than speakingf rom a vehicle.378 129. The Appeals Chamber now turns to Nzabonimana'sa rgumentt hat the Trial Chamber relied on his intentiont o establisht hat he was not heardb y an exclusivea nd limited group.37Ien assessing the public element,t he Trial Chambers tated:" [t]he fact that WitnessC NAI was summonedo ver, and that EvaristeM unyagatarea, Tutsi, was also present,e stablishesb eyondr easonabled oubt that the words were intended to be heard by anyone in the area, rather than an exclusive and limited group".3rJR0 ecalling the definition of direct and public incitement to commit genocide,t he Appeals Chamber notes that establishing the public element requires not only that the accusedp ublicly incited (actus reas), but also that the accusedh ad the intent to incite publicly (mens reaS.38T1h e Trial Chamber concluded that Nzabonimana'sc onduct satisfiedt he public element of the crime but failed to explicitly state whether it was making a finding on the oclus reus or mens rea or both. However, the Appeals Chamber observest hat in this specific instance,t he facts used by the Trial Chambert o establisht he public element- the public location,a crowd of approximately3 0 people, and audience that was not selectedo r limited - showed that the incitement was public and that Nzabonimana intended it to be so. In this context, the Appeals Chamber considers that the Trial Chamber made an assessmenot f both the actus reus and mens rea of the public element basedo n the same facts. While the Trial Chamber could have been clearer, the Appeals Chamber does not consider that the Trial Chamber used the mens rea to prove the actus reus, or that the Trial Chamber indicated that the ublic characterw as not established. 130. The Appeals Chamber is also not persuadedt hat the Trial Chamber acknowledgedt hat the audience was not established when stating that the "witnesses did not indicate the specific tt'Trial Judgement,p ara. 1755.S eea lso Muvunyi /1 Trial Judgement,p ara.27; Kujelijeli Trial Judgement,p ara.85l ; Nit,itegekaT rial Judgement,p ara. 431 Rugl4iuJ udgementa nd Sentence,p ara. 17 Akayesu Trial Judgement,p ara. 556. "o,See Trial Judgement,p ara.1 766. "" Kalimanz.ira Appeal Judgement,p ara. 159. 118 KaLimanzira Appeal Judgement,p ara. 15 9. The Appeals Chamber observest hat in the Kalimanziru casei t concluded that the Nahimana et al. Appeal Judgementw as directly applicable to Kalimanzira's convictions as the underlying facts were similar in both cases. l7e SeeN zabonimana Appeal Brief, para. 86; NzabonimanaR eply Brief, para. 32. r*u Trial Judgement.p ara.1 766. ;n' Sees upru, para.l 2l, 46 CaseN o.:I CTR-98-44D-A 29 Septembe2r0 14 ,\:-\a\ v 2189/H audience".3t'In fitrding that the audiencew as not limited or exclusive,t he Trial Chamber recalled Witness CNAX's description of a crowd of "approximately 30 people", and the fact that Witness CNAI was summonedo ver, in the presenco f Munyagatare,a Tutsi.383F urthermore, the Trial Chamber was merely noting minor differences between accountso f Witnesses CNAI and CNAX when it found that "it would be unreasonable to expect the witnessest o provide matching

verbatim accountso f such details as to the number of people present and the exact words spoken by Nzabonimana and Munyagatare".³⁸ The Appeals Chamber does not detect any error in the Trial Chamber's analysis. ¹³¹. The Appeals Chamber now turns to Nzabonimana's claim that the Trial Chamber inferred his intention from the fact that Witness CNAI was summoned over by Nzabonimana, while not believing this aspect of the witness's testimony.³⁹ The Appeals Chamber first observes that at no point does the Trial Chamber find that Nzabonimana summoned the witness.³⁸ The Trial Chamber made no explicit factual finding as to who summoned Witness CNAI over to Nzabonimana and simply stated that "Witness CNAI was summoned over" in its legal findings.³⁸ Based on the above, Nzabonimana fails to demonstrate that the Trial Chamber erred. ¹³². The Appeals Chamber recalls that the Trial Chamber relied on the public location, a crowd of approximately 30 people,^{38a} and an audience that was not exclusive or limited to find that the incitement was public.³⁹ Accordingly, whether Witness CNAI testified to Kamali calling him to listen to Nzabonimana's speech or to hear what Nzabonimana was going to tell him personally would not convert the public character of the incitement, as reasonably found by the Trial Chamber, into private discussions between Nzabonimana and specific persons.⁴⁰ Moreover, Witness CNAI's statement that Nzabonimana appealed him, para. 86; Nzabonimana Reply Brief, para. 31. See also Trial Judgment, para. 1766. The Trial Judgment, para. 1166. The Trial Judgment, para. 812. Furthermore, the Appeals Chamber recalls that the number of individuals in an audience is not an essential element of the crime of direct and public incitement to commit genocide. Accordingly, the Appeals Chamber dismisses Nzabonimana's argument that the Trial Chamber distorted Witness CNAI's testimony that there were "less than" 30 persons compared to the finding that there were "approximately" 30 people as being an irrelevant consideration incapable of affecting the verdict. See Nzabonimana Appeal Brief, para. 92. See Nzabonimana Appeal Brief, para. 86; Nzabonimana Reply Brief, para. 32. Furthermore, the Trial Chamber assessed the Defence's allegation that Kamali would have known Witness CNAI's ethnicity as a Tutsi and would not have allowed him to listen to Nzabonimana's speech. The Trial Chamber stated that it did not believe Witness CNAI's testimony that Kamali identified his ethnicity. See Trial Judgment, para. 875. The Trial Judgment, para. 1766. The Appeals Chamber observes that, in its factual findings, the Trial Chamber determined that at Nzabonimana's hearing at the Cyayi centre., See Trial Judgment, paras. 87, 938. However, in its legal analysis on direct and public incitement to commit genocide, a part from titling the section "Cyayi Centre Meeting", the Trial Chamber does not refer to the incident in terms of a "meeting". See Trial Judgment, paras. 1763-1768, 1775. See Trial Judgment, para. 1766. Nzabonimana points to specific sections of the witness's testimony and submits that the French version of the transcripts indicate that Nzabonimana addressed the witness "personally". See Nzabonimana Appeal Brief, para. 90; Nzabonimana Reply Brief, para. 29. The Appeals Chamber notes that in the French transcript Witness CNAI uses pronouns referring to himself. See Witness CNAI, T. 26 November 2009 p. 70 (French) (emphasis added) ("Isaac Kamati qui me connaissait m'a appelé, je me suis dirigé vers l'endroit où il se trouvait, il s'entretenait avec le Ministre 41 c'est tout." Case No.: ICTR-98-44D-A 29 September 2014 \v

testified that Nzabonimana repeated the same statement in Witness T193's presence u8188/H. Munyagatarea lso heard the statement.3eTt he Appeals Chamberr ecalls that the words were spoken in a public space, were heard by several persons,i ncluding Tutsis,3e2a nd contained a message directed to anyone in the area rather than selected persons.totT he Appeals Chamber is not convincedt hat WitnessC NAI's testimonyd escribedf acts correspondingto private conversations. Accordingly, the Appeals Chamber finds that Nzabonimanah as failed to demonstratet hat the Trial Chambere rred in characterisinste incitement as public. 133. Based on the foregoing, that the Appeals Chamber dismissesN zabonimana's argumentsi n relation to his conviction for direct and nublic incitement to commit genocide under his Third Ground of Appeal. 4. Instigation of Genocidea nd Extermination as a Crime Against Humanity 134. The Trial Chamber convicted Nzabonimanao f instigating genocide and extermination as a crime against humanity for the killings of Tutsis at the Nyabikenke commune office on 15 April 1994.3e4T he Trial Chamber considered that, "particularly when viewecl in context, Nzabonimana's remarks substantially contributed to the successful attack upon the commune offlce".3e5T he Trial Chamber held that this was the only reasonablei nferencef rom the following circumstantial evidence: (i) Nzabonimana was an influential figure in Gitarama pr,ljbcture and originated from Nyabikenke ,o*^urr;'06 (ii)prior to Nzabonimana'se xhortationsa t the Cyayi centre,t he attempteda ttack on the communeo ffice had been unsuccessful, ommunep olicemen and members of the population helped repel the attacks; following Nzabonimana's address,h owever, communep olicemen and memberso f the population successfullya ttackedt he communeo ffice with the only resistancec oming from the refugeest hemselves;3ea7n d (iii) after Nzabonimana's speech, the attacks escalatedi n their intensity and character,a nd assailantsu sed firearms and grenadesa s Callixte; et il m'a dit d'tcouter bien ce que le Ministre allait me dire. J'ai e./ Jbctivemenpnr Aft aftention d ce que le Ministre disait. Callixte m'u clit ce qui suit : [...]).In comparison, the English transcript does not show the use of these pronouns. .SeeW itness CNAI, T. 26 November 2009 p. 61 ("Isaac Kamali knew me and he called for me. I went towards them to the location where he was having a discussion with Minister Callixte. He then told me to listen attentively to what the minister was going to say. So I paid attention to what the minister said. This is what Callixte said[...]"). 3er S eeW itness CNAI, T. 26 Novembe r 2009 p. 61. Seea /so Witness CNAI, T. 26 November 2009 p. 70 (French). t" WitnessesC NAI, CNAX, and MunyagatareS. eeT rial Judgementp, aras.8 87, 938. rer ,SeeT rial Judgement, para. 1766. t'o Trial Judgementp, aras.l 7 18, 1731,1 '786, 1'78'7,17901, 800. t" Trial Judgementp, aras.l 7 12, 11\ 5. tno Trial Judgement.p ara.1 11 2. "" Trial Judgementp.a ra.l 713. 48 CaseN o.;I CTR-98-44D-A 29S eptemb2e0r 14 t\

2187/H opposed to only traditional weapons, which were used during the attack at the commune office on 13 April lgg4.3e8 135. Nzabonimana submits that the Trial Chamber erred in finding a causal link between his statementsa t the Cyayi centre and the attack at the Nyabikenke communeo ffice, and that even if a link was establishedf rom the circumstantiale vidence,t his inference was not the only reasonable conclusion.3eNe zabonimanaf urther arguest hat the Trial Chambere rred in its findings on his nens ,ro.ooo The Prosecution responds that the Trial Chamber's findings support Nzabonimana's conviction for this mode of liability.a0l (a)

Substantial Contribution 136. Nzabonimana submits that the Trial Chamber erroneously inferred that he substantially contributed to the attacks solely on the basis of: (i) his influence in Gitarama province; (ii) the success of the Night and Day Attacks, including the behavioural change of the population and communal policemen; and (iii) the use of firearms.⁴⁰² 137. Nzabonimana submits that the Trial Chamber erred in finding that he was influential and argues that it was required to find that he had specific influence in Nyabikenke on the day of the events.⁴⁰³ Nzabonimana also maintains that the Trial Chamber used acts for which he was convicted under direct and public incitement to commit genocide to assess his influence,⁴⁰⁴ and that no evidence was adduced on his influence over the Interahamwe in Gitarama province.⁴⁰⁵ 138. Further, Nzabonimana submits that the Trial Chamber's implicit inference that the attack was successful because he prior attacks were unsuccessful does not explain how his utterances led to the successful attacks on 15 April 1994.⁴⁰⁶ As for the population's change of behaviour, Nzabonimana argues that the population had been targeting Tutsis since 8 April 1994 in large scale attacks throughout the commune, without indication that he played any role therein.⁴⁰⁷ He adds that there is no evidence that members of the population, who protected Tutsis on 13 April 1994, had "100% Tutsis".⁴⁰⁸ 139. J. Ud. gemenpt, para. 114. See Nzabonimana Notice of Appeal, paras. 3.3.1, 3.3.2; Nzabonimana Appeal Brief, paras. 94-98, 100-112. See also AT. 29 April 2014 p. 13, 14. am Nzabonimana Notice of Appeal, para. 3.3.2.1(7), (8); Nzabonimana Appeal Brief, para. 99. aor Prosecution Response Brief, paras. 88-90. See also AT. 29 April 2014 p. 29. According to the Prosecution, Nzabonimana's remarks go beyond mere instigation. See *ibid.*, para. 88, referring to Prosecution Appeal Brief, paras. 49, 50. ou'Nzabonimana Notice of Appeal, para. 3.3.2.1(5)N; Nzabonimana Appeal Brief, paras. 97, 100-112. 403 Nzabonimana Appeal Brief, paras. 101-103, 106. See also Nzabonimana Reply Brief, para. 36, referring to Karuhanda Appeal Judgment, paras. 65, 66. See also Nzabonimana Appeal Brief, section 2.2. as Nzabonimana Appeal Brief, para. 105. 405 Nzabonimana Appeal Brief, para. 98, referring to Trial Judgment, n. 153. *affi* Nzabonimana Appeal Brief, para. 107. 407 Nzabonimana Appeal Brief, para. 108. See also Nzabonimana Appeal Brief, para. 110. 49 *ii* Case No.: I CTR-98-44D-A 29 September 2014

heard him at the Cyayi centre and then turned around to attack refugees.⁴⁰⁹ On Nzabonimana's view, the causal link between the event at the Cyayi centre and the attack on the commune office is not proven because the Trial Chamber did not find that individuals involved in the attack heard what was said at the Cyayi centre.⁴¹⁰ 139. Finally, Nzabonimana submits that the Trial Chamber's reasoning, that attacks escalated as a result of firearm and grenade use, seemed to imply his involvement in firearms and grenades distribution when he was found not guilty of such acts from 8 April to 14 April 1994.⁴¹¹ 410 Nzabonimana argues that the Trial Chamber, in doing so, changed the theory of the case against him without notice.⁴¹² 140. The Prosecution responds that the Trial Chamber made correct findings on Nzabonimana's influence,⁴¹³ and that there was evidence of his influence over the Interahamwe.⁴¹⁴ The Prosecution further responds that reference to prior attacks does not alter the fact that Tutsis were successfully protected until Nzabonimana's appearance on 14 April 1994.⁴¹⁵ The Prosecution further submits that, in relation to perpetrator's offences, being present at the Cyayi centre, it does not matter who precisely carried out Nzabonimana's genocidal order or how the order reached the assailants since

evidence established that his order had the desired effect of killing Tutsis. Finally, the Prosecution responded that it was after Nzabonimana's intervention that attackers were given access to grenades and firearms. It argues that the Trial Chamber was entitled to determine that Nzabonimana's intervention affected civilians' ability to obtain weapons, even when he was not convicted of distribution of weapons. 008 Nzabonimana Appeal Brief, para. 109. 1D Nzabonimana Appeal Brief, paras. 98, 109; Nzabonimana Reply Brief, para. 36. See also Nzabonimana Notice of Appeal, para. 3.3.2.1(10). Nzabonimana argues that the Trial Chamber did not establish the specific audience at the Cyayi centre and did not find that the Interahumwe, members of the population, or community policemen were present during his speech. See Nzabonimana Appeal Brief, paras. 98, 109; Nzabonimana Reply Brief, para. 34, referring to Trial Judgement, para. 1766 where Nzabonimana points to the Trial Chamber's finding that the witnesses "did not indicate the specific audience to whom the speech was addressed" to argue that there is no information on the persons who were instigated. Nzabonimana submits that Defence Witness T193, who was identified to be at the Cyayi centre, was exonerated by the attack on the commune office. See Nzabonimana Appeal Brief, para. 98, fn. 166. or" Nzabonimana Appeal Brief, paras. 97, 110, 111. See also AT.29 April 2014 pp. 53, 54. ar1 Nzabonimana Appeal Brief, para. 96. See also AT.29 April 2014 pp. 53, 54. The Appeals Chamber also notes that Nzabonimana raises in his Notice of Appeal arguments related to the Prosecution's dropping of charges against him but fails to develop these arguments in his Appeal Brief. See Nzabonimana Notice of Appeal, para. 3.3.2.1 (1)-(3), (5); Nzabonimana Appeal Brief, para. 96 (where he generally submits that "[t]he consequence of the Prosecution's dropping of charges [...] is that the Chamber wrote the Prosecution case entirely on [his role] [...]"). The Appeals Chamber therefore considers that Nzabonimana has abandoned these allegations. ar2 Prosecution Response Brief, para. 84. ar3 Prosecution Response Brief, para. 91, referring to Trial Judgement, paras. 1160, 1161. ar4 Prosecution Response Brief, para. 92. ar5 Prosecution Response Brief, para. 96. ar6 Prosecution Response Brief, para. 93. See also AT.29 April 2014 p. 29. ar7 Prosecution Response Brief, para. 95. 50 Case No.: ICTR-98-44D-A 29 September 2014

2185/H I4L To demonstrate his lack of influence, Nzabonimana points to: (i) public insults and sabotage against him and his projects in Nyabikenk"; (ii) the power of the Mouvement démocratique républicain ("MDR") political party; and (iii) evidence of planned attacks against his house, which, he argues, the Trial Chamber failed to consider. ar2 To the Appeals Chamber, it serves that the Trial Chamber found overwhelming Prosecution and Defence evidence that Nzabonimana was an influential political personality in Gitarama prefecture during the events from April to July 1994. 421 This is based on Nzabonimana's position as a Minister in the Interim Government, his previous tenure as Minister of Planning, his Chairmanship of the MRND party in Gitarama prefecture, his association with and roots in the region, and the settlement of the Interim Government in Gitarama prefecture. ar3 In its assessment, the Trial Chamber considered that he was publicly insulted by his family and the population and that his development projects were sabotaged with the advent of multiparty politics. ar4 The Trial Chamber also considered party dynamics between the MDR and the MRND and, specifically, Nzabonimana's arguments on the MDR's power in Gitarama prefecture. ar5 While there is no explicit mention in the Trial

Judgement of evidence of planned attacks against Nzabonimana's house, a 2nd the Appeals Chamber recalls that the fact that certain evidence has not been referred to does not mean it was not taken into account in the Trial Chamber's assessment.⁴²⁶ 42. The Appeals Chamber is also not persuaded that the Trial Chamber used Nzabonimana's convictions of direct and public incitement to commit genocide to assess his influence.⁴²⁷ The Appeals Chamber notes that the Trial Chamber referenced its factual, rather than legal, findings in relation to Nzabonimana's participation and speeches at, inter alia, the Butare trading centre, the Cyayi centre, and the Murambi meeting.⁴²⁸ According to the Trial Chamber, these events at Nzabonimana's appeal Brief, para. 102. On Nzabonimana's appeal Brief, para. 103. 420 Nzabonimana's appeal Brief, para. 106. "The Trial Judgement, para. 92. "The Trial Judgement, para. 92. On the Trial Judgement, para. 88. On the Trial Judgement, paras. 88, 90. See also the Trial Judgement, para. 85, referring to Nzabonimana's appeal Brief, paras. 2-5. The Appeals Chamber summarily dismisses Nzabonimana's submission that the Indictment fails to plead the relationship between the MDR and MRND parties (see Nzabonimana's appeal Brief, para. 103). It further notes Nzabonimana's submission that the Trial Chamber failed to consider a declaration of Defence Witness T 46 and a report of Rwandan authorities (see Nzabonimana's appeal Brief, para. 103, referring to Exhibits D134 and D124, para. 8). The Appeals Chamber observes that Nzabonimana's appeal Brief refers to both exhibits (see Nzabonimana's appeal Brief, paras. 2, 5). 425, See Witness T 24, T. 28 April 2010, para. 49, 50 (closed session); Witness T 31, T. 3 May 2010, para. 65 (closed session); Witness T 33, 22 April 2010, para. 64 (closed session). 426 The Appeals Chamber recalls that there is a presumption that a Trial Chamber has evaluated all the evidence presented to it, provided that there is no indication that the Trial Chamber completely disregarded any particular piece of evidence. See, e.g., Bagosora's appeal Judgement, para. 766; Ntabakuze's appeal Judgement, para. 357; Bagosora and Nsenyumva's appeal Judgement, para. 625. 427 Nzabonimana's appeal Brief, para. 105. On the Trial Judgement, para. 91. 51 in the Trial Judgement: Case No.: ICTR-98-44D-A 29 September 2014

constituted evidence that Nzabonimana had the power to exert his influence in his native region of Gitarama prefecture.⁴²⁹ Nzabonimana does not demonstrate that no reasonable trier of fact could have made the same finding.⁴³⁰ 143. With respect to Nzabonimana's influence over the Interahamwe, the Trial Chamber explicitly noted that the Prosecution has not proven beyond a reasonable doubt that he trained and armed the Interahamwe.⁴³¹ The Trial Chamber further determined that "Nzabonimana's purported role vis-à-vis the Interahamwe" had no impact on the credible and consistent testimony that he was an influential individual within Gitarama prefecture.⁴³² Nzabonimana fails to demonstrate any error.⁴³³ 144. In light of the foregoing, Nzabonimana fails to demonstrate that the Trial Chamber erred in finding that he was influential. He also fails to explain why instigation would require a determination that Nzabonimana had specific influence in Nyabikenke commune on the day of the events.⁴³⁴ The Appeals Chamber recalls that the Trial Chamber did not solely rely on Nzabonimana's influence to establish his substantial contribution to the attacks; but rather, his influence was one of several factors that the Trial Chamber took into account.⁴³⁵ 145. The Appeals Chamber will now examine alleged errors in relation to the other factors which the Trial Chamber relied upon to infer that Nzabonimana substantially contributed to the killings at the Nyabikenke commune

office. Regarding the Trial Chamber's reference to the prior unsuccessful attack, the Appeals Chamber observes that the Trial Chamber was considering the temporal proximity between the unsuccessful attack on 13 April 1994, Nzabonimana's speech at the Cyayi centre on 14 April 1994, and the subsequent successful attack the night right after his speech. The Appeals Chamber finds it reasonable for the Trial Chamber to consider this sequence of events, among other factors, to infer Nzabonimana's substantial contribution to the attacks. Nzabonimana fails to demonstrate how the Trial Chamber erred in this regard. The Trial Judgment, para. 91. The Trial Judgment, fn. 153, referring to *ibid.*, Section 3.3.1.2. of Trial Judgment, fn. 153. The Appeals Chamber dismisses Nzabonimana's submission that the Trial Chamber relied a posteriori on witness testimonies that it pieced together, and that it cited transcripts from Defence witnesses that do not support findings on influence (see Nzabonimana Appeal Brief, para. 104, referring to Trial Judgment, fn. 147). The Appeals Chamber observes that the Trial Chamber did not reference Defence witnesses to support its findings on influence, and further, that Defence witness testimonies cited in footnote 147 correspond to evidence that the MRND placed importance on recruiting members of the population (see Trial Judgment, para. 87, fn. 147). The Nzabonimana Appeal Brief, paras. 101-103, 106. As Nzabonimana has failed to demonstrate that the Trial Chamber was required to determine that he had specific influence in Nyabikenke commune on the day of the events, his argument that paragraph 90 of the Trial Judgment is "silent on the effect of these events on [his specific influence] exercised in Nyabikenke" is accordingly dismissed (see Nzabonimana Appeal Brief, para. 103). The Trial Judgment, para. 1712. For other factors, see Trial Judgment, paras. 113, 1714. 435 See Nzabonimana Appeal Brief, para. 107. 436 See Trial Judgment, para. 1713. See also Trial Judgment, paras. 1709-1711. 52 Case No.: ICTR-98-44D-A 29 September 2001

2183/H 146. The Appeals Chamber now turns to Nzabonimana's arguments on the population's behavioural change after his speech. The Appeals Chamber recalls the Trial Chamber's determination that prior to Nzabonimana's exhortations at the Cyayi centre, commune policemen and members of the population assisted in repelling attacks on the commune office. It then found that, following Nzabonimana's address at the Cyayi centre, commune police and members of the population successfully attacked the commune office with the only resistance coming from the refugees themselves. The Appeals Chamber detects no error in this regard. The Appeals Chamber is not persuaded how Nzabonimana's submission, that the population had been attacking Tutsis since 8 April 1994, undermines the Trial Chamber's findings on behavioural change before and after Nzabonimana's address. The Appeals Chamber is also not convinced that the Trial Chamber was specifically required to determine that assailants of the Night and Day Attacks heard what he said at the Cyayi centre. The Appeals Chamber recalls that the *actus reus* of "instigating" is to prompt another person to commit an offence. It is not necessary to prove that the crime would not have been perpetrated without the involvement of the accused; it is sufficient to demonstrate that the instigation was a factor substantially contributing to the conduct of another person committing the crime. Similarly, it is not required that the individuals who were instigated be the same as those who committed the crimes. 147. As for firearm and grenade use, the Appeals Chamber recalls that the Trial

Chamber implied that Nzabonimanaw as involved in firearms distribution.oooT he Appeals CntrtEe/H also cannot seeh ow the Trial Chamberc hangedit he theory of the casea gainstN zabonimanai n light of its reasoning on the escalationo f intensity and charactera s well as his acquittals in relation to distributio f weapons.aae 148. In light of the fbregoing, the Appeals Chamber finds that Nzabonimanaf ails to demonstrate that the Trial Chamber erroneouslyi nferred that he substantiallyc ontributed to the killings on the basiso f his influence,t he successo f attackst he night following his speech,t he "mere 250 to 300 metres" between the Cyayi centre and the commune office, and the escalation of intensity and charactero f the attacks through the use of firearms and grenadesi n the Day and Night Attacks.as0 The Appeals Chamber therefbre finds that the Trial Chamber reasonablyc oncluded that the only reasonable inf'erece from the circumstantial evidence was that Nzabonimana substantially contributedt o the attacks. 149. Based on the foregoing, that the Appeals Chamber dismissesN zabonimana's argumentsi n relation to the actus reus of instigation.a5l (b) Mens Rea 150. In its legal findings, the Trial Chamber held that "[t]here is no doubt that, at the time of Nzabonimana's prompting, he knew of the genocidal intent of his audience,p articularly given the meeting's temporal and physical proximity to the recent attack on the commune office".a-52T he Chambera lso noted" the extensivec ircumstantialael videnceo f Nzabonimana'sg enocidali ntent, set out below".as3 151. Nzabonimanas ubmitst hat, sincet he Trial Chamberd id not define the specifica udienceh e addresseda t the Cyayi centre, it could not conclude that he knew the genocidal intent of his auclience.asHae argues that the Trial Chamber was only assuming that he knew of the attack on 13 April Igg4.1ss Nzabonimana adds that the Trial Chamber ered in its determination of his oot

See Nzabonimana Appeal Brief, paras. 97, 101. See Nzabonimana Appeal Brief, para. 96. See also Nzabonimana Notice of Appeal, para. 3.3.2.1(l). See Trial Judgement, paras. 1709-1715. The Appeals Chamber also dismisses Nzabonimana's general claim, raised in the Notice of Appeal but undeveloped in his Appeal Brief, that the Trial Chamber violated his right to a fair trial in, inter alia, refusing to postpone the start of the trial and restricting the number of Defence witnesses. See Nzabonimana Notice of Appeal, para. 3.3.2.1(11)-(13). See Trial Judgement, para. 117. See Trial Judgement, para. 117. See Nzabonimana Appeal Brief, para. 99; Nzabonimana Reply Brief, para. 35, 455 Nzabonimana Appeal Brief, para. 99. 54 '1. Case No.: ICTR-98-44D-A 29 September 2014

2787/H genocidal intent by noting circumstantial evidence of events occurring after his statements at the Cyayi centre.⁴⁵⁶ 152. The Prosecution responds that Nzabonimana's arguments are irrelevant because the required mens rea was sufficiently established. The Prosecution also submits that the Trial Chamber correctly established the second form of mens rea for instigation - Nzabonimana's awareness that genocide would be committed.⁴⁵⁸ 153. The Appeals Chamber recalls that the mens rea for instigating is established where the perpetrator acts with either direct intent to prompt another to commit a crime, or with awareness of the substantial likelihood that a crime will be committed in execution of that instigation.⁴⁵⁹ 154. The Appeals Chamber notes the Trial Chamber's determination that, by "threatening a Tutsi and saying that Tutsis should be massacred at Cyayi centre on 14 April 1994", Nzabonimana prompted others to act and to continue the genocidal attack upon the commune office, and that he intended to do so.⁴⁶⁰ Since the Trial Chamber explicitly found that Nzabonimana had the direct intent to prompt others to commit a crime,⁴⁶¹ any error in relation to the Trial Chamber's finding on Nzabonimana's knowledge of the genocidal intent of his audience is inconsequential to Nzabonimana's mens rea for instigation.⁴⁶² 155. In the same vein, any error on the part of the Trial Chamber in using subsequent events to establish Nzabonimana's genocidal intent is inconsequential to its finding on his intent.⁴⁶³ The Appeals Chamber observes that the Trial Chamber found that Nzabonimana indeed possessed the requisite intent to destroy, in whole or in part, the Tutsi ethnic group on the basis of his unambiguous words at the Cyayi centre.⁴⁶⁴ 156. Based on the foregoing, Nzabonimana's arguments on the mens rea of instigation are dismissed.⁴⁵⁶ Nzabonimana Appeal Brief, para. 99. 457 Prosecution Response Brief, paras. 8, 100. 458 Prosecution Response Brief, para. 99. See, e.g., Nchamihigo Appeal Judgement, para. 61; Nahimana et al. Appeal Judgement, para. 480; Kordii and Cerkez Appeal Judgement, paras. 29, 32. See Trial Judgement, para. 1711. See Trial Judgement, para. 117. "It is unclear whether the Trial Chamber, in stating that Nzabonimana 'knew of the genocidal intent of his audience', sought to establish the alternative form of mens rea for instigation - an awareness of the substantial likelihood that a crime will be committed in execution of his instigation. See Trial Judgement, para. 1711. 463 Trial Judgement, para. 1711 ("The Chamber also notes the extensive circumstantial evidence of Nzabonimana's genocidal intent, set out below"). See Trial Judgement, para. 167. See also ibid., para. 137. 55, 'af'1 Case No.: ICTR-98-44D-A 29 September 2014

2179/H D. Alleeed Errors Relating to the Butare Trading Centre (Ground 4 and Ground 5. in part) 159. The Trial Chamber convicted Nzabonimana for committing direct and public incitement to commit genocide (Count 3), based, in part, on his conduct at the Butare trading centre in Rutobwe. In particular, the Trial Chamber found that, on or about 12 April 1994, in the afternoon, Nzabonimana addressed a gathering at the Butare trading centre and told those gathered to kill Tutsis and take their belongings. The Trial Chamber further found that Nzabonimana asked if there were any Tutsis in the crowd. The Trial Chamber also held that Prosecution Witness C NAZ and another Tutsi fled and that Nzabonimana told the population to pursue them. Nzabonimana submits that the Trial Chamber erred in fact and in law in convicting him of direct and public incitement to commit genocide in connection with the event at the Butare trading centre and in considering his event as circumstantial evidence of his genocidal intent. In this section, the Appeals Chamber considers Nzabonimana's arguments in relation to: (i) notice; (ii) assessment of evidence; and (iii) direct and public incitement. 1. Notice 161. Nzabonimana submits that the Trial Chamber erred in fact and in law in finding that he received proper notice of the allegations relating to the Butare trading centre. He argues that the Trial Chamber failed to consider that evidence adduced at trial did not correspond to pleadings in paragraph 40 of the Indictment. According to Nzabonimana, the Trial Chamber ought to have considered the following discrepancies between the Indictment and the evidence relating to the event: (i) the Indictment indicating "Hutu population", whereas the Trial Chamber mentioned a "gathering" and concluded that Nzabonimana did not use the term "Inyenzi"; (ii) the Indictment alleging that Nzabonimana himself indicated there were Tutsis in the crowd, whereas Prosecution Witnesses C NAZ and CNBH testified that Nzabonimana "asked" whether there were any Tutsis present; (iii) the Indictment indicating "soldiers", whereas Witnesses C NAZ and CNBH testified to "gendarmes". 414 On this last point, Nzabonimana argues that the Trial Chamber's Trial Judgement, paras. 162, 1775, 1800. of Trial Judgement, para. 734. See also *ibid.*, para. 1157. of Trial Judgement, para. 734. See also *ibid.*, para. 1157. of Trial Judgement, para. 734. See also *ibid.*, para. 1757. of Nzabonimana's Notice of Appeal, paras. 4.I-4.4; Nzabonimana's Appeal Brief, paras. 117-169. 470 Nzabonimana's Notice of Appeal, para. 4.3.1; Nzabonimana's Appeal Brief, paras. 163-168. of Nzabonimana's Appeal Brief, para. 163, referring to Rwamakuba Trial Judgement, paras. 61, 64, 92, 93, 126, 127, 144, 1531, 66-168. 472 Nzabonimana's Appeal Brief, para. 165, referring to Trial Judgement, paras. 134, 735. of Nzabonimana's Appeal Brief, para. 166. of Nzabonimana's Appeal Brief, para. 167. 57 Case No.: ICTR-98-, 4D-A 29 September 2014/Y/- P/-)

acknowledged this discrepancy but erroneously excused it because witnesses C NAZ and 2iVl&/H were farmers, while elsewhere in the Trial Judgement the Trial Chamber held the same discrepancy against Prosecution witness CNAF, 475 Finally, Nzabonimana asserts that the Trial Chamber should have drawn a negative inference from the fact that the nexus pleaded between Nzabonimana's conduct and the killings in Rutobwe community was not proven and that no evidence was adduced in his instructions to take Tutsis' jobs. 162. The Prosecution responds that the three differences are insignificant and did not prevent Nzabonimana from identifying the criminal conduct alleged against him. 163. The Prosecution also submits that notice provided by an indictment is not rendered effective because some allegations were not established beyond a reasonable doubt. 163. Paragraph 40 of the Indictment reads: On or about 15 April 1994, at Buture tradins cenffe, Rutongo secteur, Rutobwe commune, Giturama prefecture, Callixte NZABONIMANA addressed a gathering and told the Hutu population to kill all Inyenzi and their accomplices, the Tutsi, and take their jobs and belongings. He stated that even among the gathering, there were Tutsi who must not be spared. CNAZ and other Tutsi tried to flee and the Accused told soldiers and the population to pursue them. Many Tutsi were killed following this meeting by persons including Interahumwe, Hutu civilians and soldiers. 164. The Appeals Chamber recalls that, while the Prosecution is required to state the charges and the material facts underpinning those charges in the indictment, in general, minor differences between the indictment and the evidence presented at trial are not such as to prevent the Trial Chamber from considering the indictment in light of the evidence presented at trial. 165. The Appeals Chamber turns to the alleged discrepancy that, in the Indictment, Nzabonimana "told the Hutu population to kill all the Inyenzi and their accomplices, the Tutsis", whereas the Trial Chamber mentioned a "gathering" and found that he did not use the term "Inyenzi" during his address. 166. The Appeals Chamber observes that in the same sentence of paragraph 40 of the 1998 Nzabonimana Appeal Brief, para. 167, referring to Trial Judgement, paras. 541, 734 and fn. 947. 167. Nzabonimana Appeal Brief, para. 168, referring to Trial Judgement, paras. 735, 738. Nzabonimana also maintains that discrepancies between Prosecution evidence and allegations in the Indictment resulted in the dismissal of allegations in Bizimungu et al. Trial Judgement. See ibid, para. 164, referring to Bizimungu et al. Trial Judgement, paras. 1067-1081. 165. Prosecution Response Brief, paras. 147-149. 166. Prosecution Response Brief, para. 152. The Prosecution further argues that the trial judgements Nzabonimana cites are not comparable since the indictment in the Bizimungu et al. case failed to plead the relevant event and the Rwamakuba Trial Chamber did not reject evidence for not matching the indictment. See ibid, paras. 151, 260, referring to Rwamakuba Trial Judgement, para. 84. 167. See, e.g., Bizimungu Appeal Judgement, para. 94; Kanyurukiga Appeal Judgement, para. 73; Ntageruru et al. Appeal Judgement, para. 21. 168. See Semtrn Appeal Judgement, fn. 492 Rutagandu Appeal Judgement, para. 302. See also Muvunyi II Appeal Judgement, para. 29. 169. Nzabonimana Appeal Brief, para. 165, referring to Trial Judgement, paras. 734, 735. 170. Case No.: I CTR-98-44D-A 29 September 2001, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000.

2177/H Indictment Nzabonimana is alleged to have addressed a "gathering". Moreover, paragraph 40 of the Indictment mentions both Inyenzi and Tutsi as the intended targets. Nzabonimana's selective reference to parts of paragraph 40 of the Indictment fails to demonstrate that the Indictment did not provide him with the requisite notice in this respect. 166. As to the second alleged discrepancy, the Appeals Chamber observes that Nzabonimana points to whether he "stated" or "asked" about Tutsis at the gathering. As the Appeals Chamber considers his difference to be minor and observes that Nzabonimana does not demonstrate how the Indictment failed to provide him with the requisite notice in this respect. 161. The Appeals Chamber is also not persuaded that the Trial Chamber erred in assessing the discrepancy between "soldiers" and "gendarmes" in the Indictment and the evidence. In finding that "any divergence in the classification of the individuals as gendarmes or soldiers was minor", the Trial Chamber considered that: (i) Prosecution and Defence witnesses agreed that Nzabonimana had "uniformed escort", whether identified as gendarmes or soldiers; (ii) Prosecution witnesses were "local residents, farmers and small business owners who would not necessarily be able to identify the difference between a gendarme and a soldier"; and (iii) summaries of Prosecution witness testimonies in the Prosecution Pre-Trial Brief indicated that Nzabonimana was accompanied by gendarmes. The Appeals Chamber detects no error in the Trial Chamber's finding that the divergence was minor. Nzabonimana's argument that the Trial Chamber erroneously treated Witnesses CNAZ and CNBH differently from Witness CNAF is also not convincing. With Witness CNAF, the Trial Chamber considered the discrepancy between gendarme and soldier to be an inconsistency between the witness's testimony and his prior statement. 168. In any event, Nzabonimana fails to demonstrate why this discrepancy is significant. Regardless of whether Nzabonimana told "soldiers" or "gendarmes", in addition to the population, to pursue the Tutsis, what is relevant is the fact that Nzabonimana instructed that the Tutsis be pursued, which was properly pleaded in the Indictment. 482, see Nzabonimana Appeal Brief, para. 166. See supra para. 164. See Nzabonimana Appeal Brief, para. 167. See Trial Judgement, para. 134, fn. 94. See Nzabonimana Appeal Brief, para. 167, referring to Trial Judgement, para. 541. See Trial Judgement, para. 541. The Appeals Chamber observes that the Trial Chamber found Witness CNAF's explanation that he was a peasant, sufficient to justify the inconsistency between his testimony and prior statement. See Indictment, para. 40. 59 Case No.: ICTR-98-44D-A 29 September 2001 14 \$r'n

169. The Appeals Chamber is finally not persuaded that the Prosecution's failure to prove the nexus between Nzabonimana's conduct at the Butare trading centre and the Rutobwe killings as well as his instructions to take Tutsis' jobs showed any defect in the Indictment. The fact that some allegations are ultimately not proven does not necessarily mean that the Indictment is defective. 170. For the foregoing reasons, the Appeals Chamber dismisses Nzabonimana's arguments in relation to notice under his Fourth Ground of Appeal. 2. Assessment of Evidence. On the basis of Prosecution and Defence evidence, the Trial Chamber determined that Nzabonimana went to the Butare trading centre in Rutobwe commune on or about 12 April 1994, bought bananas there, and spoke to an audience of approximately 20 people. The Trial Chamber found that Nzabonimana told

those gathered to kill Tutsis and to take their belongings, and asked whether any Tutsis were in the crowd.³ It further determined that Prosecution Witness CNAZ and another Tutsi fled, and that Nzabonimana told the population to pursue them.¹⁷² Nzabonimana challenges the assessment of Prosecution and Defence evidence,¹⁷³ and alleges unequal treatment of witnesses.¹⁷⁴ The Appeals Chamber will address these challenges in turn. (a) Alleged Errors in Assessing Prosecution Evidence ¹⁷³. The Trial Chamber assessed the testimonies of Prosecution Witnesses CNAZ, CNAZ, and CNBH.¹⁷⁴ It did not find Witness CNAZ credible as to the events at the Butare trading centre, accepted Witness CNAZ's evidence when corroborated by other credible evidence, and found Witness CNBH credible.¹⁷⁵ The Trial Chamber further found that Witnesses CNAZ and CNBH provided consistent evidence that Nzabonimana made inflammatory comments about Tutsis after he fled. See Nzabonimana Appeal Brief, para. 168. The Appeals Chamber recalls the Trial Chamber's determination that there was no evidentiary link between the killings in Rutobwe and Nzabonimana's speech at the Butare trading centre (see Trial Judgement, para. 738), and that Nzabonimana was found not guilty of genocide with respect to the event at the Butare trading centre (see Trial Judgement, para. 1707). See Nzabonimana Appeal Brief, para. 168. See also C1.B040 soraa ruling in Nsengitumva Appeal Judgement, para. 121, re. Ferrin t40 Munyakaz. Appeal Judgement, para. 37. See Trial Judgement, paras. 703-701. See also ibid., para. 734. See Trial Judgement, para. 134. See also ibid., para. 708. See Trial Judgement, para. 134. See also Nzabonimana Notice of Appeal, paras. 41.1-41.4; Nzabonimana Appeal Brief, paras. 17-143, 149, 151. See Nzabonimana Notice of Appeal, para. 4.1.5(1), (2), (7); Nzabonimana Appeal Brief, paras. 144-148, 150, 152. See Trial Judgement, paras. 666-682, 703-734. See Trial Judgement, paras. 713, 18. 60 Case No.: ICTR-98-44D-A 29 September 2014

2175/H stopped at the trading centre, and that the overall consistency in their testimonies outweighed any differences. Nzabonimana challenges the Trial Chamber's assessment of their evidence. (i) Alleged Contradictions ¹⁷⁴. Nzabonimana submits that the Trial Chamber failed to consider contradictions between the testimonies of Witnesses CNAZ and CNBH in relation to: (i) his identification;¹⁷⁵ (ii) the manner in which the crowd assembled and the venue where the gathering took place;¹⁷⁶ (iii) the audience's conduct after Nzabonimana's utterances;¹⁷⁷ (iv) whether Nzabonimana asked about Tutsis before or after Witness CNAZ's flight;¹⁷⁸ and (v) the distribution of weapons.¹⁷⁹ He argues that, taken together, the contradictions cast doubt on the testimonies.¹⁷⁵ The Prosecution responds that the Trial Chamber did not fail to consider any significant contradictions between the Prosecution witnesses.¹⁷⁶ Regarding his identification, Nzabonimana submits that, according to Witness CNBH, Nzabonimana did not need to introduce himself to his audience, while Witness CNAZ stated that he recognised Nzabonimana because he introduced himself to the crowd.¹⁷⁸ The Appeals Chamber recalls the Trial Chamber's finding that, based on the testimonies of Witnesses CNAZ and CNBH as well as Defence Witnesses T109 and T110, the evidence reliably identified Nzabonimana as being present at the Butare trading centre.¹⁷⁹ The Appeals Chamber considers that whether or not Nzabonimana introduced himself does not undermine the fact that he was indeed identified. Nzabonimana also does not demonstrate how this minor variation casts doubt

on the credibility of Witnesses C NAZ's and C NBH's testimonies. 171. Regarding the venue and the manner in which the crowd assembled, N zabonimanas submits that, according to Witness CNBH, N zabonimana called the people and asked Joseph Ruhunga to gather those on the veranda of a drinking place with gendarmes, while, according to Witness CNAZ, the people at the centre rushed towards the vehicle that stopped and the meeting was held there. See Trial Judgement, paras 7.08, 7.12. 5m N zabonimana Notice of Appeal, para. 4.1.3; N zabonimana Appeal Brief, paras 129-135. 503 N zabonimana Appeal Brief, para 132. See also ibid., paras 123, 124; AT'29 April 2014 pp'21, 49. See N zabonimana Appeal Brief, para. 133. N zabonimana argues that Witness C NAZ testified that the question was asked when Karegeya pointed to the witness, while Witness C NBH stated that it was after Witness C NAZ fled. See idem. 50s N zabonimana Appeal Brief, para. 134. See also AT'29 April 2014 pp'21' 5tr N zabonimana Appeal Brief, para. 135. See also N zabonimana Reply Brief, para. 48. 507 Prosecution Response Brief, paras 10, 7, 11. See ibid., paras 13-18. See also AT'29 April 2014 pp'4 1, 4 2. Appeal Brief, para 1. 30. In the Trial Judgement, para. 101. 61a-r-l Case No.: ICTR-98-44D-A 29 September 2014 \$Y

outside. 5rT0 The Appeals Chamber observed that the Trial Chamber relied, inter alia, on WfAF4/H CNAZ and CNBH when it noted that people present at the trading centre assembled around N zabonimana upon his arrival. 5ll Further, a review of their testimonies reveals that neither witness described the venue of the meeting as being inside a building. 5r2N zabonimana thus fails to demonstrate any contradiction that required the Trial Chamber to provide explicit reasoning, 178. As for the audience's conduct after N zabonimana's speech, he submits that, according to Witness CNAZ, after being denounced by Karegeya, those in the crowd pursued the witness in order to kill him. 5r3H e argues that, on the other hand, Witness CNBH testified that the population protected the Tutsis and did not denounce them, and those who pursued Witness CNAZ did not intend to kill him. 5raT The Appeals Chamber notes that the Trial Chamber explicitly considered differences between the testimonies of Witnesses C NAZ and CNBH on this point, The Trial Chamber considered that Witness CNAZ "exaggerated" details of the incident, including how Karegeya denounced him as a Tutsi, but it found that this did not undermine Witness CNAZ's entire testimony. 5tN zabonimana further submits that Witness CNAZ did not mention the pursuit of J6rdme Musabyimana by gendarmes in a vehicle, as described by Witness CNBH. 5r6 The Appeals Chamber observed that the Trial Chamber explicitly noted Witness CNBH's description that the gendarmes chased Musabyimana and not Witness C NAZ. 5lTT The Trial Chamber assessed this inconsistency, found it to be minor, and considered that it may be attributed to the significant passage of time. 5l8 The Trial Chamber also considered that Witness CNAZ was chased by gendarmes, and found that Witness CNBH corroborated Witness CNAZ's testimony that gendarmes chased one of the men who fled. 52(T' The Appeals Chamber detects no error in the Trial Chamber's assessment, especially given that Witness CNAZ was pursued, and that, according to Witness C NBH, Witness CNAZ and Musabyimana ran in opposite directions. 52Nr zabonimana's argument that the Trial Chamber failed to consider his alleged contradiction is dismissed. 5r0 N zabonimana Appeal Brief, para. 131. " See Trial Judgement, para. 104, re. finding 1. 5r4 Witness C NAZ, T. 12 November 2009 p. 41 (closed session) W; Witness CNBH,

T. 3 Decembe2r 009p p. 22,32 (closed session) T. he Appeals Chamber notes that in the French version of the transcripts, Witness CNAZ does not mention in his answer to Defence Counsel that "people" rushed" (see Witness CNAZ, T. 12 November 2009p p.47, 48 (French) (closed session)). "t 5", Witness CNAZ, T. 12 November 2009p p. 41 (closed session) w, here Witness CNAZ mentions "open air"; Witness CNBH, T. 3 Decembe2r 009p p.22,32 (closed session). srr Nzabonimana Appeal Brief, para.132. "o Nzabonimana Appeal Brief, para.132. 5's Trial Judgment, paras 7. | 1, 7 12. "n Nzabonimana Appeal Brief, para.132. See also AT.29A April 2014p.21. 1" Trial Judgment, paras 7. 10. t't Trial Judgment, paras 7. 10. " Trial Judgment, paras 7. 08. "u Trial Judgment, paras 7. 08. " ^See Witness CNBH, T. 3 Decembe2r 009p p.36,37 (closed session). ol Case No.: I CTR-98-44D-A 29 September 2014

2173/H I79. Regarding the moment when Nzabonimana asked about Tutsis in the crowd, the Appeals Chamber observes that the Trial Chamber noted the differences between the testimonies of Witnesses CNAZ and CNBH when summarising their evidence. Specifically, it noted that, according to Witness CNAZ, Nzabonimana asked the question before the witness fled, 522a and according to Witness CNBH, it was after Witness CNAZ and Musabyimana fled. 523 T he Appeals Chamber is not convinced that the Trial Chamber failed to consider this discrepancy. In any event, the Appeals Chamber finds that this discrepancy does not undermine the Trial Chamber's finding that both witnesses corroborated each other on key points that: (i) Nzabonimana asked whether there were Tutsis in the crowd, (ii) Witness CNAZ fled the scene as a result of Nzabonimana's speech, and (iii) Nzabonimana instructed others to pursue him. 525 180. As for the weapons distribution, the Trial Chamber noted that, according to Witness CNAZ, Nzabonimana told the population that if anyone needed weapons, he had a cargo that could be distributed. 5'u T h" Trial Chamber also noted that, according to Witness CNBH, Nzabonimana told the crowd that they should use their traditional weapons to kill Tutsis. 52A7 ccordingly, the Appeals Chamber observes that the Trial Chamber considered the varied accounts of Witnesses CNAZ and CNBH regarding weapons. Further, the Appeals Chamber considers that this alleged discrepancy does not undermine the overall credibility of Witnesses CNAZ and CNBH, or undermine the Trial Chamber's finding that both witnesses corroborated each other on key facts related to the events at the Butare trading centre. 528 181, In light of the above, the Appeals Chamber finds that Nzabonimana has failed to demonstrate that the Trial Chamber erred in its assessment of the differences between Witnesses CNAZ's and CNBH's accounts. (ii) Corroboration 182. Nzabonimana submits that, despite numerous inconsistencies between the testimonies of Witnesses CNAZ and CNBH, the Trial Chamber nevertheless found that the two witnesses corroborated each other. s'e He argues that the Trial Chamber erred in finding corroboration on the '<-)'t ^See Trial Judgment, para.679. s23 See Trial Judgment, para.670. 524 fhe Appeals Chamber recalls that there is a presumption that a trial chamber has evaluated all the evidence presented to it, provided that there is no indication that the Trial Chamber completely disregarded any particular piece of evidence. See supra, para.105, fn. 315. '2t '712,734. Trial Judgment, paras 7. 08, ttu Trial Judgment, para.678. ttt Trial Judgment, para.669. 528 See Trial Judgment, paras 7. 08,734. s2e Nzabonimana Notice of Appeal, para. 4.1.2; Nzabonimana Appeal Brief, para. 128. See also Nzabonimana Reply Brief, paras 1. 5,49. OJ Case No.: I CTR-98-44D-A

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lact that Witness CNAZ fled the trading centre as a result of Nzabonimana's speech uEfrFiZ/H. Nzabonimana gave instructions to pursue Tutsis.s30N zabonimana maintains that both witnesses described two different scenes of what occurred after Nzabonimana spoke at the Butare trading centre.s3A' ccordingt o Nzabonimanaw, hile noting WitnessC NAZ's testimonyt hat he was pursued by gendarmesa nd noting Witness CNBH's testimony that the gendarmesp ursued Musabyimana and not Witness CNAZ, the Trial Chamber still fbund conoboration betweenW itnessesC NBH and CNAZ on the fact that the gendarmesc hasedo ne of the men who fled.532N zabonimana further submits that any corroborationb etween WitnessesC NAZ and CNBH that they met in Kabgayi is not relevant.53N3 zabonimanaa lso contestst he finding that DefenceW itness Tl10 conoborated Witness CNAZ to the eff'ectt hat the latter was one of the first to leave the gathering.s3a 183. The Prosecutionr espondst hat the Trial Chamber reasonably found corroboration between WitnessesC NAZ and CNBH.535 184. With respect to the corroboration between Witnesses CNAZ and CNBH, the Appeals Chamber recalls that two prima facie credible testimoniesn eed not be identical in all aspectsi n order to be conoborative and that corroboration may exist even when some details differ.-53T6h e Appeals Chamber further recalls the Trial Chamber's determinationt hat the overall consistencyi n the testimonieso f WitnessesC NAZ and CNBH outweighedt he differences.-ttltn coming to this conclusion, the Trial Chamber consideredt hat both witnessesp laced Nzabonimana at the Butare trading centre on 12 April 1994.t'* The Trial Chamber fbund the corroborated facts to be: (i) Nzabonimana was present at the Butare trading centre; (ii) approximately 20 people gathered; (iii) both Prosecutionw itnessesw ere present;(iv) after stopping at the trading centre,N zabonimana made inflammatory cornmentsa bout Tutsis to those present;(v) Nzabonimanaa skedw hether there were any Tutsi in the crowd; (vi) Witness CNAZ fled the trading centre as a result of Nzabonimana's speech and Nzabonimana instructed others to pursue him; and (vii) gendarmes pursuedo ne of the men who fled.s3e s30 Nzabonimana Appeal Brief, para. 123,r e.fZrringt o Trial Judgement,p nra. 708. s3r Nzabonimana Appeal Brief, paras. 123,128, reJerring toTrial Judgement,p aras.6 70, 680. s32 Nzabonimana Appeal Brief, para. 124,r e,ferring toTial Judgement,p ruas.7 08, 710. s33 Nzabonimana Appeal Brief, para. 126,r e.ferringt o Trial Judgement,p ara.109. sra Nzabonimana Appeal Brief, para. 125,r efbrring toTrial Judgement,p ara.708. Nzabonimana arguest hat, contrary to Witness CNAZ's testimony,W itness Tl10 statedt hat WitnessC NAZ left quietly without being bothereda nd did not flee as a result of the threats.S ee ibid., re.fbruingt oTrial Judgement,p ara.125. Seeu Lsoi bid.,para. 12. 5rs ProsecutionR esponseB rief, paras.1 08-11 0. "" See,e .g., Ntlahinwna Appeal Judgement,p ara. 93; Ntahakuz.eA ppeal Judgement,p ara. 150; Ntuwukulilyuyo Appeal Judgement,p ara. 24. Seea lso Biz,imunguA ppeal Judgement,p ara.321. "t Trial Judgement,p ara.712. "* Triaf Judgementp.a ras7. 03.1 04.7oi. "S,,e Trial Judgementp. aras.7 03. 705-708. 64 CaseN o.: ICTR-98-44D-A 29 Septembe2r0 14 r

2171/H 185. The Triai Chamberf urther noted that Witness CNAZ exaggeratedd etails,i ncluding the fact that Karegeyad enouncedt he witnessa s a Tutsi, which causedh im to flee.saOTh e AppealsC hamber recalls that, while the Trial Chamber did not find Witness CNAZ credible on the exaggerated details, it neverthelessc oncludedt hat these details did not lead it to discount the

witness's entire testimony.⁵⁴ Furthermore, while there is a discrepancy as to whom the gendarmes pursued, the Trial Chamber reasonably found that both witnesses corroborated the fact that the gendarmes chased a fleeing Tutsi.⁵⁵ The Appeals Chamber is not convinced by Nzabonimana's submission that both witnesses described two different scenes of what occurred after his utterances at the Butare trading centre. As discussed above, the Appeals Chamber did not detect any error in the Trial Chamber's assessment of the discrepancies between Witnesses CNAZ's and CNBH's accounts.⁵⁶ Given the above, Nzabonimana has not demonstrated that it was unreasonable for the Trial Chamber to conclude that the overall consistency in their testimonies outweighed the differences. Accordingly, the Appeals Chamber finds that the Trial Chamber reasonably found corroboration between Witnesses CNAZ and CNBH. 186. Contrary to Nzabonimana's argument,⁵⁷ at no point did the Trial Chamber determine that Witnesses CNAZ and CNBH met in Kabgayi. The Trial Chamber found that both witnesses testified to seeking refuge at Kabgayi, and that Witness CNBH corroborated Witness CNAZ's presence there.⁵⁸ The Appeals Chamber also notes that the Trial Chamber made this finding when it examined consistent aspects of their testimonies. In any event, Nzabonimana fails to demonstrate how the Trial Chamber erred or how such an error would undermine findings that the two Prosecution witnesses corroborated each other on key facts. 187. Finally, the Trial Chamber found that Witness T110 corroborated Witness CNAZ's testimony that the latter was one of the first to leave the gathering.⁵⁹ The Appeals Chamber notes that Witness T110 testified to Witness CNAZ being "the first to leave the place" when estimating Witness CNAZ's departure in relation to Nzabonimana's departure.⁶⁰ The Appeals Chamber is not convinced that this was incompatible with Witness CNAZ describing himself leaving as a result of the speech, while others were still present.⁶¹ Given the circumstances, the Appeals Chamber finds "540T-ria.l J. u,dgemenpt,w as 111,112. *5'4 1T-ria,l. J ud, gemenpt,w a.712. 502 Trial Judgementp, aras.7 08, 734. to' Srcs upro,paras1.7 4-181. 5a Nzabonimana Appeal Brief, para. 126. 505 Trial Judgementp, ara.709. 5'u Trial Judgementp, ara. 708. The Appeals Chamber notes the Trial Chamber's finding that Witness T110 corroborated not only Witness CNAZ but also Witness CNBH, as indicated by the Prosecution witnesses. See e.g. dem. tot Witness T110, T. 130 October 2010p. 11 (closed session). tot Witness CNAZ, T. 12 November 2009p. 4,5; Witness CNAZ, T. 12 November 2009p. 43 (closed session). Case No.: ICTR-98-44D-A 29 September 2014 final v

that the Trial Chamber reasonably found corroboration between Witnesses CNAZ and T110. QttVfl/H aspects of the evidence. 188. Based on the foregoing, the Appeals Chamber finds that Nzabonimana has failed to demonstrate any error in the Trial Chamber's assessment of corroborating evidence. (iii) Overall Assessment of Prosecution Witnesses 189. Nzabonimana submits that the testimonies of Witnesses CNAZ, CNAZ, and CNBH were irreconcilable and that the Trial Chamber should have considered all the evidence and contradictions before deciding whether the allegations concerning the Butare trading centre were established.⁶² Nzabonimana maintains that the Trial Chamber, while rejecting Witness CNAZ's testimony because it differed too widely from the evidence of the other Prosecution witnesses, failed to draw conclusions on the inconsistencies between the three witnesses.⁶³ He also claims that the Trial Chamber limited itself to the testimonies of Witnesses CNAZ and CNBH, and further erred by stating that the

overall consistency in their testimonies outweighed the differences.¹⁹⁰ The Prosecution responds that the Trial Chamber reasonably did not accept Witness C NAY's testimony, only accepted parts of Witness C NAY's testimony when consistent with other evidence, and reasonably disregarded other parts of Witness C NAY's testimony because of significant passage of time.¹⁹¹ Nzabonimana replies that the Trial Chamber did not fully take into account Witness C NAY's testimony, and also that the Prosecution addressed the Trial Chamber's failure to consider the witness's contradictory version of events.¹⁹² The Appeals Chamber is not convinced that the Trial Chamber erred in its overall assessment of the Prosecution evidence. The Trial Chamber considered the testimonies of all three Prosecution witnesses and it weighed Witness C NAY's account against the other evidence. Specifically, it noted that Witness C NAY's account "varied widely from the other witnesses who testified, both in the time of the meeting, the words spoken by Nzabonimana and the actions of the crowd after the speech".¹⁹³ The Trial Chamber concluded that Witness C NAY's testimony was not credible. Nzabonimana's Office of Appeal, para. 4.1; Nzabonimana Appeal Brief, paras. 117-121. See Nzabonimana Appeal Brief, paras. 117, 120, 121. See also Nzabonimana Reply Brief, paras. 39, 41, 42; AT. 29 April 2014 para. 2.1, 2.2. See Nzabonimana Appeal Brief, paras. 117-122, referring to Trial Judgement, para. 12. See also Nzabonimana Reply para. 4.4; AT. 29 April 2014 para. 22. 9rief, "Prosecution Response Brief, para. 107. " Nzabonimana Reply Brief, paras. 3. 9, 40. Judgement para. 18. In the Trial Judgement, para. 718. 66 Case No.: ICTR-98-44D-A 29 September 2014

2169/H credible in relation to the Butare trading centre and noted that the Prosecution did not cite this witness in its submissions.¹⁹⁴ The Appeals Chamber considers that, in rejecting Witness C NAY's evidence, the Trial Chamber was drawing conclusions on inconsistencies between Prosecution witnesses. Recalling the Trial Chamber's discretion 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,¹⁹⁵ the Appeals Chamber detects no error in the Trial Chamber's assessment of the three Prosecution witnesses. 193. Based on the foregoing, the Appeals Chamber finds that the Trial Chamber did not err in the overall assessment of Witnesses C NAY, C NAY, and C NAY. (iv) Conclusion 194. Based on the foregoing, the Appeals Chamber considers that Nzabonimana has failed to demonstrate any error in the Trial Chamber's reliance on Witnesses C NAY and C NAY in respect of the events at the Butare trading centre on 12 April 1994. (b) Alleged Errors in Assessing Defence Evidence 195. The Trial Chamber assessed the testimonies of Defence Witnesses T109, T110, and Jean-Marie Vianney Mporanzi. In relation to Witness Mporanzi, the Trial Chamber considered his testimony on whether the meeting occurred to be of limited probative value.¹⁹⁶ The Trial Chamber recalled contradictions between his testimony and previous statements,¹⁹⁷ and found his vague claim that Rwandan authorities pressured him to make his previous statements insufficient to substantiate his assertion that his prior statements were fabricated.¹⁹⁸ Furthermore, it determined that, even if fabricated, Witness Mporanzi's admission to providing false statements undermines his credibility.¹⁹⁹ The Trial Chamber noted that Witnesses T109 and T110 acknowledged that Nzabonimana came to the Butare trading centre, but denied that he made

inflammatory remarks about Tutsis or that any Tutsis fled the trading centre during his address.⁵⁶³ Nzabonimana "5:56 Trial Judgment, para. 718. " See, e.g., Ndahimana Appeal Judgment, para. 93; Hategekimana Appeal Judgment, para. 82; Munyakazi Appeal Judgment, para. 11. " s o s r T i r i a , l . J u , d ^ g e m e n p t a , r a s 6 . 83-708, 719-734. "t Trial Judgment, para. 731. "uo Trial Judgment, para. 732. "5"6t -T r i a l J u d , g e m e n p t , a n . 733. "" 561 Trial Judgment, para. 733. "" 'r"" Trial Judgment, para. 719. 67 Case No.: ICTR-98-44D-A 29 September 2014

challenges the Trial Chamber's assessment of Witness Mporanzi's credibility, on the basis of contradictions between Witnesses T109 and T110.⁵⁶⁵ (i) Witness Mporanzi's credibility.⁵⁶⁶ Nzabonimana submits that the Trial Chamber erroneously determined that Witness Mporanzi's credibility was undermined because he admitted to lying to the Prosecution.⁵⁶⁶ Nzabonimana submits that the Trial Chamber erroneously stated that nothing suggested Bourgmestre Charles Gahunde encouraged Witness Mporanzi to testify falsely.⁵⁶⁷ He argues that no trier of fact would have failed to note that the duress Witness Mporanzi faced "vitiates his liberty" on whether to accuse Nzabonimana or not.⁵⁶⁸ Nzabonimana adds that the Trial Chamber erred in finding that the witness failed to adduce evidence of duress.⁵⁶⁹ He also maintains that the Trial Chamber found that Witness Mporanzi was not arrested and suffered no undue consequences as a result of his decision to testify for the Defence, whereas Witness Mporanzi fled Rwanda in 2008 to avoid suffering any undue consequences.⁵⁷⁰ Nzabonimana further submits that, by only considering Witness Mporanzi's admission to lying, the Trial Chamber failed to address evidence corroborating the witness's testimony on a system of recruitment, and thus failed to provide a reasoned opinion.⁵⁷¹ Nzabonimana also submits that the Trial Chamber simply examined contradictions between Witness Mporanzi's testimony and the prior statements she refuted about events at the Butare trading centre, and failed to make findings based on the witness's freely stated facts during his trial.⁵⁷² Nzabonimana Notice of Appeal, paras. 4.1.4(3), 4.1.5(6), 5.1.2(2); Nzabonimana Appeal Brief, paras. 136-143, 181, 184, 186, 187, 189, 190. Nzabonimana challenges the Trial Chamber's assessment of Witness Mporanzi's credibility in relation to fabrication of evidence and the Butare trading centre under his Fourth and Fifth Grounds of Appeal. The Appeals Chamber considers all contentions related to Witness Mporanzi together in this section. 'n Nzabonimana Notice of Appeal, paras. 4.1.5(2); Nzabonimana Appeal Brief, para. 149. ⁵⁶⁰ Nzabonimana Notice of Appeal, paras. 4.1.4(3), 4.1.5(6), 5.1.2(2); Nzabonimana Appeal Brief, paras. 137, 181 (French original). See also AT.29 April 2014 pp. 12, 13. Noting that none of Nzabonimana's allegations in relation to his right to a fair trial, including the ones related to the assessment of fabrication of evidence, is developed in his Appeal Brief, the Appeals Chamber considers that these have been withdrawn (see Nzabonimana Notice of Appeal, paras. 4.1.4(5)-(8)). The Appeals Chamber also observes that several arguments relating to fabrication of evidence are repetitive of those raised under Ground 3 (see Nzabonimana Notice of Appeal, paras. 4.1.4(1), 4.1.4(5), 4.1.5(3)) and 71, 72, 78, 79). However, in the already assessed under Ground 3 of Nzabonimana's appeal (see supra, paras. 70, "" Nzabonimana Appeal Brief, para. 186. ⁵⁶⁸ Nzabonimana Appeal Brief, para. 186. Nzabonimana submits that Witness Mporanzi felt no "freedom" to refuse Bourgmestre Charles Gahunde's request to testify against Nzabonimana, based on a prepared list of allegations, as a refusal would be considered an act against the RPF.

Seei bid., para. 185. sn'Nzabonimana Appeal Brief, para. 81. 4. r e. lerrin Nlo Trial Judgement, paras. 119-135. 140. "" Nzabonimana Appeal Brief, paras. 136-143. In particular, Nzabonimana submits that: (i) like Witness Mporanzi, Witness CNBH confirmed that it was Bourgm. srreG ahunde who put them in touch with ICTR investigators, and that refusing to make a statement against Nzabonimana was not possible; (ii) Prosecution Witness CNBA testified that it was Witness CNBH who put him in touch with investigators from the Prosecution, thus confirming that Witness CNBH participated in the recruitment of Prosecution witnesses and corroborating Witness Mporanzi's testimony regarding the system of recruitment; and (iii) Witness T109 corroborated Witness Mporanzi in testifying that Witness CNBH attempted to recruit him to give false testimony against Nzabonimana. Seei bid., paras. 140-142. 68 Case No.: ICTR-98-44D-A 29 September 2014

2167/H testimony. 572 Nzabonimana further submits that he was prejudiced by the Trial Chamber's errors and the Prosecution's obstruction as he was unable to use Witness Mporanzi's testimony to confront Witness CNAZ. 573 198. The Prosecution responds that Nzabonimana provides no argument as to why the Trial Chamber was not entitled to disbelieve "a confessed liar". 574 It submits that Nzabonimana re-argues the evidence and misstates Witness Mporanzi's testimony in relation to Bourgm. srreG ahunde. 575 While acknowledging Witness Mporanzi's flight from Rwanda, the Prosecution argues that Nzabonimana ignores that several detained witnesses did not suffer consequences by testifying for the Defence. 576 The Prosecution further responds that Nzabonimana's undeveloped claim, that it prevented him from confronting Witness CNAZ, should be summarily dismissed as he fails to address the Trial Chamber's central decision on this matter. 577 199. Turning first to the Trial Chamber's assessment of Witness Mporanzi's credibility in relation to fabrication of evidence, the Appeals Chamber observes that the Trial Chamber examined his testimony in detail when it considered allegations that Rwandan authorities were involved in evidence fabrication. 578 The Trial Chamber determined that Witness Mporanzi's vague claims did not support the conclusion that Rwandan Government officials coerced him to make his 1998 and 2003 statements to Prosecution investigators. 579 The Trial Chamber based its determination on the following considerations: (i) nothing in Witness Mporanzi's account of his interaction with Gahunde suggested that Gahunde encouraged him to testify falsely; 580 (ii) Witness Mporanzi's testimony that he could freely add and omit allegations against Nzabonimana undermined his supposed belief that he was under threat to testify falsely; 581 and (iii) the witness ultimately decided not to testify for the Prosecution and instead testified for the Defence and, by his own admission, he was not arrested and suffered no undue consequences as the result of his testimony. 582 Given the Trial Chamber's explicit consideration of the alleged duress and circumstances surrounding 583 Nzabonimana Appeal Brief, para. 190. "" Nzabonimana Appeal Brief, para. 138. See also bid., paras. 2, 4, 189. 574 Prosecution Response Brief, para. 119. 575 Prosecution Response Brief, para. 167. 576 Prosecution Response Brief, para. 168, referring to Trial Judgement, paras. 189, 196, 212, 223. 577 Prosecution Response Brief, paras. 120-124. 578 Trial Judgement, paras. 136-148. 579 Trial Judgement, para. 143. 580 Trial Judgement, para. 140. In this regard, the Trial Chamber considered Witness Mporanzi's testimony that he had no choice but to testify against Nzabonimana, and yet admitted that Gahunde's pocketed him

gently. It considered that the witness provided no evidence other than vague perceptions and fears that he would be imprisoned if he did not testify. See Trial Judgement, para. 141. Trial Judgement, para. 142. Case No.: ICTR-98-44D-A 29 September 2001

Witness Mporanzi's false prior statements, the Appeals Chamber observes that the Trial Chamber's assessment of the evidence to demonstrate the Trial Chamber erred. The Appeals Chamber has used the evidence in this regard. 200. The Appeals Chamber is also not convinced that the Trial Chamber erred in stating that Witness Mporanzi "provided no evidence" other than vague perceptions and fears that he would be imprisoned if he did not testify. 58. In that context, the Trial Chamber was assessing Witness Mporanzi's testimony on his fear of imprisonments should he not testify against Nzabonimana. As for the witness's flight from Rwanda in 2008, the Appeals Chamber is unable to see how this argument undermines, or renders unreasonable, the Trial Chamber's finding that Witness Mporanzi, by his own admission, was not arrested and suffered no undue consequences as a result of his testimony for Nzabonimana. 59. The Appeals Chamber therefore finds no error in the Trial Chamber considering Witness Mporanzi's admission of providing false statements in its assessment of his credibility. 201. Considering the above, specifically the Trial Chamber's determination that the allegations of coercion were unfounded, the Appeals Chamber finds that the Trial Chamber had no reason to address whether other witnesses corroborated Witness Mporanzi's testimony on the system of recruitment. 60. Nzabonimana's argument on the alleged failure to address evidence accordingly dismissed. 61. Specifically, the Appeals Chamber observes that the Trial Chamber explicitly considered, inter alia: (i) the list of allegations against Nzabonimana; (ii) Gahunde questioning whether Witness Mporanzi supported the RPF, and the witness's fear of answering "no"; (iii) Witness Mporanzi's fear of being imprisoned for not fabricating evidence against Nzabonimana; (iv) Witness Mporanzi's interactions with Gahunde; (v) Witness Mporanzi's acknowledgement that in 2003 he freely made additional allegations against Nzabonimana beyond those Gahunde told him (see Witness Mporanzi, T. 26 May 2010 pp. 35, 36); (vi) Witness Mporanzi received money for food and travel expenses, which did not expect and received after his testimony; (vii) Witness Mporanzi made false accusations against Nzabonimana because he thought it would be difficult for authorities to arrest Nzabonimana, who was hiding in the Congo (see Witness Mporanzi, T. 26 May 2010 p. 40); and (viii) Witness Mporanzi left Rwanda because he is conscientized about him for imperilling Nzabonimana and wanted to make reparations for what he did (see Witness Mporanzi, T. 26 May 2010 pp. 40, 41). See Trial Judgement, paras. 120-135, 137-143, 146. Trial Judgement, para. 140. 55 Trial Judgement, para. 142. Trial Judgement, para. 140. In any event, the Appeals Chamber observes that the Trial Chamber considered Witness CNBH's testimony that Bourgmestre Gahunde also contacted the Prosecution witness (Trial Judgement, paras. 108, 109, 136, fn. 209). The Trial Chamber determined that evidence of a witness's mere contact with Rwandan authorities does not lead to a conclusion that the witness fabricated testimony against Nzabonimana (Trial Judgement, para. 136). The Appeals Chamber detects no error in this determination. Additionally, the Appeals Chamber does not accept Nzabonimana's argument that Witness CNBH's testimony that investigator sent Witness CNBH as a messenger (Witness CNBH, T. 14 December 2009 pp. 49, 50

(closed session)) confirmed that Witness CNBH participated in recruitment or corroborated Witness Mporanzi's testimony "regarding the system of recruitment" (Nzabonimana Appeal Brief, para. 141). Furthermore, the Appeals Chamber is unable to identify which specific aspect of Witness Mporanzi's testimony is corroborated as Nzabonimana fails to provide any relevant transcript reference from Witness Mporanzi's testimony on the recruitment system or on Witness CNBH's recruitment activities to falsely accuse Nzabonimana. Accordingly, the Appeals Chamber dismisses Nzabonimana's argument that Witnesses CNBA and T109 corroborated Witness Mporanzi in this regard. t0 CaseN o.: ICTR-98-44D-A 29 Septembe2r0 14

2165/H 202. Turning to the assessment of Witness Mporanzi's credibility in relation to the events at the Butare trading centre, the Appeals Chamber recalls that the Trial Chamber found that his testimony in this respect was of limited probative value.⁵⁸ The Trial Chamber considered that an impromptu meeting could have occurred at the Butare trading centre without Witness Mporanzi's knowledge.⁵⁸ To reach this conclusion, the Trial Chamber noted Witness Mporanzi's testimony that after 9 April 1994 he was concerned with refugees and other security matters.⁵⁹ Therefore, the Appeals Chamber finds that the Trial Chamber did not simply consider his admission to lying, or merely examined contradictions between prior statements he refuted and his testimony. The Appeals Chamber therefore dismisses Nzabonimana's contention that the Trial Chamber did not enter findings on Witness Mporanzi's trial testimony. 203. As for the allegations of prejudice resulting from his inability to cross-examine Witness CNAZ with Witness Mporanzi's evidence, Nzabonimana merely mentions a Defence objection prior to Witness CNAZ's cross-examination.⁵⁹ However, he fails to indicate any error in the Trial Chamber rejecting the objection.⁵⁹ Finally, Nzabonimana does not identify any error in the decision nor does he indicate the Prosecution's objection he is challenging. Also, it is entirely unclear on what matter Nzabonimana wanted to confront Prosecution witnesses with Witness Mporanzi's testimony. Given his unsubstantiated and vague claims, the Appeals Chamber dismisses his argument. 204. In light of the above, the Appeals Chamber rejects Nzabonimana's submission that the Trial Chamber erred by failing to provide a reasoned opinion or in assessing Witness Mporanzi's credibility in relation to fabrication of evidence and his testimony on the Butare trading centre. (ii) Witnesses T109's and T110's contradictions 205. Nzabonimana submits that, contrary to the Trial Chamber's finding, Witnesses T109 and T110 did not contradict each other on why Nzabonimana's vehicle topped at the Butare trading centre. The Trial Chamber's finding is supported by the Trial Judgement, para. 731. The Trial Judgement, para. 131. The Trial Judgement, para. 137. See Nzabonimana Appeal Brief, para. 138, referring to Witness CNAZ, T. 12 November 2009 p. 8-13. The Appeals Chamber notes that on 12 November 2009, during Witness CNAZ's testimony, the Defence brought an oral motion seeking to postpone the cross-examination of this witness until it met with Witness Mporanzi. The Defence argued that the Prosecution obstructed the meeting by failing to cooperate with the Defence and by maintaining the witness on its list despite Witness Mporanzi's desire to not testify for the Prosecution. During these oral arguments, it surfaced that the Defence, rather than the Prosecution, had knowledge of Witness Mporanzi's whereabouts. Having heard the argument, the Trial Chamber orally denied the Defence's motion to postpone Witness CNAZ's testimony. See Witness CNAZ, T. 12 November 2009 p. 8-13. The Appeals Chamber detects no error in the Trial

Chamber's decision as it considered that at the Defence had sufficient information to cross-examine Witness C NAZ, and it left the option open for Nzabonimana to recall the witness. Sae Witness CN1A2ZN, on 13 November 2009, p. 13. 11 Case No.: ICTR-98-44D-A 29S septemb 2014 01

centre. According to Nzabonimana, the fact that Witness T110 did not see Nzabonimana relieving himself casts no doubt on the witness's testimony, and the Trial Chamber could not infer that his testimony was contradictory. Nzabonimana further claims that the Trial Chamber erroneously found Witnesses T109's and T110's version of events suspect because of their discrepancies and their attempt to present the meeting as an impromptu event. Nzabonimana argues that the Trial Chamber and the Prosecution agreed the meeting was impromptu and that Witnesses T109 and T110 should not have been "reproached". 5es 206. The Prosecution responds that Nzabonimana ignores contradictions the Trial Chamber identified in the evidence of Witnesses T109 and T110. Regarding the "impromptu" nature of the meeting, the Prosecution submits that Nzabonimana ignores the real issue - namely that these witnesses gave contradictory reasons why Nzabonimana stopped at the Butare trading centre in order to avoid the conclusion that he stopped to give an inciting speech. 5es 207. In a statement of 13 January 2010, Witness T109 indicated that Nzabonimana exited and stood beside his vehicle, and that his driver exited the vehicle to go to the toilet. 5es 208. Witness T109 made no modification to these facts in his statement of 23 May 2010. 5es 209. During his testimony, Witness T109 stated that Nzabonimana exited the vehicle to relieve himself in a banana plantation, and that his driver went "to the gents". 6es 210. As for Witness T110, in a statement of 12 January 2010, the witness said that Nzabonimana stopped at the Butare trading centre because Ruhunga had called for him, "if not, he would perhaps have merely greeted us from his car and would have continued on his way". 6es 211. During his testimony, Witness T110 testified that Ruhunga went towards Nzabonimana and spoke with him, and that Nzabonimana was always standing near his car. 6es 212. The Trial Chamber considered that both witnesses provided contradictory accounts as to why Nzabonimana's vehicle stopped at the trading centre. 6es 213. The Appeals Chamber observed that, in the Nzabonimana Appeal Brief, para. 149, referring to Trial Judgement, paras. 727, 728. 6es 214. Nzabonimana Appeal Brief, para. 149. See Nzabonimana Appeal Brief, para. 151, referring to Trial Judgement, para. 129. 6es 215. Nzabonimana Appeal Brief, para. 151, referring to Trial Judgement, para. 664. See also AT.29 April 2014 p. 20. 6es 216. Prosecution Response Brief, para. 138. 6es 217. Prosecution Response Brief, para. 140, referring to Trial Judgement, para. 729. 6es 218. Exhibit P58 (Witness T109's Statement of 13 January 2010), para. 12. 6es 219. Exhibit P59 (Witness T109's Statement of 23 May 2010). 6es 220. Witness T109, 2 June 2010 p. 65 (closed session); Witness T109, 3 June 2010 pp. 26, 21 (closed session). 6es 221. Exhibit P69 (Witness T110's Statement of 12 January 2010), para. 14. See also AT.29 April 2014 p. 19. 6es 222. Witness T110, 12 October 2010 p. 21 (closed session). 6es 223. Trial Judgement, paras. 127, 728. According to the Trial Judgement, Witness T109 stated that Nzabonimana went to a banana plantation to relieve himself, while Witness T110 testified that Nzabonimana stood by his car the whole time. 6es 224. he was at the trading centre. See *ibid.*, para. 6es 225. The Trial Chamber further noted that in previous statements, Witness T109 stated that Nzabonimana stood by his vehicle without mentioning the banana plantation, and the witness

explained that he informed Defence investigators of this fact but it was not recorded. See *ibid.*, para. 728. As for Witness T110, the Trial Chamber noted that in a prior statement, he stated that Nzabonimana's vehicle stopped because Ruhunga called for him. See *ibid.*, para. 728. Case No.: ICTR-98-44D-A 29 September 2014

The Trial Chamber found the discrepancies significant because the Prosecution presented evidence that Nzabonimana deliberately drove to population centres, stopped his vehicle, and encouraged Hutus to kill Tutsis. According to the Trial Chamber, "the Defence witnesses attempted to portray Nzabonimana's stop at the Butare trading centre as impromptu and attempted to establish that Nzabonimana stopped his vehicle at the trading centre for reasons other than to give an inflammatory address". The Trial Chamber noted, however, that these witnesses provided contradictory reasons for why he stopped, and considered that these contradictory accounts "undermine the credibility of their counter-narrative regarding the reason Nzabonimana stopped at the Butare trading centre". The Appeals Chamber finds it inconsequential whether the Trial Chamber erred in finding that these witnesses provided contradictory reasons for why Nzabonimana stopped. What matters is whether Nzabonimana made inflammatory statements about Tutsis. The Appeals Chamber further recalls that, when faced with competing versions of the same event, it is the prerogative of the trier of fact to decide which version it considers more credible. On this basis, the Trial Chamber had reasonable basis to reject the Defence's version of events, which denied Nzabonimana making inflammatory remarks about Tutsis, and accepted the evidence of Prosecution Witnesses C NAZ and CNBH, which it found consistent. Finally, the Appeals Chamber is not convinced that the Trial Chamber "agreed" that the meeting at the Butare trading centre was "impromptu". The Appeals Chamber observes that, in summarising the Prosecution's arguments, the Trial Chamber noted that "Nzabonimana held an impromptu meeting". However, in the Trial Chamber's assessment, it considered that the Prosecution presented evidence during trial that "Nzabonimana deliberately drove to population centres in Gitarama prefecture, stopped his vehicle and encouraged Hutus to kill Tutsis". The Trial Judgement, para. 129. See Trial Judgement, para. 129. See e.g., *Ndahimana Appeal Judgement*, para. 46; *Ntabakuze Appeal Judgement*, para. 523; *Ruta Sinda Appeal Judgement*, para. 29 ("Where testimonies are divergent, it is the duty of the [t]rial [c]hamber, which heard the witnesses, to decide which evidence it deems to be more probative, and not to choose which of the two divergent versions of the same event it may admit"). (internal reference omitted). See *Nzabonimana Appeal Brief*, para. 151, referring to Trial Judgement, para. 664. See Trial Judgement, para. 664. The Trial Judgement, para. 729. The Appeals Chamber also considers it inaccurate for Nzabonimana to say that the Prosecution "agreed" the meeting was as impromptu. See *Nzabonimana Appeal Brief*, para. 151. The Appeals Chamber considers that the Prosecution's use of "impromptu" in its Closing Brief was about how the meeting was held. See *Prosecution Closing Brief*, para. 212. However, the Trial Chamber's analysis at paragraph 729 of the Trial Judgement relates to Prosecution evidence on the reasons for driving and stopping at different population centres in Gitarama to encourage the killing of Tutsis. Case No.: ICTR-98-44D-A 29 September 2014

2II. Based on the foregoing, the Appeals Chamber finds that the Trial Chamber's assessment of the contradictions between Witnesses T109 and T110 does not warrant the Appeals Chamber's intervention. (iii) Conclusion 212. Based on the foregoing, the Appeals Chamber considers that Nzabonimana fails to demonstrate that the Trial Chamber committed any error in its assessment of Defence evidence that would occasion a miscarriage of justice. (c) Alleged Unequal Treatment of Testimonies (i) Prosecution and Defence Witnesses 213. Nzabonimana submits that the Trial Chamber treated Prosecution and Defence witnesses unequally by assessing contradictions, judicial records, the opinion of witnesses, and the plausibility of testimonies in a radically different manner. Given the number and importance of contradictions between Witnesses CNAZ and CNBH, Nzabonimana argues that the Trial Chamber should not have considered Witness T109 not credible because of a mistake in one aspect of his testimony. 612 According to Nzabonimana, the Trial Chamber also should not have found Witness T110's testimony (stating that Witness CNAZ left at the same time or a little before Nzabonimana made his statement) contradictory to his prior statement from January 2010 (indicating that Witness CNAZ left some minutes before Nzabonimana). 613 Nzabonimana also avers that the Trial Chamber incorrectly reproached Witness T110 for his opinion on Witness CNAZ allegedly falling into a ditch, whereas it assessed differently the opinion of Prosecution witnesses. 614 Nzabonimana further submits that the Trial Chamber treated the issue of judicial records differently between Defence Witnesses T109 and T110 and Prosecution Witnesses CNAZ and CNAC. 615 Nzabonimana submits that nothing in the judicial records of Witnesses T109 and T110 gave reason to doubt their sincerity. He argues that the Trial Chamber erred by holding against Nzabonimana Notice of Appeal, para. 4.1.5; Nzabonimana Appeal Brief, paras. 145-148, 150, 152. See also AT 29 April 2014 p. 19-21. "Nzabonimana Appeal Brief, para. 148, re: Trial Judgement, para. 724. 613 Nzabonimana Appeal Brief, para. 146, re: Trial Judgement, para. 725. Nzabonimana notes the Trial Chamber's finding that Witness T110's hesitation, in responding to why Witness CNAZ left the scene, "may" indicate that he was not credible in respect of events to which he testified. See id. Nzabonimana Appeal Brief, para. 147 (French original), re: Trial Judgement, para. 726. See also AT 29 April 2014 p. 18, 19. "Nzabonimana Appeal Brief, para. 147 (French original), re: Nzabonimana Appeal Brief, paras. 20, 221. 616 Nzabonimana Appeal Brief, para. 145. 617 Nzabonimana Appeal Brief, para. 145. '74 Case No.: I CTR-98-44D-A 29 September 2014 {i-\\

2761/H Witness T109 his false guilty plea, 618 and against Witness T110 his admission to making a false confession. 619 Nzabonimana argues that there is overwhelming evidence of pressure on prisoner to plead guilty. 620 215. Nzabonimana also submits that the Trial Chamber found the evidence of Witnesses T109 and T110 not plausible on the fact that Nzabonimana's escorts remained in the vehicle and left him in the middle of the crowd. 621 However, he argues that it accepted the testimony of Witnesses CNAZ and CNBH that Nzabonimana ordered the same escorts to pursue Tutsis, leaving him amidst people he threatened to kill. 622 According to Nzabonimana, his Prosecution evidence, coupled with the gendarmes' unlikely pursuit of Musabyimana in a vehicle, should have raised doubt or mistrust in relation to accounts of Prosecution witnesses. He claims that the Trial Chamber described discrepancies in

Prosecution evidence as minor divergences and additional details,⁶² while it held that differences between the testimonies of Witnesses T109 and T110 undermined their credibility.^{62s} 216. The Prosecution responds that the Trial Chamber reasonably is believed by Witnesses T109 and T110 for a "host of thoroughly explained reasons",^{u'uT h} the Prosecution submits that: (i) Nzabonimana fails to acknowledge the Trial Chamber's concern that Witnesses T109 and T110 changed their accounts to favour Nzabonimana;^{6'71} ii; the Trial Chamber correctly considered that Witness T110 asserted, without basis, that Witness CNAZ did not fall into a ditch;⁶²⁸ (iii) Nzabonimana ignores findings that Witnesses T109 and T110 did not suffer adverse consequences for refusing to give certain testimony;^{62ea} and (iv) the Trial Chamber regarded Witnesses CNAZ's and CNAC's testimonies with caution.⁶³⁰ Furthermore, the Prosecution responds that, given Nzabonimana's position as a government minister, the Trial Chamber reasonably found that the gendarmes would not have stayed in the car when Nzabonimana alighted.⁶¹⁸ Nzabonimana Appeal Brief, para. 145, referring to Trial Judgment, para. 120. o" Nzabonimana Appeal Brief, para. 145, referring to Trial Judgment, para. 721. Nzabonimana's test that the Trial Chamber acknowledged the absence of a nexus between the allegation related to Witness T110's confession and the charge against Nzabonimana. Seeidem, referring to Trial Judgment, para. 722. o'u Nzabonimana Appeal Brief, para. 145. o" Nzabonimana Appeal Brief, para. 150, referring to Trial Judgment, para. 730. See also AT.29 April 2014 pp. 47. 62: Nzabonimana Appeal Brief, para. 150, referring to Trial Judgment, para. 708. See also AT. 29 April 2014 pp. 47. o" Nzabonimana Appeal Brief, para. 150, referring to Trial Judgment, para. 671. o'o Nzabonimana Appeal Brief, para. 152, referring to Trial Judgment, para. 710, 711. o" Nzabonimana Appeal Brief, para. 152, referring to Trial Judgment, para. 724-729. o'o Prosecution Response Brief, para. 729, referring to Trial Judgment, para. 719-730. See also AT.29 April 2014 pp. 42-43. o" Prosecution Response Brief, para. 135, referring to Trial Judgment, para. 724, 725. See also AT. 29 April 2014 pp. 42. 628 Prosecution Response Brief, para. 137, referring to Trial Judgment, para. 726. o" Prosecution Response Brief, para. 133. o" Prosecution Response Brief, para. 134, referring to Trial Judgment, para. 142, 1210. N" Case No.: ICTR-98-44D-A 29 September 2014

and that they would have followed his orders to pursue fleeing Tutsis.⁶³¹ The Prosecution found that the Trial Chamber treated Prosecution and Defence witnesses alike as it found certain contradictions between Witnesses T109 and T110 to be minor.⁶³² 217. With respect to the alleged unequal assessment of discrepancies, the Appeals Chamber notes that, contrary to what Nzabonimana appears to submit,⁶³³ the Trial Chamber did not use a "mistake" in one aspect of Witness T109's testimony to find his evidence incredible as a whole.^{63T*} The Trial Chamber noted a "significant discrepancy" between Witness T109's testimony and prior statements regarding Witness CNAZ,⁶³⁵ and considered that his discrepancy to undermine Witness T109's credibility "as to what happened to Witness CNAZ on the date of Nzabonimana's address at the Butare trading centre".⁶³⁶ The Appeals Chamber detects no error in the Trial Chamber's assessment of the discrepancy and observes that the Trial Chamber reached its conclusion on the credibility of Witness T109's testimony based on several factors.⁶³⁷ 218. As for Witness T110, the Trial Chamber observed that he provided contradictory accounts of Witness CNAZ's actions after Nzabonimana's speech.^{63T8} The Trial Chamber noted that, according to Witness T110's 12

January 2010 statement, Witness C NAZ left a few minutes before Nzabonimana and was not pursued; however, in his testimony at trial, the witness stated that Witness C NAZ left at the same time or very shortly before Nzabonimana. In the Appeals Chamber's view, there is no contradiction between "a few minutes before" and "very shortly before". Also, a review of his testimony at trial reveals that Witness T110 did not provide any information that would contradict his prior statement that Witness C NAZ was not pursued as Witness T110 stated that "when he left, he had no problem".⁶⁴⁰ The Appeals Chamber thus finds that no reasonable trier of fact could conclude that a contradiction existed between Witness T110's prior statement and testimony on when Witness C NAZ left the Butare trading centre. The Trial Chamber's Prosecution Response Brief, para. 139. The Trial Chamber's Prosecution Response Brief, para. 141. Referring to Trial Judgement, para. 123. See also AT.29 April 2014 p. 42. 633 Nzabonimana Appeal Brief, para. 148. 63a. See Trial Judgement, para. 124. n Trial Judgement, para. 724. n Trial Judgement, para. 724. Specifically, the Trial Chamber observed that: (i) in Witness T109's testimony, Witness C NAZ and other Tutsis remained at the centre throughout Nzabonimana's speech; (ii) in his 13 January 2010 statement, Witness C NAZ left the trading centre without explanation and that the departure did not provoke a reaction or response from anyone; and (iii) in his 23 May 2010 statement, Witness C NAZ did not leave the trading centre before Nzabonimana. See iclem, referring to Witness T109, T. 2 June 2010 p. 7G72 (closed session); Exhibit P58 (Witness T109's Statement of 13 January 2010), para. 17; Exhibit P59 (Witness T109's Statement of 23 May 2010). 637 See Trial Judgement, paras. 720, 724, 730. Trial Judgement, para. 725. 6re Trial Judgement, para. 725, referring to Exhibit P69 (Witness T110's Statement of 12 January 2010), para. 16; Witness T110, T. 13 October 2010 pp. 11, 14 (closed session). The Appeals Chamber notes that Nzabonimana inaccurately stated the finding of the Trial Chamber recalling Witness T110's testimony that Witness C NAZ left at the same time or very shortly before Nzabonimana left, as opposed to at the same time or little before Nzabonimana made his statement. See Nzabonimana Appeal Brief, para. 146. o Witness T110, T. 13 October 2010 p. 11, 14 (closed session). 16 Case No.: ICTR-98-44D-A 29 September 2014

2159/H Chamber accordingly erred in finding a contradiction. However, the Appeals Chamber is not convinced that this error occasioned a miscarriage of justice. The Appeals Chamber recalls that the Trial Chamber rejected Witness T110's evidence on several bases, including his criminal history and the retraction of his sworn confession.⁶⁴¹ Nzabonimana fails to demonstrate how the Trial Chamber's assessment of Witness T110, regarding what happened to Witness C NAZ after he left the meeting, warranted similar treatment to Prosecution witnesses on other events.⁶⁴² According to the Trial Chamber, Witness T110 admitted that he did not know what happened to Witness C NAZ after the latter left the meeting, yet he later denied that Witness C NAZ fell into a ditch.⁶⁴³ On this basis, the Trial Chamber doubted Witness T110's testimony regarding what happened to Witness C NAZ after he fled the meeting.⁶⁴⁴ Contrary to what Nzabonimana claims, the Trial Chamber did not reproach the witness for having expressed an opinion but considered that his "willingness to deny material facts of which he admittedly had no knowledge" undermined his credibility.⁶⁴⁵ Keeping in mind that trial chambers are best placed to assess the evidence, including the demeanour of witnesses,⁶⁴⁶ the Appeals Chamber finds that Nzabonimana has not demonstrated that the Trial Chamber erred in its assessment of Witness T

110's testimony compared to Prosecution witnesses. 220. As to the Trial Chamber's treatment of the judicial records, the Appeals Chamber is not convinced that the Trial Chamber erred in applying caution to the testimonies of Witnesses T 109 and T110 as a result of their convictions and Witness T110's retraction of his sworn confession. 6aT Furthermore, independent of the Trial Chamber's assessment of Witnesses C NAA and CNAC, to which the Trial Chamber applied caution, 648th the Trial Chamber had enough information in the *1 friA Judgement, paras. 121, 722. *1 Nzabonimana Appeal Brief, para. 147 (French original), referring to Trial Judgement, para. 726. The Appeals Chamber should dismiss Nzabonimana's submission on Witness T 110's hesitation as he does not substantiate any error nor demonstrate by the Trial Chamber as not allowed to make an additional observation on Witness T 110's disagreement. See ibid., para. 146; Trial Judgement, para. 725. oo' Trial Judgement, para. 726. @ Trial Judgement, para. 726. *t Trial Judgement, para. 726. *u See, e.g., Kanyarukiga Appeal Judgement, para. 121; Simba Appeal Judgement, para. 9; Ntagerura et al. Appeal Judgement, paras. 1. 2.2 13. *t iriut Judgement, paras. 120-722. In assessing the credibility of Witness T 109 the Trial Chamber noted that the witness was not directly implicated in any criminal activity with regard to the event at the Butare trading centre. However, it treated his testimony with appropriate caution for his participation in crimes committed in Gitarama prefecture for which he was convicted in absentia. See ibid., para. 120. The Trial Chamber considered Witness T 110's admission to fabricating a confession to secure release from prison, and observed that his retraction of a sworn confession was a serious matter that raised questions regarding his credibility. It also noted that the witness's 11-year prison sentence in Rwanda. According to the Trial Chamber, Witness T 110 was not directly implicated in any criminal activity with regard to the present allegation; however, due to his conviction and sentence, it treated his testimony with appropriate caution. See ibid., paras. 7. 21, 722. e8 See e Tna) Judgement, paras. 1064, 1142, 1210, 1480. e:"^\. Case No.: ICTR-98-44D-A 29 September 2014

judicial records of Witnesses T 109 and T110 to apply caution to their testimonies. According to the Appeals Chamber, Nzabonimana's argument of unequal treatment fails. 221. Concerning the conduct of gendarmes, the Trial Chamber did not find it plausible, according to the evidence of Witnesses T 109 and T110, that Nzabonimana's escorts remained in the car while he left the vehicle. 6aT The Trial Chamber reasoned that, given the President's death less than a week prior to the meeting, it did not believe that Nzabonimana's security would allow a government minister to walk unescorted in a crowd. 6s0N Nzabonimana fails to demonstrate that this was an assessment that no reasonable trier of fact could make. Furthermore, based on the evidence of Witnesses C NAA and CNBH, the Trial Chamber found that Nzabonimana told gendarmes and the population to pursue Witness C NAA and another T 109. 6srT The Appeals Chamber considered that Nzabonimana merely disagrees with the Trial Chamber's assessment and fails to demonstrate how the Trial Chamber erred. The Appeals Chamber thus dismisses Nzabonimana's arguments, 222. Finally, the Appeals Chamber is not convinced that the Trial Chamber treated Defence and Prosecution witnesses unequally in its assessment of contradictions. The Appeals Chamber recalls that an error, if any, made in the assessment of Defence evidence is distinguishable from the issue of unequal assessment of Prosecution and Defence evidence. In this regard, the Appeals Chamber notes that the Trial Chamber considered the evidence of Prosecution Witness C NAA incredible on several

etailst hat he exaggerated,6a5n2d it rejectedP rosecutionW itnessC NAY's evidenceo n the entire allegation since his account varied widely from other testimonies.6sN3 zabonimana fails to acknowledge that the Trial Chamber also found some inconsistencies in the accounts of Witnesses T109 and T110 to be minor.65aB ased on the foregoing, the Appeals Chamber finds that the Trial Chamber did not treat Defence witnesses unequally compared to Prosecution witnesses. (ii) Prosecution Witnesses 223. Nzabonimana submits that the Trial Chamber applied a different standard when it found the silence of Prosecution Witnesses C NBA, CNBT, CNAK, and CNAQ during Gacaca proceedings to undermine their credibility, while it was satisfied with Witness C NAZ's explanation of why he did not testify against Nzabonimana in Gacaca proceedings.6ss uoo Trial Judgementp, a ra.7 30. See also Trial Judgementp, a ra.6 86,693. 6so Trial Judgementp, a ra.730. t" Trial Judgementp, a ra.7 08,7 34. utt Trial Judgementp, a ra.1 11,7 12. utt Trial Judgementp, a ra.7 18. o5' Trial Judgementp, a ra.7 23. n" Nzabonimana Appeal Brief, para.1 44, re. frrintgo Trial Judgementp, a ra.7131, 038,1 421,1 686. '78 Case No.: ICTR-98-44D-A 29 September 2014. JL

2157/H 224. The Prosecution responds that the Trial Chamber evaluated the totality of evidence, considered many factors, and weighed individual reasons why witnesses did not mention Nzabonimana.65A6c cording to the Prosecution, Nzabonimana ignores that, in contrast to all other witnesses he mentions, Witness CNAZ did not testify in Gacaca proceedings.65T 225. The Trial Chamber found that the fact that Witness CNAZ did not accuse Nzabonimana prior to giving his statement in 2008 did not impact his credibility.658T he Trial Chamber accepted the witness's explanation that he first spoke to Prosecution investigators in 2008 and that he was never prosecuted for not appearing before a Gacaca court.65eIn contrast, the Trial Chamber considered that Witnesses C NBA, CNBT, CNAK, and CNAQ, who previously testified before Gacaca proceedings, omitted to raise allegations related to Nzabonimana and that this undermined their credibility.660T he Appeals Chamber therefore notes that the Trial Chamber had no information before it that Witness CNAZ testified before Gacaca proceedings, while it had such information for the other witnesses. Given the different circumstances between Witness CNAZ and Witnesses C NBA, CNBT, CNAK, and CNAQ, Nzabonimana fails to demonstrate that the Trial Chamber erred in reaching different conclusions on their credibility. (d) Conclusion 226. Based on the foregoing, the Appeals Chamber finds that Nzabonimana has failed to demonstrate that the Trial Chamber committed any error in its assessment of evidence under his Fourth and Fifth, in part, Grounds of Appeal that would occasion a miscarriage of justice. 3. Direct and Public Incitement to Commit Genocide 227. In relation to the Butare trading centre, the Trial Chamber found that Nzabonimana gave a speech: (i) with explicit instructions to kill Tutsis, and thus constituted a direct call on those assembled to commit genocide; (ii) in a public location to 20 members of the general population; and (iii) with the requisite intent.661 228. Nzabonimana submits that the Trial Chamber erred in law and in fact in characterising the incitement as direct and public.662N zabonimana submits that the facts as found by the Trial Chamber do not constitute direct and public incitement, as defined by the Appeals Chamber's *ututu* Prosecution Response Brief, para.1 28. 65t Prosecution Response Brief, para.1 28r. e. frrintgo Trial Judgementp, a ra.113. o'o Trial Judgementp, a ra.713. ute Trial Judgementp, a ra.713. See also Witness C NM, T. 12

November 2009, paras. 19-21 (closed session). *Uganda v. Kibuka et al.*, Trial Chamber I, paras. 1038, 1421, 1686. *Uganda v. Ntabanzi et al.*, Trial Chamber I, paras. 759-1761. *Uganda v. Ntabanzi et al.*, Appeal Chamber, paras. 4, 2. *Nzabonimana v. The Prosecutor*, Appeal Chamber, paras. 153-162. *Uganda v. Ntabanzi et al.*, Case No. ICTR-98-44D-A, 29 September 2014.

In jurisprudence, the facts constituted an improvised meeting with a very limited number of persons. On particular, Nzabonimana submits that the Trial Chamber erred in characterising the incitement as public because he was found to address a limited group of about 20 people, who were gathered to share a drink, and therefore tantamount to a private conversation. Nzabonimana argues that the persons were gathered in an "ambiguous manner" and that the veranda of a drinking place necessarily limited the number of individuals who could meet there. Nzabonimana further argues that the Trial Chamber fails to specify the nature and the size of the audience, and that the number of persons present is an indispensable factor that should be considered when assessing the public character of the incitement. *Uganda v. Ntabanzi et al.*, Trial Chamber I, paras. 229.

Nzabonimana also submits that the Trial Chamber erroneously found the incitement to be direct because it failed to specify whether it relied on Witness C NAZ's or Witness C NBH's account of Nzabonimana's words, rendering the evaluation of the direct effect of the words impossible. In addition, Nzabonimana contends that incitement does not require proof of a causal relationship between the acts of the accused and the genocide. However, pointing to the *Nahimana et al.* Trial Judgement, he argues that it must be established that the accused's actions "were likely to cause the commission of the crime of genocide" and that this was not done in the present case. *Uganda v. Ntabanzi et al.*, Trial Chamber I, paras. 230.

The Prosecution responds that the incitement was public because it happened at the Butare trading centre, a public space with drinking establishments and shops. It submits that, while the size of the audience can be relevant to determine the public character of the incitement, the public nature of Nzabonimana's incitement was already proven by the public space where he spoke. The Prosecution further responds that the incitement was direct because, as the Trial Chamber found, evidence demonstrated that Nzabonimana told the audience to kill Tutsis and two Tutsis fled as a result. *Nzabonimana v. The Prosecutor*, Appeal Brief, para. 153, referring to *Kulimanzira v. The Prosecutor*, Trial Judgement, paras. 155-165. *Nzabonimana v. The Prosecutor*, Appeal Brief, para. 162.

Nzabonimana submits that the Trial Chamber erred in law by assessing the public and direct nature of the incitement on the basis of unreliable evidence. See *ibid.*, para. 155. Nzabonimana's challenge to the assessment of evidence has been examined in the previous section. *Nzabonimana v. The Prosecutor*, Appeal Brief, para. 157. *Nzabonimana v. The Prosecutor*, Appeal Brief, para. 157.

Nzabonimana also points to the fact that he was able to offer alcohol to the whole crowd and to the absence of strangers during his speech. See *idem*, *Nzabonimana v. The Prosecutor*, Appeal Brief, paras. 155, 156. *Nzabonimana v. The Prosecutor*, Appeal Brief, paras. 158, 159.

Nzabonimana recalls that, according to the jurisprudence, it has to be more than "a mere vague or indirect suggestion", and that the culture and context need to be taken into account. See *ibid.*, paras. 84, 159, fn. 2/2, referring to *Nahimana et al.* Appeal Judgement, paras. 686, 692, 694-702. *Nzabonimana v. The Prosecutor*, Appeal Brief, para. 160. *Nzabonimana v. The Prosecutor*, Appeal Brief, para. 160, referring to *Nahimana et al.* Trial Judgement, para. 1015.

Nzabonimana points to several facts, namely that he shared drinks with all the Tutsis who were present, that they came from the same locality, that no one in the audience denounced any Tutsi, that the audience did not agree with what Nzabonimana was saying and that the persons who were allegedly pursuing Witness C NAZ had

no intention of killing him, and that there were no attacks following Nzabonimana's visit. See *ibid.*, para. 161. *Prosecution Response Brief*, para. 143. The Prosecution submits that Nzabonimana made his speech "to a number of individuals in a public space", as required under the law. See *ibid.*, para. 77, referring to Akayesu Trial Judgement, paras. 556, 674 and Akayesu Appeal Judgement, para. 143. *Prosecution Response Brief*, para. 143. 80 Case No.: I CTR-98-44D-A 29 September 2014 [*t

2155/H result. 673 Finally, the Prosecution argues that the Nahimana et al. Trial Chamber explained that direct incitement had the potential to result in genocide but did not stipulate this as an additional element of this crime. 674 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). 675 The Appeals Chamber recalls that when assessing the "public" element of the incitement, factors such as the place where the incitement occurred and whether the attendance was selected or limited can be taken into account. 676 It also recalls that the number of persons present is not an essential factor in this assessment. 677 The Appeals Chamber considers that, though not required, the number of persons and the medium through which the message is conveyed may be relevant in assessing whether the attendance was selected or limited, thereby determining whether or not the recipient of the message was the general public. 678 232. The Appeals Chamber observes that the Trial Chamber's consideration that: (i) the audience consisted of approximately 20 members of the general population, including Tutsis, who happened to be present in the area at the time; and (ii) the incitement occurred in an undeniably public location. 679 Therefore, the Appeals Chamber is satisfied that the Trial Chamber, in assessing the public character of the incitement, properly considered the public location of the utterance and whether the audience was selected or limited. The Appeals Chamber rejects Nzabonimana's argument that the Trial Chamber erred in failing to specify the size of the audience. While not determining the exact number of the persons present in the crowd, the Trial Chamber nevertheless determined the approximate number. 680 In this regard, the Appeals Chamber considers that it is not required for a trial chamber to determine the exact number of people present. Given the foregoing, the Appeals Chamber finds that Nzabonimana has failed to demonstrate an error in the Trial Chamber's finding of the public element of the incitement and therefore dismisses his argument that the incriminating message was tantamount to a private conversation. 673 *Prosecution Response Brief*, para. 144. 674 *Prosecution Response Brief*, para. 145. *Uganda v. Kibuka et al.*, paras. 121, 126. *Uganda v. Muvunyi*, Trial Judgement, paras. 503, 556. *Akayesu Trial Judgement*, paras. 160, 165, 170, 703, 705. With respect to Nzabonimana's argument that the veranda of a drinking place would necessarily limit the number of individuals who could meet there, the Appeals Chamber is of the view that he does not demonstrate that the Trial Chamber erred in its assessment of the public element. 680 Trial Judgement, paras. 703, 705, 1760. 81 Case No.: I CTR-98-44D-A 29 September 2014 -D\

233. Turning to Nzabonimana's argument that the Trial Chamber erred in finding the incitement to be direct, the Appeals Chamber recalls that direct and public incitement implies that the speech is a direct appeal to commit any act referred to in Article 2(2) of the Statute and requires more than a vague or indirect suggestion.⁶⁷ The Appeals Chamber notes the Trial Chamber's finding that Nzabonimana's speech "included explicit instructions to kill Tutsis" and thus constituted "an incontestably direct call on those assembled to commit genocide".⁶⁸ In coming to this conclusion, the Trial Chamber noted that Witnesses CNAZ and CNBH provided different versions of Nzabonimana's words.⁶⁹ It considered the differences to be minor and attributed them to the passage of time.⁷⁰ The Appeals Chamber found that its assessment was reasonable. The Appeals Chamber is also not persuaded that these minor inconsistencies impact the Trial Chamber's finding that, according to both witnesses, Nzabonimana made inflammatory statements about the Tutsis and asked whether there were any Tutsis in the crowd.⁷¹ Accordingly, the Appeals Chamber is not persuaded that the Trial Chamber erred in finding the incitement to be direct.

234. As for Nzabonimana's contention regarding the likelihood of his actions causing the crime of genocide,⁷² the Appeals Chamber recalls that direct and public incitement is an inchoate crime and that it is punishable even if no act of genocide has resulted therefrom.⁷³ In light of this, the actus reus of direct and public incitement is satisfied when a person directly and publicly incites the commission of genocide, irrespective of whether his or her acts were likely to cause the crime of genocide.⁷⁴ Accordingly, the Appeals Chamber rejects Nzabonimana's contention that, to establish direct and public incitement to commit genocide, it must be proven that the accused's actions were likely to cause the commission of the crime of genocide.

235. Based on the foregoing, the Appeals Chamber finds that Nzabonimana has failed to demonstrate that the Trial Chamber erred in characterising the incitement as "direct and public" and

See Nuhimarut et al. Appeal Judgement, para. 692, referring to, inter alia, Kajelijeli Trial Judgement, para. 852; Akayesu Trial Judgement, para. 557. Utut Trial Judgement, para. 1759. "Trial Judgement, para. 10, fn. 910. Witness CNBH, T. 3 December 2009 p. 22 (closed session) ("[Nzabonimana] told us that the fighting was intense at the front [...] that the way to bring an end to the war with the Tutsis was by eliminating all the Tutsis [...]"). Witness CNAZ, T. 12 November 2009 p. 4 ("[Nzabonimana] told us at the time that he had just launched the killings, the work in Nyabikenke continued, [...] since, the killings have already begun in Nyabikenke, they should also begin in Rutobwe community [...]"). See also Trial Judgement, fn. 910. Utut Trial Judgement, para. 710. Utut Trial Judgement, para. 708. The Trial Chamber found that "Witnesses CNBH and CNAZ provided consistent evidence that Nzabonimana made inflammatory comments about Tutsis after he stopped at the trading centre", "Nzabonimana asked whether there were any Tutsis in the crowd", they "corroborated each other's testimony that Witness CNAZ fled the trading centre as a result of Nzabonimana's speech and that Nzabonimana instructed others to pursue him". See idem. 686 Nzabonimana Appeal Brief, para. 160, referring to Nahimana et al. Trial Judgement, para. 1015. On Nohi*oro Appeal Judgement, para. 678. 688 See Nuhimuna Appeal Judgement, para. 678. 82 Case No.: ICTR-98-44D-A 29 September 2014 fn

2153/H accordingly dismisses his arguments in relation to direct and public incitement to commit genocide under his Fourth Ground of Appeal. 1. Conclusion 236. Accordingly, the Appeals Chamber dismisses Nzabonimana's Fourth and Fifth, in part, Grounds of Appeal. 83 Case No.: ICTR-98-44D-A 29 September 2014 ¶1

E. Alleged Errors Relating to Murambi (Ground 5, in part) 2152/H 231. The Trial Chamber convicted Nzabonimana of direct and public incitement to commit genocide based, in part, on his speech at the Murambi training centre on 18 April 1994 (Count 3).⁶⁰ The Trial Chamber found that, on 18 April 1994, the Prime Minister of Rwanda Jean Kambanda and other members of the Interim Government, including Nzabonimana held a meeting for the bourgmestre of Gitarama prefecture. It found that during the meeting Nzabonimana ordered the killings of bourgmestres and other local officials involved in the massacre of Tutsis.⁶¹ 238. The Trial Chamber also convicted Nzabonimana of conspiracy to commit genocide in relation to, inter alia, an agreement with the Prime Minister and other Ministers of the Interim Government to encourage the destruction of the Tutsi population, as such, in Gitarama prefecture (Count 21).⁶² It found that the agreement materialised on 18 April 1994 at the Murambi meeting.⁶³ 239. The Trial Chamber did not find Nzabonimana guilty of genocide with respect to his conduct at the meeting but found that it provided circumstantial evidence of his intent to destroy, in whole or in substantial part, the Tutsi ethnic group, as such.⁶⁴ 240. Nzabonimana submits that the Trial Chamber erred in fact and in law in convicting him of direct and public incitement and of conspiracy to commit genocide in connection with the event at Murambi on 18 April 1994 and in considering his event as circumstantial evidence of his genocidal intent.⁶⁵ In this section, the Appeals Chamber considers Nzabonimana's arguments in relation to: (i) notice; (ii) the assessment of evidence; (iii) direct and public incitement; and (iv) conspiracy. 1. Notice 241. Nzabonimana submits that he lacked notice of the crime of conspiracy to commit genocide and that he was convicted beyond the scope of the Indictment for the crime of direct and public incitement to commit genocide.⁶⁶ 242. Trial Judgement, paras. 1773, 1775, 1800. Trial Judgement, para. 158. See also *ibid.*, para. 1769. Trial Judgement, para. 1179. See also *ibid.*, para. 1769. Trial Judgement, paras. 1147, 1749, 1800. The Trial Chamber also entered a conviction for conspiracy to commit genocide in relation to an agreement with Jean-Damascene Ukiriyezu in May 1994 to encourage the killing of members of the Tutsi population in Tambwe commune.⁶⁷ See *ibid.*, paras. 1148, 1149. Trial Judgement, paras. 147, 147. Trial Judgement, para. 1726. 65 Nzabonimana's Grounds of Appeal, paras. 5.1-5.6; Nzabonimana Appeal Brief, paras. 1.70-1801, 82, 183, 185, 188, 191-301. 66 Nzabonimana's Grounds of Appeal, paras. 5.3.1, 5.5.1; Nzabonimana Appeal Brief, paras. 2.42-252, 258-2152. See also Nzabonimana Reply Brief, paras. 5.7-64; AT. 29 April 2014 pp. 14-11. Nzabonimana also argued that the Prosecution dropped six out of 18 paragraphs in the charge of conspiracy a few days before filing its Closing Brief and that the 84 Case No.: ICTR-98-44D-A 29 September 2014 ¶1

2157/H (a) Crime of Conspiracy to Commit Genocide 242. Nzabonimana submits that the Trial Chamber erred in finding him guilty of entering into an agreement with the Ministers of the Interim Government to destroy Rwanda's Tutsi population because he had not been given notice of this allegation, he did not present a related defence, and the defect was not cured.⁶⁸ 17n

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Indictment had provided clear and consistent notice of the allegations concerning Musambira.⁷⁰⁸ Regarding Nyakabanda, Nzabonimana submits that paragraph 54 of the Indictment did not provide notice as to the nature of his alleged conduct in respect of the crime of conspiracy to commit genocide. Toe 245. Nzabonimana also submits that he suffered prejudice, which the Trial Chamber did not mention in its assessment of paragraph 59 of the Indictment. He further argues that the Trial Chamber convicted him of conspiracy to commit genocide, which it inferred from "piecing together" circumstantial evidence that was not pleaded by the Prosecution, and that he was not able to defend himself. He concludes that the identified errors, combined with the multitude of charges brought under the count of conspiracy, impaired his reading of the Indictment with respect to the count of conspiracy and his ability to effectively prepare his defence.⁷¹² 246. The Prosecution responds that the Trial Chamber found exactly what the Prosecution pleaded. It submits that: (i) paragraph 59 of the Indictment pleaded that Nzabonimana and others conspired to kill Tutsis and that members of the conspiracy included Interim Government Ministers and others;⁷¹³ (ii) paragraphs 60 and 26 of the Indictment pleaded that the conspiracy occurred at Murambi on or about 18 April 1994; and (iii) the Trial Chamber found that an agreement with the intent to destroy Rwanda's Tutsi population in whole or in part materialised on 18 April 1994.⁷¹⁴ Nzabonimana Appeal Brief, paras. 244, 245, 266. See also Nzabonimana Reply Brief, paras. 57, 64. 705 Nzabonimana Appeal Brief, para. 267. (b) Nzabonimana Appeal Brief, para. 267. 707 Nzabonimana Appeal Brief, para. 268. See also Nzabonimana Reply Brief, para. 64. 708 Nzabonimana Appeal Brief, paras. 269, 270. Nzabonimana submits that paragraph 48 of the Indictment fails to plead any actus reus for conspiracy and that, in any event, the Trial Chamber should have set aside this paragraph with respect to the count of conspiracy in view of its vagueness. See item. "o Nzabonimana Appeal Brief, para. 211. See also Nzabonimana Reply Brief, para. 64. 710 Nzabonimana Appeal Brief, para. 264. 711 Nzabonimana Appeal Brief, para. 264. " Nzabonimana Appeal Brief, para. 272. 713 Prosecution Response Brief, para. 156. See also AT.29 April 2014p. 41. 714 Prosecution Response Brief, para. 155. "Prosecution Response Brief, para. 155. 86 Case No.: ICTR-98-44D-A 29 September 2014 (i) ^?

2149/H between Nzabonimana, the Prime Minister, and other Interim Government Ministers. The Prosecution also submits that Nzabonimana's words in Musambira, pleaded in paragraphs 60 and 48 of the Indictment, and his presence at Kambanda's weapons distribution in Nyakabanda, pleaded in paragraphs 60 and 54 of the Indictment, further proved the agreement and Nzabonimana's adherence to it.⁷¹⁷ 247. The Prosecution further responds that, regarding the date pleaded in paragraph 48 of the Indictment, Nzabonimana merely repeats arguments rejected at trial.⁷¹⁸ Finally, the Prosecution submits that it is irrelevant whether the removal of certain local authorities was sufficiently pleaded because Nzabonimana was not convicted on this basis.⁷¹⁹ 248. Nzabonimana replies that if the concise statement of facts does not specify the agreement on which the conspiracy is based, the Prosecutor cannot invoke the general allegations of the "chapeau" paragraph on the count of conspiracy to submit that the said agreement was pleaded.⁷²⁰ He argues that paragraphs 26, 48, or 54 of the Indictment, regarding Murambi, Musambira, or Nyakabanda, respectively, did not provide notice of any agreement. Even that

paragraph 59 of the Indictment, even in conjunction with paragraphs 26, 48, and 54 of the Indictment, was insufficient to notify him of material facts of the conspiracy. Nzabonimana submits that he was not provided notice of the *actus reus* of the crime alleged. 722-249.

Paragraphs 59 and 60 of the Indictment read: CONSPIRACY TO COMMIT GENOCIDE as set out in articles 2(3)(b) and 2(2)(a) and (b) of the Statute of the Tribunal in that during the period between 1 January 1994 and 31 July 1994 'Callixte NZABONIMANA with other persons, including but not limited to Ministers, including those of the Interim Government of 9 April 1994, the leadership of Rwandan Armed Forces (FAR), Gendarmerie, Presidential Guard, the political leaders of the MRND, the MRD-Hutu Power faction, the PL-Hutu Power faction, other Hutu-Power factions of opposition parties, and various local administration officials, conspired to kill or cause serious bodily and mental harm to members of the Tutsi population, with the intent to destroy in whole or in part, a racial or ethnical group. The Prosecutor hereby reiterates and incorporates by reference to PARAGRAPHS 17, 21, 25, 26, 29, 43-45, 48, 49, 51-58 as concisely states the facts to support the charges under his specific count. 250. Paragraph 26 of the Indictment reads: 716 Prosecution Response Brief, para. 156. 717 Prosecution Response Brief, para. 156. 718 Prosecution Response Brief, para. 157. 719 Prosecution Response Brief, para. 157. 720 Nzabonimana Reply Brief, para. 63. 721 Nzabonimana Reply Brief, para. 64. 722 Nzabonimana Reply Brief, para. 64. 87 Case No.: ICTR-98-44D-A 29 September 2014

On or about 18 April 1994, at Muramhi Trading Centre, Callixte NZABONIMANA together, 2748/H with the Prime Minister, and other members of the Interim Government, including Prosper MUGIRANEZA, T82, T83, held a meeting with the Bourgmestres of the communes in Gituranu prefecture. Callixte NZABONIMANA ordered the killing of Bourgmestres and other local officials opposed to the killings. Soon after the meeting, the Bourgmestre of Mugina commune, Callixte NDAGIJIMANA, and two councillors from Nyamabuye commune namely Bernard TWAGIRAMIJKIZA, councillor of Ruli and Martin GASIGWA, councillor of Musiba, were killed by persons including Hutu civilians and Interhamwe. 251. Paragraph 48 of the Indictment reads: In May 1994, Callixte NZABONIMANA was present at the reinstatement ceremony of the Bourgmestre [slc] of Musamhira in Musambira Commune, Gitarama prefecture. During the ceremony, Callixte NZABONIMANA accused the Bourgmestres of not being supportive of the killings of Tutsi, and warned them that they could be replaced by Interhamwe. The Accused refused to denounce the killings of Tutsi. Soon afterwards, the Bourgmestre of Masango, the prefect and other local authorities were removed. 252. Paragraph 54 of the Indictment reads: In May 1994, Callixte NZABONIMANA and Prime Minister Jean KAMBANDA launched the 1st battalion at Kibangu secteur, Nyakubanda Commune, where they distributed weapons and told the gathering that the purpose of the weapons was [slc] to fight the enemy who was the Tutsi. 253. The Trial Chamber found Nzabonimana guilty of conspiracy to commit genocide in relation to an agreement that materialised on 18 April 1994. 723 The Trial Chamber also considered that the conduct of Nzabonimana and Kambanda, after the 18 April 1994 meeting, reinforced the conclusion that Nzabonimana, other ministers, and the Prime Minister entered into an agreement to encourage the destruction of the Tutsi population. This conduct consisted of Nzabonimana's presence when Kambanda distributed weapons in Nyakubanda commune and

Nzabonimana's words at a reinstatement ceremony in Musambira commune.¹²⁵ 254. The Appeals Chamber recalls that the Prosecution is required to state the charges and the material facts underpinning those charges in the indictment with sufficient precision, but not the evidence by which such facts are to be proven.⁷² An indictment which fails to set forth material facts in sufficient detail is defective.⁷² 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.⁷² The Appeals Chamber recalls that a clear distinction has to be drawn between vagueness in an indictment and an indictment omitting certain charges altogether.⁷³ While it is possible to tell Trial Judgement, paras. 1747, 1749, 1758 (on Trial Judgement, para. 1747). Trial Judgement, para. 146. "205" sultrtt, para. 29. "Sees upra, para. 29. "t Biz.i.un14 Appeal Judgement, para. 99; Mugenzai rule Mugiranez. Appeal Judgement, para. 7 |, quoting Ntahakuze Appeal Judgement, para. 65. See also Gacumbitsi Appeal Judgement, para. 123. "Sec, e.g., Bizimurungu Appeal Judgement, para. 46. Mugenzai and Muiraneza Appeal Judgement, para. 117; Ntabukuzi Appeal Judgement, para. 30. 88 Case No. I CTR-98-44D-A 29 September 2014

2147/H 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.⁷³⁰ 255. Conspiracy to commit genocide under Article 2(3Xb) of the Statute has been defined as "an agreement between two or more persons to commit the crime of genocide".⁷³ The agreement constitutes the *actus reus*. "The *actus reus* can be proven by establishing the existence of planning meetings for the genocide, but it can also be inferred, based on other evidence." For instance, the concerted or coordinated action of a group of individuals can constitute evidence of an agreement.⁷³ The Appeals Chamber recalls that when an accused is charged with conspiracy to commit genocide pursuant to Article 2(3Xb) of the Statute, the indictment must plead the following material facts: (i) an agreement between individuals aimed at the commission of genocide; and (ii) the fact that the individuals taking part in the agreement possessed the intent to destroy in whole or in part, a national, ethnic, racial or religious group, as such.⁷³ 256. The Appeals Chamber notes that paragraph 59 of the Indictment pleads that Nzabonimana conspired with other persons to kill or cause serious bodily and mental harm to members of the Tutsi population, with the intent to destroy in whole or in part, a racial or ethnic group. Therefore, both *actus reus* and *mens rea* of the crime were pleaded in paragraph 59 of the Indictment. The Appeals Chamber dismisses Nzabonimana's allegation that he was not provided notice of the crime charged. Considering that the Indictment alleges that Nzabonimana conspired with others, including Ministers of the Interim Government,⁷³⁶ and that paragraph 60 of the Indictment referred to the Murambi meeting to support the charge of conspiracy to commit genocide,⁷³⁷ the Appeals Chamber finds that Nzabonimana was advised that the Murambi meeting would form part of the Prosecution's allegation of conspiracy. 257. Turning to the material facts underpinning Nzabonimana's conviction for conspiracy to commit genocide, the Appeals Chamber dismisses Nzabonimana's argument that the Trial Chamber could not have satisfied itself that the paragraph supported the count of conspiracy to commit genocide contained the names of his alleged co-conspirators. The Appeals Chamber observes that the Trial Chamber noted, as a preliminary matter, that paragraph 59 of the Indictment "See, e.g., Bizimurungu Appeal Judgement, para. 46;

Mugenli and Mugiraneza Appeal Judgement, para. 117; Ntabakuze Appeal Judgement, para. 30. 731 S eromba Appeal Judgement, para. 218; Nahimana et al. Appeal Judgement, para. 894, citing Ntagerura et al. Appeal Judgement, para. 92. "2'S"ro^bi Appeal Judgement, para. 218; Nahimana et al. Appeal Judgement, para. 894. 733 S eromba Appeal Judgement, para. 221; Nahimana et al. Appeal Judgement, para. 896. '30 N ahi.ana et al. Appeal Judgement, para. 897. "t Nahi^oro et al. Appeal Judgement; para. 344. S eea lso Ntagerura et al. Appeal Judgement, para. 92. 736 S eel ndictment. para. 59. 137 See Indictment, para. 60. Case No.: ICTR-98-44D-A 29 September 2014 G'n

sets out the basic elements of conspiracy, but does not in and of itself specify the individuals, 46/1! whom Nzabonimana allegedly conspired. The Trial Chamber concluded, however, that the Indictment read as a whole adequately informs the Defence of the identity of his alleged co-conspirators. The Appeals Chamber agrees that, reading paragraph 59 of the Indictment in conjunction with other paragraphs leading in support of the count of conspiracy, Nzabonimana received adequate notice as to the identity of his alleged co-conspirators, 258. Similarly, the time frame for the agreement indicated in paragraph 59 of the Indictment - between 1 January 1994 and 31 July 1994 - is very broad. However, the Appeals Chamber finds that when reading paragraph 59 of the Indictment in conjunction with paragraphs 60 and 26 of the Indictment, specifying the date of 18 April 1994, Nzabonimana was provided with sufficiently precise notice of the date of the facts underpinning the charge of conspiracy. 259. With respect to Nzabonimana's argument on the circumstances of the conspiracy, the Appeals Chamber recalls that the agreement to commit genocide can be inferred from a concerted or coordinated action. The Appeals Chamber recalls that the Trial Chamber considered the concerted and coordinated action of Nzabonimana and the Ministers of the Interim Government to infer that an agreement with the specific intent to destroy Rwanda's Tutsi population in whole or in part materialised on 18 April 1994. 260. The Appeals Chamber will examine whether paragraph 59 of the Indictment, read in conjunction with paragraph 26 of the Indictment, clearly alleges concerted or coordinated action as a basis for inferring conspiracy between Nzabonimana and his co-conspirators. 260. Paragraph 26 of the Indictment alleges that Nzabonimana and the other conspirators held a meeting at Murambi, where Nzabonimana ordered the killing of bourgmestres and other local officials opposed to the killings of Tutsis. However, the Indictment fails to plead a concerted or coordinated action of Nzabonimana and his co-conspirators. While paragraph 26 of the Indictment clearly states Nzabonimana's conduct, it merely alleges the presence of his co-conspirators without setting out their conduct. The fact that paragraph 59 of the Indictment pleads a general agreement and that paragraph 60 of the Indictment refers to paragraph 26 of the Indictment to underpin the charges does not resolve his lack of precision in pleading the conduct of his co-conspirators. The Trial Judgement, para. 1143. The Trial Judgement, para. 1143. to " Trial Judgement, para. 1141. 90 Case No.: ICTR-98-44D-A 29 September 2014

2145/H Appeals Chamber therefore concludes that the Indictment is defective as it fails to plead a material fact underpinning the charge of conspiracy with the required precision. Tal 261. The Appeals Chamber recalls that defects may be cured if the Prosecution provides the accused with timely, clear, and consistent information detailing the factual basis underpinning the charges. Tal 262. In determining whether a defective indictment was cured, the Appeals Chamber has previously looked at information provided in the Prosecution Pre-Trial Brief, its opening statement, as well as the witness statements annexed to the Prosecution Pre-Trial Brief. Tal 262. The Appeals Chamber finds that the Prosecution Pre-Trial Brief provided Nzabonimana with further information on his alleged conduct at the Murambi meeting and the alleged conduct of his co-conspirators. Under the subheading "Activities of the Accused in the Context of the Prevailing Situation in Rwanda", the Prosecution referred specifically to the Murambi meeting. Tal 263. The Prosecution alleged that "between 9 April and 17 July 1994, the Accused was a member of the Interim Government sworn in on 9 April 1994. This Government constituted, planned, orchestrated, pursued and/or implemented a scheme or strategy of killing Tutsi", and that "[t]he Accused voluntarily joined the Interim Government and knowingly participated in and directly and substantially contributed to the realization of the conspiracy to eliminate Tutsi". Tal 264. The Prosecution also declared that it: "... will adduce evidence to show that not only did the Accused remain a member of the Interim Government but he participated in various meetings with other members of the Interim Government in Gitarama and elsewhere in order to encourage the killing of Tutsi thereby showing his support for the Interim Government's complicity in these massacres." It then went on to describe the course of events chronologically and argued that "on or about the 18 April 1994, during a meeting of the Interim Government at Murambi, Gitarama, with local authorities, Ministers including the Accused Mr. Callixte Nzabonimana, incited the killings of Tutsis" and "[t]hey issued threats to all local authorities who were not cooperating with the Interahamwe". Tal 265. The Prosecution also announced that: "It is However, the Appeals Chamber considers that at this failure to plead a material fact with the required precision either led to a radical transformation of the Prosecution's case against Nzabonimana or did it support, on its own, a separate charge, as Nzabonimana seems to suggest with his mention of "reviving conspiracies" (see Nzabonimana Appeal Brief, para. 260. See also Nzabonimana Notice of Appeal, para. 5.5.1(3)). 10' See, e.g., Bizimungu Appeal Judgement, para. 46; Mugenzi and Mugiraneza Appeal Judgement, para. 117; Ntabakuze Appeal Judgement, para. 30; 'ot Si^bo Appeal Judgement, para. 64. See also Simii Appeal Judgement, para. 24; Muhimana Appeal Judgement, paras. 2.201. 7a Prosecution Pre-Trial Brief, paras. 31, 32. 7" Prosecution Pre-Trial Brief, para. 27. 7a Prosecution Pre-Trial Brief, para. 30. 7a7 Prosecution Pre-Trial Brief, para. 31. 91 Case No.: ICTR-98-44D-A 29 September 2001 (14 t)-,

Specifically, the Prosecutor will adduce evidence to prove that during a meeting at Murambi, -2144/H Gitarama, which took place on 18 April 1994 the Accused supported the massacres committed by Interahamwe in Gitarama and demanded that "people be killed and those who were opposed to the killing of Tutsi be sacked. He publicly denounced those who were opposed to the massacres and threatened them with unspecified action. Tal 268 The Appeals Chamber finds that this information specified concerted and coordinated action between Nzabonimana and his alleged

co-conspirators, namely that he and other ministers jointly incited the killings of Tutsis and threatened local authorities opposed to the killings. The chart of witnesses annexed to the Prosecution Pre-Trial Brief also provide clear and consistent information of Nzabonimana's conduct and the conduct of other ministers at the Murambi meeting. On particular, the summaries of Witnesses C NAA's and CNAO's expected testimonies, both linked to "Conspiracy" for the "offence charged" and paragraph 26 of the Indictment, clearly set forth a concerted action of threatening the bourgmestre. Witness C NAA was expected to testify about "a security meeting of 18 April 1994 which took place at Murambi centre, chaired by Prime Minister Jean Kambanda and attended by members of the [Interim Government], Bourgmestres and other authorities. The summary further specifies: "Among the speakers were the [Prime Minister], Justin Mugenzi and [the] Accused. The latter two made some threats to the local authorities who were accused of supporting the RPF". The summary of Witness C NAO's expected testimony specifies that there were two meetings at Murambi on 18 April 1994, "[t]he first meeting was attended by the [Prime Minister], [the] Accused, J. Mugenzi, Pauline (Nyiramasuhuko), other ministers" and others. It then explicitly provides: "[The] Accused, Pauline and other speakers criticized the bourgmestres who were not assisting killers. They said that they should assist the killers and if they are unable to do so they should not obstruct the killers". Furthermore, in its Opening Statement, the Prosecution set out the allegation of an Agreement in general terms, and specifically alleged that "Nzabonimana conducted many public attacks. In the Prosecution Pre-Trial Brief, para. 32 (internal reference omitted). The Appeals Chamber notes that all those specifications were contained in the first version of the Prosecution's Pre-Trial Brief dated 12 February 2009, nine months before the beginning of the Trial. See The Prosecution's Opening Statement, Callixte Nzabonimana Case No. ICTR-98-44-1P, Prosecution's Pre-Trial Brief, 12 February 2009 (confidential), paras. 26, 30, 33, 34, 54, 62. The Prosecution made its opening statement on 9 November 2009. The Appeals Chamber therefore considers that the relevant information detailing the factual basis underpinning the charges was provided timely. The Prosecution Pre-Trial Brief, Annexure A (Summary of the Facts on which Witness Will Testify), pp. 1, 8, 9, 13, 14. The Prosecution Pre-Trial Brief, Annexure A, Witness C NAA' p. 1, Witness C NAO' pp. 8, 9. The Prosecution Pre-Trial Brief, Annexure A, Witness C NAA' p. 1. The Prosecution Pre-Trial Brief, Annexure A, Witness C NAA, p. 1. The Prosecution Pre-Trial Brief, Annexure A, Witness C NAO' pp. 8, 9. The Prosecution Pre-Trial Brief, Annexure A, Witness C NAO' p. 9. "Opening Statement, 9 November 2009, p. 11: "The interim government, which was comprised of ethnic Hutus, passionately joined in the conspiracy to kill Tutsis and moderate Hutus"; Opening Statement, 9 November 2009, 92 Case No. ICTR-98-44D-A 29 September 2014, ¶ 2143/H meetings in which he instructed official bourgmestres, gendarmes, Hutu civilians, Interahamwe, communal policemen to kill Tutsi civilians seeking places of refuge. The statement and that "on 18h of April 1994 at Murambi trading centre, Callixte Nzabonimana, together with other members of the interim government, ordered the killing of bourgmestres and other local officials opposed to the killings." The latter statement clearly alleged a concerted action with other members of the Interim Government to order the killing of officials opposed to the killings of Tutsi population. 265. Although the Indictment was defective by not pleading with sufficient

precision the conduct of the alleged co-conspirators at the Murambi meeting, its defect was subsequently cured by the provision of timely, clear, and consistent information. 266. In view of the Trial Chamber's finding that the conspiracy "materialised on 18 April 1994" and that the conduct of Nzabonimana and Kambanda after the 18 April 1994 meeting reinforced this conclusion, the Appeals Chamber considers that any defect in paragraphs 48 and 54 of the Indictment would not invalidate the Trial Chamber's decision to convict Nzabonimana for the crime of conspiracy to commit genocide in relation to the Murambi meeting and therefore does not consider it necessary to address the arguments in relation to those paragraphs. 267. The Appeals Chamber finds that Nzabonimana was made aware that he could be held liable for conspiracy to commit genocide in relation to the Murambi meeting, and that he was afforded the opportunity to defend himself in this respect. Accordingly, the Appeals Chamber rejects Nzabonimana's argument that he lacked notice of the crime of conspiracy to commit genocide.

(b) Crime of Direct and Public Incitement to Commit Genocide 268. Nzabonimana submits that the Trial Chamber erred in fact and in law in convicting him beyond the scope of the Indictment when it found simultaneously that he issued an order at the Murambi meeting and a threat, jointly with the ministers present. 269. Nzabonimana argues that, while it is clear from paragraph 26 of the Indictment that he was charged with issuing an order, the Trial Chamber ruled ultra petita finding that he issued threats jointly with the ministers. 270. The Prosecution responds that there is no discrepancy between the conduct charged and conduct found, pointing that the Trial Chamber found exactly what was pleaded: "Nzabonimana p. 14: "Instead of preventing genocide, the Accused conspired with others to kill Tutsis", "Now let's turn to the conspiracy to commit genocide. In this trial, Your Honours, you will hear evidence of a conspiracy to kill Tutsis in which the Accused agreed with his supporters to destroy the Tutsi population[...]" 7th Opening Statement, 9 November 2009 p. 14, 15. 758 Opening Statement, 9 November 2009 p. 15, 16 (emphasised). " Trial Judgement, para. 1741. 7m Nzabonimana Appeal Brief, paras. 44-252. See also Nzabonimana Reply Brief, paras. 57-61. Case No.: ICTR-98-44D-A 29 September 2014

ordered the killing of bourgmestres and other local officials opposed to the massacre of Tutsis/H The Prosecution further considers that since the order was meant to threaten bourgmestres, the Trial Chamber also referred to the order as a threat. 270. Paragraph 26 of the Indictment alleges that during a meeting with the bourgmestres of the communes in Gitarama province Nzabonimana "ordered the killing of Bourgmestres and other local officials opposed to the killings". The Appeals Chamber notes that paragraph 26 of the Indictment does not contain the word "threat". However, Nzabonimana's alleged criminal conduct underpinning his conviction of direct and public incitement was clearly set out. Whether his conduct constituted merely an order or also a threat is a question of evidence and the Trial Chamber's findings in this regard do not render the Indictment defective. 271. Nzabonimana was notified of his criminal conduct comprised of his utterances. 271. The Appeals Chamber therefore rejects Nzabonimana's argument that the Trial Chamber convicted him beyond the scope of the Indictment when it found simultaneously that he issued an order and a threat at the Murambi meeting. (c) Conclusion 212. For the foregoing reasons, the Appeals Chamber dismisses Nzabonimana's

arguments in relation to notice under his Fifth Ground of Appeal. 2. Assessment of Evidence 273. Under his Fifth Ground of Appeal, Nzabonimana makes various challenges to the Trial Chamber's assessment of the Prosecution evidence with respect to fabrication of evidence, and to events at Rutobwe, Murambi, and Musambira.⁷⁶¹ In particular, Nzabonimana submits that the Trial Chamber erred in assessing the credibility of Prosecution Witnesses C NAA and CNAC and in ⁷⁶² Nzabonimana Appeal Brief, paras. 244, 245. ⁷⁶³ Prosecution Response Brief, para. 154. See also AT.29 April 2014 p.40. ⁷⁶⁴ Prosecution Response Brief, para. 154. In its factual findings, the Trial Chamber concludes that during the meeting held at Murambi on 18 April 1994, Nzabonimana "ordered the killing of bourgmestres and other local officials opposed to the massacre of Tutsis" (see Trial Judgement, para. 1179). It further found that "it has been proven that the Ministers present at the meeting, including Nzabonimana, used this meeting to threaten the bourgmestres" (see Trial Judgement, para. 1179). In its legal findings on the crime of direct and public incitement to commit genocide, the Trial Chamber holds that "Nzabonimana ordered the killings of bourgmestres and other local officials opposed to the massacre of Tutsis during the meeting" (see Trial Judgement, para. 1169) and concludes that "Nzabonimana's speech, which consisted of an explicit threat to kill persons opposing the massacre of Tutsis, constituted a direct call to commit genocide" (see Trial Judgement, para. 1111). Nzabonimana's argument on the alleged error of the Trial Chamber in finding that he ordered the killings (see Nzabonimana Appeal Brief, para. 247) will be examined in another section. See *infra*, paras. 339, 345. ⁷⁶⁵ Nzabonimana Notice of Appeal, paras. 5.1.1, 5.2.1.1, 5.2.1.2, 5.2.2; Nzabonimana Appeal Brief, paras. 170-180, 196-247. ⁷⁶⁶ 1994 Case No.: ICTR-98-44D-A 29 September 2001.

⁷⁶⁷ 2014/H finding corroboration between them. ⁷⁶⁸ Nzabonimana further challenges the assessment of the Defence evidence with respect to fabrication of evidence and to events at Rutobwe and Murambi. ⁷⁶⁹ 274. The Appeals Chamber will examine in turn Nzabonimana's arguments on: (i) fabrication of evidence; (ii) the Trial Chamber's alleged prejudice in its assessment of evidence; and (iii) the Trial Chamber's assessment of specific events. ⁷⁷⁰ (a) Fabrication of Evidence (i) Alleged Errors in Assessing Prosecution Evidence 275. The Trial Chamber observed that Witnesses C NAA and CNAC were imprisoned at the time of their testimonies, that both held positions of authority in the prison system, and that both acknowledged their influence within the prison structure and over fellow inmates. ⁷⁷¹ The Trial Chamber found that "the Defence claim that Witnesses C NAA and CNAC received their leadership positions in exchange for their testimony to be mere speculation," ⁷⁷² 70a and found that the evidence did not "substantiate the claim that Witnesses C NAA and CNAC fabricated their testimony against Nzabonimana." ⁷⁷³ 276. Nzabonimana submits that the Trial Chamber failed to exercise the extreme caution required to assess Witnesses C NAA and CNAC as both were detained accomplices with interests to lie because of direct benefits they gained from their testimonies. ⁷⁷⁴ He contends that no reasonable trier of fact could have failed to question whether there was a link between the circumstances of Witnesses C NAA and CNAC and the content of their testimonies against Nzabonimana. ⁷⁷⁵ In this regard, Nzabonimana argues that the Trial Chamber dismissed the impact of their circumstances on their testimonies solely because the Defence presented no direct evidence that Witness C NAA, in

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 ndert his section,t he AppealsC hamberw ill only addressN zabonimana'sc hallengesre latedt o
 Defence WitnessT 24's credibility and the allegedc orroborativee videnceo f duressa s it has
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 rgumentf rom the preliminaryi ssues ectiono f his AppealB rief, in relation to the Trial
 Chamber'sa lledged inconsistenta dmission of the testimonieso f Prosecutionw itnesses(see
 NzabonimanaA ppeal Brief, paras.l '7, 19). Nzabonimanafa ils to developh is argumenta nd fails to
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 Judgementp, arw. 224, 225, 228. The Trial Chambern oted that WitnessC NAA testifiedt hat at
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 paras.1 70-180S. eea lso Nzabonimana Noticeo f Appealp, ara.6.1(3). 773 NzabonimanAap pealB
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particular, became capita gdndral in exchange for his testimony before the Tribtnaflfl&/H
 Nzabonimana's view, the Trial Chamber possessed evidence from the Defence and from Witness
 CNAA that this witness and Witness CNAC received exorbitant and abnormal powers from the
 Rwandanj udicial authorities.TTs 217. Nzabonimana further submits that the Trial Chamber
 made a fundamental factual error when stating that Witness CNAA becamec apita gēndral in
 2003, before his 2005 testimony, while he testified in 1997in theA kayesu trial.776H e also
 submitst hat the Trial Chamberf ailed to note that Witness CNAA lied when stating that he was
 capita gdndral for less than a year, while evidence showsh e held the post for a longerp eriod.777
 278. The Prosecutionr espondst hat there is no contentient hat WitnessesC NAA and CNAC held
 positions of authority in the prison system and that the Trial Chamber reasonablyf ound the
 claim, that they received their positions in exchange fbr testimony, to bc mere speculation.tt* The
 Prosecutions ubmits that Nzabonimanas imply repeatsh is unsuccessful rial argumentsa nd
 ignores the Trial Chamber's findings.77eIn any event, the Prosecutions ubmits that encouragings
 omeonet o testify is entirely different from bribing or forcing someoneet o make f'alsea
 ccusations.Tso 279. The Prosecution further responds that nothing indicates that the positions of
 WitnessesC NAA and CNAC were abnormal, or that thcse witnesses abused their authority.Tsl
 According to the Prosecution,t here is also no indication that Witness CNAA provided incorrect
 information about the duration of his position as capitct gdndral and that any conf'usionb etween
 WitnessesC NAA's and CNAC's testimoniesc ould be explainedb y the fact that the title, capita
 gdndral, was changedt o "executive secretary"." 280. The Appeals Chamber notes that the Trial
 Chamber examined at length each allegation on fabrication of evidence that the Defence had
 raised.783R ecalling that detained or accomplice witnessesm ay be motivated to testify falsely lbr
 a number reasons,t he Trial Chamber considered that, as detainedw itnesses,W itnessesC NAA's

and CNAC's testimonies would be treated with 774 Nzabonimana Appeal Brief, para. 171, referring to Trial Judgement, para. 229. "5 Nzabonimana Appeal Brief, para. 172. "Nzabonimana Appeal Brief, para. 174. 77? Nzabonimana Appeal Brief, para. 176. 778 Prosecution Response Brief, para. 159. 77u Prosecution Response Brief, paras. 158, 159. "Prosecution Response Brief, paras. 158, 159. The Prosecution refers to the availability of incentives to provide evidence such as in Rule 101(B)(ii) of the Rules. See idem. Trial Prosecution Response Brief, para. 159. 782 Prosecution Response Brief, para. 163, referring to Trial Judgement, para. 228. "In its section on fabrication of evidence, the Trial Chamber examined allegations that: (i) Rwandan Authorities and Witness CNAI recruited witnesses to testify falsely against Nzabonimana; (ii) prisoners fabricated evidence against 96 Case No.: ICTR-98-44D-A 29 September 2014 R')

2139/H appropriate caution. 78T4 the Trial Chamber also examined specific allegations that Witnesses CNAI and CNAC fabricated their evidence in order to receive leniency and benefits in prison. 785 It heard extensive evidence on the role of the captain, 6ndral and the resultant authority of that position in prison. 78I6 it then found that: Having considered the totality of the evidence, however, the Chamber finds that the evidence does not substantiate the claim that Witnesses CNAI and CNAC fabricated their testimony against Nzabonimana. Nevertheless, the Chamber will consider their testimony with appropriate caution based on individual factors relevant to each witness which are considered in other sections of this Judgement. 787 281. In rejecting as speculative the Defence claim that Witnesses CNAI and CNAC received their leadership positions in exchange for their testimonies, the Trial Chamber considered the following evidence: (i) Witness CNAI testified for the Prosecution in the Bizimungu et al., and Karemera et al., trials in 2005 and 2007 respectively, after he became captain and 6ndral in 2003; (ii) the hearsay and vague nature of testimonies from Defence witnesses; and (iii) Witness CNAI denied that he received special treatment in prison as a result of his testimony. 78N8 Nzabonimana therefore fails to demonstrate that the Trial Chamber rejected the Defence claim solely for the lack of direct evidence. 282. The Appeals Chamber observes that the Trial Chamber found it unquestionably established that Witnesses CNAI and CNAC held positions of authority in the prison system and that both acknowledged their influence in the prison structure and over fellow inmates. Therefore, the Trial Chamber duly considered the positions of authority and the influence of both witnesses in prison. The Appeals Chamber also notes that, on appeal, Nzabonimana points to Defence evidence that the Trial Chamber already considered. As to Nzabonimana's argument that Witness CNAI's written evidence showed an exchange and benefits scheme for his testimony, the Appeals Chamber observes that the Trial Chamber duly considered the evidence in its summary of Witness CNAI's testimony. The Trial Chamber also noted that, in his testimony, Witness CNAI denied that the Rwandan Government forced him to testify and stated that the government merely authorised him Nzabonimana; and (iii) there was systematic "activism against Nzabonimana" in Rwanda. See Trial Judgement, paras. 93-25.7. * Trial Judgement, paras. 226, 231. See also ibid., paras. 1064, 1211, 104, 80. ttt Trial Judgement, paras. 224-231. See Trial Judgement, para. 231. ttt Trial Judgement, para. 231. 788 Trial Judgement, para. 229. tte Trial Judgement, para. 228. See Trial Judgement, paras. 193-200 (Witness I), 203-213 (Witness T109), 214-218 (Witness T110), 219-221 (Witness Batarad), para. 231, fn. 328. 7er

See Nzabonimana Appeal Brief, para. 177. 'e' Trial Judgement, paras. 162, 163. 97 Case No.: I CTR-98-44D-A 29 September 2014

to leave the country and testify. Accordingly, the Appeals Chamber considers that Nzabonimana, without showing any error, repeats the same allegations of fabrication from trial, and merely disagrees with the Trial Chamber's finding that claims of Witnesses NAA and CNAC receiving leadership positions in exchange for testimonies were speculative. 283. Finally, the Appeals Chamber dismisses Nzabonimana's submission that the Trial Chamber made a "fundamental factual error" on when Witness CNAA became a pitagendral. Considering the confusing and vague nature of Nzabonimana's argument, and that the Trial Chamber was aware of Witness CNAA's testimony in 1997 in the Akayesu trial. The Appeals Chamber summarily dismisses Nzabonimana's argument in this regard. The Appeals Chamber also finds that the exact duration of Witness NAA's position of authority in prison, and any inconsistencies in his evidence on this matter, are not determinative of the Trial Chamber's assessment of his credibility. As already discussed, the Trial Chamber considered that Witnesses NAA and CNAC held positions of authority in the prison system. Therefore, despite these positions, it reasonably found the allegation of fabrication against these two witnesses insufficiently substantiated. On this basis, the Appeals Chamber considers that the exact duration of their position of authority is immaterial to the Trial Chamber's determination of evidence of fabrication. 284. In light of the foregoing, the Appeals Chamber finds that Nzabonimana fails to demonstrate that no reasonable trier of fact could have concluded, as the Trial Chamber did, that "the Defence claim that Witnesses NAA and CNAC received their leadership positions in exchange for their testimony to be mere speculation". The Appeals Chamber further finds that the Trial Chamber reasonably determined that the evidence did not substantiate the claim that Witnesses NAA and bNnC fabricated their testimony against Nzabonimana. Nzabonimana's arguments in this respect are accordingly dismissed. (ii) Defence Evidence 285. Nzabonimana submits that the Trial Chamber erred in finding that the credibility of Defence Witness T24 was undermined because he admitted to lying to the Prosecution. In particular, Nzabonimana submits that the Trial Chamber: (i) could not consider Witness T24's admission to - "Trial 7qt- , Judgment, para. 163. 'oo S' e Nzabonimana Appeal Brief, para. 174. 7es See Trial Judgement, para. 1483S. eeu lsoi bid., fn. 243. 7e6 T he Appeals Chamber recalls that it cannot be expected to consider a party's submissions in detail if they are obscure, contradictory, vague, or sufficiently from other formal and obvious insufficiencies. See supra, para. 12. to 7 Trial Judgement, para. 228. t" Trial Judgement, para. 229. t" Trial Judgement, para. 231. 800 Nzabonimana Appeal Brief, para. 181 (French original). 98 Case No.: I CTR-98-44D-A 29 September 2014 Q\

2137/H undermine his credibility because the Prosecution investigators used unacceptable methods to obtain his testimony against Nzabonimana and that he feared repercussions; 801 ii i; distorted Witness T24's testimony to find that the witness provided contradictory accounts on whether he gave his 2008 statement under pressure; and (iii) erred in determining that Witness T24 was free to testify and suffered no adverse consequences as a Defence witness. 80N3z abonimana additionally submits that the Trial Chamber restricted its assessment of duress to the testimonies of Defence Witness Mporanzi and Witness T24 and failed to consider evidence corroborating their

claims of duress.^{80a} 286, The Prosecution responds that Nzabonimana's implied re-argument misstates the evidence.⁸⁰⁵ It submits that: (i) Nzabonimana ignores that several witnesses detained in Rwanda, including Witness T24, testified that they suffered no consequences by testifying for the Defence;^{806a} and (ii) Nzabonimana's argument that Witness T24 was forced to testify for the Prosecution fails because the witness ultimately testified for the Defence and admitted that he suffered no repercussions.⁸⁰⁷ Finally, the Prosecution submits that the Trial Chamber considered the evidence of duress, to which Nzabonimana refers, but it either disbelieved or found the evidence irrelevant.⁸⁰⁸ 287. The Appeals Chamber observes that the Trial Chamber explicitly considered Witness T24's testimony that: (i) Prosecution investigators, especially Djibo Moumouni, approached him several times and also approached the director of the Gitarama prison, who asked Witness T24 whether he refused to testify against Nzabonimana;⁸⁰¹ (ii) the witness felt pressured and spoke to Investigator Moumouni to avoid being labelled a "revisionist" and suffering negative consequences from prison authorities;⁸⁰² (iii) he obtained information regarding Nzabonimana's activities in 1994 from a fellow inmate, and not knowing if the information was true, conveyed the information to Prosecution investigators;⁸⁰³ (iv) he signed a statement in October 2008, which summarised discussions between Witness T24 and Investigator Moumouni;⁸⁰⁴ (v) he acknowledged making the statement of his own free will and did not act under the duress from anyone whatsoever;⁸⁰⁵ and 801 Nzabonimana Appeal Brief, paras. 191, 192. See also Nzabonimana Notice of Appeal, para. 1.1(3),(4); Nzabonimana Appeal Brief, paras. 2, 23; AT. 29 April 2014 para. 50. 8@ Nzabonimana Appeal Brief, paras. 193, 194. 803 Nzabonimana Appeal Brief, para. 195. 8s Nzabonimana Appeal Brief, paras. 182, 183. See also Notice of Appeal, para. 4.1.5(6). 80s Prosecution Response Brief, para. 164. sffi Prosecution Response Brief, para. 168. 807 Prosecution Response Brief, para. 171. 808 Prosecution Response Brief, paras. 165, 166. 80e See Trial Judgement para. 181, 182, 233. tlo Trial Judgement para. 183, 233. ttt Trial Judgement para. 184. 8lt Trial Judgement para. 184. 813 Trial Judgement para. 184, 235. 99 Case No.: ICTR-98-44D-A 29 September 2014 para. 1

(vi) the witness confirmed that since his acceptance to cooperate with the Defence, he has suffered no constraints, duress, or pressure in prison.⁸⁰⁶ 288. Given the above, the Appeals Chamber notes that the Trial Chamber explicitly considered the activities of Prosecution investigators leading up to Witness T24's October 2008 statement. It is unclear, from Nzabonimana's argument, how the Trial Chamber erred, how the activities of Prosecution investigators, or how the witness's fears would undermine the Trial Chamber's finding that Witness T24 explicitly admitted to providing false information to the Prosecution, and that this admission seriously undermined the witness's credibility.⁸⁰⁷ Beyond disagreeing with the Trial Chamber's assessment, Nzabonimana fails to demonstrate how the Trial Chamber erred. 289. With respect to Nzabonimana's argument that the Trial Chamber distorted Witness T24's testimony, the Appeals Chamber notes the Trial Chamber's reference to Witness T24's statement that: "[a]s far as the declaration- the statement is concerned, I did it of my own free will. I did not act under any duress from anyone whatsoever".⁸⁰⁸ Having reviewed Witness T24's testimony, the Appeals Chamber notes that the witness seemed to be responding to a question regarding a discrete portion of his October 2008 statement, rather than characterising the entire statement as made of his own free will.⁸⁰⁹ The

Appeals Chamber finds that no reasonable trier of fact could have relied on this part of Witness T24's testimony to determine that the entire October 2008 statement was not made under pressure. However, the Appeals Chamber is not convinced that this error affects the Trial Chamber's assessment that Witness T24's credibility was seriously undermined by his admission to making false statements, and that appropriate action would be applied to detained witnesses, such as Witness T24. 81e 290. In support of the argument that the Trial Chamber failed to consider other evidence of duress, Nzabonimana points to numerous paragraphs from the Trial Judgement that summarise witness testimonies. 20 The Appeals Chamber notes that the Trial Chamber considered his evidence. 21 Although Witness T24's fears might have been a possibility, Nzabonimana fails to show that the Trial Judgement, paras. 89, 238. 24 The Appeals Chamber notes that the Trial Chamber did not find Witness T24 generally not credible but exercised caution in its assessment of his evidence. See, e.g., paras. 358-362. 25 The Trial Judgement, para. 35, referring to Witness T24, T. 21 April 2010 p. 50, 61 (closed session). 26 Witness T24, T. 27 April 2010 p. 50 (closed session). 27 The Trial Judgement, para. 234. 28 The Trial Judgement, para. 239. 29 See Nzabonimana Appeal Brief, paras. 182, 183. 30 See Nzabonimana Appeal Brief, paras. 182, 183. 31 Nzabonimana points to the following as evidence corroborating duress that Witnesses Mporanzi and T24 confronted and that the Trial Chamber did not consider: (i) the evidence presented on Nyabikenke corroborated the statements of witnesses (see ibid., para. 183, referring to Trial Judgement, paras. 120-135, 181-187); (ii) its own findings that detainee who did not confess because of discrimination, or that some witnesses fabricated confession in order to be released (see ibid., para. 183, referring to Trial Judgement, paras. 236, 231); (iii) Witness CNAC testified to having been unlawfully detained and to having disappeared (see ibid., para. 100 Case No.: ICTR-98-44D-A 29 September 2010 14

2135/H explain how this undermines the Trial Chamber's assessment of Witness T24's credibility. Nzabonimana merely offers a different interpretation without showing how the Trial Chamber erred in its assessment. 291. For the foregoing reasons, the Appeals Chamber finds that Nzabonimana fails to demonstrate that the Trial Chamber erred in finding that Witness T24's credibility was undermined because he admitted to lying to the Prosecution. He also fails to demonstrate that the Trial Chamber committed an error in assessing Witness T24's credibility that would occasion a miscarriage of justice. (b) Piece meal Approach 292. Nzabonimana submits that instead of considering the accumulated inconsistencies between Witnesses CNAA and CNAC, the Trial Chamber erred by assessing evidence relating to paragraphs 24, 26, and 48 of the Indictment separately. 293 He contends that, by splitting up the testimonies of Witnesses CNAA and CNAC into the events of Rutobwe, Murambi, and Musambira, the Trial Chamber failed to draw inferences from their inconsistencies which should have led it to exclude their testimonies. 294 In particular, he argues that the allegations set forth in paragraph 24 of the Indictment cannot be assessed separately from those in paragraph 26 of the Indictment, which relate to 18 April 1994. 295 He argues that a holistic assessment of the evidence would have demonstrated that Witnesses CNAA and CNAC, who both testified on events in Rutobwe and Murambi, were mutually inconsistent, notably on what Witness Mporanzi told them on 18 April 1994 with respect to the situation of the prisoners in Rutobwe, 296 297. The Prosecution

responds that the Trial Chamber's assessment of Witnesses CNA and CNAC was not piecemeal as the Trial Chamber considered all aspects of their testimony and was correct in finding that they corroborated each other in key respects.⁸²⁶ 294. The Appeals Chamber fails to see how the Trial Chamber erred by separating its evaluation of the allegations and of the evidence adduced in relation to Indictment paragraphs. The Appeals Chamber, referring to Trial Judgement, para. 169); (iv) Witness T24 recalled that he was beaten while in detention (see *ibid.*, para. 183, referring to Trial Judgement, para. 192); (v) Witness T133 was told by Witness CNAC that a case was fabricated against Witness CNAC (see *ibid.*, para. 183, referring to Trial Judgement, para. 202); and (vi) witnesses spent years in prison without trial, some were later acquitted, and after serving their sentences faced new charges (see *ibid.*, para. 183, referring to, *inter alia*, Trial Judgement, paras. 183, 233-185-190). 822 Nzabonimana Appeal Brief, para. 232. 823 Nzabonimana Appeal Brief, paras. 191, 198. 824 Nzabonimana Appeal Brief, para. 198. 825 Nzabonimana Appeal Brief, para. 198. Nzabonimana's submission that the Trial Chamber overlooked the contradiction between Witnesses CNA and CNAC on the issue of the prisoners' examination below. See *infra*, paras. 296-311. 826 Prosecution Response Brief, para. 174. 101 Case No.: ICTR-98-44D-A 29 September 2014 §a*

Chamber notes that having determined that the allegations of evidence fabrication in C134/H undermine the credibility of Witnesses CNA and CNAC,⁸²⁷ the Trial Chamber considered their evidence in relation to the events they testified to, recalling each time that as detained witnesses, it has treated their testimony with appropriate caution.⁸²⁸ The Appeals Chamber finds no error in this approach. The Appeals Chamber further finds that Nzabonimana fails to demonstrate that the Trial Chamber did not assess cumulatively the inconsistencies between Witnesses CNA and CNAC. The Appeals Chamber will examine below Nzabonimana's arguments on the assessment of the credibility of Witnesses CNA and CNAC in relation to the events at Rutobwe, Murambi, and Musambira. 295. The Appeals Chamber finds that Nzabonimana fails to demonstrate an error in the Trial Chamber's approach to considering the evidence of Witnesses CNA and CNAC. (c) Rutobwe 296. The Trial Chamber found that in the days leading up to 18 April 1994, Nzabonimana encouraged the killing of Tutsis by causing the release of killers of Tutsis, who had been imprisoned by Bourgmestre Jean-Marie Vianney Mporanzi, in Rutobwe commune.*" The Trial Chamber mainly relied on Witnesses CNA and CNAC who provided evidence that Nzabonimana caused the release of killers and threatened Bourgmestre Mporanzi for having arrested them.⁸³⁰ It found however, that based on the lack of specific evidence of the crimes committed by the prisoners it could not conclude that Nzabonimana's forcible release of the Rutobwe commune prisoners substantially contributed to any of the ensuing killings or other crimes.⁸³¹ Accordingly, the Trial Chamber did not convict Nzabonimana of genocide based on this event.⁸³² The Appeals Chamber has upheld Nzabonimana's acquittal in respect of this charge.⁸³³ 297. Accordingly, the Appeals Chamber declines to consider Nzabonimana's submissions related to the Rutobwe event,⁸³⁴ except for challenges related to the assessment of the credibility of 827 See Trial Judgement, paras. 1065, 1143, 1211, 1448, 1481. The Appeals Chamber recalls that the Trial Chamber conducted an overall credibility assessment in its response to Nzabonimana's contention that Witnesses CNA and CNAC fabricated their evidence. See Trial Judgement, p

aras.2 24-231. 828See Trial Judgment, paras. 1045-1057, 1064-1071 for the release of Rutobwe communep risoners; Trial Judgment, paras. 1080-11051, 142-11521, 159-1169, 1182-1183 for the Murambi meeting; Trial Judgment, paras. 1196-1223 for the reinstatement ceremony of the Bourg, mestreo f Musambira Commune. See Lsoi bid., para. 226. "Trial Judgmentp, ara. 1076. tt'Trial Judgmentp, ara. 1075. *' Trial Judgment, para. 1123. "t Trial Judgment, para. 1723. 8t3 See infra, paras. 486-495. 8ra Specifically, the Appeals Chamber declines to consider Nzabonimana's submissions regarding Defence Witnesses Mporanzi and T24., See Nzabonimana Appeal Brief, paras. 202, 206 (Defence Witness Mporanzi), para. 205 (Defence Witness T24). t02 Ca.seN o.: ICTR-98-44D-A 29 September 2014

2133/! Witnesses C NAA and CNAC. 83t Th" Appeals Chamber will examine such challenges for their potential impact on the overall credibility and reliability of Witnesses C NAA and CNAC, 836w hom the Trial Chamber relied upon for Nzabonimana's convictions in relation to the events at Murambi. (D Witness C NAA's Credibility 298. Nzabonimana submits that the Trial Chamber failed to properly assess Witness C NAA's credibility arguing that the witness adjusted his account in each trial in which he testified. 837 Nzabonimana contends that in the Karemera et al. trial Witness C NAA testified that during the first Murambi meeting on 18 April 1994, Bourgmeister Mporanzi complained to the Prime Minister, in the presence of Government officials and other authorities, that Nzabonimana had released prisoners in Rutobwe commune and slapped him, an incident which Witness C NAA only confirmed during cross-examination in the present trial. 838 Nzabonimana argues that the Trial Chamber erred by excluding this major omission and by finding that it was "inconsequential" as these facts were both crucial and unforgettable. 83e 299. Nzabonimana further argues that the Trial Chamber failed to properly assess Witness C NAA's testimony that Bourgmeister Mporanzi complained on two occasions: during a meeting at the Gitarama prefecture office prior to 18 April 1994, and during the first meeting at Murambi on 18 April 1994. ooH e submits that the Trial Chamber overlooked the fact that this testimony contradicts Witness CNAC's testimony on this point and that there was no corroboration on the location where the witnesses heard Bourgmeister Mporanzi's statements. 841 300. Finally, Nzabonimana submits that the Trial Chamber overlooked the implausible character of Witness C NAA's testimony, and argues that in a "bid to embellish" his testimony the witness 8" The Appeals Chamber recalled that, as a general rule, it declines to discuss alleged errors which have no impact on the conviction or sentence. See Kanyarukiga Appeal Judgment para. 62; Renzaho Appeal Judgment paras. 251, 384; Kariinik Appeal Judgment para. 20. The Appeals Chamber notes that the Trial Chamber relied on this event, among others, as "t-tiut evidence of Nzabonimana's genocidal intent. See Trial Judgment, paras. 1707 (Butare Trading Centre Meeting), 1724 (Release of Killers in Rutobwe Commune), 1726 (Murambi Meeting), 1728 (Reinstatement Ceremony of the Bourgmesfree of Musambira Commune), 1732 (Destruction of houses in Nyamabuye Commune), 1734 (Weapons Distribution in Tambwe Commune), 1736 (Tambwe Commune Crisis Committee). The Appeals Chamber further notes that Nzabonimana has not challenged the Trial Chamber's finding on his genocidal intent for his conviction related to the Murambi event (for Nzabonimana's conviction for the crime of conspiracy to -fial commit genocide in relation to the Murambi event, see Judgment, para. 1747;

regarding Nzabonimana's conviction for direct and public incitement in relation to the Murambi event, as examined in the following section, the Appeals Chamber also overturned his conviction). 836 See Nzabonimana Appeal Brief, para. 208. 837 Nzabonimana Appeal Brief, para. 200. 838 Nzabonimana Appeal Brief, para. 199. 839 Nzabonimana Appeal Brief, para. 200. & 0 Nzabonimana Appeal Brief, para. 201. 841 Nzabonimana Appeal Brief, para. 201. Nzabonimana argued that Witness CNAC testified that Bourgmestre Mporanzi complained during the meeting of bourgmestress at Gitarama prefecture office on the morning of 18 April 1994. See idem. 103 Case No.: ICTR-98-44D-A 29 September 2014 v1 \r

mentioned attacks in his commune, while subsequent Prosecution disclosures led the Trial Chamber to believe that Witness CNAA may have been seeking to distance himself from any responsibility. 842 301. The Prosecution responds that details about Nzabonimana's interaction with Bourgmestre Mporanzi only arose during cross-examination, when Witness CNAA was confronted with his testimony in Karemera et al. trial, and further argues that it was not a major omission that Witness CNAA did not mention during his examination-in-chief, that Bourgmestre Mporanzi was slapped. As to the alleged contradiction with Witness CNAC's testimony, the Prosecution submits that Nzabonimana fails to explain why Bourgmestre Mporanzi could not have raised Nzabonimana's orders on more than one occasion. The Prosecution submits that Nzabonimana's argument on disclosure is based on material not on the record. 302. The Appeals Chamber observes that the Trial Chamber considered each of the alleged discrepancies that Nzabonimana raises. Specifically, it examined alleged contradictions between Witness CNAA's testimony in this case and in the Karemera et al. case, and accepted Witness CNAA's explanation that there was no contradiction between his testimonies as Bourgmestre Mporanzi told him of the prisoner release both at the Murambi meeting and at a meeting at the prefecture office. When examining the Defence's challenge to Witness CNAA's credibility, the Trial Chamber further noted that the witness testified that Bourgmestre Mporanzi spoke of the prisoner release on different occasions. When examining the consistency of Witnesses CNAA's and CNAC's testimonies concerning a meeting at the Gitarama prefecture office prior to the Murambi meeting, where Bourgmestre Mporanzi addressed the prisoner release situation, the Trial Chamber recalled that Witness CNAC testified that the meeting occurred on the morning of 18 April 1994 and that Witness CNAA could not recall the date or time of the meeting but testified that it occurred on a different day. 8 The Trial Chamber considered however that Witness CNAA's inability to give a precise date for the meeting had "minimal impact upon his 842 Nzabonimana Appeal Brief, para. 207, referring to Callixte Nzabonimana's New Motion for Appropriate Remedies on Account of Further Violations of Rule 66(A)(ii) and Rule 68 of the Rules of Procedure and Evidence, 12 July 2013 (original French version filed on 25 June 2013). The Prosecution Response Brief, para. 182. 840 Prosecution Response Brief, para. 178. As Prosecution Response Brief, para. 181. 840 Trial Judgement, para. 1069. The Trial Chamber also considered the Defence's challenge to Witness CNAA's credibility for having mentioned that Bourgmestre Mporanzi had told him that he was struck by Nzabonimana, while in his 2007 testimony in the Karemera et al. trial Witness CNAA acknowledged that this was a rumour. The Trial Chamber noted that Prosecution did not elicit evidence of Nzabonimana striking Mporanzi

during its direct examination of Witness CNAA but that only the Defence raised the issue in its cross-examination of Witness CNAA. See *ibid.*, para.1070. 'o'Trial Judgementp.a.ra.l ()69. *on Trial Judgementp, ara. 1066. 104 CaseN o.: ICTR-98-44D-A 29 Septembe2r0 14 f."-a

2131/H credibility, given the considerable passage of time since the events".⁸⁴ Nzabonimana fails to demonstrate any error in the Trial Chamber's assessment. 303. The Appeals Chamber also dismisses Nzabonimana's submission on the implausible character of Witness CNAA's testimony as unfounded. The Appeals Chamber notes that, in support of his vague claim, Nzabonimana refers only to his own motion on appeal, which the Appeals Chamber denied. See 304. Accordingly, the Appeals Chamber considers that the Trial Chamber was clearly seized of all of Nzabonimana's challenges, which on appeal amount to mere disagreement with the Trial Chamber's conclusions. Moreover, Nzabonimana fails to show how the alleged inconsistencies cast the overall credibility of Witness CNAA into such doubt that no reasonable trial chamber could have relied on parts of his testimony to sustain convictions. See 305. The Appeals Chamber therefore dismisses Nzabonimana's challenges to the Trial Chamber's assessment of Witness CNAA's credibility in relation to the release of prisoners in Rutobwe commune. (ii) Witness CNAC's Credibility 306. Nzabonimana submits that a reasonable trier of fact would have questioned Witness CNAC's testimony that he heard Bourgmestre Mporanzi's accusations against Nzabonimana at a bourgmestre's meeting on 18 April 1994 at the Gitarama prefecture office.⁸⁵ Nzabonimana argues that the manner in which Witness CNAC made these revelations were: (i) "abrupt", considering that the Prosecution took advantage of a question in examination-in-chief to elicit information from Witness CNAC regarding the release of the Rutobwe commune prisoners;⁸⁵³ and (ii) "opportunistic", considering the "links" between Witnesses CNAC and CNAA who were housed together at the United Nations Detention Facility ("UNDF") in Arusha.⁸⁵⁴ Furthermore, Nzabonimana submits that the Trial Chamber should not have accepted Witness CNAC's evasive explanation that a previous statement from 2008 failed to mention the complaint made by Mporanzi. See Trial Judgement, para. 1066. 850 See Decisions on Nizabonimana's Motion for Remedies, 6 October 2013. E t See Ntakirutimana Appeal Judgement, para. 252. The Appeals Chamber recalls that the findings concerning the events at Murambi on 18 April 1994 are based, in part, on the testimony of Witness CNAA. 852 Nzabonimana Appeal Brief, para. 203. 853 Nzabonimana Appeal Brief, para. 203. In support of his argument, Nzabonimana argues that neither the Prosecution Pre-Trial Brief or any will-say statements indicated that Witness CNAC was going to testify on the release of the Rutobwe community prisoner at the Trial Chamber at the time argued that in asking his question the Prosecution was "stepping out of line". He submits that the Trial Chamber violated his right to fair trial by relying on Witness CNAC's testimony as it was obtained under unfair circumstances. See *idem*. E5a Nzabonimana Appeal Brief, para. 203. 105 CaseN o.: ICTR-98-44D-A 29 Septembe2r0 14 at the bourgmestres' meeting at the Gitarama prefecture office because he was answering questions put to him by investigators.⁸⁵⁵ 307. The Prosecution responds that Nzabonimana's claim, regarding the manner in which the witness made the revelations, is incorrect and that, in any event, the Trial Chamber remedied any possible prejudice by postponing Witness CNAC's cross-examination for three months.⁸⁵⁶ The Prosecution also responds that Witnesses CNAA and

CNAC did not discuss his testimony in the case and, in any event, a mere risk of collusion is insufficient to render testimony inadmissible.⁸⁵ As to Witness CNAC's explanation on his 2008 statement, the Prosecution responds that Nzabonimana simply disagrees with the Trial Chamber's assessment without demonstrating any error.⁸⁶ 308. The Appeals Chamber understands Nzabonimana's main argument to be that he lacked notice that Witness CNAC was going to testify on the release of prisoners in Rutobwe. The Appeals Chamber finds however that this issue has no impact on the Trial Chamber's assessment of Witness CNAC's credibility and, therefore, has no impact on Nzabonimana's convictions.⁸⁷ 309. As to the alleged links between Witnesses NAA and CNAC, the Appeals Chamber recalls the Trial Chamber's finding that Defence evidence relating to the alleged fabrication of evidence did not undermine the credibility of their testimonies.⁸⁸ The Appeals Chamber has found that Nzabonimana failed to demonstrate that the Trial Chamber erred in this respect,⁸⁹ and considers that Nzabonimana's submission, regarding the witnesses staying together at the UNDF at the time of their testimonies, demonstrates no error in the Trial Chamber's assessment of Witness CNAC's credibility.⁹⁰ 310. Nzabonimana Appeal Brief, para. 204. See Exhibit D100 (Witness CNAC's Statement of 11 November 2008).⁹¹ 311. Prosecution Response Brief, para. 180. 312. Prosecution Response Brief, para. 187. 313. Prosecution Response Brief, para. 183. In any event, the Appeals Chamber notes that during Witness CNAC's examination-in-chief, the Trial Chamber ruled on a Defence's objection to a question, that the Prosecution posed and that the witness had not yet answered, on whether Bourgmestre Mporanzi told the witness when he had been confronted by Nzabonimana. The Trial Chamber did not, as argued by Nzabonimana, observe that the Prosecution was stepping out of line. Rather, the Trial Chamber noted that the Prosecution conceded that it was stepping out of line with regard to the question and agreed to withdraw it - or not proceed. On that basis, the Trial Chamber decided to sustain the objection with regard to that question, the third one, while it noted the observations made by the Defence to the two first questions, asked by the Prosecution and answered by the witness without an objection raised by the Defence. See Witness CNAC, T. 16 December 2009 pp. 59, 65 (closed session). The Appeals Chamber further observes that Nzabonimana elected to cross-examine Witness CNAC on the release of the Rutobwe commune prisoners. See Witness CNAC, T. 12 April 2010 pp. 21, 22 (closed session). The Appeals Chamber also finds that Nzabonimana's undeveloped submission that "in-court testimony obtained under unfair circumstances is inadmissible" is insufficient to demonstrate that the Trial Chamber violated his fair trial right. Trial Judgement, paras. 224-239. See *Seurupro*, paras. 215 - 284. 314. Case No.: I CTR-98-44D-A 29 September 2014

2129/H 310. Regarding Witness CNAC's 2008 statement, the Appeals Chamber notes the Trial Chamber's observation that Witness CNAC did not mention either the release of prisoners or the assertion that Nzabonimana's truck Bourgmestre Mporanzi in his 2003 or 2008 statements.⁹² The Trial Chamber further noted that Witness CNAC's 2008 statement indicated that it was the first time he was being interviewed about Nzabonimana and found the explanation that, during the interview, he simply answered the general questions posed to him by investigators to be reasonable.⁹³ 311. Nzabonimana fails to demonstrate that no reasonable trier of fact could have accepted this explanation. 311. The Appeals Chamber therefore dismisses Nzabonimana's

challenges to the Trial Chamber's assessment of Witness CNAC's credibility in relation to the release of prisoners in Rutobwe commune. (d) Murambi 312. The Trial Chamber found that the Defence evidence corroborated the Prosecution evidence with regard to a meeting at Murambi on 18 April 1994.⁸⁶⁴ Prosecution Witnesses CNA and CNAC as well as Defence Witnesses Mporanzi and T24 all attested to the meeting with the bourgmestre and to Nzabonimana's presence.⁸⁶⁵ Based on the totality of evidence, the Trial Chamber found that on 18 April 1994 the Prime Minister of Rwanda and other members of the Interim Government, including Nzabonimana, held a meeting at Murambi for the bourgmestres of Gitarama prefecture. Witnesses CNA, CNAC, Mporanzi, and T24, as well as a journalist from Radio Rwanda were among the attendees at the meeting.⁸⁶⁷ 313. The Trial Chamber found that Nzabonimana ordered the killing of bourgmestres and other local officials opposed to the massacre of Tutsis during a meeting held at Murambi on 18 April 1994, and the ministers present, including Nzabonimana, used the meeting to threaten the bourgmestres.⁸⁶⁸ Based on this event, the Trial Chamber convicted Nzabonimana of direct and public incitement to commit genocide and conspiracy to commit genocide.⁸⁶⁹ (i) Alleged Errors in Assessing Prosecution Evidence 862 Trial Judgement, para. 071. Trial Judgement, para. 071. 8e Trial Judgement, para. 158. 86s Trial Judgement, para. 158. 8* Trial Judgement, para. 158. Judgement, para. 158. 111:1q "" Inal Judgement, para. 179. R-6-0-1 nai. Judgment, para. 747, 749, 1173, 1715, 1800. 107 r.\^-\ \f! Case No.: ICTR-98-44D-A 29 September 2014

314. The Trial Chamber considered that Witnesses CNA and CNAC corroborated each other's accounts regarding what occurred during the second Murambi meeting with the Gitarama bourgmestres, and found that Nzabonimana and other Government officials threatened the bourgmestres as a means of ensuring their participation in the genocide.⁸⁷⁰ 315. Nzabonimana submits that the Trial Chamber erred in finding that the testimonies of Witnesses CNA and CNAC corroborated each other.⁸⁷¹ Nzabonimana also submits that the Trial Chamber erred in its assessment of their credibility when it accepted their explanations for omissions and inconsistencies with previous statements.⁸⁷² 316. The Prosecution responds that the Trial Chamber's assessment of the mutually corroborative testimonies of Witnesses CNA and CNAC was reasonable.⁸⁷³ It further submits that Nzabonimana fails to show that it was wholly unreasonable for the Trial Chamber to consider inconsistencies with previous statements and find that differences did not detract from the overall reliability of Witnesses CNA and CNAC.⁸⁷⁴ a. Witnesses CNA's and CNAC's Alleged Contradictions 317. Nzabonimana submits that based solely on the first meeting at Murambi, the Trial Chamber could not find that Witnesses CNA and CNAC corroborated each other.⁸⁷⁵ Nzabonimana points to differences between their testimonies on Prime Minister Jean Kambanda's reaction to President Fideles Nkuruziza's concerns on the insecurity in Gitarama.⁸⁷⁶ He insists that the discrepancies in their testimonies cannot reasonably appear to be minor.⁸⁷⁷ In Nzabonimana's view, their discrepant testimonies demonstrate strikingly different attitudes that Kambanda had towards the Tutsi population in Gitarama prefecture.⁸⁷⁸ 317* Nzabonimana further submits that the Trial Chamber erroneously found no significant difference between the accounts of Witness CNAC, that

Kambanda Trial Judgment, para. 161. N. Nzabonimana Appeal Brief, para. 196. 172 N. Nzabonimana Appeal Brief, para. 196. 873 Prosecution Response Brief, para. 173. To Prosecution Response Brief, para. 189. N. Nzabonimana Appeal Brief, para. 213. To Nzabonimana Appeal Brief para. 210. Nzabonimana submits that the difference is not minor as according to Witness CNA, the Prime Minister summarily dismissed Uwizye's the concern, while Witness CNAC testified that the Prime Minister reacted positively to a proposal to assist Tutsi refugees. See id. 877 Nzabonimana Appeal Brief, para. 211. 8t' Nzabonimana Appeal Brief, para. 211. Nzabonimana further submits that the Trial Chamber contradicted itself by first acknowledging "substantial differences" between the testimonies of Witnesses CNA and CNA, and then finding the difference to be minor. See id., para. 209. 108 Case No.: ICTR-98-44DA- 29 September 2014 cr\

2127/H was present at the second meeting on 18 April 1994, and the account of Witness CNA, who refuted Kambanda's presence during the second meeting. See 318. The Prosecution responds that the Trial Chamber correctly found that Witnesses CNA and CNAC corroborated each other in key respects. 88 It submits that Nzabonimana fails to show how the Trial Chamber unreasonably found inconsistencies in the testimonies of Witnesses CNA and CNAC to be minor. 881 319. The Appeals Chamber recalls that every witness presents what he has seen from his own point of view at the time of the events, or according to how he understood the events recounted by others. 88 It follows that corroboration may exist even when some details differ between testimonies, provided that no credible testimony describes the facts in question in a way which is not compatible with the description given in another credible testimony. 88 It is ultimately within the discretion of the trial chamber to evaluate inconsistencies that may arise amongst witnesses' testimonies, 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 320. The Trial Chamber expressly noted consistencies and differences between the accounts of Witnesses CNA and CNAC. 88 It found that Witnesses CNA and CNAC provided largely consistent and corroborating accounts of the events of 18 April 1994, leading up to a meeting held for the bourgmestre at Murambi. 886 321. In particular, the Trial Chamber noted that "there were few substantial differences" between the testimonies of Witnesses CNA and CNAC, the most significant being the response provided by Uwizye received to his plea for assistance during the first meeting. 887 According to the Trial Chamber, Witness CNA testified that Kambanda summarily dismissed Uwizye's concerns and then promptly left the meeting, while Witness CNAC testified that the Prime Minister reacted warmly to the Bishop of Kabgayi's offer to provide refuge for Tutsis at his diocese. 888 The Trial Chamber 87e Nzabonimana Appeal Brief, para. 214. Nzabonimana submits that, also according to Witness Mporanzi, Kambanda was present at the second meeting on 18 April 1994. See id., referring to Trial Judgment, paras. 1117-1119. See Prosecution Response Brief, para. 174. E8 Prosecution Response Brief, paras. 175, 176, 184. 88 See, e.g., Gatete Appeal Judgment, para. 205; Ntawukulilyayo Appeal Judgment, para. 24, referring to Munyakazi Appeal Judgment, para. 103; Ntahimane et al. Appeal Judgment, para. 428. 88 See, e.g., Bizimungu Appeal Judgment, para. 327; Gatete Appeal Judgment, para. 205; Hategekimana Appeal Judgment, para. 82. 88 See, e.g., Ntahimane Appeal Judgment, para. 93; Munyakazi Appeal

Judgement, para. 71; Rukundo Appeal Judgement, para. 207. 8th Trial Judgement, para. 146, 14th 7. 1st Trial Judgement, para. 146. 1st Trial Judgement, para. 147. 10th Trial Judgement, para. 147. Case No. I CTR-98-44D-A 29 September 2014

Chamber considered these differences to be minor and outweighed by the overall consistency between the two testimonies. 322. Having reviewed the relevant parts of the record and the Trial Chamber's assessment of the evidence of Witnesses C NAA and CNAC, the Appeals Chamber finds that Nzabonimana has not demonstrated that no reasonable trier of fact could have concluded, as the Trial Chamber did, that this discrepancy on Kambanda's reaction was minor and outweighed by the overall consistency between the two testimonies. By focusing only on this discrepancy in the first meeting at Murambi, 8th Trial Judgement, the Appeals Chamber expressly noted substantial and numerous inconsistencies between Witnesses C NAA and CNAC. 323. With respect to Kambanda's presence during the second meeting, the Trial Chamber acknowledged the following discrepancy between Witnesses C NAA's and CNAC's accounts: "Witness CNAC indicated that during the first part of the meeting with the bourgmestres, Prime Minister Kambanda was present and listened to their problems and dispensed advice. However, Witness C NAA made no mention of this occurrence". 8th Trial Judgement, para. 141. The Appeals Chamber did not find this discrepancy to significantly diminish the credibility of the Prosecution evidence. In reaching this conclusion, the Trial Chamber observed that Witness CNAC's evidence was clear that only after Kambanda left did the remaining government officials, including Nzabonimana, begin describing the Tutsis as the "enemy" while threatening the assembled bourgmestres to collaborate with the 1st Trial Judgement, para. 141. The Appeals Chamber is of the view that the Trial Chamber's finding on the "most significant difference" reflects the comparison of all discrepancies among themselves in order to identify which one deserves particular consideration. The Appeals Chamber finds no contradiction with the Trial Chamber's finding that this difference is rather minor when assessed in the context of the overall consistency between the testimonies of Witnesses C NAA and CNAC. See *idem*. to "Witness C NAA testified that: "After the prime minister spoke, the former president of Gitarama, Fiddle Uwizeye, also took the floor. He said that we were facing important problems connected to the massacre and that [solutions] had to be found for those problems. He also talked about the numerous refugees who had just come to Kabgayi in Gitarama. When the prime minister heard those things, he said that he was very busy. He left the meeting" (see Witness C NAA, T. 15 December 2009 p. 9 (closed session)) (as connected in p. 10)). Witness CNAC testified that: "[Fiddle Uwizeye] asked the meeting to take a decision concerning these refugees who were living in a situation of insecurity and who did not have any food to survive, and who simply were not receiving any assistance", and Father N sengiyumvar responded promising that "the refugees could be received in homes - in the houses in the diocese, and that the government had to ensure the safety of those refugees, and that for his part, the diocese was going to provide food to those refugees. Prime Minister Jean Kambanda accepted that proposition - that proposal and asked that it be adopted as such" (see Witness CNAC, T. 16 December 2009 p. 68 (closed session)). 8^e See Nzabonimana Appeal Brief, paras. 209-213. 8^e According to the Trial Chamber, these consistencies include: "[T]he series of events beginning at the prefecture office and culminating in a meeting convened by the Prime Minister

at the seat of the Interim Government in Murambi; their depiction of the Prime Minister's speech during the first meeting at Murambi as providing a broad overview of the Government's military approach to fighting the RPF; their description of the composition of the invitees to the first meeting; the presence of Ministers, including Nzabonimana and Witness T82, and other high-ranking national Government officials; the fact that no Minister took the floor during the meeting; Prlft Uwizeye's impassioned plea for assistance on behalf of his prltecture; and the fact that the bourgmestres were not informed of a second meeting convened specifically for them until after the first meeting at Murambi" (see Trial Judgement, para. 1146). tot Trial Judgement, para. 1162. n'o Trial Judgement, para. 1162. Il0 Case No.: I CTR-98-44D-A 29 September 2014 G"-1,

2125/H Interahamwe". From these findings, the Appeals Chamber understands that the Trial Chamber considered the threats to have been made in the Prime Minister's absence. On this basis, the Appeals Chamber finds that the Trial Chamber did not err in finding that Witnesses C NAA's and CNAC's accounts corroborated each other, while still acknowledging a discrepancy between both testimonies. se6T he Trial Chamber was therefore reasonable in finding that the difference did not diminish the credibility of the Prosecution evidence. Nzabonimana fails to demonstrate any error in this regard. seT 324. In light of the foregoing, the Appeals Chamber is not convinced that, based solely on the first meeting at Murambi, the Trial Chamber erred in finding that Witnesses C NAA and CNAC corroborated each other. Nzabonimana's arguments on the alleged contradictions between Witnesses C NAA and CNAC are therefore dismissed. b. Witness C NAA's Credibility 325. Nzabonimana submits that the Trial Chamber erroneously accepted Witness C NAA's interpretation that the word "enemy" was synonymous with "Tutsis", se8th us allowing the alteration of the words that the witness attributed to Nzabonimana. teeN zabonimana argues that in a prior statement, Witness C NAA claimed that Nzabonimana referred to "enemy", rather than "Tutsis" as he mentioned in his testimony at trial. eo0H e also points to a 1996 statement, where Witness C NAA did not mention Nzabonimana, nor threats against the bourgmestres, in the context of the Murambi meeting. eolN zabonimana claims that the Trial Chamber overlooked the gradual transformation of Witness C NAA's successive statements on the content of the Murambi meeting. e02N zabonimana further submits that Witness C NAA cannot be considered credible because, given the small number se5 Trial Judgement, para. 1162. 8% T he Appeals Chamber notes that, according to Witness C NAA's testimony K, ambandaw as not present at the second meeting because he left during the first meeting. See Witness C NAA, T. 15 December 2009 p. 9 (closed session). Witness CNAC testified that the Prime Minister was still present during the second meeting. See Witness CNAC, T. 16 December 2009 p. 69 (closed session). seT T he Trial Chamber did not make any determination on when the Prime Minister left or whether he left during the first or second meeting. T he Appeals Chamber finds that it would have been unclear for the Trial Chamber to explicitly state that it found it unnecessary to determine the exact time when the Prime Minister left or whether he left during the first or second meeting. In this respect, the Appeals Chamber notes that the Trial Chamber's finding that "[a]mong those who attended the meeting included Prime Minister Kambanda, bourgmestres, national heads of political parties and Interim Government Ministers".

While this finding doesn't specify which part of the meetings concerned, the Trial Chamber consistently held that it further found that "the Ministers present at the meeting, including Nzabonimana, used this meeting to threaten the bourgmestres", without any reference to the Prime Minister. See Trial Judgement, para. 1179. Despite the lack of clarity, the Appeals Chamber finds that whether the Prime Minister was still present during the second meeting held at Murambi is not material to the Trial Chamber's finding on the threats made by the Ministers present. See *infra*, para. 399. 66 Nzabonimana Appeal Brief, paras. 220, 221. 8 See Nzabonimana Appeal Brief, para. 219, referring to Trial Judgement, para. 1163. 9 See Nzabonimana Appeal Brief, para. 220, 221. 10 See Nzabonimana Appeal Brief, para. 219. 11 See also Exhibit D87A (Witness C NAA's Statement of 22 May 1996). 12 Case No.: ICTR-98-44D-A 29 September 2014.

of participants and radio reports admitted into evidence, it was impossible to miss Kambanda's presence during the second meeting. 326. The Prosecution responds that the words "accomplices" were used interchangeably to refer to Tutsis. 327. It adds that Witness C NAA was responding to questions about Bourgmestre Jean-Paul Kayesu in his 1996 statement. 328. According to the Prosecution, the fact that a witness incriminates an accused person, even if increasingly over time or through successive testimonies, does not in itself provide a basis for rejecting the witness's testimony. 329. To the Prosecution further responds that, by simply asserting that it was impossible for a witness to err about when Kambanda left, Nzabonimana does not show how the Trial Chamber was unreasonable. 330. With respect to Nzabonimana's words, the Appeals Chamber notes that the Trial Chamber explicitly considered the different words that Witness C NAA attributed to Nzabonimana - "Tutsis", in his testimony at trial, and "enemy" and "accomplices" in a prior statement. 331. The Trial Chamber recalled Witness C NAA's explanation during trial that: (i) the common goal of the ministers was to carry out the genocide; (ii) he could not recount what was said word for word, given the time elapsed; (iii) the enemy was the Tutsis during the genocide; and (iv) the idea behind the words was the same. 332. The Trial Chamber considered the witness's explanation to be satisfactory, especially given the context of the targeted killings at the time and the fact that Tutsis were described as the enemy. 333. The Appeals Chamber finds that the Trial Chamber's assessment to be reasonable. 334. With respect to Witness C NAA's 1996 statement, the Trial Chamber expressly considered that the witness did not mention Nzabonimana in relation to the Murambi meeting. 335. The Trial Chamber recalled the witness's explanation that the statement referred to the morning meeting, whereas Nzabonimana only spoke in the afternoon, and that the statement related specifically to Bourgmestre Kayesu. 336. The Trial Chamber found the witness's explanations reasonable. 337. The Prosecution Response Brief, para. 215. 338. See Nzabonimana Appeal Brief, para. 214. 339. Prosecution Response Brief, para. 191, referring to Trial Judgement, para. 1163; Witness C NAA, T. 15 December 2009, p. 57-58. The Prosecution therefore argues that it did not matter whether Nzabonimana admitted that it was the Tutsis (Witness C NAA T. 15 December 2009, p. 57, 58) or their enemy or their accomplice (Witness C NAA's Statement of 14 August 2003) who should not be supported. See *idem*. See also Exhibit D89 (Witness C NAA's Statement of 14 August 2003). 340. Prosecution Response Brief, para. 192. 341. Prosecution Response Brief, para. 197. 342. Prosecution Response Brief, para. 184. 343. Trial Judgement, para. 1163. 344. Trial Judgement, para. 1163.

163. ero Trial Judgment, para. 163. " Trial Judgment, para. 149. See also Exhibit D87A (Witness CNA's Statement of 22 May 1996). e" Trial Judgment, para. 149 "t Trial Judgment, para. 149 112 Case No.: ICTR-98-44D-A 29 September 2014 Cr\

2123/H Appeals Chamber does not detect any error in this regard. The Appeals Chamber also does not find that the Trial Chamber overlooked the gradual transformation of Witness CNA's statements, especially in light of the fact that the 1996 statements already mention that none of the speeches of the members of the government was aimed at pacifying the situation or stopping the killings. para. 329. In the Appeals Chamber's view, Nzabonimana also fails to demonstrate that the Trial Chamber erroneously assessed Witness CNA's credibility in relation to Kambanda's presence. As already discussed, the Trial Chamber considered that, compared to Witness CNA's testimony, Witness CNA made no mention of Kambanda's presence during the second meeting with the bourgmestre. The Trial Chamber determined that this discrepancy did not significantly diminish the credibility of Prosecution evidence. el6 Nzabonimana fails to demonstrate how Witness CNA's testimony that Kambanda left during the first meeting, compared to Witness CNA's testimony, that he left during the second meeting, impacts Witness CNA's credibility as a whole. Contrary to what Nzabonimana submits, the question is not whether it was possible for Witness CNA to miss Kambanda's presence, but rather when the Prime Minister left and when the threats were made. Recalling that the Trial Chamber reasonably found that both witnesses consistently testified that the threats were made after Kambanda's departure, elT the Appeals Chamber finds no merit in Nzabonimana's arguments. 330. Nzabonimana's arguments on Witness CNA's credibility are accordingly dismissed. c. Witness CNA's Credibility 331. Nzabonimana submits that the Trial Chamber erroneously considered it immaterial that Witness CNA, in his 2001 confession, omitted to mention the threats during the Murambi meeting. el8 He argues that it also erred in accepting Witness CNA's explanation on the absence of Nzabonimana's name in the Prosecution's interview notes. el e According to Nzabonimana, the Trial Chamber erroneously found the interview notes to be hearsay, even though the witness confirmed that their content reflected statements he gave in the Karemera et al. trial. el20 Nzabonimana further claims that the Trial Chamber failed to consider that the words Witness CNA attributed to Nzabonimana in this trial were the same as those the witness attributed to Karemera in the eto Exhibit D87A (Witness CNA's Statement of 22 May 1996), para. 4 ("n'alai enpt as dans le sens de pacifier ou d'arrêter les tueries"). Trial Judgment, para. 162. It "o Trial Judgment, para. 162. o" l? J - ee supra, para. 11. el8 Nzabonimana Appeal Brief, para. 216. Nzabonimana argues that even if Witness CNA did not name the speakers in his 2001 confession, the witness's omission does not mention of the threats. See eadem. ere Nzabonimana Appeal Brief, para. 217, referring to, inter alia, Trial Judgment, para. 168. 113 /l\--1 Case No.: ICTR-98-44D-A 29 September 2014

Karemera et al. proceedings. el21 Nzabonimana submits that the Trial Chamber overlooked the gradual transformation of Witness CNA's successive statements with respect to the content of the Murambi meeting, and consistently accepted Witness CNA's evasive explanations for his omissions. el23 332. The Prosecution responds that the Trial Chamber reasonably found it unproblematic that Witness CNA did not mention Nzabonimana in his 2001 confession.

because the witness did not name any other participants of the meeting. As for the interview notes, the Prosecution responds that: (i) there was no contradiction between Witness CNAC's testimony at trial and interviews he gave in Karemera et al.; (ii) Nzabonimana fails to acknowledge the Trial Chamber's finding that all the ministers made similar statements supporting the genocide; and (iii) Nzabonimana shows no error in the Trial Chamber's finding that Witness CNAC's testimony could not be impeached by the interview notes, which the witness neither prepared nor signed. The Appeals Chamber notes the Trial Chamber's observation that Witness CNAC's 2001 confession did not mention Nzabonimana in relation to the Murambi meeting. According to the Trial Chamber, this omission was not material since in the confession he did not name any attendees. The Appeals Chamber further observes that the Trial Chamber did not expressly consider the witness's omission of the threats in the 2001 confession. However, the Appeals Chamber notes that in the 2001 confession, a Pro Justitia document, Witness CNAC was answering questions regarding his role in killings, not about the conduct of the accused before this Tribunal. As for the interview notes, the Trial Chamber considered the document to be hearsay and thus unreliable to impeach Witness CNAC's testimony. In this regard, the Trial Chamber observed that the witness did not sign the document, which was an interview summary that the Prosecution prepared. The Appeals Chamber finds that the Trial Chamber reasonably found Nzabonimana's Appeal Brief, para. 218. err Nzabonimana's Appeal Brief, para. 218. err Nzabonimana's Appeal Brief, para. 215. err Nzabonimana's Appeal Brief, para. 211. err a Prosecution Response Brief, para. 198. err Prosecution Response Brief, para. 200. err Prosecution Response Brief, para. 201. err Prosecution Response Brief, para. 202. err Trial Judgement, para. 152. err Trial Judgement, para. 152. err See Trial Judgement, para. 1152. err Exhibit D97 (Witness CNAC's Pro Justitia of 29 November 2001), off Trial Judgement, para. 167. err Trial Judgement, para. 167. err Case No.: ICTR-98-44D-A 29 September 2010.

The interview notes are characterised as hearsay, and that, in any event, any error in this regard would have no impact on its assessment of Witness CNAC's credibility. The Appeals Chamber further observes that the Trial Chamber specifically addressed the Defence's assertion that Witness CNAC attributed the same words to Nzabonimana and Karemera. The Trial Chamber noted Witness CNAC's testimony that several ministers spoke at the meeting, and that, according to Witness CNAC, the ministers reiterated the same message encouraging genocide. According to the Trial Chamber, that similar words were attributed to Nzabonimana and Karemera did not undermine the consistent and corroborated testimony that important personalities delivered essentially the same message to the bourgmestres. The Appeals Chamber considers the Trial Chamber's assessment to be reasonable. The Appeals Chamber further observes that Nzabonimana simply repeats arguments that the Trial Chamber already addressed, without demonstrating any errors. The Appeals Chamber also observes that the Trial Chamber additionally did not find discrepancies between Witness CNAC's testimony and the interview notes to be significant. The Trial Chamber accepted the witness's explanation that Nzabonimana was not mentioned because the interviews were conducted in the context of Karemera's conduct, and that he had no reason to mention Nzabonimana's presence or

utterances at this meeting. The Trial Chamber also observed that the interview notes specifically stated that the list of Government ministers present was not exhaustive. Given the above, the Appeals Chamber is not convinced that the Trial Chamber erred in accepting the witness's explanation. Nzabonimana also fails to demonstrate any "transformation" of Witness CNAC's evidence in successive statements about the Murambi meeting. 337. Nzabonimana's arguments on Witness CNAC's credibility are therefore dismissed. d. Reliance on Witnesses CNA and CNAC for findings on Nzabonimana's order to kill bourgmestres 338. Nzabonimana submits that, given Witnesses CNA's and CNAC's varying accounts over time on who spoke at the Murambi meeting and what Nzabonimana allegedly said, the Trial Chamber's Judgment, at para. 169. 335 Trial Judgment, at para. 169. Judgment, at para. 16. In the Trial Judgment, at para. 169. n. Trial Judgment, at para. 168. n. Trial Judgment, at para. 168. In the Case No.: ICTR-98-44D-A 29 September 2014

Chamber adopted a "holistic approach" to "circumvent the quest" for his exact words. Nzabonimana argues that the Trial Chamber merely repeated Witness CNA's interpretation of Nzabonimana's alleged utterances, but ignored that the utterances were made in a different context than those to which Witness CNAC testified. According to Nzabonimana, the Trial Chamber simply concluded that the "ministers present at the meeting", including Nzabonimana, used this meeting to threaten the bourgmestres, but did not identify the ministers present, or what they said. 33. Nzabonimana adds that the Trial Chamber prejudiced him when it refused to admit transcripts of Prdfet Uwizeye's testimony in the Bizimungu et al. trial. 339. Nzabonimana further submits that the Trial Chamber erroneously convicted him of ordering the killing of bourgmestres without determining his exact words, his alleged order, or the intended audience. 34. Finally, he submits that the Trial Chamber erred by accepting the testimonies of Witnesses CNA and CNAC with respect to the order to kill, but not for the killings that allegedly resulted from the Murambi meetings. 340. The Prosecution responds that Nzabonimana fails to show that the Trial Chamber's assessment of evidence and findings on the Murambi meeting were unreasonable. 341. The Prosecution submits that Nzabonimana's claim, that the Trial Chamber should have admitted Prdfet Uwizeye's transcript from Bizimungu et al., is undeveloped. 342. With regard to the subsequent killings, the Prosecution argues that the Trial Chamber had the discretion to rely on some but not all of Witnesses CNA's and CNAC's testimony. 343. The Trial Chamber considered that Witnesses CNA and CNAC corroborated each other's accounts on circumstances during the second meeting at Murambi with the Gitarama bourgmestres. According to the Trial Chamber: Both witnesses described a scenario where the bourgmestres were intimidated by various high-ranking Government officials, including Nzabonimana, who took turns making various threats toward the bourgmestres, including death or removal from office, if they did not participate in the Government agenda to eliminate the "enemy," which was understood to be the Tutsis. Both attributed similar menacing quotes to Nzabonimana, namely that if they did not collaborate with the Interuhamba, they would be deemed accomplices of the Inkotanyi, or Tutsis. As a result, there would be no security in their communes and they would suffer the consequences. The Trial Chamber considered that Witnesses CNA and CNAC have provided internally credible and clear Nzabonimana appeal Brief,

para.2 22. ea2 NzabonimanAa ppealB rief, para.223. ear NzabonimanAa ppealB ief , para.223. eaa NzabonimanAa ppealB rief, para.2 24. eas NzabonimanAap pealB rief,p aras2. 22,223,24,12 48. ea6 NzabonimanAa ppealB rief,p ara.2 3l . ea7 ProsecutioRn esponseB rief,p ara.2 34. ea8 ProsecutioRne sponsBer ief,p ara.1 77. eae ProsecutioRne sponsBer ief,p ara.1 85. "t'Trial Judgementp, a ra.I l6l. 116 CaseN o.:I CTR-98-44D-A 29 Septembe2r0 14

21 19/H consistent accounts of a meeting in which Nzabonimana and other Government officials threatened the bourgmestres as ameans ofensuring their participation in the genocide.esl 342. The Appeals Chambero bservest hat WitnessC NAA testified that : [...] Callixte Nzabonimanal,i ke other ministers who were plesent- well, they imposed tlemselfeso n us who werea t them eetingA. nd he told us- or, rather,h e imposedh imselfo n us and told us that anyonew ho was working for the administrationw ho would show any supportt o theT utsiwo uld be seena sa ne nemy". t [...] [...] CallixteN zabonimansaa idt hat someb ourgmestrenso longere njoyedt hec onfidenceo f their peopleb ecauseth oseb ourgmestrewse res upportingtheIn kotanylsa nd the Tutsis,a nd that those bourgmestrehsa d to be removedfr om their post.[...] In a nutshell,a ll the ministersa ida lmost the same thing, saying that we had to stop supportingt he Tutsis. This was actually the first meeting in Gitarama during which high-level officials in the country were making such statements.[e.5..3] 343. WitnessC NAC testifiedth at: [Nzabonimana]a lso took the floor and he gaves omeexplanatioonso n the problemsw hich we had raiseda nd which concernedt he Interahamweg rorppw hich was armeda nd which was using those weaponst o kill people.H e said that the peoplew ho were claiming that the Interahamwesw ete worseningt he securitys ituationw erep eoplew ho were againstt he InterahamwesH. e said that the Interahamwesh ad shownt heir authorityi n Kigali town becausea, s he said, if they had not been there, Kigali town would have fallen into the handso f the enemy.H e askedt he bourgmestreto collaboratew ith the Interahamwesif they wanteds ecurityt o reign in their communesA. nd he also warnedu s by saying," If you do not collaboratew ith the Interahamwet,h ercw ill be no securityi n your communesa nd you will suffer the consequencesT."h at is what he told us during that meetins.g5a 344. The Appeals Chamber notes that both witnesses do not attribute the same words to Nzabonimana. Specifically, the utterances the Trial Chamber referenced appear to stem largely from Witness CNAC's testimony.e5Ht owever, this does not mean that the Trial Chamber erred in observing that both witnesses "attributed similar menacing quotes to Nzabonimana".e56B oth Prosecution witnesses provided consistent accounts of the meeting at Murambi, where Nzabonimana and other government officials threatened the bourgmestres to ensure their participation in the genocide.esTA lso, the Trial Chamber reasonably found that both witnesses described a scenario where high-ranking government officials, including Nzabonimana, took turns threateningb ourgmestresa nd where theb ourgmestresf eltintimidated.e58In the AppealsC hamber's view, it was not necessaryf or the Trial Chamber to determine Nzabonimana's exact words, the identity of all the ministers present, or precisely what they said. The Appeals Chamber also recalls ntt Trial Judgementp, ara. 1161(internalr eferenceo mitted). e52 W itnessC NAA, T. 14D ecembe2r 009p .64 (asc orrectedb y p.64,lines2 8, 31'32). et3 w itnessC NAA, T. 15D ecembe2r 009p . 10(closedssion). eto W itnessC NAC,T . 16D ecembe2r 009p . 71 (closedssion). e5s S eeT rial Judgementp, ara.1 161,r eferringt o WitnessC NAA, T. 15 December2 009 pp. 10, 11

(closed session); Witness C NAC, T. 16 December 2009 p. 10, 71 (closed session). e56 See Trial Judgement, para. 161. Judgement, para. 161. III {r" I{"1 "o . See Trial Judgement, para. 161. t1"7 Case No.: ICTR-98-44D-A 29 September 2014 S"^\

that two prima facie credible testimonies need not be identical in all aspects in order for S/H corroborative and that corroboration may exist even when some details differ. e5q 345. Turning to Nzabonimana's alleged "orders", the Appeals Chamber recalls the Trial Chamber's finding that "Nzabonimana ordered the killing of bourgmestres and other local officials opposed to the massacres" during the Murambi meeting. e6Tt' he Appeals Chamber is unable to see how this finding was supported by the evidence of Witnesses C NAA and CNAC. Indeed, Witness CNAC only referenced the killing of bourgmestres when explaining how he understood Nzabonimana's threat and the possible consequences. As noted earlier, Witness C NAA only stated that "Callixte Nzabonimana said that some bourgmestres no longer enjoyed the confidence of their people because those bourgmestres were supporting the Inkotanyi and the Tutsis, and that those bourgmestres had to be removed from their post". e62A t no point do the testimonies of Witnesses C NAA and CNAC reveal that Nzabonimana instructed a person under his authority to commit an offence. The Appeals Chamber therefore finds that the Trial Chamber erroneously determined that Nzabonimana ordered the killing of bourgmestres and other local officials. However, since Nzabonimana was not convicted of ordering genocide but of conspiracy to commit genocide and direct and public incitement to commit genocide in relation to the Murambi meeting, e6t3h e Appeals Chamber considers that this error has no impact on the verdict. 346. The Appeals Chamber notes that Nzabonimana's argument regarding Prdfet Uwizeye's transcript from the Bizimungu et al. case is undeveloped as he fails to indicate any request he made to admit the transcript. e6Fa urtherrnore, Nzabonimana points to a decision that does not relate to Prdfet Uwizeye's transcript from the Bizimungu et al. proceedings. e6Tsh e Appeals Chamber thus summarily dismisses his argument in this regard. 347. The Appeals Chamber now turns to argument that the Trial Chamber erred by accepting Witnesses C NAA's and CNAC's testimonies on the order to kill, while rejecting their evidence on the deaths following the Murambi meeting. e6R6 calling that it is not unreasonable for a trier of fact "to suffer upro, para. 184. 'uu Trial Judgement, para. 179. uu' Witness C NAC, 16 December 2009 p. 71 (closed session)" Q. Now, Witness, had you understood him to mean by the words, 'you would suffer the consequences' what was he referring to? A. For us, the consequence he was referring to was the fact that we ran the risk of being removed from our positions or that we could be killed". See also Trial Judgement, para. 160. 'o' Witness C NAA, T. 15 December (X) 9 p. 10 (closed session). e63 See Trial Judgement, para. 147, 1749, 1773, 1775. et'o See Nzabonimana Appeal Brief, para. 224. eos See Nzabonimana Appeal Brief, para. 224, referring to 30 April 2012 Decision 'et'" Nzabonimana Appeal Brief, para. 231. u8 Case No.: ICTR-98-44D-A 29 September 2014 s\

21 17/H to accept some, but reject other parts of a witness's testimony, e6tth e Appeals Chamber notes the Trial Chamber's observation that the testimonies of Witnesses C NAA and CNAC on the killing of local officials after the Murambi meeting were inconsistent, vague, and based entirely on hearsay. e6S8p ecifically, it considered that the witnesses merely asserted, in a conclusory manner, that the deaths resulted from the meetings, and that only Witness C NAA testified to the

killings of Conseillers Bernard Twagiramukiza and Wallace Gasigwa. As a result, the Trial Chamber held that the Prosecution demonstrated no evidentiary nexus between the Murambi meeting and the deaths and did not establish beyond a reasonable doubt that Nzabonimana's utterances at the Murambi meeting substantially contributed to the deaths of local officials. The Appeals Chamber sees no error in this assessment. Therefore, the Appeals Chamber finds that Nzabonimana fails to demonstrate how the Trial Chamber erred in accepting the testimonies of Witnesses C NAA and CNAC as corroborated and consistent with the Murambi meeting, while rejecting their evidence on the killings as inconsistent, vague, and hearsay. 348. Based on the foregoing, the Appeals Chamber considers that Nzabonimana fails to demonstrate the Trial Chamber committed any error warranting the Appeals Chamber's intervention. *See* Conclusion 349. Accordingly, the Appeals Chamber finds that Trial Chamber did not err in finding that the testimonies of Prosecution Witnesses C NAA and CNAC corroborated each other. The Appeals Chamber also considers that the Trial Chamber did not err in the assessment of Witnesses C NAA's and CNAC's credibility. Nzabonimana's arguments challenging the Prosecution's evidence with respect to the events at Murambi on 18 April 1994 are dismissed. (ii) Defence Evidence 350. Nzabonimana submits that the Trial Chamber excluded, without providing valid reasons, Defence evidence showing that Witnesses C NAA and CNAC could not be believed beyond reasonable doubt. In particular, Nzabonimana submits that the Trial Chamber erred, to his prejudice, by excluding Defence Witness T24's testimony on the incorrect basis that the witness "did not hear much of what was said", while, Nzabonimana argues, the witness testified that he "did hear some", e.g., Ndhimana Appeal Judgment, para. 183; Bagosora and Nsengiyumva Appeal Judgment, para. 243; *Yakuze et al. Appeal Judgment*, para. 55. *See* Trial Judgment, para. 187. *See* Trial Judgment, para. 187. *See* Trial Judgment, para. 187. *See* Nzabonimana Appeal Brief, paras. 221, 119 and 1. *Case No.: ICTR-98-44-DA-29* (September 14, 2014), *at* 6/H not expect much from that meeting." In Nzabonimana's view, without this error Chamber would not have found Witness T24's testimony to have little probative value or overlooked that Witness 724 corroborated Witness Mporanzi on the absence of threats made by Nzabonimana and on the general dissatisfaction from the bourgmestres regarding security problems. *See* T3 351. Nzabonimana also submits that the Trial Chamber erred by failing to devote the requisite attention to Exhibit D86. He claims that Exhibit D86 reveals that he "lies" of Witnesses C NAA and CNAC and corroborates Witnesses T24's and Mporanzi's evidence that the Murambi meeting was intended to find solutions to reinstate peace, that Prime Minister Kambanda announced measures to maintain security, that the bourgmestres expressed concerns during the second meeting, and that the government promised to help them. *See* T3 352. Nzabonimana further submits that the Trial Chamber erred by dismissing the evidence of Defence Witness T133, which it erroneously categorised as hearsay evidence, while admitting Witness CNAC's hearsay evidence. *See* T6 Nzabonimana submits that, by erroneously dismissing Witness T133's evidence, Nzabonimana was deprived of evidence corroborating Witnesses Mporanzi and T24, which would have in turn led the Trial Chamber to further question the credibility of Witnesses C NAA and CNAC. *See* T7 353. The Prosecution responds that Witness T24 admitted to lying, and that his recollection of the Murambi meeting was vague. *See* T7

therefore request that the Trial Chamber's possibly erroneous reliance on the English transcripts does not affect its overall conclusion that Witness T24's testimony had "little probative value".⁸⁰ The Prosecution further submits that Nzabonimana fails to show how it was unreasonable for the Trial Chamber to reject the "second-hand account" contained in Exhibit D86. Finally, the Prosecution requests that contrary to Nzabonimana's claim, Witness T24's Nzabonimana Appeal Brief, para. 226, referring to Trial Judgement, para. 1176a and Witness T24, T.21 April 2010 p. 10, s. 10. "Nzabonimana Appeal Brief", para. 226. e7a Nzabonimana Appeal Brief, para. 228. e75 Nzabonimana Appeal Brief, para. 228. e76 Nzabonimana Appeal Brief, para. 229. e77 Nzabonimana Appeal Brief, para. 229. Nzabonimana contends that Witness T133 corroborated Witnesses Mporanzi and T24 on the fact that the main purpose of the Murambi meeting was the issue of refugees, that no one was threatened, and that Nzabonimana did not speak. See *idem*. Nzabonimana further submits that the Trial Chamber did not proceed to look for corroboration between Defence witnesses when their testimonies were assessed in light of the Defence evidence. See *ibid.*, para. 230. The Appeals Chamber notes that Nzabonimana's submissions relating to corroboration of Defence evidence are dealt with in the following section. See *infra*, paras. 358-362. e78 Prosecution Response Brief, para. 205. "Prosecution Response Brief, para. 205. u*" Prosecution Response Brief, para. 206. *r Prosecution Response Brief, para. 232. 120 Case No.; ICTR-98-44D-A 29 September 2001

2115/H T133's testimony about the meeting was hearsay, and that in any event his evidence that Witness Mporanzi did not mention the threats Nzabonimana made at the meeting is undermined by Witness T133's concession that Witness Mporanzi did not tell him what every speaker said during the meeting.³⁵⁴ The Appeals Chamber notes that according to the English version of the transcript, Witness T24 stated that "[...] I did not hear much at that meeting",⁸⁴ while in the French version of the transcript Witness T24 stated that "[...] je n'attendais pas grand-chose de cette réunion".⁸⁵ The Appeals Chamber observes a difference between the transcripts- the witness stating that he did not hear much or he was not expecting much from the meeting. However, the Appeals Chamber is not persuaded that the Trial Chamber's assessment of Witness T24's testimony would have been different on the basis of the French version of the transcript. In this respect, the Appeals Chamber notes that the Trial Chamber found Witness T24's evidence to have little probative value because Witness T24 was unable to: (i) provide many details of the meeting, including the identities of the ministers in attendance apart from Nzabonimana;⁸⁶ (ii) provide details of what was said during the meeting;⁸⁷ and (iii) recall whether Nzabonimana or any other bourgmestre took to the floor, etc. The Appeals Chamber further notes that the Trial Chamber's finding of the limited probative value was in addition to its determination that the witness's credibility was seriously undermined by his admission to providing a false statement.⁸⁸ Given the Trial Chamber's findings on Witness T24, the Appeals Chamber finds that Nzabonimana fails to demonstrate that the Trial Chamber erred in not considering corroboration between Witnesses Mporanzi's and T24's testimony. 355. As to Exhibit D86, the Appeals Chamber observes that the Trial Chamber considered the exhibit and its contents.⁸⁹ The Trial Chamber accepted Witness CNA's explanation that the radio report mentioned only part of what was said at the meeting and it noted that the report contained a

356. Finally, the Appeals Chamber found that the Trial Chamber found Witness T133's testimony of limited probative value because it was entirely hearsay and the witness acknowledged that his bourgmestre did not inform him of everything that occurred during the meeting. On this regard, the Trial Chamber considered that Witness T133 did not attend the Murambi meeting and conceded that his bourgmestre was his sole source of information. The Appeals Chamber finds no error in the Trial Chamber classifying Witness T133's evidence as hearsay. Ntabonimana therefore fails to demonstrate that the Trial Chamber erred in preferring the first-hand testimony of the Prosecution witnesses over the hearsay testimony of Witness T133, and in not using T133's testimony to corroborate Witnesses Mporanzi and T24. 357. Ntabonimana's arguments are accordingly dismissed. (iii) Use of Corroboration 358. Ntabonimana submits that the Trial Chamber erroneously used corroboration to favour the Prosecution. Ntabonimana argues that, on one hand, the Trial Chamber consistently relied on Witnesses T24 and Mporanzi, whom it found generally not credible, to corroborate Prosecution witnesses - an approach the Tribunal has deemed unreasonable. Ntabonimana submits that, on the other hand, the Trial Chamber consistently disregarded the testimonies of Witnesses T24 and Mporanzi, on the pretext that they were not generally credible, when they contradicted Prosecution evidence. 359. Ntabonimana further submits that the Trial Chamber erred by relying on Defence witnesses to corroborate Prosecution witnesses on disputed facts. The Chamber submits that based on the witnesses acknowledgment of facts not in dispute, the Trial Chamber erroneously concluded that Prosecution and Defence witnesses corroborated each other in all aspects of their testimonies, including contentious issues such as Ntabonimana's presence at the Murambi meeting. Specifically, he argues that Witnesses T24 and Mporanzi rebutted the accounts given by Witnesses CNAA and in the Trial Judgement, para. 1171. e) Trial Judgement, paras. 1128-1131. e) Ntabonimana Appeal Brief, para. 6. The Appeals Chamber notes that Ntabonimana's arguments are made under the "preliminary issue" section of his Appeal Brief and it has decided to examine them as they are linked to his challenges made under his Fifth Ground of Appeal. 5 Ntabonimana Appeal Brief, paras. 1, 9, re: *Terrington Muvunyi* / Appeal Judgement, para. 131; *Rutaganda* Appeal Judgement paras. 496-506; *Nsengimana* Trial Judgement, para. 443. Ntabonimana submits that this approach enabled the Trial Chamber to establish and enhance the credibility of Prosecution witnesses. See *ibid.*, para. 7. e) Ntabonimana Appeal Brief, para. 8. 7 Ntabonimana Appeal Brief, para. 10. 8 Ntabonimana Appeal Brief, para. 10. 22 Case No.: ICTR-98-44DA- 29 September 2014

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2713/H CNAC regarding, inter alia, the Murambi meeting on 18 April 1994, and yet the Trial Chamber found that they corroborated each other. 360. The Prosecution responds that contrary to Nzabonimana's argument, trial chambers can consider witnesses to partially corroborate each other, and argues that the jurisprudence Nzabonimana refers to is not on point. 361. The Prosecution further submits that Nzabonimana incorrectly claims that the Trial Chamber found corroboration where witnesses in fact contradicted each other. It argues that the Trial Chamber did not find that Witnesses Mporanzi and T24 corroborated all allegations on the Murambi meeting, it simply found that they corroborated certain elements of Prosecution evidence. 362. The Appeals Chamber notes that, contrary to Nzabonimana's submission, the Trial Chamber did not find Witnesses T24 and Mporanzi "generally not credible" but that their credibility was "seriously undermine[d]" due to their admission of having provided false statements to Prosecution investigators. Thus, in the Appeals Chamber's view, the Trial Chamber's finding on their credibility did not amount to a conclusion that the witnesses could not be relied upon at all, but reflected a cautious approach in its assessment of their evidence. This did not bar the Trial Chamber from considering some aspects of Witnesses T24's and Mporanzi's testimonies to corroborate Prosecution evidence. Recalling again that it is not unreasonable for a trial chamber to accept some parts of a witness's testimony while rejecting others, 1003 the Appeals Chamber finds no error in the Trial Chamber's reliance on Witnesses T24's and Mporanzi's evidence to corroborate Prosecution evidence while rejecting it elsewhere. 1004 Nzabonimana fails to demonstrate that the Trial Chamber used corroboration to favour the Prosecution. 362. In addition, the Appeals Chamber observes that, contrary to Nzabonimana's claim, the witnesses did not dispute his presence at the Murambi meeting. 1005 All four witnesses testified to the existence of the Murambi meeting on 18 April 1994 and Nzabonimana's attendance. 1006 The Trial Judgment accurately reflected the testimony of the four witnesses, from which the Trial Chamber concluded that Nzabonimana was present at the Murambi meeting. 1007 The Trial Judgment, para. 11, referring, inter alia, to Trial Judgment, para. 158. "Prosecution Respondent's evidence, para. 10. "Prosecution Respondent's evidence, para. 11. "Prosecution Respondent's evidence, para. 11. "Trial Judgment, paras. 143, 234. "Srr, ,g. 1N dohi*ona Appeal Judgment, para. 183; Bagosora and Nsengiyumva Appeal Judgment, para. 243; Ntawuku-Lilyay Appeal Judgment, para. 155. "Cf. Sainovii et al. Appeal Judgment, para. 632, where the Appeals Chamber found that the Trial Chamber was entitled to partly rely on a witness's testimony as corroboration on one part of his evidence, while placing little weight on other parts of his evidence. "Srr" Nzabonimana Appeal Brief, para. 11, referring to, inter alia, Trial Judgment, para. 158. "Trial Judgment, paras. 10821-10829 (Witness C NAA), 10911-10913 (Witness C NAC), 11081-11083 (Witness Mporanzi), 1124-1125 (Witness T24). LZJ [v. Case No.: ICTR-98-44D-A 29 September 2004] v

1008 Accordingly, the Trial Chamber found that they corroborated each other on this fact. 1009 Accordingly, the Trial Chamber dismisses Nzabonimana's arguments on the use of corroboration in their entirety. (e) Musambira 363. The Trial Chamber found that in May 1994 Nzabonimana was present at the reinstatement ceremony of the bourgmestre of Musambira during which Nzabonimana accused the attending bourgmestress of not being supportive of the killings of

Tutsis, warned them that they could be replaced by Interahamwe, and refused to denounce the killings of Tutsis." The Trial Chamber relied on the eyewitness evidence of Witnesses NAA and CNAC whose testimony it found credible. However, the Trial Chamber found that there was insufficient evidence that Nzabonimana's words at the meeting substantially contributed to any subsequent crime, and, accordingly, it did not convict him of genocide as a result of this event. The Trial Chamber found, nevertheless, that the evidence provided circumstantial evidence of Nzabonimana's genocidal intent. 364. Nzabonimana challenges the Trial Chamber's assessment of the discrepancies between Witness NAA's testimony and previous statements and makes various other challenges with respect to this event. (i) Witness NAA's Credibility 365. Nzabonimana submits that the Trial Chamber failed to consider a substantial modification between Witness NAA's testimony, where he added the fact that bourgmestres would be replaced by members of Nzabonimana's party, and a previous statement from 2008, which was the only time Witness NAA mentioned the Musambira meeting. Nzabonimana further submits that the Trial Chamber erred in assessing differences between Witness NAA's testimonies in the Karemera et al. and Nzabonimana trials. In particular, he contends that, at trial, he was alleged to have accused the bourgmestres of not supporting the killings, threatened to replace them with "the Trial Chamber's" judgment. para. 158. "The Trial Chamber's" judgment, para. 1224. See also ibid., para. 1727. "The Trial Chamber's" judgment, para. 1223. See ibid., paras. 1213, 1214, 1221. "The Trial Chamber's" judgment, para. 1728. See also ibid., para. 1225. "The Trial Chamber's" judgment, para. 1728. In the Trial Chamber's legal finding section on conspiracy to commit genocide, the Trial Chamber found that the words spoken by Nzabonimana in the Musambira meeting established the intent to encourage the bourgmestres and the population to kill Tutsis. See ibid., para. 1746. "The Trial Chamber's" judgment, paras. 233-241. Contrary to what Nzabonimana submits in paragraph 32 of his Appeal Brief, he does not develop any argument on the alleged inconsistencies between Witnesses NAA and CNAC with respect to this event. "The Trial Chamber's" judgment, paras. 233, 237. Nzabonimana asserts that Witness NAA did not mention the Musambira meeting in his earlier statements in 1996 and 2003 and that in the 2008 statement, he only accused the bourgmestres of being useless and inefficient. See idem. "The Trial Chamber's" judgment, para. 234. 24 Case No. ICTR-98-44D-A 29 September 2014 at 111.

111/H Interahamwe, and refused to denounce the massacre on the radio. Nzabonimana argues that Witness NAA's evidence in the Karemera et al. trial was that Nzabonimana denied responsibility for blaming the bourgmestres for not doing anything to address the security situation, and that he challenged the fact that he had to denounce the situation for which he did not consider himself responsible. In Nzabonimana's view, Witness NAA attributed different words to him and provided "radically different" testimonies in the Karemera et al. trial and in this case when describing the same meeting. 366. The Prosecution responds that the omission in mentioning the Musambira meeting in Witness NAA's earlier statements was not significant since they did not focus on Nzabonimana. The Prosecution further submits that the Trial Chamber reasonably found that the substance of Witness NAA's recollection was the same between his testimony at trial and his 2008 statement. 367. The Prosecution responds that Witness NAA's testimony in the Karemera et al. trial was consistent with his testimony in this

case where the witness simply provided additional information.to" It argues that Nzabonimana has not shown that the Trial Chamber erred in accepting the witness's explanation that he gave the additional information regarding Nzabonimana's threat to replace the bourgmestress in Nzabonimana as the accused in this case.1022 361. The Appeals Chamber notes that the Trial Chamber explicitly considered the alleged omissions and contradictions raised by Nzabonimana. In particular, with respect to Witness CNA's 2008 statement, the Trial Chamber noted that the witness indicated that he testified in three previous cases and that he was "willing this time around to talk in more detail about [...] Nzabonimana".1023 The Trial Chamber considered that this reasonably accounted for the previous omissions on the Musambira meeting, as the 2008 statement was Witness CNA's first to specifically address Nzabonimana.1024 Nzabonimana merely repeats on appeal the same arguments raised at trial without demonstrating how the Trial Chamber erred.1025 In the same vein, the Appeals Chamber observes that the Trial Chamber explicitly considered that the witness did not mention that Nzabonimana wanted to replace the bourgmestress in Witness CNA's 2008 statement.1026 10'6 Nzabonimana Appeal Brief, para.2 36. 10'lt Nzabonimana Appeal Brief para.2 36. 10'8 Nzabonimana Appeal Brief, paras.2 34-236. 'u' Prosecution Response Brief, para.1 93. Ito Prosecution Response Brief, para.1 95. 102 P 1 r osecution Response Brief, para.1 94. 102 P 2 Prosecution Response Brief, para.1 9a. r@3 Trial Judgement, para. 1218, referring to Exhibit D94A (Witness CNA's Statement of 2 October 2008). 10' Trial Judgement, para.1 218. 't Sr' Trial Judgement, para.1 218; Nzabonimana Calling Brief, paras.5 42,543, 'tu Trial Judgement, para.1 219, referring to Nzabonimana Calling Brief, para.5 43. 125 E)-\ Case No.: I CTR-98-44D-A 29 September 2014

Nzabonimana merely disagrees with the Trial Chamber's conclusions without substantiating his alleged error. 368. The Trial Chamber also addressed the alleged contradiction between Witness CNA's testimony in the Karemera et al. and Nzabonimana trials regarding the Musambira event. In the Appeals Chamber's view, the Trial Chamber reasonably accepted Witness CNA's explanation that he was not providing comprehensive information about Nzabonimana in the Karemera et al. case since Nzabonimana was not on trial in that case.1027 The Appeals Chamber considers that the fact that Witness CNA did not testify that Nzabonimana threatened to replace the bourgmestres with Interahamwe, in a separate proceeding involving different accused, does not undermine the witness's credibility. Furthermore, a review of the trial record shows that Witness CNA only mentioned the threat to replace bourgmestress in response to follow-up questions on who, according to Nzabonimana, would be in a position to perform the work of the bourgmestre.1028 The Appeals Chamber further finds that the Trial Chamber reasonably found that the two testimonies were not materially inconsistent, let alone that "[i]n both instances, Witness CNA recounted that the bourgmestres accused Nzabonimana of being responsible for violence in Gitarama, and Nzabonimana dismissed their calls to denounce the violence".1030 Nzabonimana has not demonstrated how the Trial Chamber erred in its assessment of the differences between Witness CNA's testimony in the Karemera et al. and Nzabonimana trials. (ii) Other Alleged Errors 369. Nzabonimana submits that the Trial Chamber erred in concluding that Nzabonimana was not necessarily against the killings despite finding that: (i) the reinstatement of the bourgmestre of Musambira commune was requested by the bourgmestres; (ii) his

presence as welcomed by the population; and (iii) he did not support the illegal activities of the Interahamwe against the legitimate authority of the bourgmestre.¹⁰³² He further submits that the Trial Chamber erred in "blaming" him for refusing to denounce the killings on the radio since he denied any responsibility during the meeting and Witnesses C NAA and CNAC doubted whether he spoke on the radio. ¹⁰³² Nzabonimana also submits that the Trial Chamber erred in "disassociating the testimonies of Witnesses C NAA and CNAC" on the words attributed to Nzabonimana and ignoring the fact that he testified at the Trial Judgement, para. 1211. 'ut'. See Witness C NAA, T. 15 December 2009 p. 6, 7 (closed session). ¹⁰³³ Trial Judgement, para. 1217. ¹⁰³⁴ Trial Judgement, para. 1211. ¹⁰³⁵ Nzabonimana Appeal Brief, para. 239. Nzabonimana submits that the Trial Judgement is based on "speculative arguments and use of inferences". See item. ¹⁰³⁶ Nzabonimana Appeal Brief, para. 240. ¹⁰³⁷ Case No.: ICTR-98-44D-A 29 September 2014

¹⁰³⁸ 2109/H could not be held responsible for the subsequent replacement of officials. ¹⁰³⁹ According to Nzabonimana, the Trial Chamber erred in concluding that Witness CNAC's testimony established that Nzabonimana accused the bourgmestre of not supporting the killing of Tutsis. ¹⁰⁴⁰ 370. The Prosecution responds that Nzabonimana presents no analysis to support his claim that the Trial Chamber erred in finding that he was not necessarily against the killings. ¹⁰⁴¹ The Prosecution responds that Witnesses C NAA and CNAC were not doubtful about whether Nzabonimana gave a radio address denouncing the killings but rather testified that Nzabonimana refused to denounce the violence. ¹⁰⁴² According to the Prosecution, the fact that the Trial Chamber simply found the evidence as too general to establish a causal link between Nzabonimana's words and any subsequent dismissal of officers, did not preclude the Trial Chamber from crediting other aspects of Witnesses C NAA's and CNAC's evidence. ¹⁰⁴³ 371. The Trial Chamber found that Nzabonimana's support for the reinstatement of the bourgmestre of Musambira committed did not necessarily establish that Nzabonimana was against the killings. ¹⁰⁴⁴ 8 The Appeals Chamber notes that the Trial Chamber considered Witness CNAC's testimony, which it found consistent with Witness C NAA's testimony, that the bourgmestre confronted Nzabonimana about the violence committed by the Interahamwe and asked him to publicly denounce the violence on Radio Rwanda. ¹⁰⁴⁵ The Trial Chamber also considered Witness CNAC's testimony that Nzabonimana: (i) told the bourgmestre that they were "not fully assuming their responsibilities"; (ii) accused them of collaborating with the enemy; (iii) told them that if they were tired, they should resign and allow the Interahamwe to take over; and (iv) refused to denounce the violence. ¹⁰⁴⁶ The Appeals Chamber finds that Nzabonimana fails to demonstrate that no reasonable trier of fact could have made the impugned finding or that the Trial Chamber speculated in making it. ¹⁰⁴⁷ 372. With respect to Nzabonimana's argument that he was "blamed" for refusing to denounce the killings on the radio, the Appeals Chamber understands that he is challenging the Trial Chamber's finding that he refused to denounce the killings. In this respect, the Appeals Chamber notes the Trial Chamber's finding that Witnesses C NAA and CNAC provided consistent evidence that the bourgmestre voiced their concern to Nzabonimana about the killings and requested Nzabonimana ¹⁰⁴⁸ 373 Nzabonimana Appeal Brief, para. 241. ¹⁰⁴⁹ 373a Nzabonimana Appeal Brief, para. 238. ¹⁰⁵⁰ Prosecution Response Brief, para. 226. ¹⁰⁵¹ 373b Prosecution Response Brief, para. 229. ¹⁰⁵² Response Brief, para. 186. ¹⁰⁵³ "i." 199:1, 199:11 Trial

Judgement para. 222. "The Trial Chamber, para. 221. "The Trial Chamber para. 221. t27 v Case No.: ICTR-98-44D-A 29 September 2014 \,)

to publicly denounce the killers, but Nzabonimana refused. In the Appeals Chamber's view, irrespective of whether the witnesses knew if Nzabonimana spoke on the radio, there is no error in the Trial Chamber's finding that Nzabonimana refused to denounce the killings of Tutsis. 313. Nzabonimana provides no references and fails to articulate his argument that the Trial Chamber erred by "disassociating the testimonies of Witnesses C NAA and CNAC" on the words attributed to Nzabonimana. The Appeals Chamber rejects Nzabonimana's contention that the Trial Chamber overlooked the fact that the subsequent replacement of officials could not be attributed to him. Indeed, the Trial Chamber found that, given the general nature of the Prosecution evidence and the time elapsed after the reinstatement ceremony, a causal link between Nzabonimana's involvement in the Musambira event and the subsequent dismissal of officials was not established. The Appeals Chamber also dismisses Nzabonimana's argument that the Trial Chamber erred in considering Witness CNAC's testimony to find that Nzabonimana accused the bourgmestre of not supporting the killing of Tutsis. Nzabonimana fails to provide references and equally fails to substantiate his allegation of error. 374. Nzabonimana's arguments are therefore summarily dismissed. (iii) Conclusion 375. The Appeals Chamber therefore dismisses in their entirety Nzabonimana's arguments on the assessment of evidence in relation to the Musambira event. (f) Conclusion 376. Based on the foregoing, the Appeals Chamber dismisses Nzabonimana's arguments in relation to the assessment of evidence under his Fifth Ground of Appeal. "The Trial Chamber, para. 214, referring to, inter alia, Witness C NAA, T. 15 December 2009 pp. 5-7 (closed session); Witness C NAA, T. 16 December 2009 p. 20 (closed session); Witness C NAC, T. 17 December 2009 pp. 3, 4 (closed session); Witness C NAC, T. 13 April 2010 pp. 6, 27, 29 (closed session). The Appeals Chamber notes that Witness C NAA testified that Nzabonimana was asked to address the population over Radio Rwanda in order to condemn the massacre, and never did. See Witness C NAA, T. 15 December 2009 p. 5 (closed session). Witness C NAC testified that Nzabonimana refused when asked to denounce the acts of violence, and that he was asked to publicly condemn the event on Radio Rwanda. See Witness C NAC, T. 17 December 2009 p. 3 (closed session). The Trial Chamber, para. 241. "The Trial Chamber, para. 1225. The Trial Chamber, para. 238. Case No.: ICTR-98-44D-A 29 September 2014

2107/13. Direct and Public Incitement to Commit Genocide 377. The Trial Chamber convicted Nzabonimana for direct and public incitement to commit genocide, based, in part, on his conduct at the Murambi meeting, in Gitarama prefecture. In particular, the Trial Chamber found that, on 18 April 1994, the Prime Minister of Rwanda and other members of the Interim Government, including Nzabonimana, held a meeting for the bourgmestres of Gitarama prefecture. The Trial Chamber found that Nzabonimana's speech, which consisted of an explicit threat to kill persons opposing the massacre of Tutsis, constituted a direct call to commit genocide, and also concluded that Nzabonimana had the requisite mens rea to incite the 1994 genocide publicly. 378. Nzabonimana submits that the elements of direct and public incitement were not established and that the Trial Chamber erred by characterising as public the alleged

incitement of 18 April 1994. In particular, Nzabonimana argued that the Trial Chamber erred in confusing the mens rea and the actus reus of the crime when it determined that the incriminating message was "intended to be broadcast to the public", in lieu of assessing whether it was made public. Oae Nzabonimana contended that, despite the presence of a journalist, the incriminating message had not been made public by the media and was only addressed to a limited group of local and national authorities gathered in Murambi. 1050 Nzabonimana further contended that the Trial Chamber erred in law and in fact by finding that the incriminating message directly incited the commission of genocide because it was ambiguous and distorted. 1051 379. The Prosecution responded that the Trial Chamber did not confuse the public element of the actus reus of the incitement with the mens rea but rather identified both of them in its discussion of the law and assessed each element separately, albeit in the same paragraph. 1052 The Prosecution submits that an inciting speech, dealing with public matters, 1053 delivered to a gathering of public 1045 Trial Judgement, paras. 1713, 1775, 1800. 1054 Trial Judgement, para. 158. See also ibid., para. 1769. The Trial Chamber further found that during the meeting Nzabonimana ordered the killing of bourgeois, teachers and other local officials opposed to the massacre of Tutsis. See ibid., para. 1179. See also ibid., para. 1769. The Appeals Chamber recalls that it found that the Trial Chamber erred in entering this finding. See supra, paras. 339, 345. 1047 Trial Judgement, paras. 711, 1772. 1048 Nzabonimana Notice of Appeal, para. 5.4; Nzabonimana Appeal Brief, paras. 253-257. See Nzabonimana Appeal Brief, paras. 253-255. 105 Nzabonimana Appeal Brief, para. 256; Nzabonimana Reply Brief, para. 75. See also AT. 29 April 2014 pp. 52, 53. Nzabonimana submitted that the Trial Chamber relied on Exhibit D86 (Transcript of Radio Rwanda Broadcast, 19 April 1994) to establish the intent to broadcast and that despite indicating that the document in question did not mention threats issued by the Government, it still convicted Nzabonimana of direct and public incitement to commit genocide. See Nzabonimana Appeal Brief, para. 254. 1056 Nzabonimana Appeal Brief, para. 257. 1057 29 Prosecution Response Brief, para. 248. 1058 AT. 29 April 2014 pp. 26, 36-38. 1059 Case No.: ICTR-98-44D-A 29 September 2014

officials, addressed in their function as public officials, is public. 1060 Therefore, it argues that the incitement was public as Nzabonimana's threat was made in a public setting when he spoke during a large meeting of public officials. 1061 The Prosecution adds that the public nature of the incitement was further demonstrated by the presence of a journalist, who subsequently broadcast a report of the meeting to the public at large. 1062 It finally contended that it is clear from the Trial Judgement that Nzabonimana's incitement consisted of ordering that persons opposing the massacre should be killed, thus directly inciting genocide. 1057 380. Nzabonimana replies that the fact that public officials were convened in their function as public officials excludes the characterisation of the meeting as public. 1063 Nzabonimana contends that these officials were selected and convened in their official capacity and that the meeting was purely private. 1064 He further replies that the meeting was held in a closed room devoid of any public character. 1060 381. 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). 1061 382. In the legal findings supporting N

zabonimana's conviction for direct and public incitement to commit genocide in relation to the Murambi meeting, the Trial Chamber found that Nzabonimana's speech constituted a direct call to commit genocide and that "Nzabonimana 'public' possessed the requisite mens rea to satisfy the element of the crime of direct and public incitement to commit genocide".¹⁰⁶⁵ With respect to the "public" element, the Trial Chamber stated the following: The Chamber recalls that present during his meeting were the Prime Minister, the members of the Interim Government, the burgomasters of Gitarama prefecture and the local political officials. In addition, a journalist from Radio Rwanda was present during the meeting with the burgomasters. The journalists subsequently broadcast a report regarding the meeting. Given these circumstances, the Chamber considers that the evidence establishes that the meeting was intended to be a Prosecution Response Brief, para. 239. See also AT.29 April 2014 pp. 26, 36-40. ¹⁰⁶⁶ Prosecution Response Brief, paras. 238, 239. See also AT.29 April 2014 pp. 26, 36-40. ¹⁰⁶⁷ Prosecution Response Brief, para. 243. See also AT.29 April 2014 pp. 26, 40. In the Prosecution's view, the fact that the subsequent media coverage did not include Nzabonimana's threats does not detract from the public nature of the meeting. See Prosecution Response Brief, para. 243. According to the Prosecution during oral submissions, burgomasters attending the Murambi meeting later spread the genocidal message to the general public. See AT.29 April 2014 p. 38. ¹⁰⁶⁸ Prosecution Response Brief, para. 235. ¹⁰⁶⁹ Nzabonimana Reply, para. 77. ¹⁰⁷⁰ Nzabonimana Reply, para. 17. See also AT.29 April 2014 p. 52. ¹⁰⁷¹ Nzabonimana Reply, para. 78. See also AT.29 April 2014 p. 52. ¹⁰⁷² See *Prosecution v. Callixte Nzabonimana*, Trial Chamber I, Judgment, paras. 121, 231. ¹⁰⁷³ Trial Judgment, paras. 1771, 1712. ¹⁰⁷⁴ Case No. ICTR-98-44D-A 29 September 2014

2105/H to be broadcast to the public at large and evinces that Nzabonimana had the requisite mens rea to ¹⁰⁷⁵ incite genocide publicly. ¹⁰⁷⁶ The Appeals Chamber observes that the Trial Chamber did not make an express finding that the alleged incitement was public. The Trial Chamber only analysed whether Nzabonimana had the requisite mens rea to publicly incite genocide. ¹⁰⁷⁷ Accordingly, the Appeals Chamber considers that the Trial Chamber failed to assess whether the incitement was actually public and enter a finding on this element of the crime. The Trial Chamber therefore erred in law by failing to provide a reasoned opinion on this aspect of the actus reus of the crime of direct and public incitement to commit genocide. ¹⁰⁷⁸ In these circumstances, the Appeals Chamber has reviewed the Trial Chamber's factual findings and the relevant evidence on the record to determine whether a reasonable trier of fact could have found beyond reasonable doubt that the incitement was public. ¹⁰⁷⁹ The Appeals Chamber recalls that when assessing the "public" element of incitement, it can take into account the place where the incitement occurred and whether the attendance was selected or limited. ¹⁰⁸⁰ Additionally, the Appeals Chamber recalls that the number of persons and the medium through which the message is conveyed may be considered in assessing whether the attendance was selected or limited, thereby determining whether or not the recipient of the message was the general public. ¹⁰⁸¹ ¹⁰⁸² The Appeals Chamber notes that the attendance at the Murambi meeting appeared to be limited and selected as it only involved a group of public officials, ¹⁰⁸³ and did not involve the public at large. ¹⁰⁸⁴ The Appeals Chamber observes that the meeting was first convened by the *préfet* of Gitarama prefecture ¹⁰⁸⁵ and that the group of public officials was then

reconvened by the Prime Minister. In addition, there is no evidence on the record showing that members of the public were invited or attended the meeting. The Appeals Chamber is therefore satisfied that the public at large could not attend this meeting. The Appeals Chamber considers that the mere presence of a Trial Judgement, para. 7172 (internal reference omitted). Trial Judgment, para. 1772. Trial Chamber Appeal Judgment, para. 23; Ndindiliyimana et al. Appeal Judgment, para. 293; Bagosora and Nsengiyumva Appeal Judgment, para. 683. Trial Chamber Judgment, paras. 12, 1231. 'The' S. 1231. Trial Judgment, para. 1158. The Appeals Chamber notes that a journalist, Witness Mporanziza and Witness T24 were also present. See e.g. Witness C NAA, T. 14 December 2009 p. 64; Witness C NAA, T. 15 December 2009 pp. 7-9 (closed session); Witness C NAA, T. 16 December 2009 p. 2 (closed session); Witness C NAC, T. 16 December 2009 pp. 57, 59, 66 (closed session); Witness T24, T. 26 April 2010 pp. 57, 59 (closed session); T24, T. 27 April 2010 pp. 2, 3; Witness Mporanziza, T. 25 May 2010 p. 70. Trial Judgment, paras. 82, 106, 1123, 1138, 1144, 1145, 1153, 1154, 1155. Trial Judgment, paras. 1082, 1083, 1092, 1093, 1103, 1123, 1124, 1144, 1145, 1153, 1154, 1155, 1158. Trial Judgment, paras. 1080-1141. (Case No. ICTR-98-44-D-A 29 September 2014)

journalist Ott do not automatically render the meeting public, rather it is the broadcast of the incriminating message which would render the incitement public. In this respect, the Appeals Chamber notes the Trial Chamber's acknowledgement that the incriminating message was not disseminated by the media. Furthermore, the Appeals Chamber is of the view that the evidence does not support a finding that the meeting occurred in a public place.³⁸⁶ The Appeals Chamber is also not persuaded by the Prosecution's submission that an inciting speech, which discussed public matters, delivered to a gathering of public officials, addressed in their function as public officials, is necessarily public. In support of this argument the Prosecution underlines that, in light of the purpose and object of the crime of incitement, inciting public officials rather than "a gathering of random members of the population" creates a greater risk that genocide will actually occur because public officials "have the authority and the means to trigger massacres".³⁸⁷ While this may be the case, the Appeals Chamber fails to see how this supports the public nature of the incitement at the Murambi meeting.³⁸⁸ In light of the foregoing, the Appeals Chamber finds that the attendance at the Murambi meeting was selected and limited, that the location was not a public place, and that the incriminating message was not broadcasted. The Appeals Chamber therefore finds that no reasonable trier of fact could have found that the incitement was public.³⁸⁹ The Appeals Chamber accordingly finds that the Trial Chamber erred in convicting Nzabonimana for direct and public incitement to commit genocide in relation to the Murambi meeting and that it need not address the remainder of Nzabonimana's arguments. 4. Conspiracy to Commit Genocide 389. The Trial Chamber convicted Nzabonimana of conspiracy to commit genocide in relation to, inter alia, the agreement beginning on 18 April 1994 at the Murambi meeting.³⁹⁰ Having considered the concerted and coordinated actions of Nzabonimana and the Ministers of the Interim Government, the Trial Chamber found the only reasonable inference to be that an agreement with the specific intent to destroy Rwanda's Tutsi population in whole or in part materialised on 18 April 1994.³⁹¹ It further

considered that the conduct of Nzabonimana and Prime Minister Jean '013 See Trial Judgement, para. 180. "to Trial Judgement, para. 2195 where the Trial Chamber noted that the broadcast did not include a summation of the threats issued by the Government". See Exhibit D86 (Transcript of the Broadcast, 19 April 1994). "The Witness C NAA, T. 15 December (X) 9 p. 7, 8 (closed session) W; itness M poranzi, T. 25 May 2010 p. 70; Witness Ts 24, T. 26 April 2010 p. 57 (closed session). r. 76 Prosecution Response Brief, paras. 239, 240. See also T. 29 April 2014 p. 39. 'ntt Trial Judgement, paras. 1741, 1749, 18(X). See also ibid., para. 811. "The Trial Judgement, para. 141. tJz Ca" eN o. : ICTR-98-44D-A 29 September 2014

2103/H Kambanda after the 18 April 1994 meeting reinforced its conclusion that Nzabonimana, other ministers, and the Prime Minister of the Interim Government entered into an agreement to encourage the destruction of the Tutsi population, as such, in Gitarama prefecture. r. 390. Nzabonimana submits that the elements of the conspiracy were not established and that, assuming they were established, the inference drawn by the Trial Chamber from the circumstantial evidence was not the only reasonable one. lo*o 391. The Appeals Chamber recalls that conspiracy to commit genocide, under Article 2(3Xb) of the Statute, requires "an agreement between two or more persons to commit the crime of genocide" lo8la and the individuals involved must have the intent to destroy in whole or in part a national, ethnic, racial or religious group as such. 108T2h the agreement constitutes the actus reus. t083 This actus reus can be proven by establishing the existence of planning meetings for the genocide, but it can also be inferred, based on other evidence. top0 In particular, a concerted agreement to commit genocide may be inferred from the conduct of the conspirators. losF5u rather, the agreement need not be formal and a tacit agreement may be sufficient as evidence of conspiracy to commit genocide. 1086 392. The Appeals Chamber also recalls that where the Prosecution intends to rely on circumstantial evidence to prove a particular fact upon which the guilt of the accused depends, the finding of the existence of a conspiracy to commit genocide must be the only reasonable inference based on the totality of the evidence. tott (a) Murambi 393. The Trial Chamber determined that beginning on 18 April 1994 at the Murambi meeting, Nzabonimana agreed with other members of the Interim Government, specifically Prime Minister r07e Trial Judgement, para. 1147S. See also ibid., para. 1746. r080 Nzabonimana Notice of Appeal, paras. 5.5.2, 5.5.3; Nzabonimana Appeal Brief, paras. 273-300. Nzabonimana's challenge that the Murambi meeting was not established has been examined in another section. See Nzabonimana Notice of Appeal, para. 5.5.2(5). See supra, paras. 312-362. The Appeals Chamber considers that Nzabonimana's arguments in Witness C NAA have been withdrawn in that they are not developed in his Appeal Brief (see Nzabonimana Notice of Appeal, para. 5.5.2(7), (8)). It also notes that Nzabonimana fails to develop in his Appeal Brief his argument that the Trial Chamber erred in finding the events in Nyakabanda established (see Nzabonimana Notice of Appeal, para. 5.5.2(6). 'lo-R" r J^ee supra, para. Z)). 'ot' Nahimana et al. Appeal Judgement, para. 894. 1083 Sero^ba Appeal Judgement, paras. 218, 221 Nahimana et al. Appeal Judgement, para. 894. See also Gatete Appeal Judgement, para. 260. "n Seromba Appeal Judgement, para. 221; Nahimana et al. Appeal Judgement, para. 896. '08s Nahimana et al. Appeal Judgement, para. 896. 'o* Nohi^oro et al. Appeal Judgement, para. 898. '0" Sero^ba Appeal

Judgement, para. 221; Nahimana et al. Appeal Judgement, para. 896. See also Mugenzi and Mugiraneza Appeal Judgement, para. 88. IJJ CaseN o.: ICTR-98-44D-A 29S eptemb2e0r 14 W\

KambandaP, rospeMr ugiranezaa sw ell asD efenceW itnesseTs 82 andT 83 to encouragteh 8fiAle/H of members of the Tutsi population.rossT he Trial Chamber recalled that at the Murambi meeting, the ministers directed their threats at the assembledb ourgmestrer.tut'According to the Trial Chamber, the evidence establishedt hat in the days prior to the Murambi meeting some of the bourgmestresi n Gitarama prdfecture wert-a ctively protecting Tutsis.l0e0T he Trial Chamber then held that "members of the Interim Government therefore assembled the bourgmestres at the Murambi meeting, where they threatenedt o remove Lheb ourgmestresf rom their posts if they did not stop supportingt he Tutsi population".l0el (i) Elementso f Conspiracy 394.

Nzabonimana submits that the Trial Chamber convicted him for events at the Murambi l0e2 meeting absente vidence of an agreement. Nzabonimanac ontendst hat the Trial Chamber made no finding on whether, by virtue of a pre-existing agreementt o kill Tutsis, bourgmestre.tw ere brought together in Murambi with the premeditatedp urpose of issuing threats to stop them from protecting Tutsis.r0e3N zabonimana argues that the Trial Chamber clisregardede vidence that the meeting was organised on an impromptu basis, without prior consultation between the Prime Minister and the other ministers.lt'eH4 e also claims that the Trial Chambero verlookede vidence contradictingt he ex ecution of a prior agreem ent.l0e5N zabonimanaa vers that, if conspiracyr equires premeditation,n o evidence was adducedt hat other ministers, aside from the Prime Minister, were informed about the first or secondm eeting at Murambi before they took place.tt'eo 395. Nzabonimanaf urther contendst hat no evidencew as adducedt o support an agreementb eing reachedd uring the Murambi meeting, and that the Trial Chamber failed to characteriset he factual circumstanceso f the agreement.l0eITn this regard, he arguest hat the Trial Chamber could not base the conspiracyc onvictiono n section3 .5.7.3.2o f the Trial Judgementw, here it neitherd etermined ""** Trial Judgement.p ara.1 744. ""t'Trial Judgement,p ara. 1744,r et'brringt o section3 .5.7.3.2," Murambi Meeting - NzabonimanaO rderedt he Killing of Bourgnrestresa ndO ther Local Officials" (seei bid.,p aras.1 1 59-l 181).S eea lso ibid.,para.1145. rt)et'TrialJudgement, para. 1145.T heTrial Chamberrecalledthattheb ourgme.streo f Nyabikenkecommunes tavedotf attacks upon the refugees at the commune office on 13 April 1994 (see idem, re.f'erringt o section 3.5.2.3.2, "Cyayi Centre and Nyabikenke Commune Office Attacks - Attempted Attack on 13 April 1994", paras. 862-866). It further considered that Witness Mporanzi, bourgmeste of Rutobwe commune, placed killers in prison prior to 18 April 1994 (seei dent,r e.ferring/ o section3 .5.6.3," Releaseo f Killers in RutobweC ommune".p aras.1 063-1076). 'oo' Triol Judgement.p ara.1 145. "" Nzabonimana Appeal Brief, paras. 273-283; NzabonimanaR eply Brief, para.66. r')er NzabonimanaA ppeal Brief, paras.2 '75,2'76. r(Da NzabonimanaA ppeal Brief, para. 278. tuot See Nzabonimana Appeal Brief, ptua. 279, where Nzabonimana submits that Kambanda's attitude of reacting "warmly" to the offer by the bishop of Kabgayi to provide refuge to Tutsis, as testified to by Witness CNAC, ruled out a.prior agreement., tde a1.ir.Nr zabonimanaR eply Brief, para. 67. "" NzabonimanaA ppeal Brief, para.2 77 (Frencho riginal). r')et NzabonimanaA ppeal Brief, paras.2 80-283. t34 CaseN o.;I CTR-98-44D-A 29 Septembe2r0 14 c.).\"

2101/H the ministers present nor what they said.10eN8 zabonimanaa vers that the Trial Chamber limited itself to the vague and imprecise standard of "the ministers present",10eN8 then proceeded to infer ex-nihilo that an agreement existed between him, Kambanda, Mugiraneza, Witness T82, and Witness T83.110N0 zabonimanaa argues that, given Kambanda's absence during the second meeting at Murambi, the Trial Chamber could not find the second meeting to be an expression of a 1101 conspiracy that included Kambanda. 396. The Prosecution responds that the conspiracy was proved through the concerted and coordinated actions of Ntabonimana and other ministers, who threatened the bourgeoisie opposed to the genocide.110I't argues that: (i) a premeditated plan is not required for conspiracy, and even if the meeting was "impromptu" an agreement existed to present a unified force to threaten the bourgeoisie;110(3ii) the Trial Chamber was not required to identify every co-conspirator by name and it makes no difference exactly what each minister said because their speeches all struck the same general theme;110a and (iii) even if Kambanda was not present during the threats at Murambi, Kambanda was a co-conspirator and showed his agreement during the weapons distribution at Nyakabanda.1105 397. Ntabonimana replies that the Prosecution does not contradict his arguments but instead follows the contradictory reasoning of the Trial Chamber regarding Kambanda,1106 398. The Appeals Chamber is not persuaded that premeditation or the existence of a pre-existing agreement is an element of the crime of conspiracy to commit genocide and Ntabonimana fails to provide any supporting reference to the Tribunal's jurisprudence.110t On this basis, the Appeals Chamber dismisses Ntabonimana's arguments related to a prior agreement or to the "impromptu" nature of the meeting. 1108 Ntabonimana Appeal Brief, para. 282, referring to Trial Judgement, para. 1744. See also Ntabonimana Reply Brief, para. 66. 110e Ntabonimana Appeal Brief, para. 283, referring to Trial Judgement, para. 1179. See also Ntabonimana Reply Brief, para. 66. Item Ntabonimana Appeal Brief, para. 283, referring to Trial Judgement, para. 1744. See also Ntabonimana Reply Brief, para. 66. 110t Ntabonimana Appeal Brief, para. 280, referring to Trial Judgement, paras. 1144, 1179; Ntabonimana Reply Brief, para. 67. 110@ Prosecution Response Brief, paras. 172, 173, 209. 1103 Prosecution Response Brief, para. 218. 1108 Prosecution Response Brief, paras. 213, 221. 1105 Prosecution Response Brief, para. 221, referring to Trial Judgement, paras. 1292, 1146. 110tr Ntabonimana Reply Brief, paras. 68, 69. 1107 The Appeals Chamber observes that, in support of this contention, Ntabonimana merely cites an article. 110e Ntabonimana Appeal Brief, para. 277, fn. 466, referring to "Les procès de Nuremberg devant les principes modernes du droit pénal international", The Hague Academy of International Law, Donnedieu de Vabres, p. 529. 1103 Case No.: ICTR-98-44D-A 29 September 2001

399. The Appeals Chamber is also not convinced that the Trial Chamber convicted Ntabonimana of conspiracy to commit genocide without factual basis. 110t The Trial Chamber determined that an agreement materialised at the Murambi meeting on 18 April 1994. 110t The Appeals Chamber notes the Trial Chamber's determination that Interim Government Ministers, including Ntabonimana, used the Murambi meeting to threaten to remove the bourgeoisie from their posts if they did not stop supporting the Tutsi population. 110t According to the Trial Chamber, the purpose of the agreement was to encourage the killing of Tutsis. 110t The Appeals Chamber observes that these conclusions

were based on the Trial Chamber's factual determinations from section 3.5.7.3.2 of the Trial Judgement. In this regard, the Trial Chamber considered and found that: (i) Kambanda and other members of the Interim Government, including Nzabonimana, "held a meeting for the bourgmestres of Gitarama province"; (ii) Nzabonimana and other Interim Government officials took turns making various threats to the assembled bourgmestresses as a means to ensure their participation in the genocide; and (iii) the bourgmestresses were intimidated. 400. As for Nzabonimana's argument on the presence of other ministers, the Appeals Chamber is not convinced that the Trial Chamber's reference to "the ministers present" is too vague. Recalling that a conspiracy requires an agreement between two or more persons, the Appeals Chamber considers that finding that Nzabonimana agreed with "other members of the Interim Government" is a sufficient basis for the finding of conspiracy to commit genocide. Thus, any possible error with respect to the identification by name of the members of the Interim Government would not result in a miscarriage of justice nor impact the Trial Chamber's finding of a conspiracy. 401. The Appeals Chamber is equally not convinced that the Trial Chamber was required to determine the exact utterances of the ministers present. In the Appeals Chamber's view, the ministers' specific words were not material to the Trial Chamber's finding of a conspiracy. In this regard, Nzabonimana Appeal Brief, paras. 280-283. "Trial Judgement, para. 147. "u. See Trial Judgement, paras. 179, 1745. "Trial Judgement, para. 1744, "Trial Judgement, para. 144. "Trial Judgement, para. 158. "Trial Judgement, paras. 161, 1162, 1179. See also ibid., paras. 144, 1745. "Trial Judgement, para. 1161. "to Sr" Nzabonimana Appeal Brief, para. 283, referring to Trial Judgement, para. 1179. "1 Seromba Appeal Judgement, paras. 218, 221. Nahimana et al. Appeal Judgement, para. 894. "Trial Judgement, para. 144. "Sre Nzabonimana Appeal Brief, para. 281. Nzabonimana additionally submits that it was paradoxical that two of Nzabonimana's co-conspirators, Mugiraneza and T82 were acquitted in separate judgments. See idem. The Appeals Chamber recalls that two reasonable triers of fact 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 and an error cannot be established by simply demonstrating that other trial chambers have exercised their discretion in a different way. See Lukii and Luki (Appeal Judgement, para. 396, referring to Krnojelac Appeal Judgement, paras. 11, 12. See also Rutagunda Appeal Judgement, para. 188. The Appeals Chamber therefore finds that the Trial Chamber was entitled to reach a different conclusion than cases involving Mugiraneza and Witness T82. 136 Case No.: ICTR-98-44D-A 29 September 2001

2099/H regard, the Trial Chamber considered consistent evidence from Witnesses C NAA and CNAC, that the ministers present at the second meeting took turns threatening bourgmestres to ensure their participation in the genocide, and all "reiterated the common theme" that bourgmestres who did not support Tutsis would be removed from their posts. 402. In light of the foregoing, the Appeals Chamber finds that Nzabonimana fails to demonstrate any error occasioning a miscarriage of justice and thus dismisses his submission on the absence of

evidence of an agreement. (ii) Inferences from Circumstantial Evidence 403. Nzabonimana submits that the agreement to destroy Rwanda's Tutsi population was not the only reasonable inference that could be drawn from the evidence.¹¹²¹ He argues that the Trial Chamber failed to consider other equally reasonable inferences,¹¹²² specifically that: (i) the objective of the meeting was to deal with the war and security issues, without a pre-conceived plan to eliminate Tutsis;¹¹²³ and (ii) since the second meeting was "impromptu", the ministers' statements reflected "conscious parallelism" rather than "concerted" actions.¹¹²⁴ 404. The Prosecution responds that the ministers' conduct allowed no other reasonable inference than a conspiracy to commit genocide.¹¹²⁵ The Prosecution submits that Nzabonimana ignores direct evidence of trials and other ministers' explicit calls for genocide.¹¹²⁶ 405. The Appeals Chamber recalls that Nzabonimana failed to demonstrate that the Tribunal's jurisprudence requires premeditation or the existence of a pre-existing agreement to establish conspiracy to commit genocide.¹¹²⁷ Thus, the question of a pre-conceived plan is irrelevant to the finding of conspiracy and Nzabonimana's arguments could be dismissed on this basis only. Regarding the meeting's objective, the Appeals Chamber notes the Trial Chamber's explicit consideration that during the first meeting Kambanda provided an overview of the Interim Government's military approach to fighting the RPF.¹¹²⁸ The Appeals Chamber finds that the fact that the state of war was also discussed is insufficient to demonstrate an error from the Trial Chamber.¹¹²⁹ Trial Judgment, paras. 1086, 1087, 1100, 1101, 1103, 1159-1161, 1169. See also *ibid.*, paras. 1744, 1745. "" Nzabonimana Appeal Brief, paras. 290-294. "" Nzabonimana Appeal Brief, para. 290, referring to Trial Judgment, paras. 1744-1745. "" Nzabonimana Appeal Brief, para. 292. "" Nzabonimana Appeal Brief, para. 293, referring to Nahimana et al. Appeal Judgment, para. 897. It is the Prosecution's response, para. 173. 112 P 6 Prosecution's response, para. 237. See also *ibid.*, para. 220. , *in* *Sources*, para. 39g. "" See Trial Judgment, para. 1146. The Appeals Chamber also notes that the Trial Chamber considered Kambanda's conduct. See, e.g., *ibid.*, paras. 1096, 1144-1147. The Appeals Chamber considers that this conduct does not undermine that a conspiracy to commit genocide was the only reasonable inference drawn from the concerted and coordinated actions of Nzabonimana and the Ministers of the Interim Government. I3'7 Case No.: ICTR-98-44D-A 29 September 20014

Chamber in finding that the only reasonable inference was that an agreement materialised on 18 April 1994 to encourage the killing of Tutsis. 406. The Appeals Chamber is equally not convinced by Nzabonimana's argument that, since the meeting was "impromptu", the conduct of ministers was more consistent with "conscious parallelism" rather than "concerted" actions. It is irrespective of the impromptu or planned nature of the meeting, the Trial Chamber found that the agreement materialised on 18 April 1994. As already discussed, the Appeals Chamber recalls the Trial Chamber's consideration that: (i) the Interim Government held a meeting for the bourgmestres;¹¹³⁰ and (ii) ministers, including Nzabonimana, "imposed themselves" on the bourgmestres, supported the killings, took turns making various threats, and "used" the meeting to threaten the bourgmestres to stop protecting the Tutsis.¹¹³¹ This conclusion, long with the assembling of bourgmestres, formed the basis of the Trial Chamber's finding of a conspiracy.¹¹³² The Appeals Chamber finds no error in the Trial Chamber's finding that the only

reasonable inference that could be drawn from the concerted and coordinated actions of Ntabonimana and other members of the Interim Government was that an agreement to commit genocide materialised at the meeting on 18 April 1994. 407. Given the above, the Appeals Chamber dismisses Ntabonimana's argument that the Trial Chamber failed to consider other reasonable inferences in relation to the Murambi meeting of 18 April 1994. (iii) Conclusion 408. Based on the foregoing, the Appeals Chamber finds that Ntabonimana does not demonstrate an error in the Trial Chamber's determination of conspiracy to commit genocide in relation to the Murambi meeting to warrant the Appeals Chamber's intervention. (b) Musambira and Nyakabanda 409. Ntabonimana submits that the Trial Chamber erred by relying on events at Musambira and Nyakabanda as circumstantial evidence of an agreement at the Murambi. 1133 Ntabonimana argues that the reinstatement ceremony at Musambira commune could not be used as circumstantial evidence of the conspiracy because the ceremony was antithetical to the ministers' encouragement, at the 1994 Ntabonimana Appeal Brief, paras. 293. "The Trial Judgment, para. 158 (emphasis added). See also ibid., paras. 1144-1146. "The Serrial Judgment, paras. 159-1162 [l, 79, l'744, l 145. r'tt Trial Judgment, para. 1. 744, l'745, l'74.7 rrrt Ntabonimana Notice of Appeal, para. 5. 5.3(6)-(8N); z aboniman Appeal Brief, paras. 2. 84, 286. 138 Case No.: ICTR-98-44D-A 29 September 2014

2097/H Murambi meeting, to kill Tutsis.113aA ccording to Nzabonimana, while ministers allegedly threatenedb ourgmestresa t Murambi for not supporting massacresc ommitted by the Interahamwe, they neverthelessg rantedt he reinstatemento f a bourgmestrei n Musambira who had been driven away by the Interaho^ .r.tt3t Nzabonimana also submits, as alternate inferences, that: (i) the political opposition explained the controversyb etween him and the MDR bourgmestres;113a6n d (ii) the Interahamwe, rather than Interim Government orders, were to blame for insecurity concerns t" thatb o urg meslresr aiseda t Musambi ru.l 410. As to the weapons distribution at Nyakabanda, Nzabonimana submits that the Trial Chamber could not infer a concertedo r coordinateda ction from his mere presence,a neutral fact and passivec onduct.r13R8 efening to paragraph 1729 of the Trial Judgement,N zabonimanaa vers that the Trial Chamber found that he could not be held liable for his mere presencea t Nyakabanda, yet used the same facts to find an expression of conspira"y.tttt According to Nzabonimana, assumingt hat the Trial Chamberw as justified to rely on his mere passivep resence,t his fact alone was insufficient to infer the crime of conspira"y.ttooH e also argues that words attributed to Kambanda at Nyakabanda could not be linked to incriminating utterancesf rom the second meeting at Murambi becauseK ambandaw as not presenta t that meeting.11al 4II. Finally, according to Nzabonimana, the fact that no criminal consequencef ollowed the Murambi and Musambira events is a strong indication that another equally reasonablei nference, consistentw ith the absenceo f a conspiracv.c ould be drawn.11a2 412. The Prosecution responds that, after the Murambi meeting, members of the conspiracy, including Nzabonimanaa nd Kambanda,c ontinued to act in accordancew ith their agreement.1143 The Prosecution responds that Nzabonimana's complicated arguments of another reasonable inferencea t Musambirai gnore his explicit refusai to publicly denouncet he killings, even when the bourgmestresr equestedh im to do so.114 It maintains that Nzabonimanar epeatede ssentiallyt he rrv NzabonimanAap pealB

rief,p aras.2 86,295;N zabonimanRa eplyB rief, pua.73. rrr5 NzabonimanAap pealB rief,p ara.2 95.S eea lsoN zabonimanRae plyB rief, para.7 3. "o NzabonimanAap pealB rief,p aras2. 96,297,r eferringt oTi'al Judgementp,a ras.1 198,1 205,1 207,l2l'7. "" NzabonimanAap pealB rief,p aras2. 98,3 00. "o NzabonimanaA ppealB rief, para.2 84. Seea lso NzabonimanaR eply Brief, para.7 3. 1r3e NzabonimanAap pealB rief,p ara.2 84. rrao NzabonimanAap pealB rief,p ara.2 85.S eea lsoN zabonimanRae plyB rief,p ara.7 3. rrrar NzabonimanaA ppealB rief, para.2 84. I ra2 NzabonimanaA ppealB rief, para.2 94, referring to Til;alJ udgementp, aras.I 18 2-1 I 87, 1225. rra3 ProsecutioRn esponsBer ief,p ara.2 76,r eferringt o Ti.al Judgementp,a ra.l 7 46. rr* ProsecutioRn esponsBer ief,p ara.2 21, referringt oTialJudgementp, aras.1 198,1 205,1224. 139 CaseN o.: ICTR-98-44D-A 29 Septembe2r0 14

same threatsa gainst the bourgmestresa t Musambira commune, ll4sa ndthatt heT rial Cham&086/ frf entitled to rely on theset hreatsa s further eviclenceo f the conspiracy.tta6 413. The Prosecutionl urther respondst hat Nzabonimana'sp resencea t Nyakabandas ignalledh is slpportf br Kambanda'sm essagea nd was consistentw ith Nzabonimana'sc onducta t the Murambi meeting.llaTF inally, the Prosecutionre spondsth at the lack of "establishedc onsequencesf"o llowing the Murambi and Musambira events is irrelevant since conspiracy to commit genocide is an I Ia 8 inchoateo fl'ence. 414. The Appeals Chamber recalls the Trial Chamber's finding that the conspiracy to destroy Rwanda'sT utsi populationi n whole or in part materialisedo n 18 April 1994 based,i nter alia, on the conduct of memberso f the Interim Governmenta t the Murambi meeting.lto' As fbr the concluct of Nzabonimana and Kambanda after 18 April 1994 at Musambira and Nyakabanda, the Trial Chamber explicitly stated that these events "reinforced the messageo f the Murambi meeting"ll50 and "reinfbrced]t he conclusioent hat Nzabonimanao, ther Ministersa nd the Prime Minister of the Interim Governmente nteredi nto an agreementt o encouraget he destructiono f the Tutsi population, as suchi n Gitaramap r,lfeclure".tts\ 4I5. With respectt o events at Musambira commune,t he Trial Chamber found that Nzabonimana was present at the reinstatement ceremony of the bourgmestre of Musambira, he accused bourgmestreso f not supporting the killings of Tutsis, he warned bourgmestrest hat they could be replaceclb y Interahamwe, and he refused to denouncet he killings.tttt On this basis, the Appeals Chamber finds it reasonablef or the Trial Chamber to conclude that the reinstatementc eremony at Musambira reinforced the message from the Murambi meeting to encourage the killing of Tutsis.rts3T he Appeals Chamber is thus not persuadedb y Nzabonimana'sa rgument that the reinstatement ceremony was antithetical to the conspiracy that materialised at the Murambi rra5 ProsecutionR esponseB rief, para. 216, re.f'erringt oTrial Judgement,p uas. 1224, 1146. "06 ProsecutionR esponseB rief, pua. 225, relbrring toTrial Judgement,p ara. 1746. lloT P rosecutionR esoonseB rief. para.2 22. "on Pr.rsecutionR esoonseB rief. para.2 3(). 'ro'Trial Judgementp, aras.1 744'1. 745.1 747. "to Trial Judgement,p ara. 1746. rtt'Trial Judgement,p ara. 1141. ConsideringN zabonimana'sp resenced uring Kambanda'sw eaponsd istributiona nd speech at Nyakabanda as well as Nzabonimana's conduct at the reinstatement ceremony at Musambira, the Trial Chamber determined that the words spoken at these events "establish that these activities were undertaken with the intent to encouraget he bourgmestresa nd the population to kill Tutsis" . Seei bid., para. 174 6. "tt Trial Judgement, para. 1224. The Trial Chamber explicitly considered that

Nzabonimana's support for the reinstatement did not necessarily establish that he was against the killings since the public reinstatements served as an assertion of the legitimate public order by the Government in Musambira commune and that "[i]n his capacity as Minister, Nzabonimana thus served as a representative of the Government at the ceremony. Nzabonimana could both support the supremacy of the national Government and support the killings". See *id.*, paras. 1220-1222. The Appeals Chamber recalls that it dismissed Nzabonimana's arguments on the assessment of evidence in relation to the Musambira event. See *infra*, paras. 363-365. 140 Case No.: ICTR-98-44DA-29 September 2014

2095/H meeting. The Appeals Chamber is also not convinced by either of Nzabonimana's alternative inferences relating to the political opposition in Gitarama and the Interahamwe as the source of the bourgmestres' insecurity concerns. The Appeals Chamber considers that these alternatives fail to negate the Trial Chamber's finding that Nzabonimana's above-mentioned conduct at Musambira reinforced the conclusion that he and his co-conspirators entered into an agreement to commit 11 - 55 genocide, which materialised at Murambi. 416. Turning to events at Nyakabanda, the Appeals Chamber is not persuaded that the Trial Chamber erroneously found Nzabonimana's mere presence at the weapons distribution to reinforce the conclusion that he and his co-conspirators entered into an agreement at Murambi to commit genocide. The Appeals Chamber observes the Trial Chamber's determination that Nzabonimana was present at Nyakabanda when Kambanda distributed weapons to the Ndiza Battalion for the purpose of fighting the Tutsi "enemy". The Appeals Chamber finds it reasonable for the Trial Chamber to rely on and conclude that this event reinforced the finding on the existence of an agreement between Ministers of the Interim Government to encourage the killing of Tutsis. 1157 In addition, the Appeals Chamber finds Nzabonimana's reference to paragraph 1129 of the Trial Judgement to be misguided. 1158 At paragraph 1129, the Trial Chamber found Nzabonimana not guilty of genocide for merely attending the meeting because the Indictment alleged an active conduct. Furthermore, the Appeals Chamber finds Nzabonimana's submission, that the Trial Chamber relied only on his mere presence to infer the crime of conspiracy, devoid of merit. As stated earlier, the Trial Chamber inferred the agreement based on events at the Murambi meeting. 1159 The Appeals Chamber thus dismisses Nzabonimana's argument in relation to Nyakabanda. 417. Finally, recalling that conspiracy to commit genocide is an inchoate offence, 1160 the Appeals Chamber does not see how, in itself, the lack of criminal consequences following events at Murambi and Musambira supports another reasonable inference. 418. For the reasons above, the Appeals Chamber dismisses Nzabonimana's arguments in relation to events at Musambira and Nyakabanda. 1163 Trial Judgement, para. 1146. "to 5", Nzabonimana Appeal Brief, para. 295. 1155 Trial Judgement, paras. 1746, 1747. 1156 Trial Judgement, paras. 1285, 1292. With respect to Nzabonimana's arguments on Kambanda's words, the Appeals Chamber recalls that the group of other members of the Interim Government was sufficient to find that Nzabonimana conspired with one or more persons to commit genocide. See *supra*, para. 400. Accordingly, Nzabonimana's argument is moot. 1157 Trial Judgement, paras. 1746, 1747. "The Source Nzabonimana Appeal Brief, para. 284. 141 f\-. ' ? u Case No.: ICTR-98-44D-A 29 September 2014

20941H (c) Conclusion 419. Based on the foregoing, the Appeals Chamber finds that Nzabonimana fails to demonstrate any error warranting the Appeals Chamber's intervention and therefore dismisses his arguments in relation to his conviction for conspiracy to commit genocide under his Fifth Ground of Appeal. 5. Conclusion 420. For the foregoing reasons, the Appeals Chamber dismisses Nzabonimana's submissions concerning his conviction for conspiracy to commit genocide under his Fifth Ground of Appeal and grants the Fifth Ground of Appeal, in part, as it relates to his conviction for direct and public incitement to commit genocide in relation to Murambi. The Appeals Chamber therefore reverses Nzabonimana's conviction for direct and public incitement to commit genocide based on his conduct at the Murambi meeting. The impact of this finding, if any, on sentencing will be considered in the relevant section below.

"to Sees upra, paras. 394-402. 1160 See G. Otete A. J. Judgment, para. 262. 142 Case No.: ICTR-98-44D-A 29 September 2014

20931H F. Alleged Errors Relative to Nyamabuye (Ground 6) 421. The Trial Chamber found that, in April 1994, Nzabonimana visited the Nyamabuye commune office and told the Hutu civilians present to destroy the house of a deceased Tutsi, Jean de Dieu Mpambara, and to cover it up so that in the event of an enquiry his death would not be known.¹¹⁶¹ The Trial Chamber did not find Nzabonimana guilty of genocide with respect to his statement at the Nyamabuye commune office but found that it provided circumstantial evidence of his intent to destroy, in whole or in substantial part the Tutsi ethnic group, as such.¹¹⁶² It further found that the fact that Nzabonimana's statement was ultimately obeyed provided further evidence of Nzabonimana's influence at that time.¹¹⁶³ 422. Nzabonimana submits that the Trial Chamber erred in fact and in law in making unfavourable actual findings with respect to the Nyamabuye event.¹¹⁶⁴ In particular, Nzabonimana submits that he did not receive clear and consistent notice of the alleged acts.¹¹⁶⁵ Nzabonimana also submits that the Trial Chamber erred in its assessment of Prosecution Witness CNA's credibility and erroneously found that Defence Witness T71 corroborated Witness CNA's testimony.¹¹⁶⁶ Nzabonimana argues that the Trial Chamber failed to consider contradictions within Witness CNA's testimony, as well as between his testimony at trial and earlier statements that he had made in the Bilimungu et al. and Karemera et al. trials.¹¹⁶⁷ He argues that Witness T71's testimony contradicts Witness CNA's testimony in every respect.¹¹⁶⁸ 423. The Prosecution responds that Nzabonimana's claim that the Indictment was defective is moot because Nzabonimana was not convicted for the Nyamabuye event.¹¹⁶⁹ It further responds that Nzabonimana ignores and fails to explain why the Trial Chamber's acceptance of Witness CNA's explanation was unreasonable.¹¹⁷⁰ The Prosecution submits that Witness T71 corroborated Witness CNA on key aspects, even though he disagreed about Nzabonimana's implication in the event.¹¹⁷¹ The Trial Judgment, para. 1730. See also ibid., para. 1491. ¹¹⁶² Trial Judgment, para. 1132. ¹¹⁶³ Trial Judgment, para. 1132. ¹¹⁶⁴ See Nzabonimana Notice of Appeal, paras. 6.1-6.4; Nzabonimana Appeal Brief, paras. 302-315. ¹¹⁶⁵ Nzabonimana Notice of Appeal, para. 6.3; Nzabonimana Appeal Brief, paras. 310-314. ¹¹⁶⁶ Nzabonimana Appeal Brief, paras. 302-309, 312, 313. See also ibid., paras. 14, 15. Nzabonimana also submits that the Trial Chamber erred by distorting and setting aside the testimony of Witness T71. See Notice of Appeal, para. 6.2(2). The Appeals Chamber considers that Nzabonimana has

withdrawn the argument, since it is not developed in his Appeal Brief. "o' Nzabonimana Appeal Brief, para. 302. "ooN zabonimana Appeal Brief, paras. 306-309. The Prosecution Response Brief, para. 253. Ir?0 Prosecution Response Brief, para. 250. "7r Prosecution Response Brief, para. 251. t43 Case No.: ICTR-98-44D-A 29 September 2014 t"

20921H 424. The Appeals Chamber recalls that, as a general rule, it declines to discuss alleged errors which have no impact on the conviction or sentence. The Trial Chamber did not convict Nzabonimana for his statements at the Nyamabuye communal office, but relied on his statements as circumstantial evidence of his genocidal intent and as further evidence of his influence at the time. Ir73 As the Trial Chamber relied on several other events as circumstantial evidence of Nzabonimana's intent to destroy, in whole or in substantial part, the Tutsi ethnic group, as such, Ir74 the Appeals Chamber finds that the Nyamabuye event does not underpin Nzabonimana's convictions. Similarly, the Trial Chamber's reference to this event as further evidence of Nzabonimana's influence has no impact on his convictions or his sentence. Ir75 The Appeals Chamber therefore declines to consider Nzabonimana's challenges in relation to the Nyamabuye event. 425. As to the assessment of the credibility of Witness CNA, the Appeals Chamber finds that Nzabonimana fails to demonstrate how the alleged contradictions within his testimony and with Ir76 prior statements made in other proceedings undermine the overall credibility of Witness CNA. In any event, the Trial Chamber did consider that Witness CNA's omission to provide all the information about Nzabonimana in previous trials did not impact his credibility regarding this event because those cases concerned different defendants. Ir77 The Appeals Chamber does not detect any error in the Trial Chamber's assessment. 426. For the foregoing reasons, the Appeals Chamber dismisses Nzabonimana's Sixth Ground of Appeal. "72 Kunyurukiga Appeal Judgement para. 62; Renzaho Appeal Judgement, paras. 251, 384; Kragiini Appeal Judgement, para. 20. In this respect, the Appeals Chamber notes Nzabonimana's contradictory submissions claiming on the one hand that the Trial Chamber did not convict him, and on the other hand, that he be acquitted in respect of the events at Nyamabuye. See Nzabonimana Notice of Appeal, paras. 6.1(2), 6.4. Ir78 Trial Judgement, para. 1732. Ir79 Trial Judgement, paras. 1707 (Butare Trading Centre Meeting), 1724 (Release of Killers in Rutobwe Commune), 1726 (Murambi Meeting), 1728 (Reinstatement Ceremony of the Bourgmestre of Musambira Commune), 1734 (Weapons Distribution in Tambwe Commune), 1736 (Tambwe Commune Crisis Committee). Ir75 The Appeals Chamber recalls that the Trial Chamber relied on Nzabonimana's influence among other factors to establish his substantial contribution to the attacks in relation to the Cyayi and Nyabikenke events (see Trial Judgement, paras. 1712, 1713, 1714). See Suprup, paras. 136, 140-144. Further, influence is not a required element for genocide or any other crime of which Nzabonimana was convicted. It also recalls that the Trial Chamber considered the abuse of influence, not influence alone, as an aggravating factor in sentencing. See Ir80, para. 464. Ir81 The Appeals Chamber recalls that the findings concerning the events at Murambi on 18 April 1994 are based, in part, on the testimony of Witness CNA. Ir82 Trial Judgement, para. 1483. 144 Case No.: ICTR-98-44D-A 29 September 2014

2091|H G. Alleed Errors Relating to Tambwe (Ground 7) 427. The Trial Chamber convicted Nzabonimana of conspiracy to commit genocide (Count 2) based, in part, on its conclusion that, in May 1994, he entered into an agreement with Jean-Damascene Ukirikyeyezu to encourage the killing of members of the Tutsi population in Tambwe, Rwanda. **The Trial Chamber reached its conclusion having found that Nzabonimana and Ukirikyeyezu entered into an agreement to form a Crisis Committee with the purpose of disguising the killings from the international community and on another occasion distributed weapons and encouraged their use for the killing of Tutsis.** **Te 428. Nzabonimana submits that the Trial Chamber erred in convicting him of conspiracy to commit genocide based on the events in Tambwe, Rwanda.** In this section, the Appeals Chamber considers whether the Trial Chamber erred in assessing: (i) the notice provided to Nzabonimana of this crime; and (ii) the legal elements of the crime. **Notice 429. Nzabonimana submits that the Trial Chamber erred in finding that paragraphs 49 and 58 of the Indictment provided him with notice that he entered into a conspiracy with Ukirikyeyezu to kill Tutsis.** In particular, Nzabonimana submits that the Trial Chamber erred in finding that the Indictment reasonably identified his alleged co-conspirators. **H2e argues that the Prosecution's Opening Statement merely refers to the Interim Government's role in the conspiracy.** **Its 430. Moreover, Nzabonimana contends that the Indictment failed to notify him of the circumstances of the agreement with Ukirikyeyezu and instead merely described two isolated events, the formation of a Crisis Committee and the distribution of weapons, in which Ukirikyeyezu allegedly participated.** **Nzabonimana contends that the Indictment does not allege any nexus between these two events.** **According to Nzabonimana, it is impossible to tell from the Indictment whether these incidents are part of the same conspiracy or two separate conspiracies.** Furthermore, Nzabonimana argues that the Prosecution failed to present any evidence concerning the Trial Judgment, paras. 148, 149. **The Trial Judgment, paras. 1748S. eea lsoi bid., paras. 15381, 583, 1591, 1599. 18 Nzabonimana's Office of Appeal, paras. 7.1-7.3; Nzabonimana's Appeal Brief, paras. 316-384. 18 Nzabonimana's Office of Appeal, paras. 7.1, 7.2; Nzabonimana's Appeal Brief, paras. 316-328. 182 Nzabonimana's Appeal Brief, para. 320. 1183 Nzabonimana's Appeal Brief, para. 320, referring to Trial Judgment, para. 1743, fn. 2182, citing Prosecution Opening Statement, 19 November 2009p. 11. **"Nzabonimana's Appeal Brief, para. 317. 185 Nzabonimana's Appeal Brief, para. 319. 1186 Nzabonimana's Appeal Brief, para. 319. t, < Case No.: ICTR-98-14D-A 29 September 2014****

2090/H what transpired prior to the Crisis Committee meeting and the distribution of weapons in Tambwe, which might indicate a conspiracy. **431. Nzabonimana contends that the allegations in the Indictment "radically" differed from the evidence presented.** **In particular, Nzabonimana submits that the Trial Chamber lacked an evidentiary basis for finding that the Interim Government had a policy to disguise the killings from the international community and the role that Nzabonimana and Ukirikyeyezu played in the design or adoption of that policy.** **Nzabonimana further argues that the meeting did not take place in Ruhango, as the Trial Chamber found.** **Finally, Nzabonimana submits that the Prosecution failed to prove any of the criminal consequences of the incidents alleged in paragraphs 49 and 58 of the Indictment.** **432. The Prosecution responds that the Indictment sufficiently pleads Nzabonimana's conspiracy**

with Ukirikyeyez\ at Tambwe ,o**urr.tto' 433. Count 2 of the Indictment charges N zabonimanaw ith conspiracy to commit genocide. Specifically, paragraph 59 of the Indictment alleges that: [...] between 1 January and 31 July 1994, Callixte NZABONIMANA with other persons, including but not limited to Ministers, including those of the Interim Government of 9 April 1994, the leadership of Rwandan Armed Forces (FAR), Gendarmerie, Presidential Guard, the political leaders of the MRND, the MRD-Hutu Power faction, the PL-Hutu Power faction, other Hutu-Power factions of opposition parties, and various local administration officials, conspired to kill or cause serious bodily and mental harm to members of the Tutsi population, with the intent to destroy in whole or in part, a racial or ethnic group. 434. In the Trial Judgement, the Trial Chamber observed that paragraph 59 of the Indictment referred only to the categories of people with whom N zabonimana allegedly conspired. The Trial Chamber noted, however, that the Indictment identified the specific individuals with whom N zabonimana allegedly conspired in other paragraphs leading in support of the count of conspiracy and that, thus, the Indictment when read as a whole adequately informed N zabonimana of the identity of his alleged co-conspirators. 435. In particular, paragraphs 49 and 58 of the Indictment pertain to events in Tambwe commune. Paragraph 49 of the Indictment states: rr? N zabonimanAap peaBl rief,para.321. rr*t N zabonimanAap peaBl rief,para.325. rr8e N zabonimanAap peaBl rief,paras.322,326. Ire" N zabonimanAap peaBl rief,para.326. rrer N zabonimanAap peaBl rief,paras.323,327. rr2 ProsecutioRne sponsBer ief,paras.255-261. "" Indictmenpt,a ras5. 9,6 0. "" Trirl Judgemenp(a. ru.1 743. "" TriafJ udgemenpt.a ra.1 743. t46 CaseN o.:I CTR-98-44D-A 29 Septembe2r0 14

2089/H On or about 15 May 1994, in collaboration with the Interim Government's policy of forming Crisis Committees throughout the country as a way of disguising the killings from the international community, Callixte NIZABONIMANA, in the company of Major Jean Damascene UKIRUKYEEYU, a member of the Civil Defence in Gitarama, presided over a meeting in Ruhangocellule, Nyamaganasecteur, Tambwecommune, Gitaramaprefecture, where the Crisis Committee of that commune was elected. The meeting was also convened to address the issue of Hutu's [sic] fighting over the property of Tutsi. Many Tutsi caught on roadblocks were killed on the orders of this committee and they included NYABUGAJU, RUHEZAMBIGO AND LANGUIDA. Paragraph 58 of the Indictment states: In May 1994, Callixte NIZABONIMANA, acting in concert with T92 and Jean Damascene UKIRUKYEEYU brought along full of weapons to the Tambwe commune office. The Accused ordered that the weapons be distributed to the population. The weapons were distributed and were used to kill Tutsi in various attacks in Tambwe commune. 436. The Trial Chamber found that Nizabonimana and Ukirukyeyezu entered into an agreement to establish a Crisis Committee to disguise the killings from the international community. In addition, the Trial Chamber found that, in late April or early May 1994, Nizabonimana and Ukirukyeyezu distributed weapons and encouraged their use against Tutsis. The Trial Chamber considered the concerted and coordinated nature of these actions and inferred, based on the totality of the evidence, that an agreement with the specific intent to destroy the Tutsi population in whole or in part materialised between Nizabonimana and Ukirukyeyezu in May 1994. The Appeals Chamber recalls that charges against an accused and the material facts supporting

hose charges must be pleaded with sufficient precision in an indictment so as to provide notice to the accused. The Appeals Chamber further 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.¹²⁰⁰ 438. The Appeals Chamber observes that paragraph 59 of the Indictment alleges that between 1 January 1994 and 31 July 1994 Nzabonimana conspired with, inter alia, Ministers, including those of the Interim Government of 9 April 1994, military, and political party officials, to kill or cause serious bodily and mental harm to members of the Tutsi population with the intent to destroy in whole or in part a racial or ethnic group. Paragraphs 49, 58, and 60 of the Indictment provide greater specificity as to the material facts underpinning Nzabonimana's conviction for conspiracy to commit genocide, namely his participation with Ukirikyeyezu in a Crisis Committee meeting and the Trial Judgement, at para. 1148. "The Trial Judgement, at para. 1148. "The Trial Judgement, at para. 1748. "The Trial Judgement, at para. 461. Ndindiliyimana et al. Appeal Judgement, at para. 171; "i.e., et al. Appeal Judgement, at para. 262. \$ginovii "Sees upra, para. 254. t4"7 Case No.: ICTR-98-44D-A 29 September 2014

2088/H their role in the distribution of weapons in Tambwe commune for the purpose of killing Tutsi civilians. 439. Specifically, for the purposes of notice, these allegations provide a basis for inferring that Nzabonimana and Ukirikyeyezu conspired to commit genocide. Consequently, there is no merit in Nzabonimana's submission that the Trial Chamber erred in finding that paragraphs 49 and 58 of the Indictment provided greater specificity as to the identity of the specific individuals with whom Nzabonimana conspired. Indeed, Ukirikyeyezu is clearly identified in paragraph 49 of the Indictment as a member of the Rwandan army, which is among the categories specified in paragraph 59 of the Indictment, and he is again mentioned in paragraph 58 of the Indictment. Moreover, paragraph 60 of the Indictment clearly states that the acts alleged in paragraphs 49 and 58 of the Indictment are intended to support the charge of conspiracy. For the purposes of notice, the Appeals Chamber is not convinced that any greater specificity was required. 440. In addition, the Appeals Chamber finds no merit in Nzabonimana's submission that the Indictment did not clearly indicate whether these two incidents formed a single conspiracy or two conspiracies. As mentioned above, it follows from paragraph 60 of the Indictment that both events were pleaded in support of the count of conspiracy. In addition, paragraphs 48 and 59 refer to both Nzabonimana and Ukirikyeyezu and relate to events in the same locality. In these circumstances, the Appeals Chamber is not satisfied that any greater specificity was required to connect the two events to the allegation of Nzabonimana's participation in a conspiracy to commit genocide. The Appeals Chamber also summarily dismisses Nzabonimana's argument relating to the alleged insufficiency of evidence to establish that the events in Tambwe commune demonstrate the existence of a conspiracy. Submissions relating to the insufficiency of evidence have no bearing on determining whether a trial chamber erred in finding that the requisite notice was provided. 441. Finally, the Appeals Chamber is not satisfied that Nzabonimana has demonstrated any difference between the Trial Chamber's findings and the allegations pleaded in the Indictment. The Trial Chamber clearly found that the purpose of the Crisis Committee was to conceal the killings from the international community and that the meeting occurred in Ruhango cellule, as alleged in paragraph 49 of the

Indictment.12t'IN zabonimana's mere assertion that the evidence did not support these findings or provide greater context for his role in formulating the policy does not impugn the notice he received in the Indictment of the material facts underpinning his conviction. Furthermore, the fact that the evidence did not establish that Tutsis were in fact killed as a result of these 'r'"Trial Judgement, paras. 5781, 5911, 5991, 748. 148 Case No.: ICTR-98-44D-A 29 September 2014

2087th incidents does not have any bearing on the sufficiency of notice for the inchoate crime of conspiracy, which requires only the act of entering into an agreement to commit genocide.1202 442. Accordingly, the Appeals Chamber finds that Nzabonimana has failed to demonstrate that he lacked notice of the material facts underpinning his conviction for conspiracy to commit genocide. 2. Conspiracy to Commit Genocide 443. Having considered the concerted and coordinated actions of Nzabonimana and Ukirikyeyezu, the Trial Chamber found the only reasonable inference to be that an agreement materialised between them in May 1994 with the specific intent to destroy the Tutsi population in whole or in part, as such.1203 In reaching this finding the Trial Chamber considered that: (i) Ukirikyeyezu and Nzabonimana entered into an agreement to establish the Crisis Committee, the purpose of which was to disguise the killings from the international community;1204 and (ii) in late April to early May 1994, Nzabonimana and Ukirikyeyezu distributed weapons and encouraged that the weapons be used against the Tutsis.1205 On this basis, the Trial Chamber convicted Nzabonimana of conspiracy to commit genocide.1206 444. Nzabonimana submits that the Trial Chamber accepted evidence on events in Tambwe community that do not support the inference that he and Ukirikyeyezu entered into an agreement to destroy the Rwandan Tutsi population.1207 Nzabonimana maintains that the Trial Chamber erroneously found Ukirikyeyezu a co-conspirator because Ukirikyeyezu was not reliably identified.1208 Nzabonimana contends that Prosecution Witness CNAK was unable to identify the military officer present during the weapons distribution or the establishment of the Crisis Committee.1209 Nzabonimana argues that the Trial Chamber erred by considering that Defence Witness T92's evidence on Ukirikyeyezu's identity corroborated Witness CNAK's evidence.1210 On this respect, Nzabonimana submits that Witness T92 denied the occurrence of the "meetings", including his presence, as Witness CNAK alleged.1211 Nzabonimana adds that Witness T92 was '1212 See Gacaca Appeal Judgement, para. 260. '1213 Trial Judgement, para. 148. '1214 See Trial Judgement, para. 7748. See also ibid., paras. 583, 591, 599. '1215 See Trial Judgement, para. 1748. See also ibid., para. 1538. '1216 Trial Judgement, paras. 148, 1749. '1217 Nzabonimana Notice of Appeal, para. 1.1.3; Nzabonimana Appeal Brief, para. 329. 1208 Nzabonimana Appeal Brief, para. 343. 1209 Nzabonimana Appeal Brief, para. 343. Nzabonimana submits that, while it is alleged in paragraphs 49 and 58 of the Indictment that Nzabonimana's co-conspirator regarding Tambwe charges was Ukirikyeyezu, Witness CNAK testified that he did not remember the name of the military officer who accompanied Nzabonimana in Tambwe. See idem, referring to Witness CNAK, T. 25 November 2009 p. 51. 1210 Nzabonimana Appeal Brief, para. 343, referring to Trial Judgement, para. 1527. '1211 Nzabonimana Appeal Brief, para. 343, referring to Trial Judgement, para. 1527. 149 Case No.: ICTR-98-44D-A 29 September 2014

20861H found not to be credible.'212N zabonimanaf urther contendst hat the Prosecutiond id not producea ny evidence relating to Ukirikyeyezll's conduct, and that the finding that Ukirikyeyezt distributed weaponsi s erroneouss ince Witness CNAK testified that Nzabonimanaa lone spoke and distributed t2l3 weapons. 445. With respectt o the establishmenot f the Crisis Committee,N zabonimanas ubmitst hat the Trial Chamber erroneously found evidence to justify the inference that he and Ukirikyeyezu had entered into an agreement to kill the Rwandan Tutsi population.l2la Regarding the weapons distribution at Tambwe commltne, Nzabonimana submits that the Trial Chamber erred by: (i) relying on Witness CNAK's testimony to determine that Nzabonimana brought weapons to allow the people to ensure the security of the country and themselvesf rom the "enemy", meaning Tutsis;r2r5a nd (ii) concludingw ithout evidentiaryb asist hat, after the weaponsd istribution,h e and Ukirikyeyezu" encouragedth e population"t o uset he weaponsa gainstT utsis.l2r6 446. The Prosecutionr espondst hat the Trial Chamber reasonablyf ound an agreementt o destroy the Tutsi population based on the cooperation between Nzabonimana and Ukirikyeyezu at Tambwe.l2lTT he Prosecutionr espondst hat WitnessT 92 corroboratedW itness CNAK's evidence that an ottlcer responsiblefo r the Civil Defencew as presenti n Gitaramaa t the time.r2r8It submits that WitnessT92 simply supplementedt he name, Ukirikyeyezu, fbr the officer in charge of the Civil Defence, about whom Witness CNAK testified.r2reT he Prosecutiona dds that the Trial Chamber correctly fbund that Nzabonimana and Ukirikyeyezu were involved in the weapons distribution,l220 and that Nzabonimana fails to demonstrate that the Trial Chamber was unreasonablein acceptingW itness CNAK's testimony that it was public knowledge that the enemy wast heT utsis.l22l 44'7. Nzabonimanar eplies that the Trial Chamber merely refers to the totality of evidence,w hile the evidenced oes not reveal coordination."" He submitst hat the Trial Chamber'sc onclusiono n r:r2 Nzabonimana Appeal Brief, para. 343, rel?rring toTrial Judgement,p ara. 1535. r2r3 Nzabonimana Appeal Brief, para. 344, rel'erring /o Witness CNAK, T. 25 November 2009 p. 52. 'r'o NzabonimanaA ppeal Brief. paras.3 37-342. '-' NzabonimanaA ppealB rief.p ara.3 31. r216 Nzabonimana Appeal Brief, para. 333, referring /o Trial Judgement,p ara. 1748. rrrT ProsecutionR esponseB rief, para.2 54. rrrr ProsecutionR esoonseB rief. oara.267. r:lu P rosecutioRn esDonsBe riel',p ara.267. ll:" ProsecutionR esponseB riel',p ara.2 68. I2rr ProsecutionR esponseB rief. para. 262,r e.ferring/o WitnessC NAK, T.25 November2009 p. 52 (closed session). rttt NzabonimanaR enlv Brief. nara.81. 150 CaseN o.:I CTR-98-44D-A 29 Seotembe2r0 14 C"

2085/H the existence of a plan is not sufficiently reasoned,a nd further that the Trial Chamber was drawing inferenceu pon inferen ""."" 448. The Appeals Chamber recalls again that conspiracy to commit genocide, under Article 2(3Xb) of the Statute,r equires "an agreemenbt etweent wo or more personst o commit the crime of genocide".l'o The Appeals Chamber further recalls that where the Prosecutioni ntends to rely on circumstantiale videncet o prove a particular fact upon which the guilt of the accusedd epends,t he finding of the existencet o f a conspiracyt o commit genocidem ust be the only reasonablei nference basedo n the totality of the evidence.1225 449. As recalled above, the Trial Chamber convicted Nzabonimana of conspiracy to commit genocideo n the basis of an agrementb etweenN zabonimanaa nd Lkirikyeyezu to encouraget he killing of Tutsis, which it inferred from Nzabonimana'sa nd Ukirikyeyezu's agreementt o establish the

Crisis Committee and from their distribution of weapons. The Appeals Chamber will consider whether the Trial Chamber erred in finding that Ilkirikyeyezu was Nzabonimana's co-conspirator. 450. With respect to both events which form the basis of Nzabonimana's conviction for conspiracy concerning Tambwe commune, the Trial Chamber considered Witness CNAK's testimony that a military officer who was responsible for Civil Defence accompanied Nzabonimana and concluded that that officer was Ukirikyeyezu. Specifically, with respect to the distribution of "y"zu weapons, the Trial Chamber observed that Witness CNAK did not know the name of the individual who accompanied Nzabonimana, but that he described him as "a military officer who was responsible for Civil Defence".¹² The Trial Chamber then stated that "Witness T92 gave corroborating evidence that Jean-Damascene Ukirikyeyezu was a Major and was President of Civil Defence in Gitarama".¹²² With respect to the Crisis Committee, the Trial Chamber determined that "although Witness CNAK did not provide the name of the officer, [it] noted that Witness T92 testified that Jean-Damascene Ukirikyeyezu was a major and was President of Civil Defence in Gitarama".¹ The Trial Chamber then found that Nzabonimana came to establish the Crisis Committee with Ukirikyeyezu.¹ The Appeals Chamber therefore considered that, for both events, the Trial Chamber relied on Witness T92's evidence regarding Ukirikyeyezu's positions in the 1223 Nzabonimana Report, para. 81. ² = Sero^ba Appeal Judgement, para. 221; Nahimana et al. Appeal Judgement, para. 896. See also Mugenzi and Appeal Judgement, para. 88. (14) giraneza "o Trial Judgement, paras. 1495, 1544. " Tnal Judgement, para. 1527. " Src Trial Judgement, para. 1527 (internal reference omitted). The Appeals Chamber observed that the Trial Chamber did not mention Ilkirikyeyezu's presence or involvement in its factual conclusions on the weapons distribution. See bid. para. 1538. The Trial Judgement, para. 1570. 151 Case No.: ICTR-98-44D-A 29 September 2001 14 S"

20841H military and Civil Defence as corroborative and supplementary of Witness CNAK's evidence that Nzabonimana was accompanied by an officer responsible for Civil Defence.²³ 451. The Appeals Chamber observes that, in relation to both events, the Trial Chamber had before it no evidence that Ukirikyeyezu was present. The Trial Chamber concluded that Ukirikyeyezu was present on the basis of Witness CNAK's testimony that a military officer who was responsible for Civil Defence accompanied Nzabonimana and Witness T92, and Witness T92's evidence concerning Ukirikyeyezu's positions in the military and Civil Defence.²³ The Appeals Chamber notes that while Witness T92 testified that he knew Ukirikyeyezu and his positions,¹²³³ Witness T92 denied seeing Nzabonimana and Ukirikyeyezu during the 1994 events, denied attending the meeting during which the Crisis Committee was established, and denied distributing arms with Nzabonimana and Ukirikyeyezu.¹ The Appeals Chamber further notes that the Trial Chamber found Witness T92 not credible with respect to both events.²³⁵ 452. In these circumstances, the Appeals Chamber finds that no reasonable trier of fact could have considered Witness T92's evidence as corroborative of Witness CNAK's evidence. As Witness CNAK did not identify Ukirikyeyezu, and as the Trial Chamber had before it no other evidence that it was Ukirikyeyezu who accompanied Nzabonimana, the Appeals Chamber finds that the Trial Chamber erred in determining that Ukirikyeyezu was present during the establishment of the Crisis Committee and the weapons distribution and that he was, therefore, Nzabonimana's co-

conspirator. 453. Accordingly, the Appeals Chamber finds that the evidence before the Trial Chamber in respect of Tambwe commune could not lead a reasonable trier of fact to conclude that the only reasonable inference was that Nzabonimana and Ukirikyeyezu entered into an agreement to destroy the Rwandan Tutsi population. The Appeals Chamber therefore dismisses Nzabonimana's 1236 remaining arguments as moot. *rr3t*' Trial Judgement, para. 1583. *'tt*' Trial Judgement, paras. 5271, 570. *r2rr* Trial Judgement, paras. 495, 1503, 1544, 1570. *'rrr* When asked if he knew Ukirikyeyezu, witness T92 answered that he knew the name and that "[h]e was a major, a member of parliament, Jean-Damascène Uukirikyeyezu. I know that he was also appointed president of Gitarama and that he was also a appointed a member - or, the president of civil defence in Gitarama". *eeW* witness T92, T.19 May 2010 o.16. *rtt*' Witness, Tg2, T.19 May 2010 p. 18, 19; *W* witness T92, T. 19 May 2010 p. 53, 71 (closed session). *ee* also Trial Judgement, paras. 1503, 1534, 1564, 1579. *'ttt* See Trial Judgement, paras. 1535, 1580. *tt'u* 5th Nzabonimana Notice of Appeal, para. 7.2N: *zabonimana Appeal Brief*, paras. 345-384. *t52* Car[^]eN o.: ICTR-98-44D-A 29 September 2014 r

2083tH 3. Conclusion 454. For the foregoing reasons, the Appeals Chamber grants Nzabonimana's 5th Ground of Appeal. The Appeals Chamber reverses Nzabonimana's conviction for conspiracy to commit genocide in relation to Tambwe commune. The impact of this finding, if any, on sentencing will be considered below. 153 CaseN o.: ICTR-98-44D-A 29 September 2014

2082tH H. Alleged Errors Relating to Sentencing (Ground 8) 455. The Trial Chamber sentenced Nzabonimana to a single term of life imprisonment for his convictions for genocide (Count 1), conspiracy to commit genocide (Count 2), direct and public incitement to commit genocide (Count 3), and extermination as a crime against humanity (Count 4). *t* 456. Nzabonimana submits that the Trial Chamber erred in fact and in law in imposing a patently disproportionate sentence. *t* In the alternative to quashing his convictions, Nzabonimana submits that a reduction of sentence is warranted as the Trial Chamber engaged in double-counting aggravating circumstances and failed to properly exercise its discretion when considering mitigating circumstances. 123Nzabonimana submits that, although the Trial Chamber was not obliged to consider mitigating circumstances given his refusal to address them, the Trial Chamber erred in the exercise of its discretion by failing to consider other mitigating circumstances that were available in the evidence, the alleged prejudice suffered, and the conduct of the Prosecution. 12a0 457. The Prosecution responds that, by failing to make any submission on mitigating circumstances at trial, Nzabonimana waived his arguments on appeal. *tto*' Similarly, the Prosecution argues that Nzabonimana waived on appeal his arguments on the Trial Chamber's assessment of aggravating circumstances as he failed to identify the substance of the Trial Chamber's alleged errors in his Notice of Appeal. 124I2n any event, the Prosecution submits that the Trial Chamber did not engage in double-counting and Nzabonimana does not present any arguments showing an abuse of discretion. 12a1 458. In addressing his ground of appeal, the Appeals Chamber bears in mind that trial chambers are vested with broad discretion in determining an appropriate sentence due to their obligation to individualise penalties to fit the circumstances of the convicted person and the gravity of the crime. 2aaA As a rule, the Appeals

Chamber will not substitute its own sentence or that imposed by '23rd Trial Judgement', paras. 1800, 1822. ²³⁸ Nzabonimana Notice of Appeal, p. 59; Nzabonimana Appeal Brief, paras. 385-395. ²³⁹ Nzabonimana Notice of Appeal, p. 59-61; Nzabonimana Appeal Brief, paras. 29, 385-395. ²⁴⁰ Nzabonimana Appeal Brief, paras. 385, 390-395. Nzabonimana argues that in choosing to exercise its discretion to consider mitigating circumstances, the Trial Chamber was obliged to do this according to the law. He further argues that having been acquitted of the majority of the charges, there was no way he could have anticipated being convicted on "the basis of a *tu quoque* paragraph in the Indictment". See *ibid.*, para. 390. ²⁴¹ Prosecution Response Brief, paras. 305, 306. ²⁴² Prosecution Response Brief, para. 307. ²⁴³ Prosecution Response Brief, paras. 308-312. ²⁴⁴ Srr, e.g., Bizimungu Appeal Judgement, para. 372; Ndindiliyimana et al. Appeal Judgement, para. 418; Ntahimimana Appeal Judgement, para. 218. ²⁴⁵ Case No. ICTR-98-44D-A 29 September 2014 n°

2081 | The trial chamber unless it has been shown that the trial chamber committed a discernible error in exercising its discretion, or failed to follow the applicable law. ²⁴⁶ Preliminary Matters 459. The Appeals Chamber recalls that under Rule 86(C) of the Rules, the parties shall address matters of sentencing in their closing arguments. It is thus the accused's prerogative to identify any mitigating circumstances before the trial chamber and he cannot raise them for the first time on appeal. ²⁴⁷ Nzabonimana made no submission on sentencing in his closing brief and arguments at trial, ²⁴⁸ the Appeals Chamber will not consider his contention that the Trial Chamber should have considered the Prosecution's alleged poor conduct, alleged prejudice suffered in presenting his case, and the fact that he welcomed Tutsis into his household during the events. ²⁴⁹ The Appeals Chamber notes that Nzabonimana refers to aggravating circumstances only in the subheading of Ground 8 of his Notice of Appeal but that he does not allege any error in this respect. ²⁵⁰ The Appeals Chamber finds that this cursory reference to aggravating circumstances is insufficient to provide the requisite notice within the meaning of Rule 108 of the Rules. ²⁵¹ Consequently, Nzabonimana's submissions in his Appeal Brief on alleged errors pertaining to aggravating circumstances impermissibly exceed the scope of his Notice of Appeal. ²⁵² The Appeals Chamber nevertheless considers that it is in the interests of justice to examine these arguments. As the Prosecution responded to these contentions despite its implicit objection to their consideration, the Appeals Chamber considers that there is no unfairness to the Prosecution in this respect. ²⁵³ Srr, e.g., Bizimungu Appeal Judgement, para. 372; Ndindiliyimana et al. Appeal Judgement, para. 418; Ntahimimana Appeal Judgement, para. 218. ²⁵⁴ Srr, Koryirukiga Appeal Judgement, para. 214; Bikindi Appeal Judgement, para. 165; Kuperikii et al. Appeal Judgement, para. 474. ²⁵⁵ Trial Judgement, para. 1816. See also Nzabonimana Appeal Brief, para. 385. Despite Nzabonimana not making sentencing submissions, the Trial Chamber did address mitigating circumstances and considered his contribution towards the development of Gitarama province and lack of expression of negative sentiments against Tutsis prior to the events of April 1994 to be of limited weight. See Trial Judgement, paras. 1812, 1816, 1820. ²⁵⁶ See Nzabonimana Appeal Brief, paras. 392-394. In addition, the Appeals Chamber considers that the Trial Chamber did not err in the exercise of its discretion in choosing to consider mitigating circumstances when it was under no obligation to do so, or because it did not consider the circumstances that Nzabonimana raises for the first time on appeal. See *ibid.*, paras.

390, 391. '209 Src NzabonimanNa oticeo f Appeal,p . 59. ttto R ule 10 8 of the Rulesr equires, inter alia, thatt he appellant" indicatet he substanceo f the allegede rrors". l25l I n this respect,t he AppealsC hambero bservesth at the issuei s aboutt he scopeo f the appealr athert han waiver, as mentionedb y the Prosecution..S eeP rosecutionR esponseB rief, paras.3 05, 307. tu' C7.G otrt" AppealJ udgementp, ara.20 NtabakuzeA ppealJ udgementf,n . 255; Bagosoraa nd NsengiyumvaA ppeal Judgementp,ara.3 81. 155 CaseN o.: ICTR-98-44D-A 29 Septembe2r0 14

2080/H 2. Alleged Double-CountingB etweenA ggravating Circumstancesa nd Elementso f the Crime 461. In determining the appropriate sentence,t he Trial Chamber considered as aggravating circumstancesN zabonimana's abuse of influence, the large number of victims at the Nyabikenke commune office in excesso f the threshold for extermination as a crime asainst humanitv. and the fact that thc victims werep articularlyv ulnerable.l2s3 462. Nzabonimanas ubmits that the Trial Chamber erred by finding that the releaseo f prisoners fion Rutobwe communea nd the order to destroya Tutsi housei n Nyamabuyec ommunec onstituted aggravatingc ircumstancesw hile also consideringt hesee ventsi n inferring his genocidal intent, one of the clementso f the crime of genocide,o f which he was convicted.l25Naz abonimanaa ddst hat the Trial Chamber could not consider influence as an aggravatingc ircumstancew hile consideringi t in relation to the commission of certain crimes.r2ssH e argues that the Trial Chamber also ened by considering the number of victims at the Nyabikenke commune office as an aggravating circumstancew hile also relying upon this fact in satisfactiono f one of the elementso f the crime of exterminationa s a crime againsth umanity.l2s6 463. The Prosecution responds that the Trial Chamber did not rely on the Rutobwe and Nyamabuye incidents to double-count any element of an off'ence,b ut cited these events alongside other findings to infer Nzabonimana'sg enocidali ntent and to illustrate Nzabonimana'sa buseo f his positiono f influence.l2'sT7h e Prosecutions ubmitst hat the abuseo f his positionw as not relied upon by the Trial Chamber to establish Nzabonimana's genocidal intent or any other element of his convictions,'2tt The Prosecution also submits that the Trial Chamber did not engage in double-counting regarding the number of victims at the Nyabikenke communeo fice incident and properly consideredi t as an aggravatingc ircumstancea s the Trial Chamber only consideredt he number of victims beyond thoser equired to establishe xterminationa s a crime againsth umanity.r2se 464. The Appeals Chamber recalls that a factor consideredb y a trial chamber as an element of a crime cannot also be considereda s an aggravatingc ircumstance.'toTuh e Appeals Chambera lso recalls that the Trial Chamber convicted Nzabonimanao f instigating genocide for the killings of rr5r Trial Judgementp,ara.1 818,1 819. r2so NzabonimanaA ppeal Brief, paras.3 86, 387. 'tt' NzabonimanaA ppeal Brief, para. 388. r256 Nzabonimana Appeal Brief, para. 389. r257 ProsecutionR esponseB rief, para. 309. r2s8 ProsecutionR esponseB rief, para. 309. r2se P rosecutionR esponseB rief, para. 310, re.ferringt oNdindabahizA.ip pealJ udgementp,ua. 135. t26o D orrJevi(Appeal Judgement, para. 936. See also Biz.imungAu ppealJ udgementp, tua.3 80; NdindabahizA.i ppeal Judgement,p ara. 137; Bluiki(Appeal Judgement,p ara.693,r e.ferrintgo Vasiljevi(A ppealJ udgementp,ara.1 72,1 73. 156 Ca.seN o. ; ICTR-98-44D-A 29 Septembe2r0 14

2079|H Tutsis at the Nyabikenke commune office on 15 April 1994.t'6t The Trial Chamber noted "the extensive circumstantial evidence of Nzabonimana's genocidal intent" which included, inter alia, Nzabonimana's forcible release of prisoners in Rutobwe commune and his statement at the Nyamabuye commune office to destroy the house of a dead Tutsi.r262T he Appeals Chamber observes that the Trial Chamber considered Nzabonimana's abuse of influence, not his mere influence, as an aggravating circumstance, and specifically, Nzabonimana's encouragement or the intensification of the massacres instead of using his position of authority and his influence to protect Tutsis.1263Furthermore, contrary to Nzabonimana's submission, the release of the Rutobwe commune prisoners and his order of destruction of a house in Nyamabuye commune served as examples of Nzabonimana's abuse of his position of influence and were not aggravating circumstances in themselves.1264Thus, the Appeals Chamber rejects Nzabonimana's contention that the Trial Chamber engaged in double-counting in relation to his influence and the events in Rutobwe and Nyamabuye communes. 465. Turning to Nzabonimana's submission regarding double-counting the number of victims at the Nyabikenke commune office as both an element of extermination as a crime against humanity and an aggravating circumstance, the Appeals Chamber recalls that, with respect to extermination as a crime against humanity, "a particularly large number of victims can be an aggravating circumstance in relation to the sentence for this crime if the extent of the killings exceeds that required for extermination".1265As the Trial Chamber considered that the large number of victims at the Nyabikenke commune office exceeded the threshold for extermination as a crime against humanity, the Appeals Chamber finds that it did not err in taking the number of victims into consideration as an aggravating circumstance. The Appeals Chamber therefore rejects Nzabonimana's submission that the Trial Chamber engaged in impermissible double-counting in considering the number of victims at the Nyabikenke commune office as an aggravating circumstance. 466. In light of the foregoing, the Appeals Chamber dismisses Nzabonimana's Eighth Ground of Appeal. 126r Trial Judgement, paras.1 718,1 737. 1262 Trial Judgement, paras.1 717,1 724,1 732. ttu'Trial Judgement, para.1 818. tt* Trial Judgement, para.1 818. 126 N 5 dahimana Appeal Judgement, para. 231; Ndindabahizi Appeal Judgement, para. 135. The Appeals Chamber recalls that while extermination as a crime against humanity has been found in relation to the killing of thousands of persons, it has also been found in relation to fewer killings, such as the killings of approximately 60 individuals and less. See N dahimana Appeal Judgement, para.231, referring to Lukii and Lukii Appeal Judgement, paras.531, 544, paras.1564-1567. 15't Case No.: ICTR-98-44D-A 29S septemb2e0r 14 e-\

20781H IV. APPEAL OF THE PROSECUTION A. Alleged Error Relating to Nzabonimana's Conviction for Instigating Genocide and Extermination in Nyabikenke Commune Office (Ground 1) 467. The Trial Chamber convicted Nzabonimana of instigating genocide and extermination as a crime against humanity under Article 6(l) of the Statute based on his role in the killing of Tutsis at the Nyabikenke commune office, Gitarama prefecture, on 15 April 1994.126A6s recalled earlier, the Trial Chamber found that on 13 April 1994, assailants attempted an unsuccessful attack against Tutsis who sought refuge at the Nyabikenke commune office.1267It further found that in the afternoon of 14 April 1994, Nzabonimana held a meeting at the Cyayi centre, where approximately 30 people were present, during which he told them to prioritise the

2077tH crime against humanity in relation to the killings at the Nyabikenke commune
office.tzT6Ita rgues that the Trial Chamber failed to provide an explanation as to why it rejected
these modes of liability,l277a nd requestis the Appeals Chamber to enter a conviction on this basis
for genocide (Count 1) and extermination (Count 4), or alternatively murder, as a crime against
humanity (Count 5), in order to fully reflect the criminality of Nzabonimana's conduct.1278 470.
Nzabonimanar espondst hat the Prosecution's appeal should be dismissed.t2'eH e further
requestst hat the Appeals Chamber refrain from entering a new conviction basedo n a more
severe legal characterisationat this stage,as it would deny him the right to appeal the new
conviction.r2s0 471. As a preliminary matter, in so far as the Prosecution arguest hat the Trial
Chamber failed to provide an explanation for rejecting the modes of liability of committing and
ordering, a review of the Trial Judgement reflects that the Trial Chamber explained in detail the
legal elements of each mode of liability underArticle 6(1) of the Statuter elevantt o the crimes,
including committing and ordering.r2sSt ince the Trial Chambers tatedt hat it would discuss
thesem odes of liability in its legal findings "where applicable",t"" th" Appeals Chamber considerst
hat the Trial Chamber implicitly consideredt he applicability of thesesem odeso f liability to the
allegedc rimes. The Appeals Chamber finds no error in the Trial Chamber's decisiont o only
explicitly discuss the form of responsibility it concluded was most appropriate. Accordingly, the

Prosecution has not shown that the Trial Chamber erred in this respect. 472. The Appeals Chamber now considers, in turn, whether the Trial Chamber erred in not convicting Nzabonimana on the basis of the modes of responsibility of committing or ordering in relation to the events at the Cvavi centre and the Nyabikenke commune office. 1. Commitments 473. The Prosecution submits that Nzabonimana should have been convicted under the mode of liability of committing since his role in the attack at the Nyabikenke commune office was "integral to its commission" and that his actions went far beyond mere instigation. 128 T3 he Prosecution contends that "[a] person providing a contribution that is equally important as - or more important 1276 Prosecution Notice of Appeal, para. 2; Prosecution Appeal Brief, paras. 2, 4, 11, 23-57, 69. See also April 2014 p. 56. #'-I". 29 Prosecution Appeal Brief, paras. 2, 4, 25. r2t8 Prosecution Notice of Appeal, para. 2; Prosecution Appeal Brief, paras. 2, 3, 25, 50, 56, 57, 69. 127e Nzabonimana Response Brief, paras. 1, 2, 17, 93, 1280 Nzabonimana Response Brief, para. 15. r28 Trial Judgement paras. 1692-1700. "tc"e"t"r.i d --J ud.-gement, para. 1700. 1283 Prosecution Appeal Brief, paras. 4, 11, 24, 26, 49, 50. See also Prosecution Reply Brief, paras. 31, 32: AT.29 Apr 2014 p. 56, 63. 159 Case No.: ICTR-98-44D-A 29 September 2014

20761H than - the carrying out of the *aclus reus*, cannot be assessed as a mere accessory".¹o The Prosecution further submits that the accused's presence is not required for "integral part commission:rl2tt5u n6 that, with the exception of Nzabonimana's absence during the attack, Nzabonimana's conduct meets all of the indicators considered by the Appeals Chamber in previous cases,r2un6a mely that: (i) he fully exercisedh is influenceo ver the physicalp erpetrators;r2(ui7i) he fully embracedt he decision to commit the crime as his own;r288a nd (iii) his conduct enabledt he crimes.l2n9 474. The Prosecution argues that Nzabonimana's power and influence were establishedf rom, inter alia, the fact that he was highly respectedi n his hometown, Nyabikenke commune, and throughout Gitaramap rdfecture as he was "one of the highest ranking officials in Rwanda".l2e0T he Prosecutionf urther arguest hat Nzabonimanaf ully embracedt he decision to commit the crimes as his own considering "[h]is leadershipr ole, his personalo rder to massacret he Tutsis and his threat thalt he Tutsis'time would come soon".l2elTheP rosecutionc ontendst hat the fact that, following his remarks, Nyabikenke authorities turned "fion defending the Tutsis [at the Nyabikenke communeo ffice] to massacringt hem" demonstratest hat Nzabonimana'se xerciseo f influence was as compelling as that inthe Seromba,G acumbllsi,a nd Munyakazi caser.tt" The Prosecutiona sserts that Nzabonimanae nabledt he killings as much as or more than Gacumbitsi or Munyakazi who had simply led assailantso n the ground.l2e3T he Prosecutionc ontendst hat Nzabonimana's conduct is part of "his wider campaigno f genocide".r2ea 415. Nzabonimana responds that the Prosecution's theory in relation to his influence and authoritya s well as "campaigno f genocide"i s new and distorted.l2eNsz abonimanac ontendst hat the Trial Chamber only made vague isolated findings on his influence and never found that he exercised" compelling authority" over anyone.t'e6A ccording to Nzabonimana,h is conduct is not r:*o ProsecutionA ppeal Brief, pnra. 26. Seea i.sr.Pr rosecutionR eply Brief, ptra.32. r:*s ProsecutionA ppeal Briei. pnras.44-48. '-' ProsecutionA ppeal Brief. paras.2 7,49. '-' Prosecution Appeal Brief, paras. 28-38, re.t'brringt o, inter alia, Seromba Appeal Judgement, pzas. 170, 171, Gut'unhitsi AppealJ udgement,p aras.2,6O;M unyukaz.Ai

Appeal Judgement, paras. 2, 136. "The Prosecution Appeal Brief, paras. 39-41, referring to, inter alia, Seromba Appeal Judgement, para. 171. The Prosecution contends that although the relevant indicator was not specifically considered by the Appeals Chamber in Gacumbitsi or Munyakazi, the leadership roles of the accused showed that they embraced the decision to commit the crimes. See ibid., para. 39. "The Prosecution Appeal Brief, paras. 42, 43, referring to, inter alia, Gacumbitsi Appeal Judgement, para. 60; Munyakazi Judgement, para. 135. See also 1.T.29 April 2014 p. 63. "The Prosecution Appeal Brief, paras. 29-31. See also Prosecution Reply Brief, paras. 17-27. "The Prosecution Appeal Brief, para. 4. "The Prosecution Appeal Brief, paras. 29, 35. See also ibid., paras. 32-38. "The Prosecution Appeal Brief, para. 43. "The Prosecution Appeal Brief, paras. 15-22. "The Nzabonimana Response Brief, paras. 13, 18-20, 22, 24-29, 41. "The Nzabonimana Response Brief, paras. 19, 25. See also AT.29 April 2014 pp. 68, 69. 160 Case No.; I CTR-98-44D-A 29 September 2014 01

2075 The comparable to that found to constitute committing in the Seromba, Gacumbitsi, and Munyakazi cases, where the accused were either present, led, or supervised the attack. In comparing other cases where "exhortations to kill [...] prior to a criminal attack" were characterised as instigating, Nzabonimana contends that the elevation of the legal characterisation of his conduct to committing is unwarranted. He stresses that liability for committing should be limited to cases involving the active participation at the time of the crime and that adopting a broader interpretation would blur the distinction between his mode of criminal responsibility and others. See 416. The Prosecution replies that Nzabonimana's submissions are unfounded and without merit. 1300 It further asserts that the Prosecution's case regarding Nzabonimana's power and authority was not new as it was alleged in the Indictment, the Prosecution Pre-Trial Brief, and the 1301 Prosecution Opening Statement. 471. As correctly recalled by the Trial Chamber, acts other than physical perpetration can constitute direct participation in the actus reus of a crime. 1302 The question is whether an accused's conduct "was as much an integral part of the genocide as were the killings which it enabled". 1303 In the cases where the Appeals Chamber has concluded that an accused's role constituted an integral part of the crimes, the accused were present at the scene of the crime and participated, supervised, directed, played a leading role, or otherwise fully exercised influence over the perpetrators. 1304 However, in this case, the Trial Chamber did not find that Nzabonimana was present during the attack and, further, did not find that he supervised, played a leading role, or fully exercised influence over the perpetrators. 478. Consequently, the Prosecution has failed to demonstrate that the Trial Chamber erred in not concluding that Nzabonimana committed genocide and extermination, or alternatively murder, as a crime against humanity at the Nyabikenke commune office. 1267 Nzabonimana Response Brief, paras. 44-66. 1268 Nzabonimana Response Brief, paras. 67, 68, referring to Ndindabahizi Trial Judgement, paras. 458, 464; Nchamihigo Trial Judgement, paras. 369-371, 373-378; 1269 Trial Judgement, paras. 543, 546, 548; Kijelile Trial Judgement, paras. 8, 29, 32, 33, 36. "Nzabonimana Response Brief, paras. 13, 44, 69. "Prosecution Reply Brief, paras. 11-16, 28-30, 44-49. "Prosecution Reply Brief, paras. 4, 6-10, 20. Judgement, para. 1696. See also Munyakazi Appeal Judgement, para. 135; Seromba Appeal Judgement, para. 61; Gacumbitsi Appeal Judgement, para. 60. "Gacumbitsi Appeal Judgement, para. 60. See also

Munyakazi Appeal Judgement, para. 135; Seromba Judgement, para. 61. Appellate See Seromba Trial Judgement, paras. 239, 269; Seromba Appeal Judgement, para. 111; Cacumbitsi Appeal Judgement, para. 60. See also Munyakazi Appeal Judgement, para. 136. 161 e-1 Case No.: I CTR-98-44D-A 29 September 2014

20741H 2. Ordering 419. The Prosecution submits that, in the alternative, Nzabonimana should have been convicted for ordering the attack. In the Prosecution's submission, the Trial Chamber found that Nzabonimana ordered the massacre. It also contends that Nzabonimana occupied a position of authority which would have compelled the physical perpetrator(s) to carry out the crimes, meeting the actus reus of ordering. In the Prosecution's view, Nzabonimana possessed the required mens rea for this mode of liability. 480. Nzabonimana responds that the Trial Chamber did not establish that the perpetrator(s) of the attack were those present at the Cyayi centre when Nzabonimana gave his remarks. The Defence submits that the required causal link was absent as the offence should be committed by the person who received the order. In Nzabonimana's submission, there was no direct evidence that an order was issued to the bourgmestre or to policemen, and that the circumstantial evidence does not lead to the only reasonable conclusion that Nzabonimana gave an order to attack the commune. 481. The Prosecution replies that there was direct evidence that he gave an order at the Cyayi centre meeting the requirements that it was the only reasonable conclusion from the factual findings. 482. The Appeals Chamber recalls that ordering requires that a person in a position of authority instructs another person to commit an offence. The authority envisaged by ordering requires a formal superior-subordinate relationship between the accused and the perpetrator. 483. It may be informal or of a purely temporary nature. It is sufficient that there is proof of a position of authority on the part of the accused that would compel another person to commit a crime. 484. A person in a position of authority may incur responsibility for ordering if the order has a direct and 05 Prosecution Notice of Appeal, para. 2; Prosecution Appeal Brief, paras. 2, 4, 25, 51, 56, 57. See also AT. 29 April 2014 paras. 5, 6, 3, 6, 4, 6, 6. (b) Prosecution Appeal Brief, para. 52, re bringing to Trial Judgement, paras. 1785, 1195. See also AT. 29 April 2014 paras. 63, 66. "" Prosecution Appeal Brief, paras. 5, 1, 53, 54. (c) Prosecution Appeal Brief, para. 55. (d) Nzabonimana Response Brief, paras. 73, 75. (e) Nzabonimana Response Brief, paras. 5, 76. "" Nzabonimana Response Brief, paras. 77-79. (f) Nzabonimana Response Brief, paras. 80-92. (g) Prosecution Reply Brief, para. 59. (h) Prosecution Reply Brief, para. 61. (i) Bug, roru and iViengiyumva Appeal Judgement, para. 217; Setuko Appeal Judgement, para. 240; Kordii and Cerkez. Appeal Judgement, para. 28. (j) (Srtuk, "Appeal Judgement, para. 240; Nahimana et al. Appeal Judgement, fn. 1162; Korrijii anti aerkez, Appeal Judgement, para. 28. (k) Setuko Appeal Judgement, para. 240; Semanza Appeal Judgement, para. 363. 162 Case No.: I CTR-98-44D-A 29 September 2014 0"

2f731H substantial effect on the commission of the illegal act. 485. Responsibility is also incurred when an individual in a position of authority orders a(n) act or omission with the awareness of the substantial likelihood that a crime will be committed in the execution of that order, and if that crime is effectively committed subsequently by the person who received the order. 483. The Appeals Chamber notes that the Trial Chamber found that Nzabonimana was an influential political personality in Gitarama prefecture during the events of April to July 1994. 484. However,

the Trial Chamber made no findings on his position of authority, informal or temporary, over the recipients of the alleged order or the direct perpetrator of the attack sufficient to establish Nzabonimana's responsibility for ordering under Article 6(1) of the Statute. The Appeals Chamber notes that in paragraphs 1785 and 1795 of the Trial Judgement, the Trial Chamber indeed referred to Nzabonimana's remarks as "orders". However, nowhere in the Trial Judgement did it find that the attack at the Nyabikenke commune office was subsequently committed by the persons who received the alleged order. In fact, the Trial Chamber made no findings that the persons who were present at the Cyayi centre, where Nzabonimana made the remarks, were the same as those who committed the killings at the Nyabikenke commune office. 484. Accordingly, the Appeals Chamber finds that the Prosecution has failed to demonstrate that the Trial Chamber erred in not concluding that Nzabonimana ordered the killings at the Nyabikenke commune office. 3. Conclusion 485. Accordingly, the Appeals Chamber dismisses the Prosecution's first Ground of Appeal. *Setako Appeal Judgement*, para. 240; *Semanza Appeal Judgement*, para. 361. See also *Gacumbitsi Appeal Judgement*, para. 182. "Ndindiliyintnae et al. Appeal Judgement", paras. 291, 365; *Setako Appeal Judgement*, para. 240; *Renzaho Appeal Judgement*, para. 3. 15. "Bogoroio and Nsengiyumva Appeal Judgement", fn. 642; *Renzaho Appeal Judgement*, para. 315; *Nahimana et al. Appeal Judgement*, para. 481. 'J', *Tdal Judgement*, para. 92. See also *Id. bid.*, para. 1712. *T32 C 2 7. Renzaho Appeal Judgement*, para. 320; *Boikosia and Tariulovs & Al Appeal Judgement*, para. 75. *T32 Tdal Judgement*, paras. 1785, 1795. "O C7. Ndindiliyimana et al. Appeal Judgement", para. 368. 163 Case No.: I CTR-98-44D-A 29 September 2014

2fJ721H B. Alleged Errors Relating to the Release of Prisoners in Rutobwe Commune (Ground 2) 486. The Trial Chamber found that, in the days leading up to 18 April 1994, Nzabonimana encouraged the killing of Tutsis by causing "the release of killers of Tutsis", who had been imprisoned by bourgmestre Jean-Marie Vianney Mporanzi, in Rutobwe commune. It further found that killings in Rutobwe commune intensified after the release of the prisoners. However, the Trial Chamber found that there was insufficient evidence to conclude that the release of the prisoners substantially contributed to the commission of a specific crime. Accordingly, it did not convict Nzabonimana of genocide based on this event. 481. The Prosecution submits that the Trial Chamber erred in failing to convict Nzabonimana of aiding and abetting the killing of Tutsis in Rutobwe commune through the forcible release of prisoners. According to the Prosecution, all of the elements of aiding and abetting genocide were found by the Trial Chamber: (i) the killings for the actus reus of genocide; (ii) Nzabonimana's substantial contribution by releasing the killers for the actus reus of aiding and abetting; and (iii) his knowledge of the killers' genocidal intent for the mens rea. The Prosecution submits that the Trial Chamber accepted the evidence that the prisoners, once set free, committed genocidal killings when it found that the killings in Rutobwe commune intensified after the release of the prisoners. The Prosecution further submits that the Trial Chamber erred when concluding that it could not find that Nzabonimana's conduct had substantially contributed to any of the ensuing crimes since he released the very criminals who later killed Tutsis in the same commune where they had been imprisoned. The Prosecution submits that the Trial Chamber erred in fact

when finding that no detail was provided as to the victims, dates or locations, and erred in law in requiring such details in addition to the elements of the crime that were proven. In this respect, the Prosecution argues that the Trial Chamber's error is further compounded by its reliance on the Kalimanzira Trial Judgment, para. 1076. See Ist. itb id., para. 719. The Trial Chamber further found that Nzabonimana must genocidally intend to free the released prisoners. See id., para. 720. I, 'q'-y .k"9yn.rhe Trial Judgment, para. 723. The Trial Judgment, para. 723. '32e Prosecution Notice of Appeal, para. 3; Prosecution Appeal Brief, paras. 5, 14, 58-69. See also Prosecution Reply Brief, paras. 9, 10, 91; AT.29 April 2014, paras. 6, 66. The Prosecution Appeal Brief, paras. 5, 59-61. See also Prosecution Reply Brief, paras. 8, 2, 83. The Prosecution Appeal Brief, para. 59. The Prosecution Appeal Brief, paras. 60, 63. See /sr. Prosecution Reply Brief, paras. 8, 3, 86-88. The Prosecution Appeal Brief, para. 62, rejecting the Trial Judgment, paras. 1067, 1076, 1719, 7722. See also Prosecution Reply Brief, para. 83. The Prosecution Appeal Brief, paras. 5, 64-66, re. bringing to Kareru Appeal Judgment, para. 3 | 8; Ntakirutimana Appeal Judgment, para. 517. See also Prosecution Reply Brief, para. 83. The Case No.: ICTR-98-44D-A 29 September 2014 Trial Chamber Appeal Judgments since the Appeals Chamber in that case did not require additional details, but instead found the evidence insufficient in relation to the existence of killings. 488. Nzabonimana responds that the Trial Chamber correctly acquitted him due to insufficient evidence of killings. 1336 Nzabonimana submits that the Prosecution erroneously contends that the Trial Chamber implicitly acknowledged the existence of crimes committed by the released prisoners and that the evidence of these crimes was sufficient. 1337 Nzabonimana further submits that the Prosecution confused the Trial Chamber's finding that killings intensified following the release of the prisoners with proof beyond reasonable doubt of "crimes specifically connected" to the reprehensible conduct. 1338 Nzabonimana contends that the evidence of Prosecution Witness CNA was vague hearsay and that Defence Witness Mporanzi's testimony mentioned no particular crime and provided no specific elements, rendering it impossible to establish a nexus between the murders and the release of prisoners. The Nzabonimana submits that the Trial Chamber simply required specific and sufficient evidence that murders were committed. 1340 Nzabonimana finally argues that the Trial Chamber correctly relied on the Kalimanzira Appeal Judgment. 1341 489. The Appeals Chamber recalls that in determining substantial contribution for aiding and abetting, it has assessed whether a "link" or "connection" between the conduct of the aider and abettor and the crime has been demonstrated. 1342 Such conduct must have a substantial effect upon the perpetration of the crime. 1343 Whether a particular contribution qualifies as "substantial" is a "fact-based inquiry", and need not "serve as condition precedent for the commission of the ... crime".-- 490. The Trial Chamber recalled that it had heard evidence that the released prisoners: (i) organised themselves after their release and then carried out various crimes against Tutsis in Rutobwe commune between 21 and 30 April 1994, including demolishing houses and killings; and 1344 The Prosecution Appeal Brief, para. 61, referring to Kalimanzira Appeal Judgment, paras. 77-79. See also Prosecution Reply Brief, para. 89. The Nzabonimana Responds Brief, paras. 114, 128. 1337 Nzabonimana Responds Brief, para. 118. 1338 Nzabonimana Responds Brief, para. 119. 1339 Nzabonimana Response Brief, paras.

121,125,126. See also AT.29 April 2014 p.73. 110 Nzabonimana's response Brief, para.1 27. In his response Brief, paras.1 23, 124, 126. Nzabonimana argues that the Prosecution's reference to the Ntakirutimana and Karera Appeal Judgments is irrelevant and further points to the Muvunyi 1 Appeal Judgement where he submitted the Appeals Chamber reversed a conviction for genocide due to the imprecision of the hearsay evidence in relation to relevant murder scenes. Ibid., paras.2.3, 124, 126, 127. ¹¹¹ See, e.g., Nindabahizi Appeal Judgement, paras.1 16-117; Kamuhanda Appeal Judgement, paras.6 8, 72. ¹¹² See, e.g., Ndayimana Appeal Judgement, para.1 141; Kamanzira Appeal Judgement, paras.7 4, 86; Rukundo Appeal Judgement, para.52. In Ntawukulilyayo Appeal Judgement, para. 214; Kamanziriro Appeal Judgement, para. 86; Rukundo Appeal Judgement, para.52. 165 Case No.: ICTR-98-44D-A 29 September 2010 14 S-1

2070. (ii) carried out attacks in Nyamabuye commune. "The Trial Chamber nonetheless found that the Prosecution failed to provide specific evidence of the crimes the released prisoners had allegedly committed after their release.¹³⁵⁰ The Trial Chamber noted that no detail had been provided concerning the alleged victims, dates, or locations.¹³⁵¹ Contrary to the Prosecution's submission, the Trial Chamber did not accept the evidence that the criminals, once set free, committed genocidal killings nor did it find that details were provided.¹³⁵² The Appeals Chamber finds that it is clear that the Trial Chamber considered the evidence to be insufficient to connect Nzabonimana's conduct in releasing the prisoners in Rutobwe commune to the commission of any specific crime.¹³⁵³ Furthermore, the Appeals Chamber is of the view that the Trial Chamber did not require "additional details" as a matter of law, but rather noted examples of evidence that were not before it.¹³⁵⁴ Nowhere in its findings did the Trial Chamber require the Prosecution to "specifically identify the perpetrators" or provide "certain named or described" victims, as asserted by the Prosecution. Thus, the Appeals Chamber considers that Nzabonimana's acquittal was not based on any additional legal requirements, but rather on the insufficiency of evidence. ¹³⁵⁵ In this respect, the Appeals Chamber notes that the Prosecution points to the evidence of Witness CNA and Witness Mporanzi to support its submission that the Trial Chamber accepted evidence that the released criminals committed genocidal killings.¹³⁵⁶ The Trial Chamber stated that it heard evidence that between 21 and 30 April 1994 the prisoners carried out various crimes including demolishing houses and killings in Rutobwe commune.¹³⁵⁷ The Trial Chamber found that Witness Mporanzi corroborated Witness CNA's testimony that prisoners committed crimes after their release, and that after about 20 April 1994, the "perpetrators were doing whatever they wanted", including killing Tutsis.¹³⁵⁸ The Appeals Chamber observes, however, that neither Witness CNA nor Witness Mporanzi referred to a particular incident or provided details of the killings. Moreover, Witness CNA testified to attacks in Nyamabuye commune,¹³⁵⁹ and not 'The Trial Judgement, para.1 122. 'The Trial Judgement, para.1 123. 'The Trial Judgement, para. 1123. 'The Prosecution Appeal Brief, para. 62, where the Prosecution submits that the victims were Tutsis, the location was Rutobwe commune, and the dates were between 21 and the end of April 1994. See also Prosecution Reply Brief, para.83. 'The Trial Judgement, paras. 1723, 1724. 'The Trial Judgement, para. 1723. 'The Prosecution Appeal Brief, para. 59. 'The Trial Judgement, para.1 722. 'The Trial Judgement, para.1 067, referring to Witness Mporanzi, T.26 May 2010 pp.1 0, 11. See also ibid., para.1 062. 'The witness CNA, T. 15

December 2009 p. 2 (closed session). 166 Case No.: ICTR-98-44D-A 29 September 2014

2069/H Rutobwe commune as alleged in the Indictment, 1355a and he provided no description of the attacks. 135H6 is testimony that he learned from the released prisoners that they were given authorisation by the governor and "one of the ministers" to kill Tutsis, 135i7s similarly vague. While Witness Mporanzi testified that after the release, the prisoners organised themselves to attack Tutsis and started killing cows, demolishing houses, cutting down banana trees, and "killing people that they could find", 135h8i's testimony is vague and devoid of detail. Furthermore, it is unclear from Witness Mporanzi's testimony whether he was referring to the released prisoners when describing the events between 21 April 1994 and towards the end of April 1994 where "perpetrators" were "killing if they wanted". 135eT The Appeals Chamber finds, therefore, that the Trial Chamber reasonably concluded that there was insufficient evidence to find that the release of prisoners substantially contributed to the commission of a specific crime. 135eT. Finally, the Appeals Chamber dismisses the Prosecution's argument concerning the Kalimanzira Appeal Judgement. 136Li like in Kalimanzira, the Trial Chamber in the present case found insufficient evidence of the underlying crimes which precluded a finding of substantial contribution. 1362 494. The Appeals Chamber therefore finds that the Prosecution has failed to demonstrate that the Trial Chamber erred in not finding Nzabonimana guilty of aiding and abetting genocide for the release of prisoners in Rutobwe commune. 495. Accordingly, the Appeals Chamber dismisses the Prosecution's second round of Appeal. 136t See Indictment, para. 24. Witness C NAA testified that Nyamabuye's orders in Rutobwe commune. See Witness C NAA, T. 15 December 2009 p. 2 (closed session). 135 56", Witness C NAA, T. 15 December 2009 pp. 2, (3 closed session). 136t Witness C NAA, T. 15 December 2009 p. 2 (closed session) 136t witness Mporanzi, T. 26 May 2010 p. 10, 11. 136t Witness Mporanzi, T. 26 May 2010 p. 10. 1360 The Appeals Chamber notes that, in his Response, Nzabonimana challenged the Trial Chamber's credibility assessment of Prosecution Witnesses C NAA and CNAC and Defence Witness Mporanzi whose evidence underpins the Trial Chamber's finding that Nzabonimana released the Rutobwe commune prisoners. See Nzabonimana's Response Brief, paras. 96-113. The Appeals Chamber understands that Nzabonimana is seeking to provide additional arguments to support his acquittal in respect of this event, without having used the provision of Article 5 of the Rules of Procedure and Evidence of the Tribunal. As the Appeals Chamber found no error under this ground of appeal, there is no need to examine further Nzabonimana's arguments challenging the factual findings. Further, any challenge to the assessment of evidence in this event has been examined in Nzabonimana's appeal, to the extent that such error could have an impact on Nzabonimana's conviction or sentence. See *infra*, paras. 296-311. 1361 See Trial Judgement, para. 1723, fn. 2168. 136t See Kalimanzira Appeal Judgement, paras. 76-78. 136t Case No.: ICTR-98-44D-A 29 September 2014 S-

2068/H V. IMPACT OF THE APPEALS CHAMBER'S FINDINGS ON NZABONIMANA'S SENTENCE

496. The Appeals Chamber recalls that it has reversed Nzabonimana's conviction for direct and public incitement to commit genocide in relation to the Murambi meeting on 18 April 1994, 130a3n and for conspiracy to commit genocide in relation to the establishment of a Crisis Committee and weapons distribution at Tambwe, 130t. 136t See *infra*, paras. 296-311. 1361 See Trial Judgement, para. 1723, fn. 2168. 136t See Kalimanzira Appeal Judgement, paras. 76-78. 136t Case No.: ICTR-98-44D-A 29 September 2014 S-

affirmed Nzabonimana's convictions for genocide and extermination as a crime against humanity in relation to the events at the Cyayi centre on 14 April 1994 and at the Nyabikenke commune office on 15 April 1994. The Appeals Chamber has also affirmed his convictions for direct and public incitement in relation to events at the Butare trading centre and the Cyayi centre, as well as his convictions for conspiracy to commit genocide in relation to the Murambi meeting on 18 April 1994. In the circumstances of this case, the Appeals Chamber affirms Nzabonimana's sentence of life imprisonment. ¹ See supra, paras. 38, 40. ² See supra, para. 454. ³ See supra, paras. 149, 156, 157. ⁴ See supra, paras. 33, 35. ⁵ See supra, paras. 419, 420. ⁶ Case No.: ICTR-98-44D-A 29 September 2014

2067/H VI. DISPOSITION 497. 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 29 April 2014 SITTING in open session; GRANTS Nzabonimana's Fifth Ground of Appeal, in part, and REVERSES his conviction for direct and public incitement to commit genocide in relation to the Murambi meeting on 18 April 1994 in Gitarama prefecture; GRANTS Nzabonimana's Seventh Ground of Appeal and REVERSES his conviction for conspiracy to commit genocide in relation to events at the Tambwe commune; DISMISSES Nzabonimana's appeal in all other respects; DISMISSES the Prosecution's appeal in its entirety; AFFIRMS Nzabonimana's convictions for instigating genocide and extermination as a crime against humanity at the Cyayi centre on 14 April 1994 resulting in the killings of Tutsis at the Nyabikenke commune office on 15 April 1994; AFFIRMS Nzabonimana's convictions of direct and public incitement to commit genocide in relation to events at the Butare trading centre on 12 April 1994, and at the Cyayi centre on 14 April 1994; AFFIRMS Nzabonimana's conviction of conspiracy to commit genocide in relation to the Murambi meeting on 18 April 1994; AFFIRMS the sentence of life imprisonment imposed on Nzabonimana 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 detentions in which he was arrested on 18 February 2008; RULES that this Judgement shall be enforced immediately pursuant to Rule 119 of the Rules; and ORDERS that, in accordance with Rules 103(8) and 107 of the Rules, Nzabonimana is to remain in custody. ⁶⁹ Case No.: ICTR-98-44D-A 29 September 2014

2056/H in the custody of the Tribunal pending the finalisation of arrangements for his transfer to the State where his sentence will be served. Judge Afande appends a separate opinion. Done in English and French, the English text being authoritative. ⁶ f' li i - i ... - i* - l'tr l. I, ii i 'ri-' L \t';j'; i,.,"; Judge Mehmet Gi.iney, Presiding Judge William H. Sekule Judge Arlette Ramaroson Rylyr@ Judge Khalida Rachid Khan Judge Koffi Kumelio A. Afande Done this 29th day of September 2014 at Arusha, Tanzania. [Seal of the Tribunal] lru . \.r [l't iv / a\ t't0 Case No.: ICTR-98-44D-A 29 September 2014

2065/H VII. SEPARATE OPINION OF JUDGE KOFFI KUMELIO A. AFANDE 1. In this Judgement, the Appeals Chamber rejects Nzabonimana's submission that the Trial Chamber engaged in impermissible double-counting between aggravating circumstances and elements of the crime in relation to his influence and the events in Rutobwe and Nyamabuye, ⁶unes.' While I agree with

this conclusion, I have a degree of uneasiness with the reasoning in paragraph 464 of this Appeal Judgement, which, in my view, does not necessarily support the outcome but rather suggests that there was, indeed, double-counting. I wish to clarify very briefly my own position as to why the Trial Chamber did not commit any error in this regard. 2. The Trial Chamber found that, in the days prior to 18 April 1994, Nzabonimana encouraged the killing of Tutsis by causing the release of killers of Tutsis in Rutobwe commune, who had been imprisoned. It further found that, in April 1994, Nzabonimana visited the Nyamabuye commune office and told the Hutu civilians present to destroy the house of a dead Tutsi. The Trial Chamber considered that Nzabonimana's actions in relation to the release of the prisoners and his order for the destruction of the Tutsi house provided circumstantial evidence of his genocidal intent. In its sentencing considerations, the Trial Chamber found that the two incidents "further display Nzabonimana's abuse of his position of influence to stoke the genocide in Gitarama prefecture." The Trial Chamber considered Nzabonimana's abuse of influence as an aggravating factor in determining his sentence. 3. While Nzabonimana's actions in relation to the release of the prisoners and his order for the destruction of the Tutsi house constituted circumstantial evidence relevant to the Trial Chamber's determination that he possessed genocidal intent, they are not, per se, an element required to establish criminal liability for genocide. The Trial Chamber further considered that these events constituted evidence supporting the conclusion that Nzabonimana abused his influence, which abuse, in turn, was considered by the Trial Chamber to be an aggravating factor. Accordingly, while the Trial Chamber relied on these events as circumstantial evidence showing that Nzabonimana possessed genocidal intent and abused his position, in themselves they were neither an element of the crime of genocide nor aggravating circumstances. By attributing to Nzabonimana's actions the evidentiary value it deemed relevant in the overall circumstances of this case, the Trial Chamber acted within the scope of its discretion. Appeal Judgement, para. 464. Trial Judgement, paras. 1076, 1719. Trial Judgement, paras. 1488-1491, 730. Trial Judgement, paras. 1724, 1732. (x.A *4. 17) Case No.: ICTR-98-44D-A 29 September 2014

20641H 4. For the reasons set out above, I believe that Nzabonimana's argument that the Trial Chamber engaged in impermissible double-counting between an aggravating circumstance and an element of the crime is unsubstantiated. Done in English and French, the English version being authoritative. Btw Donet his 29th day of September 2011 At Arusha, Judee Koffi Kumelio A. Afande Tanzania [Seal of the Tribunal] Trial Judgement, para. 1818. The Trial Chamber explicitly held that Nzabonimana could not be held criminally responsible for his actions in relation to the two incidents. See Trial Judgement, para. 1818. Trial Judgement, para. 1818. r72 Case No.: ICTR-98-44D-A 29 September 2014

20631H VIII. ANNEX A - PROCEDURAL HISTORY 1. The main aspects of the appeal proceedings are summarised below. A. Notices of Appeal and Briefs 2. Trial Chamber II of the Tribunal rendered the judgement in this case on 31 May 2012 and issued its written Trial Judgement in English on 25 June 2012. Both parties appealed. 1. Nzabonimana's Appeal 3. Nzabonimana filed his notice of appeal on 24 July 2012. On 7 September 2012, the Pre-Appeal Judge granted, in part, a motion filed by Nzabonimana for an extension of time to file his briefs, and ordered him to file

his appeal brief no later than 40 days from the date on which he was served with the French translation of the Trial Judgement, and to file his response brief no later than 15 days from the date on which he was served with the French translation of the Trial Judgement or the French translation of the Prosecution appeal brief.² The French versions of the Trial Judgement and of the Prosecution appeal brief were served on Nzabonimana on 18 and 26 June 2013, respectively.³ 4. On 22 July 2013, the Pre-Appeal Judge denied Nzabonimana's motion for an extension of the word limit for his appeal brief.⁴ On 23 July 2013, Nzabonimana filed a motion seeking to amend his notice of appeal.⁵ On 29 July 2013, Nzabonimana filed his appeal brief.⁶ 5. On 30 August 2013, the Appeals Chamber granted in part Nzabonimana's Motion to Amend Notice of Appeal, where it: (i) instructed Nzabonimana to file a revised notice of appeal no later than 4 September 2013; (ii) granted the Prosecution's motion to strike Nzabonimana's appeal brief; (iii) ordered Nzabonimana to file a revised appeal brief not exceeding 30,000 words no later than 14 September 2013.⁷ 6. On 4 September 2013, Nzabonimana filed his amended notice of appeal and amended appeal brief.⁸ On 13 September 2013, the Prosecution filed its response brief.⁹ On 30 September 2013, Nzabonimana filed his reply brief.¹⁰ On 7 October 2013, the Pre-Appeal Judge ordered Nzabonimana to file a confidential version of the amended appeal brief filed on 10 September 2013 no later than 14 October 2013 and the Prosecution to file a public redacted version of its response brief no later than 14 October 2013.¹¹ 2. Prosecution's Appeal 7. The Prosecution filed its notice of appeal on 29 June 2012.¹² On 12 September 2012, the Prosecution filed its appeal brief.¹³ On 9 July 2013, Nzabonimana filed his confidential response brief.¹⁴ On 24 July 2013 the Prosecution filed its reply brief.¹⁵ 3. Other issues 8. On 16 October 2013, the Appeals Chamber denied in its entirety Nzabonimana's motion for remedies in relation to the Prosecution's alleged violation of Rules 66(A)(ii) and 68 of the Rules.¹⁶ 7 Decision on Callixte Nzabonimana's Motion to Amend his Notice of Appeal and the Prosecution's Motion to Strike Nzabonimana's Appeal Brief, 30 August 2013. E Amended Notice of Appeal, 3 December 2013 (original French version filed on 4 September 2013); Mmoire t l'Appelant Amendé, 4 September 2013, as corrected by Amended Appellant's Brief Public

20621H 4 September 2013; (iv) and instructed the Prosecution to file its response brief to the amended appeal brief no later than 13 September 2013.¹⁶ On 4 September 2013, Nzabonimana filed his amended notice of appeal and amended appeal brief.¹⁷ On 13 September 2013, the Prosecution filed its response brief.¹⁸ On 30 September 2013, Nzabonimana filed his reply brief.¹⁹ On 7 October 2013, the Pre-Appeal Judge ordered Nzabonimana to file a confidential version of the amended appeal brief filed on 10 September 2013 no later than 14 October 2013 and the Prosecution to file a public redacted version of its response brief no later than 14 October 2013.²⁰ 2. Prosecution's Appeal 7. The Prosecution filed its notice of appeal on 29 June 2012.²¹ On 12 September 2012, the Prosecution filed its appeal brief.²² On 9 July 2013, Nzabonimana filed his confidential response brief.²³ On 24 July 2013 the Prosecution filed its reply brief.²⁴ 3. Other issues 8. On 16 October 2013, the Appeals Chamber denied in its entirety Nzabonimana's motion for remedies in relation to the Prosecution's alleged violation of Rules 66(A)(ii) and 68 of the Rules.²⁵ 7 Decision on Callixte Nzabonimana's Motion to Amend his Notice of Appeal and the Prosecution's Motion to Strike Nzabonimana's Appeal Brief, 30 August 2013. E Amended Notice of Appeal, 3 December 2013 (original French version filed on 4 September 2013); Mmoire t l'Appelant Amendé, 4 September 2013, as corrected by Amended Appellant's Brief Public

Corrigendum, 3 December 2013 (original French version filed on 10 September 2013). See also Corrigendum of the Memoire d'appelant amendé, 10 September 2013; Corrigendum of the Memoire d'appelant amendé, 13 September 2013. 'Prosecution's response Brief, 13 September 2013 (confidential). ' Brief in Reply, 19 December 2013 (original French version filed on 30 September 2013). ' Order on the Status of Briefs, 7 October 2013 ("Order on the Status of Briefs"). The Prosecution filed its public redacted response Brief on 8 October 2013 (see Prosecution's response Brief, 8 October 2013), and Nzabonimana filed a confidential version of his amended appeal Brief on 10 October 2013 (see Memoire d'appelant amendé on Confidential corrigendum 10, October 2013). The Prosecutor's Notice of Appeal, 29 June 2012; Corrigendum to Prosecutor's Notice of Appeal, 23 August 2012. The Prosecution's appeal Brief, 12 September 2012. 'o Nzabonimana's response Brief, 5 September 2013 (confidential) (original French version filed on 9 July 2013). Pursuant to the Order on the Status of Briefs, Nzabonimana filed a public redacted version of his response Brief on 10 October 2013. The Prosecution's reply Brief, 24 July 2013. The Decision on Callixte Nzabonimana's Motion for Remedies, 6 October 2013; Callixte Nzabonimana's Motion for Appropriate Remedies on Account of Further Violations of Rules 6 (A)(ii) and 68 of the Rules of Procedure and Evidence, 2 July 2013 (original French version filed on 25 June 2013) (public with confidential and public annexes). On 17 June 2013, the Pre-Appeal Judge dismissed without prejudice previous motions for violation of practiced directions. The Decision on Prosecution's Motion to Strike and for Extension of Time, and on Nzabonimana's Motion to Strike and for Extension of Words and Remedies, 7 June 2013; Requested by Callixte Nzabonimana to find 'obtenir les réparations appropriées pour les violations des articles 6 (A)(ii) et 68 du Règlement de procédure et de preuve, 11 June 2013 (public with confidential and public annexes); Requested by Callixte Nzabonimana to find 'obtenir les réparations appropriées pour les violations des articles 6 (A)(ii) et 68 du Règlement de procédure et de preuve, 13 June 2013. 174 Case No.: I CTR-98-44D-A 29 September 2014

2061 On 22 April 2014, the Appeals Chamber denied Nzabonimana's motion seeking to admit additional evidence on appeal. 17 B. Assignment of Judges. On 3 July 2012, the Presiding Judge of the Appeals Chamber assigned the following Judges to the appeal: Judge Mehmet Giiney (Presiding), Judge Faustino Pocar, Judge Arlette Ramaroson, Judge Andrius Vaz, and Judge Khalida Rachid Khan. On 7 September 2012, the Presiding Judge, Judge Mehmet Giiney, designated himself as the Pre-Appeal Judge. On 10 March 2013, the Presiding Judge of the Appeals Chamber replaced Judge Andrius Vaz with Judge William H. Sekule. On 29 January 2014, the Presiding Judge of the Appeals Chamber placed Judge Faustino Pocar with Judge Khalida Rachid Khan. On 29 April 2014, the parties presented their oral arguments at a hearing held in Arusha, Tanzania, in accordance with the Scheduling Order of 31 March 2014. ' Decision on Callixte Nzabonimana's Motion for Admission of Additional Evidence on Appeal Pursuant to Rule 11.5 of the Rules, 22 April 2014. ' Order Assigning Judges to a Case Before the Appeals Chamber, 3 July 2012. ' Order Assigning a Pre-Appeal Judge, 7 September 2012. ' Order Replacing a Judge in a Case Before the Appeals Chamber, 19 March 2013. ' Order Replacing a Judge in a Case Before the Appeals Chamber, 9 January 2014. ' Scheduling Order, 31 March 2014.

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2060/H IX. ANNEX B - CITBD MATERIALS AND DBFINBD TERMS A. .Jurisprudence I. Tribunal
AKAYBSU Jean-Paul The Prosecutor v. Jean-Paul Akayesu,C aseN o. ICTR-96-4-A, Judgement, I
June 2007 ("Akayesu Appeal Judgement"). The Prosecutor v. Jean-Paul Akayesu,C ase No.
ICTR-96-4-T, Judgement,2 September1 998 (" Akayes u Trial Judgement"). BAGILISHEMA Ignace
The Prosecutor v. Ignace Bagilishema, Case No. ICTR-95-1A-A, Judgement (Reasons), 3 July 2002
("Bagilishema Appeal Judgement"). BAGOSORA Th6oneste et al. Th4oneste Bagosora and Anatole
Nsengiyumva v. The Prosecutor, Case No. ICTR-98-41-A, Judgement,l4 December2 0il ("Bagosoraa
nd NsengiyumvaA ppeal Judgement"). BIKINDI Simon Simon Bikindi v. The Prosecutor, Case No.
ICTR-01-72-A, Judgement, 18 March 2010 (" Bi kindi AppealJ udgement"). BIZIMUNGU Augustin
Augustin Bizimungu v. The Prosecutor,C ase No. ICTR-00-56B-A, Judgement,3 0 ltne 2014 (" Bi
zimungaA ppeal Judgement"). BIZIMUNGU Casimir e/aL The Prosecutor v. Casimir Bizimungu,
Justin MugenTi,J dr6me-Cl6mentB icamumpaka,a nd Proper Mugiraneza, Case No. ICTR-99-50-T,
Judgement and Sentence, pronounced on 30 September 2011,f iled on 19 October2 011
("Bizimungue t al. Trial Judgement"). GACUMBITSI Sylvestre SylvestreG acumbitsi v. The
Prosecutor,C ase No. ICTR-2001-64-A, Judgement,7 July 2006 (" GacumbitsiA ppeal Judgement").
HATEGEKIMANA Ildephonse Ildephonse Hategekimana v. The Prosecutor, Case No. ICTR-00-55B-
A, Judgement,8 May 2012 (" H ateg e kimana AppealJ udgement"). KAJELUBLI Juv6nal The
Prosecutor v. Juvinal Kajelijeli, Case No. ICTR-98-44A-T, Judgement and Sentence, 1 December
2003 (" Kai el ii el i T rial Judgement"). t76 CaseN o.:ICTR-98-44D-A 29S eptemb2e0r1 4 r\\

2059/H KALIMANZIRA Callixte Callixte Kalimanzira v. The Prosecutor, Case No. ICTR-05-88-A,
Judgement,20 October 2010 (" Kali mnnlira Appeal Judgement"). The Prosecutor v. Callixte
Kalimanzira, Case No. ICTR-05-88-T, Judgement, 22 June 2009 (" K alimnnz ir a T ial Judgement").
KAMUHANDA Jean de Dieu The Prosecutor v. Jean de Dieu Kamuhanda, Case No. ICTR-99-54A-A,
Judgement, 19 September2 005 ("Kamuhanda AppealJ udgement"). KANYARUKIGA Gaspard
Gaspard Kanyarukiga v. The Prosecutor, Case No. ICTR-02-78-A, Judgement, 8 i|/{.ay 2012 ("
Kanyarukiga Appeal Judgement"). KARBRA Francois Francois Karera v. The Prosecutor, Case No.
ICTR-01-74-A, Judgement, 2 February 2009 (" Kar er a Appeal Judgement"). The Prosecutor v.
Francois Karera, Case No. ICTR-01-74-T, Judgement and Sentence, 7 December2 007 ("KareraTial
Judgement"). MUGENZI Justin and MUGIRANEZA Prosper Justin Mugenzi and Prosper
Mugiraneza v. The Prosecutor, CaseN o. ICTR-99-50-A, Judgement, 4 February2 013 ("Mugenzi and
Mugiraneza Appeal Judgement"). MUHIMANA Mikaeli Mikaeli Muhimnna v. The Prosecutor,
Case No. ICTR-95-18-A, Judgement, 2l May 2001 (" Muhimana Appeal Judgement"). MUNYAKAZI
Yussuf The Prosecutor v. YussufM unyakali, Case No. ICTR-97-36A-A, Judgement,2 8 September2
011 (" MunyakaqiA ppeal Judgement"). MUVUNYI Tharcisse Tharcisse Muvunyi v. The
Prosecutor, Case No. ICTR-00-55A-A, Judgement, 1 April 2011 (" M uvu nyi 11A ppeal Judgement").
The Prosecutor v. TharcisseM uvunyi, Case No. ICTR-00-55A-T, Judgement,1 1 February 2010 (" M
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Judgement,2 9 August 2008 (" Muvunyi 1 Appeal Judgement"). The Prosecutor v. Tharcisse
Muvunyi, Case No. ICTR-00-55A-T, Judgement and Sentence, i2 September2 006 ("Muvunyi lTriaT
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