

RWANDA / JUDGMENT

François Karera v. The Prosecutor

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Couuself or the Appellant Office of the Prosecutor Ms. CarrrelleM archessault Mr. IlassauB
ubacarf a[ow Mr. AlexandreBergevin Mr. Alex Obote-Odora lvlr. ChristianD eslauriersA, ssistant
Ms. Dior SowF all h[r- AbdoulayeS eye Mr. Fraugois-XavierN sanzuwera f"." Mr. Alfred Orono
Orono tl:if pour'le nwrnf Ms. Florida Kabasinga pinal itrternatio'rct Tribunal Ms. B6aniceC tapaux
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'09 02/02 11:23 FAX 0031705128932 ICTR @ooz ffiln CONTENTS I.INTRODUCTION tr.
STAT.IDARDOS F APPELLATE REYIEW IIL ALLEGED GEITEIIAL ERRORS IN THE ASSESSMENT
OF THE EYIDENCE (GROUNIDO F AppeAL 2,IN PART)*... ..r....!.r.. --.---...5 A. At Lscpo
GslIERArE, nnonsI N TI{EA ssesslrpNro F THEA reelletr's Tesrf\doNy.....,.....5 1. RulesA
pplicablet o the Assessmenotf an Accused'sT estimonya rrdP rovisiono f a ReasonoOdp
iuion 5 2. Alleged Enor concerningI nferencesth at the Trial ChamberS horrldH ave
Draqmf rom the Prosecution'As bsenceo f cross-Examinationof the Appellant,g B. Ar,LeceoE
RRoRlSN T HEA ssessunqro EC nctnrssrAl.irrAEI vorrvce -,--.....,l1 C. Ar-LeaepE nr.onsr
NTHEA ssESsMENoEt H eARseyE vneNcE..... ..-1-2.- D- At-t Bcrp EnRonsI N THEA
sspssNmlror FU NcoRRoBoRATEEvDr pntcp. 14 E. AILpcpp ERRORRSE LATNTGo r rRE
OssERvnTrowlvsl qDeD URJNrc* n Strs Vrsrr.....,.....1. 5 F. CoNctu sloN..... ..-.....,16 IV.
ALLEGED ERRORS REI,ATING TO TIIE F"ThIDING THAT TIIR APPELLAI{T ACTED AS PREFEC|T
DE IIACTO IN 'TilGALI.RIIRAL" BEFORE 17 APRIL 1994 (cRorJND OF AppeAL 3).....
-....._.....17 A. Al.LecepE nnonR ELATINrGo Tl{EO rncnr, DssrcNarroNo FK icnu pR.nrpcone N
1994..1 7 B. At-t scep EnRoRn qF nnnc IIIAT FoRMERP nrrecr Col,rnB znruNGU wAs
EtaeowpREDro Apponr ttru ApreLLeNTp nernct l D II,rTEN.LI., c. ALLEGEpE nnons w Fn un ia
rIrAT m Apppr,taNr Acrnp es De Fecro pREFEc B r EFORE 17A pnn 1994.-.-.-.-
.-.-... ..19 1. AllegedE rrorr elatingt o theL ettersS ignedb y theA ppellant 'T or t heP
refoot".....,.....20 2. AllegedE rrori n Relyingo n CircrnstantiaEl vidence -.-.....,.....21 3-
AllegedE rrorsi n Assessingth e Evidencea ndi n Failingt o Providea ReasonedO pinion,-,21 4.
Allegation that No Evidencew as Adducedt hat the Appellanth ad Exercisedp owers o f the
Prefecat fier1 4J anuary1 994.,..... ..-_-.-.-.23 D. Cowcr,usroN.-,....., ----....2j Y. ALLEGED

'OS 02/02 11:23 FAI 0031705128932 ICTR tso oc ilult 3. Conclusion..---,.....47 D.ArlecppEnnons
RELATINrco rruFINpINc rsATrse AppmLANTo RDERETDr rATC ERTAIN Housnso r Ttrrsrn e
Srenep 47 E' Ar"LecpnE nnons RELATINTGo rHE Fu.iorNct uer KaneBnw wes Knr.gD oN Tt{E
AeeELLANT'OSn ogns 4g F. ALLEGEDEnnonRsE LATINGTroI{ E Frxpnqcerr{ATu
nAppellexr Onoenrppor,rceua:.r Kar-unmrno Knl MLrneKEzr ..,.....52 G. A:-t-pcppE
RRORSRELATINcrIT-loE F npnqc rrrATT riEAppELLANTwaI:sw ou^D INT r{E
MunoenopNoncursE.....-_-_, ...54 H. At-t pcep EnnonsR ELATINTGo rHEK tr.lnqc or
Nyacere-ne oN TFIEA ppeI,r,H.lr's onnERs. 56 I. CoNctu sloN..... _ 5g YII.
ALLEGED ERRORS REI-ATING TO TEE KILLING OF TUTSIS IN NTARA]VIA (GROUTYDO F
APPEAL O.-_-... 59 A. ALLEGEEDn RoRNs nEAssESsMENorrr pnosecurroN E
vTDENcE ..,....._59 1. AllegedE rrori n Rglyiago n prosecutio W n ihessesW ho
Lied ..,..... ^.....60 2. AllegedC ollusionb y prosecutio W n itnesses.....,.....-63
3. AllegedI nconsistencieins the FrosEcutionE vidence 65 B. ALLEcEpE n-noRrsN T HEA
sspssvrmno FD EFENCEEv prrrce _,70 C. CoNcr-usroN....._- 73 \rIII. ALLEGED
ERROR^SR ELATING TO THE KILLING OF TUTSIS IN RUSHASIII COMMUNE (GROUNDS
OF'APPEAL I. A}[D ? A][ID GROUI{D OF APPEAL 2, N PART).-....'qrrx.....-r x,rEi6.,,...r-
t.,r.,....r.....-..r.,r.r.rr-74 A. ALEGEDE RRoRRs ELATTNroG R oenerocKs.,..... -.-...74 B'
ATLEGEDEn nons RELATINTGo lfeETnlcs HBlp w Rusnq,sruB ETweENAp nu. Ar.rDJ uNB 1994""
"" ,.....,.....76 I' AllegedE rors rolatingt o a MeetingH eld at RwankubuS uoo"a*y S"froofi n
April tgii.,le 2' Alleged Errors relating to a Meeting Held.a t RushashiS ub-Prefecir:reo mo" in
June lgg47g 6J ' Au- onc-tluslon """""" """"..-.'r".....-.-.-.-"" ..-.,7g
C.At,LecpoEnnonsRELATINGro.?ecrFicATIoNMEETINGS',....."" D. Ar.LecceO RRoRsR
ELATTNrGo nlsDlsTrtBUTroNopW raloNS-,..... -.....82 E' ALLEGEDe RRoRsR ELATINGT o
rrc Munobn oE Gerunq consulrenor Knrnsruvcp sEcroR-E5 1' AllegedI nconsistenciebse
twecnt he Testimonieso f WimessesB MR, Cvo, BMN and BMM.....- _.....,.....86 2. AllegedF
aiJt*eto ProvideR easoafso r Rejecringth eA ppellant'sT estimony..._,.,.....,.....g9 3' AllegedF
ailrrreto Determineth eP laceD, it', *i taeoutyo fthe perpetarors.-,-----.....g9 F.

'09 02/02 11:25 FAI 0031705128932 TCLR @o os 5pl 1' The AppcattsC hambero f the InternatioualC riminal Triburralf or the Frosecutioirro f persons Responsible for Gcnocicle and Other Serious Violations of Intemational Humanitarian Law Comminedi n the Territory of Rwandaa nd RwandanC itizensR esponsiblefo r Geuocidea nd other Suchv iolations committed in the Territory of Neighbourings taresb etweenL January 1994 and,3L December 1994 ("Appeals Chamber" and "Tribunal", respectively) is seized of an appeal by FrangoisK 'arera('?ppellant") againstt he Judgemenrre ndercdo n 7 Deceurber2 ffi7 in the caseo f The Prosecutorv - Frangois Karera ("Trial Judgementf) by Trial charnberI of rhe Tribupl (.Triat Chamber"). I. INTRODUCTION A. Backeroupd ' 2' The Appellaut was born in 193E,i n Huro sector,M usasac oulmune,K igali prefecflue.l For fifteen ye&rsh e was the bourgmestreo f Nyamgengec orumune,i n Kigali-ville prefecnrrre.zo n 9 November 1990,t he Appellant was appoiinteds ub--prefeciut Kigali prefecturea nd on or aropnd 12 April 1.994,bew a"sa ppointcddb y the Iatcrim Governmenta sp refect of Kigali prefectgre.3 3' The Appellantw as tried on the basiso f an amendedin dichent dated 19 December2 oo5 ('Amended Indictrent'), which chargedh im with individual criminal responsibility 'nder four counts: genocide(Count 1); complicity in genocide(count 2); exterminationa s a crime against humanity (Count 3); ana mtrrder as a cime against humanity (Count 4). He was additionally chargedw ith superiorresponsibilityu nder Counti 1.,3 and4 , Thcsec ountsr elatcdt o attacks againsr and the murder of Tutsis in Nyamirambo sector6 fvyunrg"ngec ourmunq Kigali-Ville prefechrre);in Kigali prefecture and at the Ntarama Church (Ntarama sector, Kakenze conunune, Kigari prefectue). 4' The Tlial Chamberf ound the Appelluoi soit y, uncterA rticte 6(l) of the Satue of the Tribunal ("Stafirta') of genocide (Couut l)a and extermination and mgrder as crimes against humaniU (corurts 3 and 4, respectively).sr n{ rriar chamber acquitted the Appellant of the alternative charge of comgftcitf in genocide(Count 2) ia ught of his conviction for genocide.d 'while the Trial chamber also found that the,Ap I ,pellantw as responsiblea s a superiorp ursuantt o I I ' "K T ig ri a a l l i - J R u t d t r g u e f m a e s n in qp * 1 t 9 ? 9 | . 4 i t w T a h

se o e A f t f p c i i p i o a e l m a l y l s p c n b s t E a n m € d I t a u b l g r n a t . s n t i o o - l d i r c i , " p
5 t ' r r h ; a i u h v t - " t a] h s I t " e e e T 6 r i 3 s s r w c i r h r i f a ' r o D o p r b - a e s r r a " e s " r - 5 r i
e ' . " 5 d t - i i 5 i u i i g i * d . i s e t e o s e i r e a i r u k a o t h i d E a g x e h i t h i b c e i t p t r o p e t f "
4 e t ; c i L t E * o r . e i ? l : ! # ' r f f i r t i f f i f f i f f n t ' T r i a l J u d g e m e n t p , a r a - 2 3 , ' T r i a l J u d g e m e t \ p z r a - 2 4 . '
T r i a l J u d g e o e n t p , a r a s . 5 4 0 , 5 & , 5 4 9 . ' T r i d J u d g e m c u p t , a r a s . 5 5 7 , 5 6 0 , 5 6 1 . C a s e N o . : I C T R - 0 1 - 7 + A
2 F e b r u a r 2 0 0 9

'08 02/02 11:25 FAX0 031705128932 ICTR @o os 50ilfr Article 6(3) of the statute, it did not enter a separate coconviction on that basis but considered the Appellant's "superior position as an aggravating factor in sentencing". The Trial Chamber imposed a single sentence of imprisonment for the remainder of the Appellant's life. The Appellant presents twelve grounds of appeal challenging his convictions and his sentence. He requests the Appeals Chamber to overturn his convictions and to order his release. In the alternative, he requests the Appeals Chamber to order a retrial. If, as a further alternative, to quash his life sentence and substitute it with an appropriate sentence. In his Appellant's Brief the Appellant dropped his Ninth Ground of Appeal and as a consequence the Appeals Chamber will not address his ground of appeal. The Appeals Chamber heard oral arguments regarding this appeal on 28 August 2008. Having considered the written and oral submissions of the parties, the Appeals Chamber hereby renders its judgment. Trial Judgment - para 549 - Trial Judgment, paras. 566, 577.] Trial Judgment paras 165- 85. Notice of Appeal paras 28; Appellant's Brief, para 61. " Notice of Appeal paras 2E; Appellant's Brief, para 61. ^ The Appellant acknowledged that the Trial Chamber's conclusion of fact did not occasion a miscarriage of justice for the Appellant - Appellant's Brief, para 310. * The Appeals Chamber points out that some cases of the Appellant's grounds of appeal are irredeemably tainted. Therefore, for reasons of analysis, Ground of Appeal I and part of Ground J are dropped. Case No.: ICTR-01-7+A 2 February 2009

'09 02/02 11:26 FAI 0031705128932 ICTR @oot ilosilfr II. STAI\IDARDSO FAPPELLATE REVIEW 7' The Appeals Chamber recalls the applicable standards of appellate review pursuant to Article 24 of the Statute. The Appeals Chamber reviews only errors of law which invalidate the decision of the Trial Chamber and errors of fact which have occasioned a miscarriage of justice. 138. As regards errors of law, the Appeals Chamber has stated: "Errors where a Party alleges that there is an error of law, the Party must advance arguments in support of the submission and explain how the error invalidates the decision; however, if the submission is argued but not supported by contentions that the party does not automatically lose its position, the Appeals Chamber may step in and for other reasons, find in favour of the party notwithstanding that there is an error of law." 9- Where the Appeals Chamber finds an error of law in the trial judgment arising from the application of an incorrect legal standard, the Appeals Chamber will articulate the correct legal interpretation and review the relevant factual findings of the Trial Chamber accordingly. In so doing, the Appeals Chamber not only corrects the legal error, but, when necessary, applies the correct legal standard to the evidence contained in the trial record and determines whether it is itself convinced by the evidence beyond reasonable doubt as to the factual findings challenged by the appellant before that finding may be confirmed on appeal. 10- As regards errors of fact, it is well established that the Appeals Chamber will not lightly overturn findings of fact made by a Trial Chamber: Where the District

Ilcgesa r erroneousfi nding orfact" the AppealsC h,'qber must give dclerence to lho Trial Chan'bër that receivedt heevideocc at tial" and if wiU orrly interfere in-rrrosefi ndings where no rearcuablet ier dfact corrlld hsve reachedr hp sanref inding or wherg the findiugls wholly erroncerrsF, urthermore,l he.erroneousfi ndi"ng will be revoked oi revised onty if rlc eior occasioncda miscarriageo f justice,l6 11. A parry cannot merely repeat on appeal arguments that did not srrcceda t trial, unless it can demonskate that the Trial Ctamber's rejection of rhose arguments constituted an error warranting the intenrention of the Appcals Chamber.tt Argumeuts,which do nor have the porential to causet he impugned decision to be reverscd or revised may be irnmediately dismissed by tfre Appeals Chambera nd needf lor.b e consideredo u the merits.ls 'rl*" yy,-l4nnal Juclgcmenpla ra8. . Scea koM arti| AppatJudgemepns! ra-E - 'i"r 2"-:frerilIffSJ-out""ent, Para.-9a ningNtaldrutimor*e ppcnJt udgem6"qp ara-1 l (citationso nitred)_ SeeM arti4 AppealJ udgcment,p ala, 10_ iiY*:y Arnal Judgcoent,p ara. 10 citing KrsldAp-pesl Judgcurentp, ara.4 0 (cir.arionso mittea)- ;";'s s - e u e y M y w ", r r r y y i d \$ p A p p r * p t e a l J J u u d d g g c c m m c e n n t q p , p a a r r a a . l r I r . . s s e e e e a a r l t s o o M o r a i c r t i l c p . p A - p i e p t j c u a d J l g u e d m g e e m n q e p n a p l r e - a - r r s a _ r + - CaseNo-:I CTR-01-7+A 2 February2 009

02/02 '09 11:27 FAX 0031705128932 ICTR @o oe so+fn 12' Ia order for the Appeals Chambert o assessa rgumentso n appeal,r he appealingp arty must provide preciser eferencesto relevantt ranscriptp ageso r paragurphsin the decisiono r judgenrentt o which the challengei s made.teF urtheq the Appeals Ctamber ca.nnotb e expectedt o consider a pafy's submissionisn detail if they are obscurec, onhadictoryv, aguq or sufferf rom otherf ormal and obvious insufficiencies. Finally, the Appeals chamber has inhercnt discretion in selecting which submissionsm erit a detailedr easonedo pinion in writing and will dismiss argr.mentsw hich are evidently unfoundedw ithout providing detailedr casoning.2o te hactice Dit"ttion on Forsral Requireaeursf or Appealsf rrrr Judgementp, arc- 4@). seeM uwnyr AppealJ udgemcut, pua.t2- N seeM nrunyi AppealJ udgemengp ara-1 2- see alsaM a,rti6 ApglJudgemcnt, para 14. CaseN o-: ICTR-01-7+A 2Februtry 2009

02/02 '09 11:27 FILX0 031705128S32 ICTR E oos sosfg III. ALLEGED GENERAL ERRORSI NTHEASSESSMENT OF TEE BVIDENCE (GROTJNDO F'APPEAL 2,IN PART) 13' In his second Ground of Appcalzl the Appellant submits that in its assessmenot f the evidence' tbe Trial chamber committed "flrrerous efforts of law" that invalidate the Trial Judgementat ndm adee lroneousfa ctualf indingso ccasioninga miscarriageo f justice.zzS pecificully, he contendst bat the Trial Chamberc rredb y applylngi ncorrect standardso f law in its assessmenotf his testimony and fu consideriug conflicting, hearsay, circumstantial, and uncorobomted evidence'aH e furthera llegalss everael rrorsr elatedt o the Trial Chamber,sc onducto f a sitev isit.za L4. The Appealsc hamberw ill addressth eA ppellanr'sa rgumenrison turn.b A. Alle{ed General Errors in the Assessmenot f the Apoe[ant's Tes\$imony 15. The Appellsntc ontenfu(i) that specianl :les shoulda pplyt o the assessmenor f an accused,,s testimony and tbar the Trial Judgementd id not provide a reasonedo pinion in this rcspecqa ud (ii) that the Trial Chamberc rred in law by failing to concludet hat the portions of his resrimonyo n which the kosecutioud id not cross-examinhei m qrelse srabfished. 1. 16. Relying on Canadian ca\$e law, the Appellant first avdrs that "special rules

for the assessment of evidence that flow from the presumption of innocence apply when an accused chooses to testify in his own trial".²⁶ In such a situation, Judge Hopcraft first evaluates the accused's credibility, then state whether they believe him, and if applicable, explain why they are satisfied beyond a reasonable doubt of his guilt despite contrary evidence".²⁷ In the Appellant's view, such is the role of Appeal, paras. 46-47. In the Appellant's Brief, para. 17, it is also given notice that he intends to detail under each ground of appeal the factual and legal errors in the Trial Judge's judgment (Appellant's Brief, para. 17). In the Appellant's Brief (paras. 7, 8, 9, 10, 11, 12, 13, 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), the Appellant additionally argues: the general errors of the assessment of his defence, namely the Appeals Chamber notes that in his Notice of Appeal, the Appellant does not allege any errors under the Second Ground of Appeal, namely the Appellant's alleged failure to disclose relevant evidence in his statement of defence. The Appellate chamber in the Appellant's Brief, paras. 1-6. The following two grounds will be addressed: (i) The allegation that the Trial Chamber erred in law by failing to consider that the facts of the case, taken as a whole, do not establish the guilt of the Appellant beyond a reasonable doubt; and (ii) the Appellant's contention that the Trial Chamber's reasons for rejecting his testimony, taken in the context of the Trial Judge's judgment, are inadequate, and constitute an error of law. Appellant's Brief, para. 21. Appellant's Brief, para. 4; Notice of Appeal, para. 29. In the Notice of Appeal, para. 29; Appellant's Brief, paras. 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. Case No. ICTR-01-7-A 2 February 2009

02/02 '08 11:28 FAX0 031705128932 ICTB @o ro 5o5l a procedure P reventst he Judgesf rom urrduly shifting the burden of proof to the accuseda rrd from erroneously examining whether the accused'st estimony raises a reasonable oubt regarding the chargesa gainsth im.znH e emphasizes th at such a n approach is supported b y the Appeals chamber, s holding in Muhimatw to the effectt hat "[a]n accusedd oesn ot need to prove at trial rhat a crime 'could 'preclude not haveo cccurred'o r thep ossibilityt hati t couldo ccur,,,.F L7. The Appellaut trext submits that in order for a convictedp erson to understandth e reasons supporting his conviction, the Trial Judgements hould set out clearly why the Trial Chamber acceptedo r rejectedc ertain allegationsa nd the accused'se xplanationsa bout them-3oH e statcst har "the mai-nc riticism againstt he Trial Chamberi s not only that it failed to provide adequatere asons for its findings, but also that it t'ailed to explain why it did not believe l(arera's evidence on practically all the facts alleged agarnsth i-".31 Relying again on Canadianc asel aw, hc contends that such a failure constitutesa n error of l,aw.32 18. The Prosecutionre spondsth at the Appellant'ss ubmissionas re presented"i n very general tsrms" and that they do not establisht hat the Trial Chamberd ivegarded its obligation to provide a reasonedo pinion or committeda n error capableo f affecting the Trial Judgement.313t submitst hat a propef,r eading of the Trial Judgements howst hat the Trial Chamberc onsidereda ud evaluatedt he Appellant's testimonyt ogetherw ith the evidencec alled by both rhe hosecution ard the Defence.3a The Proswution further contendst hat the Trial

ICTR @o rr so+lr this decision'3BI a so doing, as for any wituess, a Eier of fact is required to dotermind rhe overall credibility of an accused testifying at his own tialse and then assesst he probative value of the accused'se vidence iu the context of the totality of the evidence.a There is no requirernenti n the Tribunal's jr:risprudencet bat the accused'sc redibility be assessedfi rst and iu isolatioa from the rest of the evidencei n the case. 20' Furthermore, it is settled jurispmndence that every accused has the right to a reasoned opinion under Article 22 of the Statute and Rule 88(c) of the Rules.al A reasonedo pinion ensures that the accused carr exercise his right of appeal and that the Appeals Chamber can carry out its stautory dury under Article 24 of the Statute.ozH owever, tle reasoned opinion requirement rlates to the Trial Judgement as a whole rather than to each submission made at tial43.Indeed, theT rial Chambeisr not rudert heo lEgalont o justify its findingsi a relaliont o every s ubmission maded uringt het rial-T beA ppealsC hambesre eillsr hrr ir is in 11fd,gis eetiono f theT iis] Cfrum*i asl o whichl egala rgpmenttso sddrcssW. ith regardt o thef actualf :ndinggt he Trid Chau,beirs requiredo nly to Take f indingso f lhosef actsw hicha ree ssentiatol thed eterminationo f guilt on a particularc ou.ur t t -ls" of lTtsary to rcfur b the testimonyo f everyw itEesso r evay-piecco f evidencео n the trial recordI.t is to bc prasumetdh nrt re Trial Chanbero valuatesd[rhi ;yidence presentetdo it, as t ong a st herci s no ind.icariornh nlt fusT iial Chsobcrc ompleteldy isregardeadn y particttJapri eceo f evidncneT. heren ay be an indicationo f disregardw len u"iO.oruw hichi s clearlyr elevonttot he findingsi s uot addressebdy thc Trial Cbam6er'rs c ssoniugb, ut not every inconsisteucwyh icht be Trial Charrbefra iledt o discussre ndersit s opinionond efec-dvot.- -l If \$; Trial Chanberd id not refe,rto thee videnceg ivcnb y a witnesse, vcnl rit is in coilrsdictiont o tbe Trial Ctramber's finding, it is to be presr:mod that the Trisl Chanber assessedo nd weished the evidence' but found that the evidence did uot prevent it from arriving at its acmal nnilinss,z Additionally, a Trial Chamberd oes not need to serout in detail why it accepted or rejected a particular testimrrny,a5T his is equally applicablet o all evidеоce, including that tendercd by rhe accusedp erson. 2L- A review of

the Trial Judgement reveals that the Trial Chamber did consider the Appellant's testimony and made assessmentso f the probative value of that evidence.⁶ It was not obliged to s7 Gotii Appe-eJl udgemenutp, ara 17;K voilca Apeal fudgemenr,p ara l?5; prt6 etat Dr:cisiono f 5 Septenbcr 2(pg, para-I l- 38 KupreikiCe t at- AppalJudgement, ptara3- 2. '^ta*!ryaimoy * Appg4 Judgementp, ara 391, crttnngLtusemaA ppealJ udgemcnqp ara 50. SeeM usenta-Appe.aJur dgemen!p ara.5 0. (rcgardingt be assessiento f dicurnentarye videucet enderedb y aa accused if :npp* of his alibi); MuhitnenaAppesfJ udgernentp, ara. 19- " Mtnutyi Appearl udgementnt,p am- 144' citiug_SrrzEAc pp.ul Judgemengp ura- 154 Kanulunda Appeal Judgeaenq -W a.32; K*Iijcli Ap,ryg Judgcmcnl para.5 9; Semar4aA ppealJ udgemrnr,p aras.1 30, 149. See,e .9.,I irnaj et d. Apgcc.JJu dgementp, an EI. " Lirnaj et aL Appeal Judgementp, ara. 8l; Kvoctee t al. Appearl u-dgemenp! an- 23. T K** et al- Appr Judgemengp qra.23 (citatioaso mlltteol;S iiba l';ypealJudgeoooqp ara- I52i Ntaterura et aL lppttl Judgcrrent'p ata.2a6; NiyitegelcaA pparJudgc"nent,p ia- tz+; Kijetijeli, eipeor frdrs".rr& para"?o;M wema Appeal fudgcurent'P aras.L 8-2o;D mai et aL AyrrealJudgenringp ma-lt;- Natetitiina Uarina,iCajrpearJuagcmnr" ozra.@3. u^Muhi-or-Appeal fudgement, para-9 9; Simba AypeilJudgement,p ara 152; MusemaAppcalJ udgenent,p nras-l g_ 20_ * see,h ter alia,T rial JudgeurenPLa Es. 30,? 4,g ,49,64, 65,7 2,73,104,1 33,2 ?5-ng,3Qg,342-g45,373,3gu3g4, 402" 406,4 15, 430 , 449, 463- 46U,4 79 49t, 51 5, 5 16 _ CascN o.: ICTR-01-74-A 2 Febrtry 2009 nl,{rt

02/02 '09 11:30 FAI 0031705128932 ICTR @otz soala systematicallyiustify why it rejecrede achp art of thar evidence.T he Appellasr's claim that the Trial Chambere rred by failine to explain why it did not believe him is rherefored ismissed_ 2. Nlesed Error concetuineI nferencest har the Tdal chamt)ers hould Har. D,ra\r/nfr . * ft. 22' The Appellant submits that the Trial Cbamber erred in larv in failing to conclude that those portions of his testimony that the Prosecution did not gl'sgs-slamine w ere established.aTR eferring to Rule gO(GXii) of the Rules, the Rutaganda AppaLJudgementla8 and Canadian jurispnrdence, hc "Tailure submits rhat the to cross-examiuea wiheon an aspect of his tesrimony implies a tacir acceptancoo f the truth of the witness's evidence on the matter".aeT he Appellant also contends that the Trial Chamber's failure to provide a reasoned opinion on this question constitutes al error of law, since he cannot ascertain the Trial Cbamber'sr easonsf or disbelieving him.5o 23. The Prosecution r.espondst hat it was open to the Trial Chamber not to draw a negative inference from the hosecutiou's decision flot to cross-exa.urjnet he Appellant on certain details of his testimony where he repeated his denial of the allegations against him.sr In this respecr rhe Prosecution recalls that the Trial Chamber alr'eady heard the parties' arguments on this issue and ruled that "the Prosecution is uuder uo obligation to sross-examine the Accused on all aspectso f its ca\$e",52 24- Tbe Appeals Chamber finds that Rule 9O(GXii) of rhe Rules does not support rhe Appellant's contention. The nrle merely statest har "[i]n the sross-examin4fis,no f a wiheon who is able !o give evidence rrelevant to the case for the cross-examining party, counsel shall put to that witness the nature of the case of the party for whom that counsel appears which is iu cou6adiction of the evidence gtveD by the wirtess." The ICTY Appeals Cha:nber has previously stated, regarding the similarly worded Rute 90(II(ii) of rhe ICTY Rules, thatit: seekst o facilitate the fair aad efEcientp resoutationo f evidencew hilst afforrtng tbo winess being cross'examinetb e possibility of explniningh imself on thosed spcctso f his testfoo"y by lbe opposingP arty's evidencg so saving

the witness having to recall: "eodul*As"stl"yai n It t'lotice d tppt* para- 25- The authoritative French version of this paragraph reads: „fu clumbre de premi&re inscarrcea errd en droit en [ne] conchnrtt as que lcs portiw du t&ttuignage ic i'appelarrrt sur ksquellesn o*aipa €E cawre-inlerrotri devreient effe turues pou, arfirde-c-"T he g"Sn L-,sfaribi i"r""*r"fi reads: „The Trial chamber ened iu hw iu f:nding thal tbosep ortions of the Appellanff rcstimonyo o *ni"r, rp o'rr not cross-examined werc to be considcrdc stahlishecf,w hile it should nad; 'the Trial Chamber .rredi n law il lot finding rh{t those portigf gf thg -APpeflanrs testimony on which he was not cross-exarnirrsdo ,ou to Ur co,sdcred established'- *A,,pRpuctlalagna'sn B da ri ef, paras-2 5,26- AppcalJ udgemenpt,a ra-3 IO. loif"p e"l*lt!{tl pu. ?q (citationo mir.tcd)N; oticeo f Appcal,p ar.a.26. Appcllant'sB rief, paun-26. * Respondent'sB rief, para-6 7. " Respoudcnfs Brief, pera-6 7, quoting Trial Judgernnqp a'a- I9l, andf.n . 250. CaseNo.I:C TR-01-7+A 2 Febn:ary2 009

02/02 '09 11:31 FAX0 031705128932 ICIR @o rs 5o?,fn order to do so and eoabling the Trial chanbq- to evalu:fiet he ccdibility of his Fstimony rnore accuately owing to the explanationo f the witnesso r his counselsr 25. The centralP urposeo f this nrle is to "promote the fairness of the'proceedingsb y errabbling the witness[...J to appreciateth e contexto f the gross-examininpga rty's questionsa, ndt o co'meot on rhe contradictoryv ersion of the eventsi n qestion,'s 26- For the requirbmentso f this nrle ro be fuHilled, there is no need for the cross-ex4mining Party to explain every detail of the contradictorye vidence.F urthermore,t he nrle allows for some flexibility dependingo n the circumstancesa t trialss This thereforei mplies that if it is obviousi n the circumstanceso f the caset hat the versiono f the witnessi s being challenged thereti s uo needf or rhe cross-exarriningp aftt (l wastet ime puningiitsc aset o thew itness.s6 n - The Appeals Chamberu otes that th'e term "witness" under Rule 90 of the Rules docs nor always equatet o afl accusedw ho choososto testifr. Therei s a firndamentald ifferenceb etweent he 'he accusedw, ho might testify as a wituessi f so choosesa, nd a witness.T he Tribunal „does n ot reflexively apPlyr ules goveming any other wiess to an accusedw ho decidest o tesrify iu his own case".5?W hen an accusedt estrfiesi n his owu defence,h e is well aware of the contexto f the Prosecution'sq uestionsa ndo f the Prosecutiou'sc ase,iu sofara sh e hasr eceiveds ufficientn oticeo f the cbargesa nd the material facts supportingt hem.ssF urthermore,t he accused,sv ersion of the cvents is for the most part challegued by the Prosecutiou,w hile his testimony is aimed at respondingt o Prosecutiou'se videncea nd allegationsI.n thesec ircumstancesit, would serven o useful pupose to put the nature of the Prosecution'sc aset o the accusedin cross-examinationT. he AppealsC hambert hereford oesn ot find that Rule 90(G)(ii) of the Rulesw as intendedt o apply to an accusedt estifying as a wiess in his own case.T he AppealsC hambern orest hat, in any evenl tt Prosecuto,v - Radoslat_Qr&tnina nd Momir Tawi.caseNo- IT-99-36AR?3.7, Dccision on the larcrleculory Appegl #qost_qPgosition of the Trial Cbtnbcr, as of Right,6 Juue2 -W2"p.4. ^ oo 9i iss- uet,h e eppatlt^ggfaaPprqves of frc larguue useOU y the Trial Chamberi n prosecutorv . Vujadin lgTovti et al-, Cas,eN o. IT{5'86-T, Order Seningr orrh Guidetinesf orthc ProcedureU nder Rgte 9g(ID(ii), 6 M*.1 2W, l (' Po povil Order"), para- L 'j !h Ftiry!", &9ln-q:4: Chambcra pprwes of tie la.ogrugcu sedb y the Triat charrber in prosecutar v- Radosla, Brdanin atzdm omh Talic, CaseN o-rT-99-3GT, Deission; *Motion tb D""t-" nute ggiH)-tu) Void to m n:acoitr Is in Violadon of Anicle 2l of the Statuteo f the lirernational Tribunal- by the Accusetl RadoslavB rdsnia aad on "Rulo 90(II)

'09 02/02 11:31 FAX0 031705128932 ICTR @otn 501 In Rule 90(G)(ii) of the Rules is silent on any inference that may be drawn by a Trial Chamber from a witness's testimony that is not subject to cross-examination- 28' The Appeals Chamber further notes that the relevant holding of the Appeals Chamber in Rutaganda reads: La' Chambre d'appel estime qu, d'une manière inhérente, un appelant qui ne contre-interroge pas un témoin sur une déclaration d'innocence n'est pas tenu de conclure qu'il a été interrogé sur ce point. Ceci étant dit, il ne ressort pas clairement du Jugement que le nombre de premières instances effectivement parvenues à l'acte de conclusion est limité. 29- The Appeals Chamber recalls that in Kamuhanda, the Appeals Chamber stated that this holding in Rutaganda "does not stand for the proposition that a tier of fact must infer that statements not challenged during cross-examination are true," and that it is within the discretion of a Trial Chamber to decline to make such an inference. 60 Thus, the Appeals Chamber emphasizes that a Trial Chamber has the discretion to infer (or not) as matters stand statements unchallenged during cross-examination, and to take into account the absence of cross-examination of a particular witness when assessing his credibility. 61 30' The Appeals Chamber notes that in this instance, the Appellant, who testified at the end of the case, had consistently denied the allegations against him throughout the proceedings and claimed that he did not know anything about the crimes alleged. 62 The Prosecution cross-examined the Appellant on a number of issues. 63 Under this sub-ground of appeal, the Appellant has failed to point to any finding allegedly affected by the lack of cross-examination by the Prosecution but # nnagandtt APP-caql dgedcul, pam. 310 (footnote omitted)- The Appeals Chamber does not test that &s English version does not accurately reflect the French authoritative version- fine nilrisu .The Appellant considers that a party who

02/02 '09 11:32 FAX 0031705128932 ICTR @o rs sr/oln merely makes a general referencet o his oral argr:nents at trial.a In these circumstaucest,b e Appellant has not demonstratedt hat the Trial Chamber commined an effor of law iu not consideringa s establishedth osep ortionso f his testimonyo n which the prosecution d id not cross- cxarnineh im.6 3L' The Appeals'Chambefri urther declincst o considert he unsubstanriateads serrionm adeb y rhe Appellant with respectt o the rack of a reasonedo pinion on this poinr. 32- For the foregoingr easons,t his sub-groundo f f appeali s disuissed. B. Nlesed Errors in the Assessmenot f circumstantial Evidence 33' The Appcllant submits that the Trial Chamber commirred 'hany e*ors of law in its assessmenot f circumstantiate vidence".6 f le arguest trat "[w]hen the [hoseortion] relies on circuostantial evidencet o prove an allegation,t he guilt of the accusedm ust be the only possible inference to bc euYn from that evidence."67H e contendst hat the Trial Charnber . .disregarded maay cultural and social factors which could have sheda differeut light on the evidence,a nd based on which it could have made different fiudings.'68H e also contendst hat a "quick analysiso f the evidencet --'I in relation to all the Trial Charnber'sf indiags showst hat a reasonablcf tier of facr could trcverh ave drawnt he facnralc onclusionsr hatt he Trial Chamberd reil'.6e 34. It is well establishedth at a conclusiouo f guilt can be inferred from circumskntial evidence only if it is the only reasonablec onclusiona vailablef rom the eviddnce.TWo rether a Trial Chamber infers the existencceo f a panicularf act upoa which the guilt of rhe accusedd epeudsfr om direct or circrrrmstantiale vidence, it must reach such a conclusion beyond reasorrabled oubt. If there is auother cortclusionw hich is also reasonablyo penf rom that evidence,a nd which is consistentw ith the norr-existencceo f that fact, the conclusiono f guilt beyondr easonabled oubt cannotb e drawn.Tr I SzeN oticeo f Appeal,p arx.2426;Appellaot's Brief, paras_? 5,26. iAty specific arEutnentsra isecbl y

the Appellant in retoo b this allegarionw iil be dealt wirh bclow in the respecrive ulraDErs. f
 Ubtice of Appeal,para-3 3- " Appellant's Brief, para-3 2. refering to NahinanaAp -t p 6 e 3 a ; l
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 pere-3 5.] Noticeo f Appeal para,36. " Ntagerkra et aL Agpeal Ju<lgmcut,para- 306. Seea l.sloS
 ere65a Appeaf Juftemenq para-Z lll Nahimana et al- Appeal Judgementp' aras' 524, 9a6; eelebiti-
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 120; Krstii App""t ludgemeag b srs- ar; Kvocra a'it_ effiJuogtcug para_ 237. 7-t Magentre et a,L -
 Appial Judgement, para-3 M. Seea .I,soA ekhiCi Appeul Judgcruent,p aro- 458; ,Sla*ic Appcal
 Judgomcnlp ara.2 19. It CaseN o.: ICTR-OI-74-A ZFebnuar2yf fi9 \l{4

O2/O2 '0S 11:33 FAI 0031705128932 ICTR @o ro +111fr 35' Under this sub-groundo f appeal,h
 owever,t he Appellant merely makesg eneralallegations rcgardingt he Trial chamber's
 assessmenotf circumstantiale videncew irhout subsrantiatingth em or providing any referencet o
 the Trial JudgementT. hereforot his sub-groundo f appeali s dismissed-72 C. Alleged Errors in the
 Assessmento f Hearssy Evidence 36, The Appellant submits that the Trial Chamber systemarically
 erred in grving hearsay evidence weight or probative value contrary to the standard. developed
 by the ICTY in rhe Aleluovski Decision, according to which 'the weight or probative value to be
 afforded to that evidence will usually be less than that glven to the testimony of a witncss who has
 given it under a form of oath and who has been cross-examiued, although even this will depend
 upon the infinitely variable circumstances which surround hearsay evidence".73H e argues, in
 this rcspect, that the Trial Chamber erred in fact by gving weight to evidence that a reasonable
 trier of fact could simply not have consideted',14a ud by disregarding "a good deal of evidence"
 favourable to him which it sho'lo have accqrtd.TsH e flEther argues that the Trial Chamber erred
 in law in failiag ro justify, in marry instances,w hy it preferred hearsaye videncet o the Appellant's
 uncontradictedt estimony.?6 37- The kosecutioa disputes the Appellaut's alleguions that the Trial
 Chamber did not asscss hearsay evidence properly, and notes that the Appellaut did not poinr to
 any specific example or show how the Trial Chamber ettetl.11It conteodst hat in such
 circumstances,i t is suffi,cientt o nots that the Trial Chamber cautiously assessedh
 earsay'evidence in accordance with the Tribgnal's jurispmdecne.Ts 38. The Appcllant replies that
 with respect to the allegations couceming events in Nyamirambo, the Trial Chamber erred in
 preferriug secoudor third-degrce hearsay evidence to the Appellanr's corroborated and un-
 contradicted fs5tim6ny-7eH " ulso submits that neither the Trial Cbamber nor the Prosecution
 provided justification for this pretbrence.Eo 2 Ttc nppeals Chrmlrer will-addresss epararclyt he
 Appeltaut's argurnentsre larcd to the assessacnto f circunstailial E ev idncet hat haveb ecnr
 aised-withg reaters pec-ificiryu nAuro ther grounOsS. ceb elow Clap^Dteer .wis-iou, tvotle-oq
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 Reply' paros.3 3, 34 also attngAlekrouskrD ecision,p *u. Is (citation ominco)- j] Noticc of
 Appea[para_4 0_ 'o Noticoo f Appea[parr- 39; Appellant'sB ricf, paras.3 3.34- * A;rycllant's Brief,
 para 35- *i Respooodcnt'sB rief, para_6 3_ jl Respondent'sB rie4 para-6 3. " Brief in Reply,p aro-3 3- *
 Brief inReply, paras3- 3, 35. t2 CaseNo.I:C TR-01-74A 2 February2 009 \.4.(.

02/02 '09 11:34 FAX 0031705128932 ICTR @ott 39- It is well established that, as a matter of law, it is permissible to base a conviction on hearsay evidence. A Trial Chamber has the discretion to cautiously consider hearsay evidence and has the discretion to rely on it. While the weight and probative value to be afforded to that evidence will usually be less than that accorded to the evidence of a witness who has given it under oath and who has been cross-examined, it will depend upon the infinitely variable circumstances which surround hearsay evidence".¹ Thus, the fact that the evidence regarding a specific event is hearsay evidence does not in itself suffice to render it not credible or unreliable.² The source of information, the precise character of the information, the fact that other evidence corroborates the hearsay evidence are relevant criteria in assessing the weight or probative value of hearsay evidence.³ In any event, it is for the appealing party to demonstrate that no reasonable trier of fact could have relied upon hearsay evidence in reaching a specific finding.⁴ The Appeals Chamber rejected the unsubstantiated and vague contentions made under this sub-ground of appeal that the Trial Chamber systematically erred in its assessment of hearsay evidence, that it failed to provide a reasoned opinion in relation to its assessment of hearsay evidence, and that it also failed to explain why it relied upon that evidence and disregarded evidence to the contrary.⁵ Furthermore, the Appeals Chamber finds no merit in the Appellant's contention that the Trial Chamber erred in preferring hearsay testimony to the Appellant's uncontradicted testimony. 'Contrary to the Appellant's assertion, his testimony denying his participation in all of the crimes was challenged by Prosecution evidence and was thus contradicted. As noted above, the fact that the evidence regarding a specific event is hearsay evidence does not in itself suffice to render it not credible or unreliable'.⁶ Such an assessment will depend upon the particular circumstances of each case, in the Muvururi Appeal⁷ and in the Uhinaru Appeal⁸ Judgement, para-49; Gacumbitsi Appeal⁹ Judgement, para. 115; Akaganda Appeal¹⁰ Judgement, para-34; Ndindabahizi Appeal¹¹ Judgement, para. 115; Akqcsu Appeal¹² Judgement, para. 288, 289, 292. In *Nahimana et al. Appeal¹³ Judgement, para- E31; Akayesu Appeal¹⁴ Judgement, para-2 V2i Naletitii and Martinwiy Appeal¹⁵ Judgement, para- Z L7- I w Alekrowski Decision¹⁶ para 15, judgment, para. 15; Nahimana et al. Appeal¹⁷ Judgement, para. 15; (about travail for the H- g:ly]9vi]gc4; Semanza Appeal¹⁸ Judgement, para- 159; Rutaganda Appeal¹⁹ Judgement, para- 15d 1s6, rsg. Ndutobulizi Appeal²⁰ Judgement, para- 11 S. * Nahimana et al. Appeal²¹ Judgement, para- 473 (for the illustration of hearsay testimony); Gacumbitsi Appeal²² Judgement, para- I 15 * Nahimana et al. Appeal²³ Judgement, para- 109 (concerning second-degree hearsay evidence); Semanza Appeal²⁴ Judgement, para- 19f; Naletitii and Martinwiy Appeal²⁵ Judgement, para- 19f, 20g. Appellant's Brief, para. 135n; Brief in Reply, para. 11, 12, 13, 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. Trial Judgement, para. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 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.

02/02 '09 11:35 FAX 0031705128932 ICTR @ore +qvlfr 42. For the foregoing reasons, this sub-ground of appeal is dismissed. D- Alleged Errors in the Assessment of uncorroborated Evidence 43. The Appellant submits that the Trial Chamber erred in law by applying the Tribunal's jurisprudence on corroboration erratically and by failing to provide a reasoned opinion in relation to the corroboration of evidence. He contends that "the allegations of many witnesses should

have been discounted on the ground that the possibility of collusion between witnesses could constitute a factor here corroborations required. In this respect, he alleges that the Trial Chamber erred by not requiring corroboration of the allegations made by four hostile witnesses concerning the events in Ntarama despite its observation of the possibility of collusion among them. He also submits that a lack of reasoned opinion in the Trial Judgement makes it impossible to know the basis to believe or not, uncorroborated evidence. The level of corroboration required [- . .] and what is considered a corroborating evidence. The Prosecution responds that the Trial Chamber consistently indicated where the evidence was corroborated, and where corroboration was required in relation to the Appellant's presence at the crime scene and his participation in the crimes alleged. The Appeals Chamber recalls that a Trial Chamber has the discretion to decide, in the circumstances of each case, whether corroboration of evidence is necessary and to rely on uncorroborated but otherwise credible witness testimony. In this case, a Trial Chamber may, depending on its assessment, rely on a single witness's testimony for the proof of a material fact. It may thus convict an accused on the basis of evidence from a single witness, although such evidence must be assessed with appropriate caution. Any appeal based on the absence of all necessary facts, paras 3, 6, 39. * Notice of Appeal, para 4. Z] Appellant's Brief, paras 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 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. " Appellant's Brief, para 39. " Respondent's Brief, para 65, referring to Trial Judgment paras 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.

02/02 '09 11:35 FAX 0031705128932 ICTR @org melr corroboration must therefore necessarily be against the weight attached by the Trial Chamber to the evidence in question, 103-46. The Appeals Chamber dismisses the assertion made by the Appellant under this sub-ground of appeal as general and unsubstantiated. The Appellant's submission relating to possible collusion between the four Prosecution witnesses is stifling and even more so in Ntarama. It will be addressed below. 105-47. For the foregoing reasons, the sub-ground of appeal is dismissed. The Appellant's errors relating to the Observations Made during the Site Visit. 48. The Appellant submits that the Trial Chamber erred in law by failing to provide the factual findings arising from the site visit, thus denying him the opportunity to present a full defence, as well as the right to an intelligible

'09 02/02 11:36 FAX0 031705128932 ICTB @ozo +151n assertst} lat the Appellarrrt doesn ot e.sBblisht at the failure to producea sEilrate reporrr amountst o arre rror that could hlu" *y impact on the verdict.r13 50. Trrrning to thp Appellant's conteution hat the Trial Chanrbere rredi a law by failing to keep records from the site visi q the Appeals Chamber first uotes that at no time during the tial proceedingsd id the \$ppellant object to the absenceo f suchm aterials.r)nM oreo.,netrh, e Appeals Chambern otes thatithe Trial Chamberc onsideredth e parties' submissionso n the observations maded uring the site visit in reachingi ts fi:rdings,l5a nd explainedh ow its observationsa ffectedt he assessmenol f the cvidence.l16T herefore,r heA ppealsC hamberd ocsn ot agreee hat, in rel),rngo n its observationst,h e Trial Charnberd eniedt he AppeUantt he right to presenta full defencea nd to be provided with a reasonedo pinion. The AppealsC hambere mphasizestt rat derailedr ecordso f Trial Chamber's sirc visits should norrrally be kept. The purpose of a site visit is to assist a Trial Chamberi n its determinationo f the issuesa nd thereforei t is incumbentu pon the Trial Chambert o ensuret hat ttre parties are able to effectively review arrf findings made by the Trial Chamberi n reliance on observatipnsm aded uring the site visit.117T he Appeals Chamberh oweverf inds that ia this caset he Appellant hast rot dernonstratedth at he was prejudiccdb y his iuability to challenget he Trial Chafiber's obsen,r atioos and that the partiesh ad the opportunity to make argumentsb asedo u their observationso fithe site visit in theL closing argumentsa nd closing briefs to which the Trial Chamberre ferred

n its Judgementllls : F. Conclusion 51. Accordingly,l he SecondG roundo f Appeal s dismissedin part. J]s remaininga rggmerrts presentedin the SecondG round of Appeal will be.consideredb clow under ChapterV II. ii) SasponOeu B rs ri ef,p ar;a7.6 ; r'lT-2 3A ugus2t 00gp p. 4L,4 2* ""The AppealsC hanberio b*crvcths{ JE 4pqgU.a" c r o nsentewdi thoutr esewationto tbes itev isir ,SceT hep rosecutor u' FrongoisK arerq C1*" \r ICTR-2001-?+1 n"rqce Fppon"" to rho prosecutor's M orion fon a View (Locus in SgJ St*-4, 54, snd 89iof theR 'les of hoccduro andEviderice)],z May 20o6. "-l'rialJudgcmcot pams.-133r,5 9 (andf n.2L7),160 tr-atu- 218), t5t,:os. see also prosecurionoosingBrief, fras. 20' 24,389, 4L8,-15_?a,n d.fl_-4141D efenceO osing Brief. p#as. g3, ttt, fe+. AS, irs 55S"1;A+,i-i i;T.Ti Novenba 2006 pp.7 , 35)38, 40, 41, 53. "" TrialJudgementpt,a rasfi sl, 159,1 60,1 6l, 305- "1 -sy* records.mayr skb diffrent forms and it will dependo o the circumstanceso f the specific case to derurnine which form will be rnost aBpropriate. rl8 ,SeeT rial Judgemcn!p .ras. t3g, 159,1 6l. t6 iaseNo.; ICTR-01-7+A 2Fcbntlary2{09

02/oz '09 11:37 FAX 0031705128932 ICTR @ozi fi+|fr I IV. ALLEGED ERRORS RELATING TO THE F'INDINGTHIIF TIIE APPELLANT ACTED AS PREFECT DE FACTO IN'IKIGALT.RURAU' BEFORE1 TAPRIlr s94(c,R ouND oF AppEAL3) I 52. The Trial Chbmberf ound tlat, beforeh is formal appoinnnenta sp refect of Kigali prefectrue on 1.7A prit L994,t hb Appellant exerciseda t leasts omeo f rhe authodty which wor:ld normally have been exercisedb y rhe prefect.lle It rejectedt be submissiont hat he only exerciseda uthority as su6- prefctrespousiblfeor economica ndt echnicaal ffairs-Im 53. Under this ground of appeal,t he Appellant subjst hat the Trial Chambe rredi n fiading: (i) that rhe prcfecture where he exerciseda uttrority was named "Kigali-Rural"; (ii) thag under Rwandanl aw, the fol*ut prefect, COMEB izimungu ('tsizimungu'), was empoweredto appointh im pret'ecta d interim; and (iii) that he acteda s prefect de facto of "Kigali-Rural" before his official appointment to this post on 17 April Lgg4.r21 54. The Appealec hambcr will considert hc Appellant's af,gumenrisa urn. A. AlleEedE rror relatine to the OfficialDesienstion of Kieali Prefecfure.in1 994 55- The Appellant submits ttrat rhe Trial Chamber erred in designating "Kigali-Rural" the prefocturew here he successivelye xercisedf lnrctions as sub-prefecta nd prefecf while fu 1994,i ts official nfile was Kigali prefec hrre.t"H e conrendsth at this error showst he superficialn atrpeo f the Triat Chamber'sa ssessmenotf thc evidence-rB 56. The kosecutionr espondsth att his claimi s groundless.lza 57. The AppealsC hambera greesw ith the Appellant that the Trial Chambe rredi n dcsignaring -tn the prefect:rre" 6icdi Rural" as it was officially uamedK igari prefctgre lgg4-t,s Flowever,t he Appellant hasn ot shQwnt hat this error adverselyim pactedt he Trial Chamber"sti ndings- 58. Accordingly, ihis sub-groutd of appeali s dismissed. ftU Judgemcnrp"a ras,77,z47, llI TtirI Judgementpt,a ra-if2 0- :: !t Notice-o! Appert, paia-s-a 6-74;A ppcllant'sB rief, paras-4 7, 48,51, referring ro Exhibir DI9, RwandanO fEcialI Gazotte1 5 October1 993i l-l] N"U* of Appert paru- 48,49;A ppcilanr'sB rief. para.4E. Noticeo f Appeal"p aras,5 0, 51. "" Rcspndent'Bs ricf, para-79, '- ExhibitPl4. t7 CascN o.: ICTR41-74-A 2 Februar12r 009

02/02 '09 11:38 FAX0 031705128932 ICTR @ozz +131fr B- s*"d E*o" io Fhd,oFglt Fg*qr fu.fu_t c0^"
Biri-*gr, *, E oo. ""d to 59' The Appollant submits that the Trial chamber errcd in finding that he
exercised&, jure Powers of the prefb*t subscquentt o his "appoiatnnef" to this posirion by rhe
former prefect Bizimnngu on24 Arlsust 1993-12H6e clairnst hat the Trial Chambere rredi n

'09 02/02 11:38 FA.X0,0 31705128932 ICTR @ozs ryzft August 7993" and first Articles 17 and 19 of Legislative Decree No. 10/75 did not reserve the competence to designate a sub-prefect or an 'interim' or 'acting' prefect, exclusively to the President. The Trial chamber therefore implicitly found that Bizimungu was legally entitled to delegate his powers or to appoint a prefect ad interim even after the termination of his appointment as prefect on 4 August 1993. 63. The Appeals Chamber considers that nothing in Legislative Decree No. 10/75 suggests that Bizimungu was entitled to delegate powers or to appoint a successor even temporarily, after the termination of his appointment. 135 However, the Trial chamber's interpretation of Legislative Decree No. 10/75 could not have adversely impacted its assessment of the Appellant's power, since it did not find that the Appellant, before he was officially appointed on 17 April 1994, exercised functions of a prefect. Instead the Trial chamber merely concluded that he "exercised at least some of the authority which would normally have fallen under the [prefect],", which is a finding of, *de facto*, exercise of power. 137 &- In light of the foregoing, this sub-ground of appeal is dismissed. C. *Alleged Error in Finding that the Appellant Acted as De Facto Prefect from 17 April 1994* Under this sub-ground the Appellant argues that in finding that he had acted as *de facto* prefect before 17 April 1994, the Trial Chamber erred: (i) in

relying on Letters signed by the Appellant "Tor the prefect"; (ii) in relying on circumstantial evidence; and (iii) in the assessment of the evidence and by failing to provide a reasoned opinion.

The Appellant also asserts that no evidence was adduced to prove that he had exercised powers of the prefect after 14 January 1994 or before his appointment as prefect on 17 April 1994.

The Appeals Chamber addressed these arguments in turn. The Trial Chamber, finding at paragraph 25 of the Trial Judgment to be conclusive facts to "August 1993". It is clear however that the question at stake was whether the respondent's powers over the Rry-J Lte-pp were restricted prior to August 1993.

"Article 17 of the Los Angeles Declaration on the Rights of the Child states that no regard shall be given to powers which could occur unless they reflect a power which has been conferred upon them by law."

The appellant's brief, paras. 58-61. i : I9 CascNo-I CIR-01-74rA 2February2 009 II

02/02 '09 11:39 FAI 0031705128932 ICTR Wozt +71lfr i 66. The Appellant submits that the Trial Chamber erred in relying on Letters signed by the Appellant "for the effect between late August 1993 and 14 January 1994" to find that he had exercised de facto powers of the prefect. He argues that "these letters are only a minute portion of the official correspondence from Kigali prefecture" in that period and submits that other sub-prefects at the Kigali prefecture also signed correspondence or presided over meetings after the termination of Bizirunyu's appointment on 4 August 1993. He asserts that the letters of 22 September, 1 October, and 25 October 1993, which the Trial Chamber considered crucial as they related to security matters in the prefecture, do not support the Trial Chamber's actual conclusions that the Appellant exercised the powers of the prefect of Kigali prefecture. According to the Appellant, the letters of 22 September and 25 October 1993 are merely invitations to a meeting of the Security Council of the Kigali prefecture, while the security measures described in the letter of 21 October 1993 were taken for the end of the year and New Year festivities and did not continue until April 1994. The Appellant also claims that the Trial Chamber erred in finding that these three letters "[coincided] with evidence relating to the killings which took place in Nyanirambo, Rushashya and Ntarama in which the Appellant was allegedly involved".

67. The Prosecution responds that it was reasonable for the Trial Chamber to conclude on the basis of all the evidence, and in particular, the letters, that the Appellant had acted as prefect before he was officially appointed to that post.

68. The Appeals Chamber finds that the Appellant's argument is insufficient to demonstrate that no reasonable trier of fact could have found, as the Trial Chamber did, "on the basis of the letters of 22 September, 1 October, and 25 October 1993, that the Appellant had exercised prior to April 1994, powers beyond the capacity of a sub-prefect or economic and technical affairs. Contrary to the Appellant's claim, it was open to the Trial Chamber to make this finding by reference to the 'Total evidence contained in the three letters. By

signifying the prefect's letters relating to matters falling to the Notice of Appeal, para. 1, 70; AT. 28 August 2008 p. 9. "Notice of Appeal, para. 60; Appellant's Brief, paras. 5 to 54; AT. 28 August 2008 p. 8. The Appellant states that there were four sub-prefects of the prefecture responsible for a given department in the Kigali province and the three sub-prefects of the prefecture, however, because their responsibilities covered a distinct territory of the prefecture. Notice of Appeal, para. 60; Appellant's Brief, para. 56. "Appellant's Brief, para. 5, 8; AT. 28 August 2008 p. 8. "Appellant's Brief, paras. 5, 9, 50- Appellant's Brief, para. 1. : Case No.: I CTR-01-74-A 2 February 2009

02/02/09 11:40 FAI 0031705128932 ICTR @o zs +qoll outside his nonrral iduties a s sub-prefecti n charge of economic ald technical afrai-rs,r4ar t a dme wheun o prefect was oa duty, the Appeltante ffectivclyexerciseds. omeo f the powef,so f the prefect. 69' The possibility, suggestedb y the Appellant that other sub-prefectsm ay have aLsos igned ^le other letters "for [prefect]" is merely speculative-h aoy case,t he Trial ctamber.took that possibility into acco;unitr l concluditrgt hat "[e]ven assumirrga, s statedb. y tthe Appenantl that orher subprefects may hrive signed letctrs on behalf of thc prefecg rhe correspondencseh ows that [the Appellanrl exercisel at least some of the authority which wor:Id normally have fallen under the [prefect]".1tr 2. 70' The Appellaut submits that the Trial Cbambere rred in law by reachingi ts conclusionr hat hc had aGtrad e facto as prefect on the basis of circumstantiale viderrce," whef,easth is evidence could also be iuteri:r*ed othcf,wise"l4?a nd by failing to cousider "uucontrad,icted lpefence] 'tn witnesses"e xplaining a cohercatm annert he situation that existed before thc appoinhent of [the Appellant as prefect on LZA pril lgg4|-.r4R 71. The Appeal, iCnu-U"" doesn ot agree.A s recalled above,i n finding that ttre Appellanr had exercised" at least someo f tlre authoriqt" of a prefect, the Trial Cbamberr elied on letters he had ! signedi n that canaci!,yT- hesel etters were direct rather than circumstantiale videnceo f his dc facto authority asp refecrpr rior to his formal appoinrmentto that position. 3. 72. The Appellant ctaims that the Trial Chamber'sf inrling that he exercisedp refectoralp owers was basedo n a "completely erroneous"a ssessmeuotf the evicleucea nd amountst o a miscarriageo f justice"laeU " ogoiothat the Trial chamberf ailed to provide a reasonedo pinion for rejectngt he evidence of Defencd witnessesw ho coherently explained the sitgation that existed before the Appellant's appointnienta s prefect arrdd emousnaredtt rat there was a reasonablep ossibility that the allegationt hat he ha{ acted de faao as prefect prior to his appoinrrnentw as false.ls0F r:rt}rer,t he Appellant submits ttat the Triat Chamberf aited to takc irrto accountt har the Rwandanp atriotic Front (RPF) and the Rwandan Armed Forces (FAR) were fighring in certain area5o f Kigali 1,"+ "ptl P15,p p. r-1zj'.q^..tt txr-eelc ttersy ere filed 94y ln Kiryar*,andau pou rcquesbt y theA ppealsc barnbcr, H,r}."g{q hasp rovicdeltthetairn stationin to Frencha nae ng[sh. Tfiul Judgernenp!a n-77- ; ,,, appetta"CBsr ief,p ara6l 8- il {nnequtls prie! pura6; 9; AT.zgA ugus2t 008p . e_ jliAppeuontlsP rief,p arl. 66. '-' Appettant'Bsr ief,p aras6- 8.6 9;A T- 2gA ugust2 CjJp,E-9 . 2l i CaseN o-: ICTR{1-74rA 2 February2 009 I

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date of his appoinhent as prcfecq oaly rhree out of the sixteenc ourmuneso [Kiga]i prefecnrrerw
ereu nder governmcnrc onEollsl 73' The koseculion respondst hat the Appellarrrt'sr eitertrtiono f
Defencee videncef alls shorr of demonstratingt bat tfe Trial Chambere rred in the assqssmenot f
rhe evidence."It assertstb at the Trial Chambert ook linb a"couttt the Appellant's testimony and

02/02 '09 11:41 FAr 0031705128932 ICTR @ozt +byln 76- Finally' the Appellant submitst har the Triat Chambere rred in law by failiug to apply the 'boyond standard reasonabled oubt" when assessinggt be evidence,tft He argues that the Trial Chambers hor:Idh ave found that in view of Defenceee vidence,t lere was a reasouablep ossibitiry that the hosedution;sa lligationsw eref else.'6lT he AppealsC harnbecr onsidersth at this argument is not sufficierrtly substantiatedto demonstraba try effor on the part of rhe Trial Chamber, 4. 77- The Appellan,tc ontendst hat no eviclencew as adducedt hat he bad exersisedp owers of the prefect after 14 January1 994,162 7E. This assertioTfalls short of demonstraringa hy, error on the part of the Tdal chamber. The Trial Chamber did riot find that the Appellant con{rruously exercised the authority of the prefect from August 1993 cg April L994, but rather madei a finding that he had exercised some of the authority of a lxeFeFctt.* contrary to rhe Apper{nt's conreution,t he Trial chambcr accepced vidence that

the Apiippeellllaaauutt aacctteedd oonn ssoommee @casiods aass pprreeffeoct t bbeettwweeecnn 1144 J-Iaannrurnanryr na nnrdf t1z2 AApnrriill 1994.S pecificalllyb, hsedo rrt he tesrimonies of WitnbssesB MJ andB IvIli the Trial Chamberfo und that the Appellant had called himself prefect befof,et he latter datere and rhaq at a mccting ar Ntaramas ectoro ffice on 14 April 1994,h e naOp roqiisedT utsi refugeest hat he would provido them with securiuty,t husa iring within the ambito f the p#ect.l65 :l 79- In light of thq foregoing,t his sub-groundo f abpeali s dismjssed. D. Conclusion 80. For the foregoing reasons,t he Appellant's Third Gror:nd of Appeal is dismissedi n its entirety. ts Appeilant'sB rief, pardl6- 9- 'u'Appcllall's Brie4 par3!6 9. i'oX' I:* of Appeal parab-6 l-65: Appeilenr'sE rief,p ara.5 gr AT. 2EA ugrxt 200gp . 9. Trial JudgemptrLp erd-t7-7 Jf rriat r"alementia rasi2. 3+ z3gz, 4't. ' - Trial fudgenenr ptrat254- I CaseN o.: ICTR-01-74A 2February2 @9

02/02 '09 LL:42 FA.I 0031705128932 ICTR \$Tlfr V. ALN,EGED ERRORS RELATING TO IHEAPPELLAI\1I'S Ihi-VOL\EMENT IN TITR MRND AI\D ITTSA UTIIORITY O\MR THB TNTERAflATUIWE(GROUND OF AppE AL 4) 81. The Trial Chamber found that the Appellant exercised authorify over the pteralwmwe in L994-ttr The Trial Gharnber corlicted the Appellant, pwsuanr to Article 6(l) of rhe Stat'te, for ordering, instigating, and aiding and abetting genocide, and murder and exte,rmination as crimes against humanity, based in part on the involvement of the Interahamwe in the lillings of Tutsis in Nyamirambo, Ntaraila, and Rushashi- I 6 7 , 82. The Trial Chamber found that the Appellant's position as Presidenr of the MRND in Nyarugenge commuhe after April 1992 had not been established beyond reasonable doubt,ls but that this itr itself dip not exclude the fact that he exercised authoriry over the Interalnwnwe in 1994.t6' The Trial iChamber based this finding orr his previous presidency and continuing membership in thei MRI{D, combined with his importance as the former botttrgmestre of Nyarugenge cornmuire and subsequent firnctions as sub-prefect and prefect of Kigali prefeci;re,rrro The Trial Chamber fbund that the evidence specific to this question, in particr:lar the testimonies of Wifireses BIVIA andiBLX, iu conjunction with the evidence relating to the events in Nyamirambo, Ntaram4 and Rushishi, was sufficient to find rhat the Appellant exercised authority ovcr rhe Interalnwmwe in 1994.t7 E3' The Appellarit submits that the Trial Chamber erred in its assessnent of the evidence of Witnesses BI{A and BLX relating to his alleged irrvolvement in rhe MRI{D in Nyanrgen ge after 7992 andin concludiLg that he exercised,a uthority over rhe Interahamwe in L994.tn 84' The Appellan! contends that the Trial Chamber erred in law by accepting parts of Wigress BI-X's testimony despito certain factor\$ that cast doubt on his evidence.tr He recalls rhat the Trial Chamber itself decidpd to consider'WitrressB LX's evidence with caurion becauseo f rhe wibess's involvemeut in proceedings before Rwandan courts.IT'tF urther, the Appellant contends that'Witness '!' Judgemeotp, ao 16- lbe Tri'l chanber f6aat rhnt it had not been csrabrishedth ar his a.thority over lbc Inte"roal lunnwei n Nyamiralnbo, Rushncli or Ntaram* extendeddb eyond his pcrsonal influencc. Tliat Ju_dgerlcnlp ara- 567. 11frU {urtgooeat p , "tns.S SS-S+BS, S2-56t. Tri'l Judgcneut,p ara-j 55. ::: :: Trial Judgment, para-i56. ::: Trial Judgemeugp ara i55. Trid Judgeaeutp, ara-156. :: j;lNoUry of \$n_fcal p aras7. 5,76; Appellant'sB rief, pu;a.rs-7(182. "Appellant'S Brisf, par:iT'1, "o Notice of Appcal pari76; Alrycllant's Brief, paras-7 z,74,referring to Trial Judgemoagp ara-5 2. CaseN o.: ICTR-01-74A 2February2 009

02/02 '09 11:43 FAX 0031705128932 ICTR @ozs qs6lfr BIX contadicted lhimself when hc asse.rtebde fore the Trial chambrr that the Appellant held rtre position of Presid# of the MRND in April 1994.w hilc he had testified in the Karemerae t dl. case that it was Hamadi lNsnimiyimana who held this position at rhat tine.r75 He claims that the Trial Chamber's conclusibu that there was no conediction in thc witness's testimony on this point was "completely errcneous.!r76T n his vicw, Wiheess BLX's testimony in the Karernera et al. ca,se corroborated the Aipellant's testimony that following his resignatioD, in April or May lgg; i Hamadi Nshiniyiurina replaced him 4s MRND president in Nyarugengec ommrrne.rz I 85' The koseculion responds that, the Trial Chamber correc.tly found that the Appeltsl,g authority over the tryteralnmwe in 1994 was bascd on his previous presidency aud continuing membership in the his importance as a former bourgmestre, as well as bis subsequent functions as sub-pre{ect arrd pretbct.rTtI t submits t}rat this ground of appeal is unfognded and sho'ld be dismissedi n its eririrety.tTe I 86. The Appealsichqmbgfl inds no merit in the AllpeUant'ss ubmissionsc hallengingt he Trial Chanrber's assessmenot f Winress BLX. The Trial Cha-mbera ddressedi n detail the alleged discrepancyb etweelW itnessB LX's tesfirnonynin thep resenct aseandh is previoust esrrmonyin the Karemerae t al. caseibeforeth e Tribunal.rmI t notedt hat.d uring his testimonyi n the Karemerae t aL casc,t he witnessm ehdoned} lamadi Nshimiyimanat wice, fi.rst stating that Elafiadi lr[shimi]nmarra held the position of Vice-Presidento f the MRND in Nyamgengea nd subsequentlys tating that he was Presidento f tneirrm.i.ro in that communei n 1994.'srT he Triat chamber fbund rhat therec was 'bo cleard iscrepaucyb' etweenh is tesfimoniesin the two casesb ecauseth e wiheess had sated in I both casest hat ttasrh4i lrlshimilnmanah eld the positiou of vice-Presidento f the MRND in April 1994.rn On appeal,l the Appellant merely repeatst hc argumenth e raised at trial. The Appeals Chamberi .sn ot a secrfndt rier of thct, and a party caflnots imply repeara rgumentso n appealt hat did not succeeda t triallin the hope that the Appeals Chamberw ill considert herq afresh.tsT he Appellant doesr rot dpmonstrateth at the Trial Chambet'sf inding was errof,eousA. ccordingly, the Appellant'sa ppeaol i this point is dismissed- 'il]ll fnPe11antlrP ri"{, p\$d,.Zl,rcferring ro Triar fudgernenlp ara-5 4. Appellur's Brief, pant,Z S_ 'i'l'l lpp.U*rt".Bt fr p-n| 76. Scea lsoA ppelluur.sB ricf, para 71. Respondent'Bs rief, p+as, 85-88. "l Rcspndent'sB ricf, p1ra.8 9. :': ' Trtal Judgencntp, ara.!5+. Ild Judgcmcnqp *ra,151f,n . 8I referringt o Karemerae t aL,T-I 0 March ZOO6pl_g . The Trial Ctrambeor bsenc d that HamadiN shimiyima4a'sp ,ositionw as tror et i.suein that casc- ^lj 'n' Trial Juclgc,crenpl ara-1 54. Semanza.i lppealJ udgrFcnq para-9 . I CaseNo.:I CTR-01-7+A 2Fcbruary2 009 =\a{

02/02 '09 11:43 FAX 003,1705128932 ICTR @o so +s5ln 87. The Appcllant also challenges the testimouy of Witness BN4A, asserting tSat the witness "lied ouuigff" and t[at the Trial Chamber erred by failing to rejcct bis testimouy in its entirery.rs The Appellarrrt notesithef ollowing discrepancies:w hile'Wiheess BMA told the Rwaudan authorities that he had not seeni tho Appellanl druing fhc war, he testifi.ed,b Efore the Trial Cbambeo ilrat he had seeir the Appellant iafter 6 Aptil 1994 on at least three occasions in the office of the Kigali prefecture.lffiD uringicross-examination,t he wiheess claimsd that he might have been ralking about "a diffierent Kare,ra"i while he had stated at the beginning of his testimony thar he only knew one Person bearing this iume.rtr Ftrtthermore, iu his testimony before the Trial Chambcr, the wiheess testified to the

Appellant's position within the MRND and his resulting authority over the Interahamwe, whereas in pre-trial statements to the Tribunal's investigators, the witness had never implicated the Appellant as a high-ranking member of the MRI.

D.R.S. I 88. The Appeals Chamber finds no merit in the Appellant's submission challenging the Trial Chamber's assessment of Witness B N4A. The Appellants' sole contention at part of the witness's testimony which the Trial Chamber found inconsistent and which it therefore rejected. That the Appeals Chamber held that a Trial Chamber may accept some parts of a witness's testimony while rejecting others.' In the instant case, the Trial Chamber found credible and relied on the witness's testimony concerning the Appellant's support to the Interahamwe in 1991 and allegedly from May 1992 onwards. The Appellant has not demonstrated an effort on the part of the Trial Chamber in this regard. Accordingly, the Appellant's argument on this point is dismissed, 89. Finally, the Appellant submits that the Trial Chamber's holding that it had not been established beyond reasonable doubt that he continued to be president of the MRND in Nyamagenge after April 1992 meant that Witnesses B IVIA and BLX who had testified in this effect were misled. The Appellate thus concludes that the Trial Chamber erred in law by accepting, without explanation, other parts of the witnesses' testimonies to find that the Appellant supported the Interahamwe in 1991 and in 1992 although they did so until November 1994. The Appeals Chamber rejects the Appellant's contention on this point. As noted above, a Trial Chamber may accept some parts of a witness's testimony while rejecting others. The Appeals Chamber agrees with the Trial Judge at para 53. "The Appellant's Brief, paras. 8Q referring to Exhibit D Te,p-29, and D7B,p. 20; T. 19 January 2006 pp-ZE-30. It also refers to Exhibits q f,i ,r,q-g l, referred to in T.r 9 January 2004 p.p. 146. It says U" f s Brief, para. 81, referring to Exhibit D IOA_ Trial Judgement paragraph F3. :l:' Sees from the Jr Q citation in the Preamble Judgment, attached to Kanulunda Appeal filed against the same judgment, paragraph 56. It notes the finding in the Judgment, paragraph 2.] Appellant's Brief, paragraph 82, "Appellant's Brief, paragraph 82. II 26 Case No.: IQfR-01-7+A ZFe&tury ZACP I

'09 02/02 11:44 FAX 0031705128932 ICTR +8+IH Chamber further tilt that a Trial Chamber as the obligation to provide a reasoned opinion, but is not required to articulate every step of its reasoning in detail.⁹¹ In the present case, the Trial Chamber explicitly stated that it found the witnesses' testimonies concerning the Appellant's support to the Interahamwe in 1991 and 1992 credible, as the Appellant has not demonstrated a material error in this finding. The Appellant's argument that the witnesses' evidence is speculative and does not require further consideration. 91. The Appeals Chamber finds that, in any event, the Trial Chamber's finding on the Appellant's authority based on the evidence of Witnesses BIVIA and BLX alone - The Trial Chamber's reliance on Witnesses BIVIA and BLX is limited to a general illustration of the Appellant's authority over the Interahamwe without any link to particular events. The Trial Chamber merely noted that the evidence of Witnesses BIVIA and BLX regarding the Appellant's support to the Interahamwe in 1991 and 1992 was credible and supported the fact that the Appellant exercised authority over the Interahamwe. In addition, it held that the evidence adduced in relation to the specific events in Nyamirambo, Ntarama, and Rushashi also showed that the Appellant exercised authority over the Interahamwe.⁹² For the foregoing reasons, the Appeals Chamber rejects the Appellant's submission that the Trial Chamber's finding that the

assessment of the evidence of Witnesses B IVIA and B IJ (relating to his involvement in the TFI. FD in Nyarugenge after 7 992 and in finding that he exercised authority over the ruerahanrwetn Xggq. Accordingly, his grounds of appeals dismissed. rY SceS imbaAppeuJf udf repeat, para- 152 - "Trial Judgencut, para 156. :: Tritl Judgemenp ara-56- r'7 Trial Judgeneot, p *a i56, referring to Trial JudgeneogS ctionsI I.4-6. i 27 CaseNo.:I cfr-01-7+A 2 February 2(D9 SlrL

02/02 '09 11:45 FAI 0031705128932 ICTR @otz +aslfr l \rI. ALL4GED ERRORS RELATING TO THE FINDING THAT THE APPELLANT WAS INVOLVED IN A CAMPAIGN TO KILL TUTSIS IN w m, una+mo sEcTo& NYARUGENGcEo MMtrNE (cRouND o F I APPEAL 5) 93' The Trial cn"-U", found that in April 1994 three policemen r Kalimba Habimana and 'erb Kabarate, who stationed in [the Appellant's] house in Nyamirambo [...] committed crimes together with the hi:t'eralnmweo peratingi n that area".le8s pecifically, the Trial chamber found that: ! I Between S t[o tO.1n U t199-4], rheI nteralwnwe followett after Kabahay", a Ttrtsl, and killed hi- in Butama+n ot far away- from N yamaaEbo-T hey then rporteat o te poud*" rhrr, h e bad bcen killed[-:!; - Between I and 10 April 1994, p oliceorn Kalimba forced a man !o kill l vlurekez! a Tuts! at the roadblock n eatlr(ar€ra.'s house[,..]; ' q t0 April_1994_'_Ndingutsae T, u tsl was afiestcda udk illed by the policemen atd Interehqnw not far awayf rom Karaa's bouse[.. .]; i - on z{ Aptil 1994P' alatinN vaeatarqa Tutsi" w ask illed at a roadblock a boutt hreep lorsf romh is houseb ypoucpmaKna limbai. .ll-tt 94- The Trial Chamber firrther tbund that the perpetrato\$ were aware that the vlctrms were Tutsis and that they killed them prusuant to the Appellant's order ro kilt Tutsis.m Based on these findings, the Trial Chamber convicted the Appellan! pursuanr to Article 6(1) of the Statute, for ordering genocide and extermination and murder as crimes against humanity. ml 95. The Appellanp submits ttrat the Trial Chamber erred in its factual findings in relation to his involvement in a cainai+ to kill Tutsis in Nyamirambo sector, Nyarugenge courmnne .M He argues that the Trial Chamber erred in finding that (i) he exercised authority over the three policemen, n involved tit ftt killings; (ii) he ordered, by telephone, the ki[ing of Kabuguza's family members between 7 :*d 10 April 1994; (iii) he gave orders to kill Tutsis and ro demolish their houses in NyamiramQo between 7 and 15 April 1994; (iv) he gave orders to spare certain Tutsis and their housesb etween; 7a nd t5 April 1994; (v) a man called Kahabayew as killed in April lgg4 as a co[scquence of the orders given by him; (vi) he ordered policemena Kalimba ro kill a T\rtsi called I ::@] Trial Judgr:orcngp ara.5 35. I Trial Judgcmenpl ara.536.]"l 'N T o r t i i a c f e J uagcmntp, a rassj +0, SS7,5 60,S 6L_ of Appeal, p ans, ll-t&; Appellanr'sB rief, parasg. 3-r84; .A,T2, g August2 oogp p. 24,2s- 28 CaseNoI.C: TR-01-7+A 2 February 2 009

02/02 '09 11:46 FAX 0031705128932 ICTR @o gc +8?,lf I Mruekezi between:Ea nd t0 April 1994; (vii) he was involved irr the killing of Jean Bosco Ndingutse on 10 abtit 1994; aud (viii) a man called Palatin Nyagatarew as kiltsd following his orderst o kill Tutsis at Nyamirambo.2otT he AppcalsC hamberw ilt considert hesea rgumentsin rurn, ; A' Allefed Emors relatine to the Apoellantts Authority over Commune policemen 96. lbe Trial CnamUer found that the Appellant had authority over the tSree policeuen who guardedh is housei n Nyauriramboa nd manned a roadblock near his house.2eT hc Trial Cbamber firrther found that the rhreep olicemenc ommittedc timesi n the areao f Nyamirambo.2os n. In this sectiob,t he AppealsC ha:rrberc onsiderst he following allegatiouso f erro6 rclaredt o the finding that theiAppellant had authority

over the policemen: (i) alleged failure to provide a reasoned opinion; (ii) alleged error in assessing prosecution evidence; and (iii) alleged failure to give proper weight to Defence evidence. 1. Alleged Error in Failing to Provide a Reasoned Opinion 1-198. The Appellant submits that the Trial Chamber erred in law in failing to identify the evidence showing the Appellant's alleged de jure or de facto authority over the communal policemen Kafimba "Habimana" and Kabarate allegedly ordered at his house in Nyamirambo and in omitting to explain how he could have exercised any authority over policemen who were outside the administrative territory in which he worked-20699. The Prosecution primarily responds that the Trial Chamber duly considered the evidence of several witnesses to establish that the three policemen took orders from the Appellant and committed criminal acts. 206-100. A review of the Trial Judgement reveals that, contrary to the Appellant's contention, the Trial Chamber provided a reasoned opinion for the impugned findings and identified the underlying 'Witnesses evidence. 206-100. The Trial Chamber relied on the evidence of BMF, BI\II, BLX BMU, BI\4A, BMG, and IME to find that the policemen Kalimba "Habimana, and Kabarate were "communal policemen" under the Appellant's authority, rather than under the authority of the prefect of Kigali-ViUe prefecture. 206-100. The Trial Chamber's conclusion that the Appellant exercised authority over these policemen is not based on the premise that he had de jure authority over them, but on the Appellant's Brief, paragraph 183, paragraph 4. 206-100. Trial Judge acquiesces to the Trial Judgement, paragraph 68, 192, 196, 209. 206-100. * Notice of Appeal "Wab. gZ-g+; AT. 2g August 2006-14. * Respondent's Brief, paragraphs 91-96, paragraph 95, "on Trial Judgement paragraph 112. 206-100. Case No.: ICTR-01-74A 2 February 2006 Sl/t-

02/02 '09 11:46 FAI 0031705128932 ICTR @ on +8r1fr even though the Trial Chamber recalled that it is a state of emergency a prefect can requisition communal police 206-100. The Trial Chamber's conclusion is supported by the evidence of several Prosecution witnesses who testified that the policemen were guarding the Appellant's house and maintaining a roadblock in front of it that these policemen claimed to be the Appellant's subordinates, that the Appellant ordered them to kill and destroy their houses, and that the people did not obey the Appellant's orders. 206-100. This argument is therefore dismissed. 2. 206-100. The Appellant submits that the Trial Chamber erred in finding that throughout the month of April 1994 he exercised authority over certain communal policemen since the evidence does not permit this inference. 206-100. The Appellant contends that his error of fact occasioned a miscarriage of justice. 206-100. The Appellant states that since there was no legal basis for the allegation that he had "real" authority over the Prosecution, the Prosecution had to support its allegation by providing evidence that he continuously effectively exercised de facto authority over the policemen during April 1994. 206-100. The Appellant submits that his allegation was "disregarding" the Trial Chamber's finding that the Appellant left Kigali on 7 April 1994 and remained in Rutengeri between 7 and 19 April 1994. 206-100. The Appellant argues that the Trial Chamber failed to take into account existing 'compelling reasons' for discrediting the evidence provided by Prosecution witnesses and ignored evidence contradicting the Prosecution's allegation of "real" authority, specifically, the Appellant's assertion that the Trial Chamber erred in relying on the testimony of Prosecution Witnesses BMU, BI\q BMA, BMG, BMF, BMFI, and BME. 206-100. The Appeals Chamber will consider the Appellant's arguments in turn. 206-100. Trial Judgement paragraph 122. 206-100. fjl

Triat tudgementrp. arasiI. 12-119, tzt, Lzz_ "&.dp4lclo.!t's Brief, pard 89- fi nnpeffontlsB rief.p ard.E Sr, cferringr o TriatJ udgementpr,a z- 537,]"3.pp"tt".f s Brief, P*3: 17: TtreA ppell:.nrt *ails thatN -yarrirambwoa st ocatedin, Kigafi-Villep refecnrqa ndn or in Kigali prcfecturg of w{ri*r he was a iub-prcfecl ,-,_1*1 -pqcU",ts Brid, paral.8 8. refering ro Tri4l Judgeae,or,p aras.479, 500. Noticc of Appesl parab.8 5, 86. n"A14r{la1 1's Btief, para-l9 0, ttoAppella n t's Bricf, parai. g t-r rs- CaseN o.: ICTR-01-74,A 2February2 S)9 I \rq-" I I

02/02 '09 11:47 FILXA 037705128932 ICTR @o cs : 4aoffr (a) Witnes.sB MU 106. W'iuressB MU, arr official from Nyamirambo,t estified r.hata rouncl 10 Aprit 1994, three commrrnep olicemeq Safaxi,I Glimba and Thonras,m amed a roadblockf urf rout of the Appellant's housea ndw ere engagedin kilUngs.=teA ccbdiugt o the wihe, on 10 April Lgg4,the p oliceuen told him that they reportedt o the Appellant and not to TharcisseR euzaho,t he prefecr of Kigali- Ville prefecture.zo : L07. The Appellant assertsth at'WitnessB MU lied andm adec oatra<lictorys tatemenrsH. e argues 'link that Wituess BMU'b testimonye stablshedto o tenuous4 betweent he Appellant and rhe policemenm anning'ar oadblocki u front of his houset o supportt he finding madeb y the Trial Chamber.zl 108. The hoseculon resPondsth at the Appellant simply reiteratesh is submissionsa t trial ou the credibility of kosecution witnesses,in cluding Witness BMU, while failing to show that the Trial Chambera ctcdu nredsonablyin relying on this evidence.z2 109. In assessingW ikressB MU's evidencot,h e Trial Chambero bservedth aq as an ofEcial in Nyarugengein 1994'urcl someone new ho .knewt he Appellant personally,t he witnessw as in a good position to obsewe the evenrs.% However, the Trial Chamberd ecided to considerh is evidencce with caurion, si.ncci t found that the witness "may have beerri nfluenced by a wish to positively affect the criminal proceedingsa gainstt himl in Rwanda."z tlO. The Trial Chambert lren observedth at WimessB MIJ's prior sratementosf 1998 and 2ff12 ("199ES tatemeuf'a nd*20ft2S tatement"r,e spectivelyd) o aot mentionp olicemenat a roadblocki u front of the Appellant's housea nd that "[h]e explainedt hat he wasn ot askeda boutt bem and added that in his 1998\$ tatementht e onty describedw hat peopler old him, andn or what he Eaw."H \ilbile the Trial Chamberc bnsideredt hat this was "not quite coasisrentw ith his testimony that he had heard from a subordinatea bout the policemen'sp osition at thc roadblock,ni't neverrhelessfo und that this inconsisten?yd id not affect rhe wiaess's credibility. u6 ft. Trial Cbamera ccepted Witness BMU's explanationsf or the discstepanciesb etweenh is testimony and prior statements regardingt he numero f roadblocls in Nyamiramboa nd his knowledgeo f the roadblocls when he zre 'consider[ed] Ths Tdal Cba.Eb&r it likely rhat Safari and Thomas wre rhe first oaness of Kabarata and Habimand'. flial Judgec@engp are- I I i. :: Trinl Judge,mr",npt,a ra. i89. llj appemorsB rief,p ara!e. z-se.] ResponrtcnBt'rsi ef,p ans.9 6-98. f rriat Jvagenenpt,a ri.,tt r. -' Trial Judsement. DsrL il l 3- lt;atudEement, iare ! rs- "" Trial Judgrmonl" para il15, i 31, CascN o:- ICTR-01-74jA 2 February2 009 i I I

02/02 '09 11:48 FAX 003.1705128932 ICTR @o ss +Tqlfr left his houseo u lf April 1994-n7T he Triat Ch^mbera lso acceptedW itrressB MU's evidence about the policemeri and their crimes at the roadbloCki n front of the Appellaut's housei n April 1994, including tnai they claimed to be subordinateso f the Appellant and not of tbc prefect of Kigali-Ville.228 I ll1. The Appella:irta ssertsw ithout more detail that the Trial Chamber erred in considering ! WitnessB MU's evidenceb ecau.qhee lied.22Ae review of tfrebrial Judgementrte vealst hat the Trial Chambera

accepted the witness's evidence only after a careful consideration of the various factors relevant to the assessment of his credibility.³⁰⁶ In this respect, the Appellant has failed to establish 'witness that the Trial Chamber erroneously accepted the evidence of BMU. 112. The Appellant further argues that contrary to Witness BMU's explanation in cross-examination at in the 1998 and 2002 Statements he only recounted what people had told him, those statements in fact included details of what he saw in the sector after 6 April 1994 and even mentioned the specific persons who manned the roadblocks and those who were killed at such roadblocks.⁴¹ In addition, the Appellant asserts that Witness BMU should have mentioned the names of the policemen in his statements since he stated that he learned their names from a report he received from so-called 'insiders'.⁴² Finally, he argues that Witness BMU provided a different explanation in court by stating that he had omitted mentioning the role of the Appellant and the policemen "because he was not asked any question [sic] about them".³ LL3. In the 1998 Statement, Witness BMU recounted in general terms the events in Rwanda and in his sector from the beginning of the war in October 1990 to the end in 1994.²⁴ The focus was not on specific situations arising in the area of Nyamirambo but rather on broader events. The witness mentioned in general the setting up of roadblocks where Tutsis were killed and the failure of competent authorities to stop these killings, but gave no description of a particular roadblock or killing. In addition, the Appeals Chamber notes that "as with the 2002 Statement, the 1998 Statement focused on the role of Tharcisse Renzaho in the genocide. In these circumstances, it is understandable that Witness BMU did not mention the presence of three particular policemen at a roadblock and the crimes they committed under the Appellant's alleged authority. In addition, Witness BMU was at first only recounting what he witnessed personally, but also referred to what he had heard from others. The Appeals Chamber therefore considers that Witness BMU's explanations are 'true' in the context of the Judgment." paras 15, 116. Judge O'Connell, para 15. In the Appellant's Brief, para 96. :: Trial Judge O'Connell, paras 13, 15, 116. Appellant's Brief, para 92-93. Appellant's Brief, para 93-94. Case No. ICTR-01-74-I, 2 February 2009 :

paras 15-16, 02/02 '09 11:49 FA.X 031705128S32 ICTR @os +781a were not at odds with the content of the 1998 Statement. Turning to the 2002 Statement, it is clear that the focus again was on Renzaho's role in the genocide. While in this statement, the witness recounted the existence and functioning of roadblocks in general, he did not describe specific events at roadblocks. ⁷⁴ Witness Bilirumuna explained in his testimony that he did not, in these previous statements, mention the setting up of a roadblock in front of the Appellant's house because he considered it to be a crime by policemen under the Appellant's control because he was not asked any questions about them. This explanation is consistent with the subject-matter of these statements.^{*} The Appellant has not demonstrated that no reasonable trier of fact could have found that these admissions did not affect Witness BMU's credibility. 115- Pointing to the alleged contradiction between Witness BMU's testimony and the 2002 statement regarding the number of roadblocks in Nyamirambo, the Appellant claims that the "inflated number of roadblocks clearly shows Witness BMU's desire to aggravate the charges against Karera." But the Appeals Chamber recalls that the Trial Chamber addressed the alleged inconsistency and accepted the explanation provided by the witness that in the 2002 Statement he was asked only about the number of roadblocks on the main road from

the regional stadium on the centre of town' and not about the entire sector-87T. The Appellant has not shown that the Trial Chamber erred in reaching this conclusion. Witness BMU's explanation is consistent with the fact that in the 2002 Statement, the number of roadblocks was mentioned in relation to his own role in distributing weapons and roadblocks in the sector. In addition, the Appeals Chamber notes that the Appellant's contention that the witness inflated the number of roadblocks to aggravate the charges against him is mere speculation. 116. The Appellant further contends that, of the three witnesses who testified to the presence of policemen at a roadblock in front of the Appellant's house, only Witness BMU established a link between the policemen and the Appellant, and that this link was too tenuous to support a finding that the Appellant exercised any authority over the policemen. 23. The Appellant asserts that - [all the foregoing Statement, p. 3 - i. f. r. r. a. f. u. O. g. c. - - - {paras. 1, 6 - 9 T. A. l. p. 1 p. e. l. l. : l. a. * n. r. t. - 's = B. P. r. i. e. l. f. , Y. p. a. j. r. : i. l. Y. O. l. l. : S. : 3. P. f. " n. : : S. a. l. B. * a. j. ; : t. i. v. l. T. t. u. l. , a. 4. q. p. * f. - . . i. l. i. r. n. y. i. : s. * . r. s. e. s. s. a. r. t. o. € L. r. ; h. t. o. o. T. t. - r. i. a. r. r. c. - c. * h. a. a. s. n. a. b. s. u. o. r. , o. s. b. s. o. c. i. n. . , a. r. t. * i. o. a. r. n. l. ; p. ; a. . r. f. a. 'f. s. f. #. r. n. i. p. l. ' i. 6. h. " " d. o. ; f. s. o. m. e. _ t. i. m. e. a. f. t. e. r. 10. A. p. r. i. l. J. p. 94, w. h. e. n. c. a. s. a. t. t. r. i. a. l. h. g. t. e. s. t. i. f. i. e. d. t. h. a. t. h. o. r. * d. p. r. e. v. i. o. u. s. l. y. , o. " i. " " J. i. " p. o. n. , a. b. o. q. t. t. s. h. . r. e. u. !. r. \$. o. a. d. b. l. o. c. k. s. _ A. * W. p. p. e. J. l. l. a. * n. * t. n. , s. l. 1. t. s. " r. i. {d. ; , I. * p. . a. ? . r. a. | : 95. * H. o. _ w. c. " v. : c. r. l. - 9. t. h. _ e. A. A. n. p. r. r. p. e. l. l. e. c. r. u. t. ' n. d. d. n. t. o. a. s. e. n. n. s. n. o. t. t. a. c. l. o. r. r. s. ' m. i. ' r. r. h. h. a. r. i. h. , a. n. , r. ' T. i. , r. r. i. a. r. r. q. r. L. " - ' - ' L. t. ^ ' i. - l. " J. ^ ; - ; -) ; r. i. l. : i. - i. l. i. f. f. ; , r. p. l. l. a. t. i. o. n. f. o. r. r. h. q. t. _ r. y. n. a. r. d. c. i. s. t. c. r. e. p. i. i. c. y. - B. l. f. f. ' : : T. r. i. a. l. J. u. d. g. e. a. c. u. p. g. a. r. a. , 116. : 2002 Statement, p. 45, - Appellant's Brief, para. 98, 33 Case No. : I. C. T. R. - 01-7 + A. 2. F. e. b. r. u. a. r. y. 2. 009

02/02 '09 11:49 FAX0 031705128932 ICTR @o ge #rlfr what fsic.l WitressB MU said on rhis point is that the policemen boastedt bat they reported to IGrerar athert hant o Renzaho,t hep rdfetof Kigali-Villd,.24 ll7- The Appeals Chamberd isagreesT. he tink establishedb y Witness BMU berweent he three policemen and the Appellaut was not tenuous.A ccording ro Wituess BMU, the policemen,w ho wel€ aware of the witness's official position, told him that they were obeyirrgi nst'ctions of the Appellanta nd were working fel him, not for Renzahot,h e prcfect of Kigali-Ville prefect're.ur In addition' the Trial chamber's fiading on the Appellaut's position of authority over the policemen doesn ot stando n WitnessB M(J's testimouya lone.T his aspecto f his tesfmngnyw as corrobornted by the testimonieso f WitnessesB MF, BMH, BMG, andB ME.Z2 118- The Appelluit', contenriont hat the Trial Chhmuere rred in the assessmenotf Wiheess BMU's evidenceis therefored ismissed.. : (b) WitnessesB M4 andB LX 119. The Appellaflt subEits thar he calrnot "comprehendh ow WitressesB I\,IA and BLX could haveb eenb elievedo n the issueo f communep olicemen"w hereast he [Tria]l Chamberr ejectedt heir testimoniesio relationt o [other allegationsa gainstt he Appellanta nd] alsor ejectedW iuressB LX's testimooya s to the distriburiono f weaponsin Nyamirambo".2a3 720. The Appealsb hamberr ecalls that it is not unreasonablefo r a Trial Chambcrt o accepts ome Partso f a witness'\$r esdmonyw hile rejectingo thers.2#T heA ppellanth asn ot shownh ow tbe Trial. Chambcr erred in aqceptingo nly portions of the evidence of these witnesses.T he Appellant,s contentioni s thereforbd i smisscd. (c) WimesseBsI \{F I h udB MII LZI. The Trial CnltoU* fouudt hat "[t]he testimonieosf t.--I WiheessesB MF andB MH, are generally consistent a.boutt he police officers. They said rhat Karera left Nyamirambo but continucd to visit thef,e, that policemcn remained at his hou5e, regarded Karera as their superior and communicated with tii- Uy phone, that they committed crimes,

distributed machetes, and ordered others to commit crimes."245 m Appellant's Brief, para.9 t- " ^ T_ - l I anual ?-M p - VL-S e e also T, VL I antwy 2006 pp.j , 6, 7- !.LSea T rial Judgementpqa rasl. 12.l 17, ttE. Appellant's Brief, pul l+n - l*] s:" szprc Chaper IV Atleged Etlors RclatiDgt o the Appellanr's Involvementi n thc MRND and his Authority over the Intcralntnwe (Grouad,ofA ppeal 4). para E7- ^' Trial Judgemeutp, ara-7 1.2. CascNo.:I CTR-01-74-A 2 Febntrry 2009 \.IJJ-

'09 02/02 11:50 FAX0 031705128932 ICTR E ogs +76l/, 122' With regardt o Witress BMF, the Appellant claims that shep rovided many derailsr egarding the presencc of "o.-*u policemen in front of the Appellant's house, but that norhjng in her teshmonys howst hzita sulrrior-subsrdrinxls relationrrshipe xisredb etweenh im and the policemen.z6 I 123' The Appeals chamber find.s that contrary to the Appellant's coatenrion, ' Wiuess BMF,s testimony supportst he finding that the Appellant exerciseda uthority over ttre three policemen. Indeed, the wiuess'testified that she knew the policemen and that they had been guardirrgt he Appellant'sh ouseb gforeA pril lgg4. %7s he alstot estificdr bati n the secondh alf of May 1gg4 she heard PolicemanK zilimba tell his colleagueH abimanat hat the Appellant had fursruc6d him by tclephouet o spaxes bmeT utsi families.as The Trial aamber was thereforee ntitled to take tbcse aspectso f WitnessB MF's testimsayi nto accounti n assessiugw hethert he Appollant exercised auttrority over the popce,men. L24' The Appetlant submits that wirress BMH lied with regard to the relationshipp euweettrh e : Appellant irnd the pblicemen and that the Trial Chamba erred ia assessingth e evidenceo n rhis point'2aeT he Appellpt arguest hat WitnessB MH could uot have witnessedt be Appellant ordering the policemcnt o deshoi houseso f Tutsi betweeu1 0 and 15 April 1994,s inces he was not pre.sent in thc aread rring thirt perio4 as evidencedb y her 1998 Statemenrw here she said that prior to 22 i May 1994,s he badlpgento nc and ahalf monrhei n a place qft61 rhen her house.-oH e fuither submits that when confronted with this discrepancy,s he provided an explanationt hat even the kosecution did notibclieve and which, therefore, should not have been acceptedb y the Trial Chamber. The Appellant assertst hat Witness BMIfs cxplanation to rhe effect that she had informed the hoseclrtion that there was au error in her 1998 statement one year prior to her testimonyc ontradicti the Prosecution'sa ssertiont hat this infbrmation had beenm adc availablet o it only twenty-fo beforeh er testimony.sr L25' Thesc argumeutsw ere already addresseda nd dismissedb y rhe Trial chamrr:r.Ez me Appellant hasn ot shgwnh ow the Trial Chambere credi n acce,ptingW ituessB MH,s explanationsa s to the discrepanciesb etweenh er trial testimony and prior statementsT. his contentioni s therefore I dismissed.

f.O.pperlenBr'sri ef, para,f Of . :: Trial JudgeocuLp ra*97. l: Trid JudEe,ncniia rasr 137,t 7l. -'Appellaafs Brief, paraI.0 Z. -u AS4nllant's Ericf, pTt .103.F 4ppepnrs Bricf refers to e srarcmenot f 19 August 2006. ft is apparenftr om rhc F co r Btctxa s well a.st hc exhibit ilrl-bcr that the Appcltant meantt o rafcf,t o rhe StatencDiof tgAugust 199g_ Alrycllant'sB rio! paraI. tmrOO " TiaI JudgemeoLp arasi1 63, 164_ Ca.seN o,: ICIR-01-74iq. ZFebruary2 009 \C/rt

'09 02/02 11:51 FAX0 031705128932 ICTR @o lo ++51fr 126. The Appellairt firther contendst hat the tesrime6.. of WimessesB MF and BMH we,ren ot acceptedb y the Triql Chamberi n severaIrr espects.n amely with regard to tbe Appellirnt,sp resence during an attacko n 8 April 1994,t he order to kill Kabuguza,'andth e circumstarceso f his death.E3 -'nsny He arguest hat WitnessB MF's tes regarclingt he killing of her youngerb rother and twenry Tlrtsis was also aoi ad';ttcd.m He

further submissions that the Trial Chamber did not find, these witnesses credible with regard to the events of 8 April 1994 and should have rejected these testimonies in their entirety. 5s L27. With regard to the attack of 8 April 1994, the Trial Chamber found that Witnesses B, MH and BMF were generally credible and concluded based on their testimony that the attack had taken place. However, it failed to find established beyond reasonable doubt that the Appellant orchestrated the attack and that members of his family "were present despite the evidence provided by both witnesses to this effect. The Appellant claimed since the Trial Chamber's findings suggested that Witnesses B, MF and BMH had falsely attempted to implicate him, the Trial Chamber ruled in law to believe the rest of their testimonies." The Trial Chamber held that the Trial Chamber had the discretion to accept only part of the witnesses' evidence. The Trial Chamber reached its conclusion on the evidence of these witnesses "without carefully considering the credibility of the allegations made by the Defence, including the allegation of collusion. 8 It did not find that the Appellant's witnesses had attempted to falsely implicate the but merely refrained from entering a finding on the presence of the Appellant in the attack because it was not persuaded beyond a reasonable doubt with respect to the part of their evidence that directly implicated the Appellant. The Trial Chamber expressed doubt as to whether it would have been possible for the witnesses to recognize some of the features of the attack, given the circumstances of the attack. The Trial Chamber's reasons show that it did not disbelieve the witnesses' account of the attack but that it applied additional caution to their identification of the Appellant and declined to enter a conviction on the basis of their evidence. The Appellant has put forward the Trial Chamber's failure to disregard the testimonies of these witnesses in their entirety. (d) Witness B, ME L28- The Trial Chamber found credible Witness B's evidence regarding a meeting held on the morning of 15 April, followed by the Appellant's order for the Appellant to order a large crowd to join him. P.L.F., p. 14, referring to Trial Judgement, para. 33, 13% of 40, 145- 150 of the Brief of the Appellant, referring to Trial Judgment of 1999. :: Id. Judgment, paras. 108, 111. The Trial Judgment is irreconcilable with the Appellant's brief of 108. I : "The Trial Judgment, para. 135. ^ Trial Judgment, para. 135, 36 Case No.: ICTR-01-74-A 2 February 2009 V. {

02/02 '09 11:52 FAX 0031705128932 TCTR @o ar 'ft+fr deshoys ouses of Tutsis. 26 It noted that the witness testified that the policemen who stayed at the Appellant's house participated in the meeting and concluded that her testimony corroborated the evidence given by other witnesses regarding the Appellant and the policemen. 29- The Appellant claims that the testimony of Witness B, ME at best permits a finding that he gave orders to the policemen on the morning of 15 April 1994, but does not support any inference that he exercised authority over them during the entire month of April. 263 I 130' The Appeals Chamber agrees that the evidence of Witness B, ME alone could not support a finding of the Appellant's authority over the policemen in April 1994. However, the Trial Chamber only considered this evidence as corroborative of other evidence regarding the relationship between the Appellant and the policemen. From a review of the relevant portion of the Trial Judgment, it is evident that the Trial Chamber considered that Witness B, ME's evidence corroborated the testimonies of witnesses B, MF, BMH, BLX, BldA, BMU, and BMG in relation to the presence and role of the

policemen at the Appellant's house and the nature of their relationship with the Appellant. Witness BME's testimony was not only corroborated by these other testimonies, but also by the finding that on 15 April 1994, the Appellant was in a position to give orders to the policemen. 131. The Appellant further contended that the testimony of Witness BME could not be believed. 26. He averred that, if believed, his testimony would conflict with the prosecution's allegation that the Appellant was involved in the same day. 66. He further claimed that Witness BME's evidence at the Appellant's trial was in direct contradiction to the findings of the Trial Chamber that the killings resulted from the orders and encouragement of the Appellant prior to that date. The Appellant's submissions in this regard are considered below under Section C, 'Witness (e) BMG : 'With 132. In regard to Witness BMG, the Appellant merely stated that the Trial Chamber did not believe him regarding the killing of Felix Dix and Kabuguzza and recited his testimony that the Appellant's house was guarded by commune policemen, namely Karim Habimana, and Mr. Jodgemenpt, para. 133, 134. In the Appellant's Brief, para. 109, 110. The Trial Judge, para. 18. * Appellant's Brief, para. 11. In the Appellant's Brief, para. 111, the Appellant referred to other sections of the Appellant's Brief dealing with the killings of Kabuguzza, Igtrabay, Ugrekezi, and Ndiugutse : 37. Case No: ICIR-01-7/A ZFcbwzry2009 St - i

<r" -:#. ?#-g '09 02/02 11:52 FA.X0 031705128932 ICTR @otz i +fill i Kabarate'68. The Appellant acknowledged that Witness BMG gave details of the links which existed between the police and the Appellant and points out that the witness clearly explained that he did not see the Appellant committing or ordering any crime. 6e 133. The Appellant does not attempt to show an error on the part of the Trial Chamber in assessing his witness's evidence. Accordingly, the Appeals Chamber rejects the Appellant's vague and unclear assertions in relation to Witness BMG. 134. At the outset of its assessment of the Defence evidence, the Appeals Chamber stated to the Appellant's authority over the policemen, that the Trial Chamber called its findings under a previous section of the Trial Judgment that it accorded "little weight" to the evidence of the Appellant's relatives, Witnesses ATA, KD, and 85. The Trial Chamber then proceeded to consider the testimonies of Defence Witnesses KBG, *IK and GM, but accorded them little or no weight. In so doing, it reasoned that KBG, who did not notice anything peculiar, only passed by Karera, whose name was in Nyamiramba's letter in April 1994. The Trial Chamber noted that "[a]lthough he did not personally see crimes being committed, he confirmed that the people who manned the roadblock in Nyamiramba's area were against civilians," and that "with regard to Witness KNK the Trial Chamber noted that her evidence that "there was no roadblock near Karera's house as based on her visits in the area between January and 6 April 1994, whereas the roadblocks were set up later". 273. The Trial Chamber found that witness ZEM "lacked first-hand knowledge about the events," and that "If his testimony that he was not involved about the involvement of Karera or the policemen in the events in Cyiririgiza in 1994 carries limited weight compared to direct and consistent evidence from other witnesses implicating him in the killings." 274. 135. The Appellant submits that the Trial Chamber erred by 'unreasonably dismiss[ing] the testimonies of Witnesses ATA, trO, BBK, I(BG, KNK and ZR1r, 4w, without providing satisfactory explanation for such a decision." 275. 135. The Appeals Chamber notes that eight Defence witnesses, namely, the

Appellant, three witnesses related to T- (witnesses A TA, KD, and B BK), and witnesses K BG, KNK ZBM, and I Ijl app"ua,t's Brtuyfp, .r{ I t z. :: Appclalt's Brief, pani 1I2, ll rriot ruagementp, i"a.lt tg. :- Trial Judgeurengp aro-|t t9. :: Trial Judgrnrenrp, an-lf t9- :"" Trial Judgpmntp, ara-j t t f - "" Trial Ju-dgccrenpt,a ro. l f tl Appelht's Brief, parr| 1I4, refecringto irial Judgementp ara_1 19. ,38 CaseNo.:I CTR-01-74rA 2Fcbntary 2009 :

--___-'* '09 02/02 11:53 FAI 0031705128932 ICTR @otc wzft BMP, testified in lation to the hosecutiou's allegationt hat the Appellanr was presentin Nyamiramboi n Apr,il 1994a ndt hat he gaveo rderst o the policernenu trderh is authority.2?6 i 737' Ilt the cours+o f its assessmenot f the relevant Defenceee vidence,t he Trial Chambers tatcd that it accordedl imited wcighr to the evidenceo f wirressesw ho were rlated to the Appellaat oa the groundt hat "[w]hile theser elationshpsd o noq in themselvesd, isoedit thc witnesset,h ey may account for the wiesses' inclination to resolve any lapse in their recollections in a mantrer I favourablt o Karerd."z7T7 heseo bservationsm erely demonsrrateth at rhe Trial cba'ber viewed the evidencef rom Defince witnessesw ho had close relationshipsw ith the Appellant or his family membersw ith cautifn and doesn ot demonst^r te perse that the Triar Chambere rred in law in its i assessmeDotf this evidencc. I 138. The Appeals Chambern otes that Wibesses ATA, KD, and BBK were away from rhe Appellant's house in Nyaminrrnbo after 7 April 1gg4.27T8h erefore, the evidenceo f these rhree wiesses was not significant with regard to the presencea ud role of the tfuee policemen at rhe Appellant's housea frfi 7 April 1994.I rr thesec circumstancest,h e AppealsC harnbers eest ro error in the Trial Chambera lcordinc Iimited weight to the evidenceo f thesew itrresseso n this point. : 139' with regardi to wiesses KBG, KI{K and,Z BM, the Trial chamber consideredr heir testimoniesb ut it is {pparentf rom the Triar Judgementrt hati t did not find their evidencer clcvarrl or significaut regarding the Appellant's authority over the three policemen and their role in the commissiono f crimesi n Nyamirambo.2TTeh e Appellant.hasn ot showna uy error in this approach. i, L40' The Appcalsl Chamberr ecalls that theltle task of weighing and assessinge videncel ies, in the first place,w ith \$e Trial chamber.T hc Trial Chamberh ad rherefocrt he discretient o assessth e relevancea nd weight of evidenceg iven by boih Prosecutiona nd Defencew itnessesw hen reaching a dccisiona s to the'Appellant'sa uthority.t*ni*" Appellanth as not demonsnapdh ow the Trial Chambera busedit s'discretioni n this respectA. ccoqdinglnt he Appealsc hamber dismisseth is sub-groundo fappeal. 'Jl rriar \$ agu-enr p arasr:m. tog. lj Trial Judgcmengp aro-i+ SS- r05f ort bcs ummaorrvt hl w'oersetse, stinrouir:s. ;g.|;'.H#, x frfr* M par M a u -3 r 1 r* . o 7tpn"J'foag.rrro I q para. lE; Rutagan&te#"f Judgenent pata_3 {Il KupreikiC etal Appeal Judgymen! I CaseN o.: ICTR-01-74A 2February2 009 \AJ_.

'09 02/02 11:54 FAX0 03.1705128932 ICTR @ot+ +TIIf r B. l4l' The Tria] C,hamberf ound that between 7 arrd l0 April 1gg4,t he Appellant gave, via telephone,a n order io kill Kabugr-rza2tAl t the sameh mc, the Trial Charuberh eld that it could not conclude beyond re,asonabled oubt that Kabugrva was kitled by rhe policeme,ns tarioneda t rhe Appellant's house,s incet he time and place of the killing wereu nclear,n o one obserr,,etdh e alleged killing, andn o one hLarda nyo'e ass'me responsibilityf or ir-*z 742- The Appellaut submitst bat the Trial charnber ened in law by making this finding basedo n connadictory iipru*iUr" evidence.zs'S ince the Trial chamber base4 its finding on the "oa testimonies of witr,ressesB IVII{ BMU, and EMF, the Appellant firsr

reiterates his previous submissionst hat the I testimonieso f these tbree wihcsses should be rejected in their entirety.zsa Next' the Appellatit recaus that ttre Tdal chember listed rbe various contradictions and inconsistenciesin ttle testimonieso f WitnessesB MF and BMH and claims rhat there were additional inconsisteheciesth at the Trial Chamberd id not note.2s5H owcver, he points to only one I example: the fact tliat Witness BMF testified that the Appellant orderedt hat Kabug*za,s entire farrily !s kill6{ while WiurossB MH staredt hat the Appellant instrnctedt hat the other membe,ros f Kabuguza's family bres lared.286T h" Appellant coDtendstt rat WirnessesB MF, Bi\df1 and BMU lied in their rcstimo4ies,2nH e arguest hat the Trial Chamben" speculatedin order to make up for the shortcomingsso f ithe kosecutor's case," thus ignoring the "reaEonablep ossibility that Karera ! bad nothingt o do with the killiag.'2881 '5. Appellanta sserrstb at this finding hasi mpacrodo n the Trial Chanrber's cci:rcclusion that the Appellant exercised aurirority over rhe policemen in Nyamiraurbo.z8e I I L43. The kosecutipn responds that this sub-ground of appeal is unfounded.zsoI t submits that the jxamincd Triat Chamber ddy the wimesses' evidencq considered the coauadictiops, and provided a reasoned explanatign fon accepting rhe bsdmonies.2el It claim.q that the Appellarrrt has failed to show how the Triali Chamber's explanation was unreasonable or unfourrrdd.zn Moreover, the kosecution notes th{t even though the Trial Chamber found that rbe Appellant ordered Kabuguza ll rria Judgeucnpga ra.lr+s- :-": TtirI Judgcrrenpta, ra-lf+S.]| N ap o p ri e c u eo a r ' A rs o d o ri e e a r , l r ' p r * a F " . * - ?g 12,-:gt:6 . r,A zb 1 ' 4 - rc[an B r's ri ef,p ars-t 2]7;N r.2gA ugus2t 00gp p. t4,42,43. fi {mc11ant}!*{ .!, parojr.? -5c, itingT riatJ udgetnenpt,a rast.4 G.t44_ ""'.dppellant'Bs rief, pad LZS- "" Appellant'Bsr ief.o aratlz 6.]-l' A e T i . r ieUart'sB rief,i arap.r zz, tZe. 28A usus2t 008p j t+. I nespona"nsf Brief,p '4a"f Of. l" Responded'Bs riet,p aia.9 9. "" RcspndentB'sr icf, fnfa, 99. 40 CaseNot-*:- Or-rq-ln 2 February2 009 \-},L

'09 02/02 11:55 FA-X0 031705128932 ICTR @ots 4?Dlf to be kirle{ a "rcading of the Trial Chamber'sl egal findings shows rhat it did not hold the Appellaut respr>nsibiefo r this murder."B3T he Prosecutionc oncludest hat the Appellant has not demonstarcdt he imiaa that a possiblee rror as to his role in Kabuguza'sk illing could havoh ad on the vudict and that this sub-groundo f appeals houlda ccordinglyb e dismisd .7e4 li/. The Triql Chamber'sim pugnedf inding stqndso n the eviduceo f WitressesB MU, BMF, and BMH. The Trial Chasrberf ound that'TVitnqsscsB MF and BMH gave I generallyc onsistcut account about overhearinga policernan talk on the telephonei n Karera's house about kitung Kabuguza".DsH owever,i t noted a nurnbero f problematice lementsi n the evidencer elated to the Appellaut's alleged 6rder to kill tkluguza and to tus allegedm urder. Specifically, W.ihessB MU statedt hat the killing of Kabuguzao ccurredb ctween 7 and 10 AFil 1994,W ibressB MH did uot provide a datef c the phonec orrversatioub, ut implicitly situatcdi t in April 1994,a nd.'WirresBs MF said that both the pirone conversationa nd the killing of Kabugr:zat ook place in May 1994. In -'nony addition, Witness Blr4Ifs tes indicated that severald ays separatedr be phone conversarion and the killing of Kabuguzaw hile WihressB MF testifredr hat the killing took place on the morning after the conversation.F urthermore,W itness BliVIF testified ttrat Kabuguza's entire family was killed, informatiou cbrroboratedb y Wihess BMU, while Wihess BMH sraredt hat the Appellant had decidedt hat Kabugr:za'sw ife and children could li.re.t960 n the basis of thesei nconsisrencios, the Triat Chamberc onsideredt hat the circumstancest,h e

location, and the time of the killing remained unclear and as a consequence, he refrained from concluding 'beyond reasonable doubt that Kabuguza was actually killed by the police officers stationed at Karera's house'.⁷ L45- The Appeals Chamber finds, however, that the Trial Chamber should have adopted a more cautious approach in its assessment of the Prosecution evidence regarding the person who ordered the killing. The testimonies of Witnesses B MF and BMH were not corroborative as to the period of the Appellant's Purported order to kill Kabuguza. The evidence provided by Witness B MH is speculative as to the identity of the person who ordered the killing.²⁹ Furthermore, no clarity exists as to whether the scope of the order was to kill the entire family of Kabuguza or to spare his wife and children. The Appeals Chamber hereafter finds that the Trial Chamber erred in finding that, between 7 and 10 April 1994, the Appellant ordered the murder of Kabuguza. L46' Nevertheless, the error could not lead to a miscarriage of justice since no conviction was entered on the basis of the alleged order to murder Kabuguza. The Trial Chamber's assessment of the Respondent's Brief, para. 100, citing Trial Judgment, paras. 538-559, ; 50. qo_u *Dt's Brief, para. 101 ; Ar'. ZUA ugusr 2009 pp. 4\ 43. " Trial Judgment, para. 139. : Trial Judgment, paras. 139-144. o" Trial Judgment, para. 145- 41 Cn-rcN o.: ICTR-01-74-A 2 February 2009 5-nr-

'09 02/02 11:55 FAX 031705128932 ICTR @o lo +611 for the Appellant's authority over the policemen is primarily based on the evidence collected in 1994, that they lived in and guarded his house, that they received orders from him, that they referred to him as "boss" and that they manned a roadblock near his house.² Accordingly, the Appeals Chamber dismisses this sub-ground of appeal. : C. . Alleged errors relating to the findings that the Appellant Ordered the killings of IULs 147. The Trial Chamber found that between 7 and 15 April 1994 the Appellant gave orders to kill Tutsis and destroy their houses in Nyamirambo at the location of his house.³ It further found that between 8 and 10 April 1994 he ordered the policemen, renewed who guarded the Appellant, to destroy the houses of Kahabayana and Felix Dix with the assistance of the Interahamwe. In finding that these events took place pursuant to the Appellant's orders, it relied on the evidence provided by witnesses B ME, BMG, BMFI, B MF, BMu, and B LX.³⁰² L4E' The Appellant submits that the Trial Chamber erred in law and fact in finding that he had ordered the killing of Tutsis and the destruction of their property in Nyamirambo.³⁰³ 149. The Appeals Chamber will consider the Appellant's arguments in turn.³⁰⁴ 150' The Appellant first contends that the Prosecution's underlying allegation itself was "general and redundant" and that the Trial Chamber erred by making a finding of fact from evidence in support of such an allegation. To this, the argument is summarily dismissed as the Appellant only raised it in the Notice of Appeal and did not develop it sufficiently to enable the Appeals Chamber to reassess the alleged error. l j *q Trial Judgment, paras. 36- 37, il l { I "9*nt, pr*s..t_r-o.r2r2sg^ -r4sL, 62-t68t?, 3, tE?.r s2,r s5_rs6,203. ""- Ttar Judgment, para. 168. I Trial Judgment, para. 168' qoss-referring Section I 1.4-7 of the Trial Judgment where these findings are discussed. :: Trial Judgment, paras. 159-166 II X"ry of Appeal, para. 1 : app.U*r,sB Brief, paras. 129-145. HD*T. Appellant's statement in introduction to his Brief (Appendix; s Brief. para. 130) are considered below under Chapter 36 Note of Appeal. p"tu"*.9 6 e9. 42 Cn-rcN o.: ICTR.01-Z+A 2 February 2009

'09 02/02 11:56 FA.X0 031705128932 ICLR @otz +681/' 2. 151' The Appellahtn exr contendsth at the Trial chamberc ommitteda numbr of errofs, which are dctaied below, io rhe assessmenor f prosecution aud Defencevidence related ro this ailegation.306 (a) Alle9edh consistenciesin Datesa ndT imesP rovidedb v prosecution W imes.res L52' The Appellant tists andh ighlights allegedi nconeistencieisn the daresa ndt imes providedb y Prosecutionw ibesses iu relation to the allegedcd orders.w He contendst hat „[i]t is absolutely unblievable that ttie chamber found on the basis of rhis evidence, thar Karera gave orders, between 7 arrills April 1rgg4t,o kill the Tirtsi and destroyt heir housesi l Nyaminrmboa nd that, consequently,b etween E and 10 April 1994, thc policemen who were guarding [his] house destroyedt he houseso f Ifuhabayea nd F6lix Dix, with the assistanco f the Interlunrwe,,.30H e suggeststh at "[t]he evidencem ust have bccn examinedi n arr offharrrrrm auuert o make the frnding that an impossiblef act hasb eenp rovenb eyonda reasonabled oubt?,.3oe ',nonies 153. The Appellut arguest hat the tes of the prosecution w itnesscsw ho testifieda bout the allegedo rder to kiII Ttrtsisw etrc" so conradictory" that the Trial Chamber , .ought t o aarnit', that they wcrc probably speakingo f different events.3loH e further submitst trat the Trial chamber erred in concludingt hat therew ere severals tageso f destructionr esulting from more than one order glven by the Appellant, deppitet he fhct that all the witnessesw ho restified about the dcstnrctiono f the houseso f Tlrtsiss tatedt hati t occurredin rmediately'aftetrh e orderh adb eeng iven.311 L54. The Prosecotioo, "rpoods that the Appellant simply lists inconsistenciesio rhe hosecution witnessese' vidence'ih'itltoutd emonstratinsgp ecificaltya ndi n a well arguedf iuulnerh ow the Trial Chamberf ailed to mbke good use of its power to assessth e evidencr.rr3l2It submitst hat the Tria] Chamberd uly consideredt he testimonieso f all the winressesi,n cluding Defencew itresses, ard recallst hat it is withirt a Trial charnber'sd isection to assessth e contradictionsin light of the cntire evidencea rrdd etermihea wihress'sc tedibility.3l3 155' The Appeals Chamberr ecalls that the task of weighing and assessingr e videncel ics, in the first place,w ith the Tria1c hamber and that it is within the Trial Chamber'sd iscretiont o assessa nv : ff app'tt-t'-s Brief. parap.1 31-lrf4. # ;l t tt g flH * : l =. : p : T lI.* i f l - f r : g li i ; (tt . u d i h : rylr,t",Gf ns; i" t . h p et ; e ; s " r * im td on ; oi i e ; fw s J i i r f a f e ;H ssBc ,T sM i U ^ B, i M ;I c 'i ,B u n ? tr,B Mr{[ndB ME. ifl effieuanbq.rd ir-- rsz< r-in"sri " *iii*rl. t'o nipett*t'rB.iJ', iard. 138. iof' nlf nctqt's^Blef, para-1 39r, eferringt o Trial Jutlgcmenpt,a ra. RespondenBt'sri et para-1 03. I 43 CaseN o.: ICTR-OI-?+A 2 Febnary 2009

02/02 '09 11:57 FAX 00317051289J2 ICTR @o rs +6+|fr inconsistenciesin tle testimony of witnessesa nd to determine whether, in light of the overall evidencct,h e wibresseas ren onethesrsc liablea ndc redible.sta 156- Tbe Appeal.'C 'lrt,b", notest hat, under Section 4-7 ofthe Triat Judgement,3ttste Trial Chamberf or:nd thati'the Interlunrwe, n Nyamirambof ollowed after Kahabayek, illed him in lthe neighbotuingc otwnuneo fl Butamwab enveen8 and 10 April [1994],a nd reportedt o Karera's policement hat the kiling had takenp lace" and that *[t]he killing was a cousequencoef Karera's ordet""3rcA s to thelutt;tlg of F6lix Dix, the Trial Chamberf ourrd rhat "it must have occurred between 8 and 15 April [1994], when the Tutsi housesw ere desFoycd" bur declined to enter a conviction ou that basis,r easonirrgrth at therew as not "sufEciente videncet o find beyoudr easonable doubt hatt he threep olicemenw erer esponsibleo f kerring F6lix Dix [sie]".317 L57. Therei s no dbubrt hatt he Trial Chamber'srmeotioonf the destuctiono f houseso f

Tutsi in this section of the Trial Judgement is a reference to its prior findings in section 4.5 of the Trial Judgement. The Trial Chamber held that "between 8 and 10 April 1994 or around these days, the policemen who guarded the area's houses destroyed the houses of Kahabaye and Dix, with the assistance of the Interahamwe." It is apparent that in making this finding, the Trial Chamber relied chiefly on 'Witness BMU's testimony'. The Trial Chamber also considered the testimonies of Witnesses BMG, BMF, BMH, BIJ, and BME, and it appears to have, found them corroborative of Witness BMU's testimony on this point. The Trial Chamber considered the differences in these testimonies as to the date of the events and did not find that these differences amounted to a conflict in the evidence. The Appeals Chamber notes that the range of dates provided by Witnesses BMG, BMF, BME, and BMH included the shortest time-frame given by Witness BMU. The Trial Chamber 'Witness specifically concluded that BMH's testimony that Karera gave the order to destroy houses between 10 and 15 April 1994 does not contradict Witness BMU's evidence that Kahabaye, and Dix's houses had been demolished by 10 April [1994] - and that the "evidence suggests that there was more than one order and several stages of destruction". The Appellant has not demonstrated that the Resgonden Butsri ef, para- 104. 'I' See Bagishenu Appeal Judgment, para. 7g, Trial Judgment, paras. 4-7. The findings of Joseph Kahabaye and E. Ex. ix), in the Trial Judgment, paras. 181-183. The Trial Judgment, paras. 84, 85. iii H. 'I' section 4-5 (c) order to kill Kuryi and destroy their houses - 'The Trial Judgment, para. 68. 'The Trial Judgment, paras. 152-166, 167. 'The Trial Judgment, paras. 159-166. The Trial Judgment, para. 166. 'The Trial Judgment, para. 166. Case No. : ICTR-01.7.1-A 2 February 2009

'09 02/02 11:58 FAX 0031705128932 ICTR @oqe w6lfr I that no reasonable inference of fact could have concluded that the evidence of Witnesses BMG, BMF, BMH, BIJ and BME was consistent as to the date of the events. 159' The Trial chamber found witness BME's testimony credible and accepted that her testimony that the events in question occurred on 10 and 15 April 1994 was given honestly. It is however concluded that [was] likely that witness Blue erred regarding the precise date of the event, in view of her traumatic situation" and the circumstances, the Trial chamber considered whether her testimony contradicted witness BMU's evidence that Kahabaye and Dix's houses had been destroyed between 10 and 15 April 1994. It concluded that witness BME's evidence that the order to destroy houses took place on 15 April 1994 did "not exclude that Kahabaye, and Dix's houses had already been demolished". 37 The Appeals chamber finds that the Appellant has demonstrated that the Trial chamber erred in making such a finding. 160' The Appeals Chamber finds no error in the Trial Chamber's finding that "between 7 and 15 April 1994, Karera gave orders to kill Tutsi and destroy their houses in Nyamirambo, at locations near his house." 34 This finding is supported by the evidence given by Witnesses BIJ, BMG, BMF, BMH, BLK and BME, which the Appellant has not successfully challenged. The Appeals chamber will address below, under Sections E, F, G, and H, the Appellant's arguments relating to the link between the killings and the charges. 161' The Appellant claims that the Trial Chamber's holding leaves open the reasonable possibility that the houses were destroyed before [he] gave the order to destroy them. 162' The Appeals Chamber notes that in its reasoning leading to the conclusion that the Appellant committed genocide based on the killing of Kahabaye, Murekezi, Ndinguruse, and Nyagatare the Trial Chamber found that they

"were killed pursuant to Karera's orders to the policemen and Interahamwe to kill Tutsis and destroy their homes, which were given between 7 and 15 April [1994]-33a On that date the Appellant's order to destroy the houses of Kahabayea and Felix Dixico demonstrated his genocidal intent. The Trial Chamber considered the alleged 11th Indageneur's statement as 5Ft6 t, t6Z 166. : final Judgment paragraph 160. : Trial Judgment paragraph 166. : It is 'I' :-: 'A T p t p i r e l l J a u n d t' g s e m e u t p, a r a- I 68. Brief, paragraph 140. 'ol 'TI4riqa l {' cement paragraph 38, Judgment paragraph 39. 45 Case No.: ICTR-01-74A ZRebvary2 @9

02/02'09 11:58 FAX 0031705128932 ICTR @o so +65lfr inconsistency between the time frame identified by some witnesses of the order and the timing of the houses' destruction. While one witness stated that the Appellant ordered the destruction of houses on 10 April 1994 another witness testified that the order was given on 15 April 1994 and two other witnesses testified that similar orders were made on or after 15 April 1994. The Trial Chamber reasoned that "[t]he evidence suggests that there was more than one order and several stages of destruction. It is accepted that the possibility that Interahamwe's and Dixico's houses had already been destroyed on 10 April 1994. The Appeals Chamber sees no error in this reasoning and finds therefore that the Appellant has not shown that no reasonable trier of fact could have reached the conclusion that the Appellant ordered the destruction of the houses on the basis of the evidence. Furthermore the Appellant has not shown that no reasonable trier of fact could have reached the conclusion that his order to destroy houses of Tutsis as well as the destruction of the houses of Kahabayea and Felix Dixico illustrates his genocidal intent. (c) Alleged Defence's denial of Defence and Prosecution witnesses 163. The Appellant further alleges, without elaboration, that the Trial Chamber failed to explain why it did not believe the Defence evidence. 333 L&. A review of the Trial Judgment reveals that the Trial Chamber took into account the totality of the evidence and discussed in detail the evidence given by both Prosecution and Defence witnesses. 334 On appeal to the Appellant's claim, the Trial Chamber explained why the evidence given by Defence witnesses did not weaken the evidence reduced by the Prosecution witnesses. 335 Witness GB confirmed that, Benelally, those who managed the roadblock attacked and looted civilians' property. 4 f4: _t_ou-only confirms that Kahabayea's house had been destroyed between 7 April 1994 and 9 April 1994. Witness K D, who said that it was demolished in the June 1994, did not observe its destruction and her account was based on information from others and is not in conformity with evidence from other witnesses. 336 The Appellant has not demonstrated, how the Trial Chamber erred in making this finding. His appeal on this point is therefore dismissed. The Appeals Chamber orders, 166. The Appellant's Brief, paragraph 142. L43, L45- The Trial Judgment, paragraph 167. : : Trial Judgment paragraph 167. " Trial Judgment paragraph 167. 46 Case No.: ICTR-01-74A 2 February 2009

so on 02/02'09 11:59 FAX 0031705128932 ICTR +6lfr (d) Alleged Shift of the Burden of proof 166. The Appellant alleges that the Trial Chamber's statement that the Defence witnesses did not weaken the Prosecution evidence is incorrect and that it erroneously shifted the burden of proof. 337 167. The Prosecution responds that the Trial Chamber did not reverse the burden of proof and that "[h]aving seen and heard the witnesses testify, the Trial Chamber could very well prefer the

02/02 '09 12:00 FAX0 031705128932 ICTR @o sz I ryzlf by those persons who were quoting him, as to why the lives and horses of some Tutsi had to be spared."g . I L73- The Appeals chamber calls its holding in the Nahimana et al. Appeal Judgment thus: "I two testimonies corroborate each other when one prima facie credible testimony is compatible with the other prima facie credible testimony. Respecting the above facts and sequence of events it is not necessary that both testimonies be identical in all their details or that they describe the same act in the same way. Every witness presents what he has seen from his own point of view at the time of the event. According to how he understood the events recounted by others. It follows that corroboration may vary so that differences between testimonies provided through credible testimony descriptions of facts in question in a way which is not perfect with the description given in another credible testimony do not prevent the Appeals Chamber from either recalling that minor inconsistencies normally occur in witness testimony without rendering it unreliable and that it is within the discretion of the Trial Chamber to evaluate such inconsistencies and to consider whether the evidence as a whole is credible, without explaining its decision in every detail." L75. While the Trial Chamber did not explicitly address this matter, the Appeals Chamber finds that the alleged inconsistency is minor, and that it is not relevant to the material facts underlying the conviction. Accordingly, the Trial Chamber's failure to address this issue does not render its reliance on the witness's statement erroneous.

L76- The Appellant next alleges that Witness BMG's testimony is "very confusing" and contradicts Witness B MF as to the time period of the orders allegedly given by the Appellant. At L77. The Appeals Chamber notes that the Trial Chamber chiefly relied on 'Witness B MF's testimony' not Witnesses BMG's, in making the finding on the Appellant's order to spare the lives of certain Tutsis-

fbi Wtiile Witness BMG's testimony suggeststhat at the order to spare Callixte's life was given sometime before 15 April 1994, Witness BMF testified that the order was given in the second half of May 1994. Concerning its conclusion that the evidence of Witness BMG corroborated that of Witness BMF "about the sparing of Callixte", the Trial Chamber reasoned that it was not clear from Witness BMG's testimony whether he personally heard the Appellant make the order, or learned about it from others solely without addressing the apparent discrepancy between the dates identified by the two witnesses as to when the Appellant ordered the barbed wire and the firing of the bullets. Brief para 4. Nahimana et al. Appeal Judgment, paras 4ZE. Likwinda et al. Appeal Judgment paras 7Z f. 1- Appellant's Brief para 148. The Trial Judgment notes that the Appellant's brief does not contain any evidence to support his claim that the order was given on 13 April 1994. Trial Judgment paras 10-12. The Trial Judgment also found that the Appellant's brief did not contain any evidence to support his claim that the order was given on 13 April 1994. Trial Judgment paras 10-12.

02/02 '0s t2:00 FAX0 031705128932 IC13 E ose 4ezlfr houseo f Callixte IGlisa be spared.W hile it would have beenp referablef or the Trial Chambert o addresss uch an aliparent discrepancy,t he Appeals Chamber does not find that this omissiou amountst o an efior iince the testimoniesa ren ot incompatible. 178. The Appcllairtf inally submitst trat'WitnessB MH's evidencem ustb e dismisssfsl incei t was "obtainedf rom otbei persoosa nd doesn ot tally with the evidenceo f the two orherw ihesses tBI\df audB MGJ."35T2 tislunsubstantiatesdu bmissionis dismisseds incet he Appetlantb asn ot explained what differeacee xist betwoent he tcstimorryo f WitnessB MH and WiraessesB MF and BMG. To the exteut that the dppellant is challenging thc hearsayn ature of Witness BMH's testimony,r he Appeals Chamberr ccalls that "hearsaye videucei s admissiblea s long as it is of probative valuc," and that a Trial Chainberh as the discretiout o cautiouslyc onsiderh earsaye videncea nd to rely on iLtts i L79' The Appealsiframber finds that the Appellant has not shownt hat rbe Trial Chambere rred in relying on WitenesiesB MF, BMH, andB MG in rcachingi ts finding on this poinr. 1E0, This sub-grorrrrnodf appeails thereford rsmitted. E. A]legd Errors reletine to the Findingq that lGhabaye was Kill€d on the Aooellsntts Ordens 181. The Trial Chdmbcr found that" pursuafitt o the Appellanr's order to kill Tutsis, Interaharnwe in Nyamirambo follqrwed,J oseph Katrabaye and killecl him ia Butamwa between 6 and IO April 1gg4.354"I \e Intaralianm" then reported the killing to rlre Appellant's policerrren.3ssp artly on rbe basis of these findiilgs, the Trial Chamber found the Appellant gutlry of ordering genocide and extermination and mtrder as crirnes against htrmanity-356 182- The Appellarrt submits that tlrc Trial Chnmber e,lred in finding that Kahabaye was killed on his orders357a nd ,ori*nd, that the Trial Chamber errcd in the assessmentto f thc evidence.s* The fi lnn"O*',s Brief,p .rra-1 48S. ecalroN oticeo f Appealp ara 101. ' Jee svDrd lrafa- Jy_ I t ia ruagi-*t, parait.g z slo. "- Tlial Judgementp, aru- I 82, :: Triat Judgemeupt,a ras.5 40,5 55,552,5Sg,5 60. ii{otoe otAppcal.paras.t 03-115; AppeDsnr'sB riof, paras.t 5&165- "- Appellant's,Brief,p aras-1 51-165-T he Appcllaatc iics paragraphs1 08-113o f thc Trial Judgeucntt o demonstrate that tbe Trial Chanber was wary of Witsress5 MU ana 'hored fu rhe *ornr that bp was lyiol:"1x" npp..fr-Orrrt i notest htrLt be Trial cI"- rber held that WitnessB MU's teft ipoay shouldb e consirlcred* iiti iutio. (*riiC be r'y n",u beeu inlluerrcedb y t' wisft to posilivcly affect.tbc -"-Tl pr6cecaingsq gainsth i- in Rwaacta)u t , "rt rry-'; ft" sftuemsnli athe APPcttant'sB rief, lha Trial Chasbtr did nit conctudc ntit tne fihcss *'s fvi"g- rriar rualura' para ll3. Thcreforc, thc Appeals Chambcr need not addrcsst he irnsuUstanti"t"aa rgg-

o"itfi"t inis fact wai rrwE pleadcdint heAmcndedlhdictuentN. oricco f Appea[para_l1 2. 49
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ihding,'WiressesB MU, BMF, andB MG, gaveh earsayc videncea ndp rovided rro direct evidencei
mplicating tho Appellant in Kahabaye'sm urder,t5eH e claims tXat the Tdal Chamber relied on
ithe "incomplete 4ccounts" of witnessesa ud particularly opposest he Triat Chamber'sa
cce,ptancoef the tes"mony of WitnessB MU in light of its prior assessmenotf this witness.3oH e
furthfi allegest har no causall ink was establishedb erweent he order and l(ahabaye's ki[ing.36l
The Appclhaf slaims that fbe Trial Clgmber failed to examinet he factual contradictions in the
witnesses'e siimonies and erroneouslym adei ts finding event hough "it hasn ot bcn proved
beyonda rcasoaaableidoubttt rat Kahabayew ask illed on l(arera's ordef,s."362 i 1E3. The
Proscuuiion responds that the Trial Chamber correctly found that Katrabaye was killed on the
Appellant's o,rders-36I3t submits that rhe Trial Chamber relied on rhe restimonies it deemed
credible and found ithar th. Appellant had given orders to the Interahamwe and policemcn.se
Further, the Frosecution points to the Trial Chamber's previous finding that the Appetlanr
exercised 'Interalnrrwe autlrority over tho and the three policemen guarding his house.365T hus,
the Proscuution concludbs that "the death of Kahabaye was undoubtedly the direct consequence
f the Aprpellanl,'so tders, ana tne Trial Chamberd id not commit any effor in this ,"gartl-"366 ! 784.
The AppealsiChambenr otes that the Triat Chamberr elied oo the testimonieso f Wiresses BMU,
BMG, and BMF in making is finding on this point-3n Wiaess BMG sratedt hat he heard that
IGhabayeh ad beenk illed in Butamw4 a location outsideN yamirambo,b ut did not know by
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JosephK ahabaye,F elix, and Vianney Hitimana-36eH e testified tbar Kahabayew as arresreda ud
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testified thtt Interahamweb oasted" to the policcmen about having killed [Kahabaye1".37Wl itness
s appcttant'sB rief, para-1 63- Seea lsoB rief in Rcply,p ara 33. * Appellant'sB ricf, para-1 52. ""
^frppellant'sB ricf, para 159.]ll Appettant'sB ricf, para.1 59. "o' Rcspondenl'sB rief, pora- I 12- rq
ncfundent's Brie4 para- I la.]l Respondeot'sB dd, para 114,c iriug Trial Judgementp, aras.5 63, 562.
ll Respondeot'Bs rief, para"1 15. ll1mat ludgcmenpEar i3t.z s-rso,t E2- lf rti*Judlc,ncnsiruatiz. z.i
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speciEci nformarioni s grvea as ro the identiry of rbc said policenrea.I t soous that lbc Trial
chanber inferred from tbe coDlc,xrrh at the peoplei n_volvcdh cre the lnlicemr:o it-aing tne
appar*tt house'W itncss BMF tesrifed that he wrs not p."seni wlren Kabbayc wrs "r e ki r l e le d
but rrmr "[t]his information'[--.] was *Interahamwes relatedt o [hin]-" He furthber statedt bat [.vc]
wero boastinga boutw bat 15oy-ft"ad one,a nd * il"y UJ no fessou to lid'. He specified fbat bc did
"not rcmenber exacrly the uame of tbc porson from whom tnel goi fUt CaseN o.: ICTR-01-74-A 2
February2 009

02/02 '09 12:02 FAX0 031705128S32 ICTR @o ss +60!fl BMU received a telephoner eport from a subordinates at the police station Karera's roadblock had killed Joseph Kahabye and Felix Dix and the families land that they also destroyed their houses, accompanied by Interhamwgt-31H2 e further testified that on the same day he personally saw the remains of the houses and noticed that "Joseph Kahabye's folks" had been killed, 373 1E5. The Appeals Chamber notes that no direct evidence supports the Trial Chamber's conclusion that the "bilateral meeting in Nyamirambo followed after Kahabye, killed him in Butamwa between 8 and 10 April [1994], and reported to Karera's police unit that the killing had taken place, 374 The Trial Chamber's finding is insufficiently clear as to how the Trial Chamber reached its conclusion. Furthermore, in finding that killing was a consequence of Karera's order, 375 the Trial Chamber omitted to specify which order it referred to and did not reveal how it established a link between the murder of Kahabye and any order given by the Appellant. 1E6. Based on the Trial Chamber's actual findings, the Appeals Chamber finds that no reasonable trier of fact could have concluded beyond a reasonable doubt that Kahabye's murder was a consequence of an order to kill Tutsis given by the Appellant. The evidence regarding the location of the crime and the identity of the perpetrators accepted by the Trial Chamber was not corroborated and, in fact, remained conflicting. Witness BMG testified that this murder occurred in Butamwa, while Witness BMU seemed to place it in Nyamirambo. Witness BMF testified that the murder had been perpetrated by Interahamwe while, according to Witness BMU, the perpetrators were the police under the Appellant's authority. The Trial Chamber itself recognized that there was "limited information concerning the specific circumstances of his death and that no witness observed the killing" 376 but entered a finding that "the killing [of Kahabye] was the consequence of Karera's order", 377 without explaining how it reached this conclusion. 187. In sum, the Appeals Chamber finds that the Trial Chamber erred in finding that Joseph Kahabye's killing was "a consequence of Karera's order". Accordingly, the Appeals Chamber grants this sub-ground of appeal and reverses the Appellant's convictions for genocide and extermination and murder as crimes against humanity based on this event. Information, but rather that the police officers in Butamwa were at this location, and they came to brief the police officers in Butamwa that they had killed". Finally, he stated that he "heard this from the Interahamwe themselves because they were reporting to the police, etc. They were doing nothing about the incident. They were talking to the policemen". T. 18 January 2006 p. 7. :: Trial Judgement, per*. 177, 182. 3D Trial Judgement, para. 379. "TdaI Judgement para. 182- 177] prior to the arrest of the Appellant. 182. The Trial Judgement para. 182- 177 Case No. 1 CIR/1-74-A 2 February 2009

02/02 '09 12:03 FAX0 031705128S32 ICTR @o so +5!lfr F. Kill Mukekezi 1E8. The Trial Chamber found that between 8 and 10 April 1994, a policeman Gtimba forced a man to kill Mukekezi, a Tutsi, at the roadblock near the Appellant's house and later boasted that he had carried out the killing following the Appellant's order. 378 It found that the testimonies of Witnesses BMU and BMG corroborated each other and were reliable despite their hearsay nature. 379 Partly on this basis, the Trial Chamber found the Appellant guilty of ordering genocide and extermination and murder as crimes against humanity. 380 LSg. The Appellant submitted that the Trial Chamber erred in finding that he had ordered Kaimba to kill Mukekezi, 381 the Appellant claims that the Trial

Chamber based its finding on "lurely circumstantial evidence" and that this finding "amounts to speculation and is, therefore, erroneous." 382 190- The Appellant claims that the testimonies of Williams and BMG, on the basis of which the Trial Chamber made this finding, are inconsistent and fail to provide a sufficient link between him and the murder. 383 The Appellant highlights that the Trial Chamber neither mentioned nor explained how it could be satisfied with conflicting evidence which it treated with caution in view of a contested fact beyond reasonable doubt. 384 191. The Prosecution responds that the Trial Chamber did not err in its finding. 385 192. The Trial Chamber relied primarily on the testimony of Witness BMG in making the impugned finding. 386 It also found that Witness BMU's evidence corroborated the evidence of BMG's evidence. 387 The Appeals Chamber has recalled above that neither testimony corroborated the other when one prima facie credible testimony is compatible with the other prima facie credible testimony regarding the same act or a sequence of linked facts and that it is not necessary that both testimonies be identical in all aspects or describe the same act in the same way. 388 It follows that corroboration may exist even when the testimonies differ on some details, provided that no credible alternative explanation is put forward. 389 192 :: Trial Judge enquired of the Appellant's Brief, paras. 6 GL73; Brief in Reply, para. 3 4- No Hearing of Appeal, para. 1 25. In the Appellant's Brief, paras. 1 18, 1 19, 1 27; Appellant's Brief, para. 1 69; Brief in Reply, para. 34- "The Brief in Reply, para. 3 4. 38J Respondent's Brief, paras. 1 18, 1 19, 1 27; Trial Judge [Fmen] paras. 1 86, 1 88-190. Trial Judge enquired of the Appellant's Brief, paras. 1 18, 1 19, 1 27. Case No.: ICTR-01-7+A 2 February 2012/19

02/02 '09 12:03 FAI 0031705128932 @osz rysalfr lestimony describesth e facts in questioni n a way which is incompariblew ith thc descriptiong iven in anothe,cr rediblet estimouy.3se L93. Contary to the Appellant's cofltention,t he evidenceo f WitncssesB MG and BMU is nor inconsistento r conflicting. The wiesses corroborateee ach other as to the fact that Mruekezi was kiUed and as to the location of his killing. Winess BMG saw policeman Kalimba force a young man to kill Murekea at the roadblock in front of the Appellant's houseb etween8 and 15 April Lgg4.xn Subsequently,K alimba boasted that rhe Appellant had ordered him "'to go and get 'Wirless Murekezi and his wfe", but that he did not fitrd the wife.3el BMU testified that betweenc7 and 10 April 1994 s subordinator eported to him over the phone that the Interalnwnwea nd the policemen who guarded the Appellant's house had killed Mruekezi and his rwo sons at the roadblock in front of the Appellant's house.3eT2h e time-framesp rovrredb y thc two wilnessesa re consi8tentT, hc Appellant has not shownh ow the Trial Chambere rredi n hnding theset estimonies coroborative. L94. The Appellant submits that the Trial Chamber relied on evidence conraining "lhree hearsays" and favoried Witress BMG without providing au explanation for why it found his evidencere Hable.39l 195. The.AppealsiChambedr ismissesth e Appellant's contcution-T he Trial Chamberc hiefly reUedo n the testimonyo f WimcssB MG who sawp olicemauK alimba force a man fo kill Murekezi- 'Witness BMG was thereforea n cyewitnesst o the killing. He was also n ctireclw, ittcrsst o Kalimba boastingt hat he had iarricd out the Alryellant'so rder'to go and get Murekezi andh is wife-.3s 196. [u any case,t he Appeals Cbamberh as alreadyr ecalled that it is for r]re appealingp arry ro de,nonstratet hat no,reasonablet ier of fact cor:Id have taken iuto accounth earsaye videncei n to Sees uDraDlg;s-1 73- 1l f*A fuage-""t, para,1

86. " Trial Judgecutp, ara-1, 86. :: Trid Judgmcng gaxa-L 87. ll" Appellants Brief, gta. L70- " Trial Judgement'p ara- 186. Wituess BMG stated that "[h]c was brought therc by Interahanwvesw ho wel€ accompnied_bay policenan who was Suafdingl the Appallant'sl housg ana wireo they got Dc,xtb 'the Appellanf sJ house't ho policemanl ed Murckezi and conpclded Hrr to lie dows, ald'rrren he orderei i'yo*g matr to fir'u", "t'i rha yorng uan relirscd l" dg :Yl L_no longcrrcmcm,bcrt lre na&e of rhat yorug man, So wlcu rnoy oung marrr efnsJ to do-so,t_h e policemanl oaded his rifle aod - in mdc r to fire - to shoota t ihe y6uog oro- So r*,ftunO o yo*t -* ** thrl, hc just took his uacbeta and kille<l Mun:kczi- Tbat was the circunstancao f Mrnckozi,sd eath.H c'nsd 6c* t Jcen from a place which wa.sfn rther away from thcre,a nd tre wasb roughtt o the roadblocl in order0 ob e killed aadl wor:tri also like to add thll' thc policeman'sl auc was ! {a]inr-ba L . atrc ou, lc boased ttrrt it was tt}e AppllanJ wto oraereJ him lo go and get Murekezi and Helen, r}at is Murekezi's wifc, Lut the policemal <lid not find Murckczi's wifa He provided this information latel. but I wss therc when he hought Mr.rckezi there at thc roadblock,"T . 9 Joorury i4x5;, 2L- CaseN o.:I CTR-01-7+A 2 February2 009

02/OZ '09 12:04 FAX0 031705128932 ICTR @o se ry+|fr re46hing a specific finding.rrs The Appellant has not done so in rhis insrancea nd thereforeh is cont'entiouth at the Trial Ctrambere rredi n retying ou hearsayt estimonyi s dismissed. 197' Finally, the Appellant reiteratesh is argumentm ade at trial that he was not cross-examiaed about his deniat or tne incident and submitst hat the Trial charnbere rredi n law by nor considering that suchu nchallengedd enial constitutest acit acceptanceo f his account.3e6 198' The Appeals'Chamberer callst hat a Trial Cbamberh asr hed issrerioua s to whethero r not to infer that statementsw hich have uot been challengedd uring cross-examinariona re true-3eI7t has already rejected the general contention that the Trial Chamber erred in not making such an tnferen'ncefr om the fact that the hosecution did not cross-ex4mineth e Appellanl3esC ontraryt o the Appellant's assertio[the absenceo f cross-examinationodno es not imply that the prosscution acceptedth e Appellant's denial of this incident,T he Appellant's argumearis dismissed. lgg. This subgroundo f appeails thereford ismissed. G. Alleed Err:ors relaths to the Finding thst the Appellant wes Involved in the Murder of Ndinsutse 2C0- The Trial Ctrrambefro und that oa 10 April Lgg4, Jean Bosco Ndingutse, a Tutsi, wdS arrestoda nd killed not far away from the Appellant's houseb y Interahafirwe andt hc policeuen who werereg uardiugt le AppeUant'sh ouse.3eTeh e Trial Chamberfo und that this kiUing wa.so neo f the kiUingsp erpetratpd P ursuantt o the Appel.lant'so rdersg trrcnt o the policcmen a.,dl nteraharmvd between7 aurd1 5 Adril 1994t o kill Tutsi memberso f ttrc population.@I n making this frnding the Trial Chamberprimarilyr elied on'WitnessB MU who testifiedt hath e sawN dingurseb einga rrested by the policemen drying the a.fternoouo f 10 April !994, about 300 metresf rom the Appellanr's house'orL ater that day, one of WitnessB MU's subordinaterse portedt o him that Ndingutseh ad bee'nk illed by the policemen andI nteralumwe.&2P artly on this basis,t he Trial Chamberf ound the Appellant guilqyo f ordering genocidea nd exterminationa ndm trder as crimesa gainslh umanify.e3 "t Seesuprapara.3g. 1Te pp.ti*r.'i nri.f, prra-I z 1. o" Sees uDraDarE:-9.]l see sap'ai:ua- 30. f l , lt * * " P jf: ; : - - * B :H :t * " ^ lt " ff _ 1 T T P .w :9 h 1 o y ,] f u fr n ^ d ,w er h t h ic e h a ur. p h o o l r ic ito c yf m th e e np - c fu rp lc c [a ra n t q e d g rb u e a c rd im e c dh , i s i t h i o s u c s r e e i n a r N f r o w y r u a r m t u h r i e r e a c s H

motn bros \$.edaruh 4TaritailtlJ,udgeucnpt,aras.1 93,1 96,5 35. f*.'f.ia Judlmert
paras.5 35,5 36,5 3g. Trial Judgemeupt,a ras:1 93-195_ -," Trid Judgenenr,p ara 193. * Trial
Judgemculp, aras.S aO 552, 560. CaseN o.: ICTR-01-74-A 2 February2 009

02/02'09 12:05 FAX0 031705128932 TCTR @o ss 4561f zot' The Appellairt submitst hat the Trial
Charrrbemr adea n effoneousf indine sincet he evidence did nor show that he orderedt he
murder of Ndingutse.e He coutendst hat the Trial chamber relied 'Wihess \$olely on the hearsayt
estimonyo f BMU, which did not provide any direct evidenceo f the Appellant's involvemeni n the
iucident leadingt o Ndingutse,sm urder.oj 2o2. The Prosecutionr espondst hat the Trial Chamberp
roperly assessthd e evidencec onccrning the muder of Ndineutse'ffi It submitst har the Triat
Chambe,wr as within its discretioni n finding i WinessB MU rredible andr elying solely on his
restimony.4T 203- The Appealsichamberf inds thatthe Trial Chambererredin finding that
Ndingutseh ad been killed pursuantt o thp Appellant's orders given between7 and 15 April 1994 to
the policemena nd Interalmwe to kill Tutsi' The Trial Chamberf ound that the killing occurred
shortly after the Appellant had giveniano rder to kill Tutsis and destroyt heir housesa nd in
aplaceneart he location where the order wasigiven.H owevet, WitaessB M{.I was the only
wituessw ho testificd about this event and the Trial,Chamberd ecidedt o considenh is testimonyw
ith caution,{Es ince he might "have been influencgd by a wish to positively affect the crimiaal
proceedings4 gainst thiml in Rwanda".ag 204- Witness BMIJ testified that he saw the policemen
guarding the Appelant,s house arrest Ndingut"*ea nd that ldter they "took two
vehicles[beloneingt o Ndiugutsel,a nrinibusa nd a peugeot 504" to the Appellaht's
compound.arHo e also testitid r}lar he was told by a suborclinateth at Ndiugutse was killed by
"Karera's policemen" and Interahantwe.alrT he Appeals Chamberf inds that no reasonablctr ipr of
fact could havea ccqrtdet,h is witness'\$u ncorroboratedh earsayt estimouy that the
policemenw ,hok illed Ndiagutsew ere the policemenw ho guardedt.h e Appellant's house.
Furthermore,t ro reasonabet rier of fact cor:Id have concludedo n the basis of that
circumsrautial evidencet hat the only reasonablein ference€ was ttrat Nclingutseh ad been killed
pursua't to the Appellant'so rderst o kill Tutsis. 205- In sum, the Appeals Cbamberf inds that the
Trial Chaorbere rred in fact in finding that Ndingutse had been killed pr.rsuantt o the Appellant's
order. Accordingly, the Appeals Chamber grants thjs sub'ground of aPpeal and revcrses the
Appcllant's convictions for genocide and exterminatioorra ndm urder a.s.c rimesa gainstf
uumpnibbr a.sedo n this everrt f*i IqUg: o! Aqpeal,p ara-1 31: Apt 6llanr'sB rief. para-l Z9_ Brief i!
Reply,p aro.3 {; Appellaat,sB licf, para. U6. * Respondcnt'sB fief, pora- 120, *'para- Rcspnitenr'sB
rief, L2\ ciring jvifregekt Appcd^Judgeorent,p ara. L1L, Sce also Muhimana appd \$t99]:gt,tT:1^01,
trT.r:s ela Agw,niudsemepnat,* e2;G actimsi xpir*t ruogu-,q pam*72. ;'frial Judgemenf,p ura-r l
1J, * Trial Judgenent para 113. CascN o.: ICTR-01-7+A 2 February2 009

02/02 '09 12:06 FAX0 031705128932 ICTR @o oo +55lfr E Allee€d Errorrs nelatins to the Killfug of
Nyagatare on the Aopellantrs Ord.rs 206' The Trial chanber found that a Tutsi man naned Palarin
Nyagatare was killed at a roadblock by policeinanK alimba on} April 199{ ard that this followed
rhe Appellant,so rderst o kill Tutsis in Nyaroimmbu-auP artly on tbis basis,t he Trial chamber
found the Appellant guilty for ordering gerrocidea id exterminationa ndm urdera s crimesa
gainsth humanity.al3 207. The Appellat submits ttrat the Trial Chamber erred irr fact in fiudiug

02/02 '09 12:08 FAI 0031705128932 ICTR @o or 45cfr her that he (Katimba) had ordered Nyagatare's execution. A witness BMH stated that Nyagatare was killed by a group which included Interahamwe and the Appellant's police men.⁴⁰ Witness BMI further testified that Kalimata subsequently told the assailants that Nyagatare's house was a spare for his children, stating they just killed their father.⁴⁶ Witnesses 210. In assessing the testimonies of BMF and BMH on this point, the Trial Chamber noted: 'The testimony of the testis' relatives as consistent in relation to the time, location and participants. They both testified that Palatin [Nyegatare] was killed on 24 April and heard Kalimata directing to bring in the killing. The Chamber recalls that the witnesses were personally acquainted with Ksimbirinda that Witness BMF's account is potent, ...'.¹ It is also clear that Palatin was killed at a mad block in the area[...]'.²¹¹ The Appeals Chamber recalls that a person in a position of authority may incur responsibility for ordering another person to commit an offence if the person who received the orders subsequently commits the offence. Responsibility is also incurred when an individual in a position of authority orders an 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 committed by the person who received the order. A notion of formal superior-subordinate relationship between the accused and the

perpetratoris ,required; i t is sufficieut that there is proof of some position of authoriryo n the part of the accuqedth at worrld compelt he perpeuotort o commit a crimc purstutntl o the accu\$cd'6 order.49 212. The Appeals iChambcr notes that, contrary to the Appellant's contetrtiotr, the Prosecution was not compelled tci prove that the Appellant gave the specific order to kill Nyagatare. However, the Appoals Chamber is not satisfied, in the circutttrstances of the case, that the elements of the mode of resporrsibility of ordering were established beyond reasonable doubt" Vhile the evidence demonstrates that Kalimba was involved in the mr.uder of Nyagatare, a relatively long tirne lapsed between the Appellaut's general order co kill Tutsis and the killing of Nyagatare, and no clear link has been established between the order and tlre evidence relating to the murder. The Appeals Chamber finds therefore that no reasonable tier of fact could have for:nd that rhe only reasonable conclusion available from the circumstanrial hearsay evidence of Wirnesses BMF and BMH was that Nyagatare was tiUeo as a result of the Appellant's gncral order ro kill Tutsis in Nyamirambo. 423 T. l8 Januar12 006p - 3l; Trial Judgementpgr rr 200- 'l- Trial Judgeoentp, ara-'201- * Ttial ludgemeuqp ara-'201- : ftial Judgencnt,p lra'201 ' ! ,lahima'na e tal-AugeiilJ.udgenr:ntp, ara-4 tl_.,geaet soG atii Appal ludg-ernengp ara l?61N tagerznaeta L .A, ppeal Judgemat, para-3 65: Kordii and eerkezAppealJ udgementp, aoas2. E, ZS- 57 CaseN o:-I CTR-01-7+A ZFcb'ruaqr 2@9

02/02 '09 12:07 FAI 0031705128932 ICTR @oez +filn 213. Accordinglyj tUis sub-ground of appeal is grhnted. I. 214. The Appeals Chamber grants the Ground of Appeal io part and reverses the Appellant's convictions for ondering and extcrmination and murder as srimes against humanity, basedo u the allegedm ruderso f Ndin gutsc, and Nyagatale. llryl. O*1._rrrla bo GaticAppcaJl udgenengp aras.152, 157; Kordi(aad S.-f' "*" App-! Jud gencngp ara.3 q B laikif Appl ludjcurencq para4- L temazza Appeaf JudgLTrcnl pars- 361. I I 5t CascNo.:I CIROI-74A 2February2 009

02/02 '09 12:08 FAX 0031705128932 ICTR @o se ryszff, vii- ALLEGED ERRORSR ELAIING TO Tr{r' KILLING oF TUTSISI N |TARAIVrA(GROU\D OFAPPEAL 6) 275' The Trial cdauber found that at a meeting at Ntarama sectoro ffice on 14 April 199d tlrc Appellant promisedito provide security by bringing sold.iersr o protecr the refugees.coI r further found that on 15 APIil L994, the Appellant eucourageda group of Interahamwe arrds oldiers to attack the refugeesb t the Ntarama Church instead of providing the security he had promised.atr Severalh undredT utbis were killed during the attack.a3B2a sedo n thesef indings, the Trial Chamber found that' the Appellant "substauti.allyc ontribured"t o the artack and thus insrigatedg enrride.ass Additionally, the Trial Chamberf ound that the Appellaat was presentd uring the attack and that he participaredi n it by shooting, thus committing genocide.e Based on rhese f indings, the Trial Chambera lso found,that the Appellant instigateda nd comsritted exterminationa s a crimc against humaaity,a3asn di nsfgarcd murder a s a criue againsth umanity.ar 216- The Appellant challengest hesof iadings and contendst hat the Trial Chamberc om.rnitred el3onlo f fact audl a1 rn reachingt hem.sTH e submitst hat the Trial Chambere rredi n its asscssment of the evidencea nd that it shouldh avef ound that the allegationt hat he was presenta ndp anticipated in the attack at ttre Ntatama Chr:rchw as "pure fabrication".4s The Appellant claims that the Triat Cbanber's f:adings 4re "unreasonable"a3agn d tha q at the very least,t here is reasonabled oubt as to his participationi u tts attackm The Prosecutionr espondst hat this ground of ap'eal has no morit and shouldb e

sumoirily dismissed.att he AppealsC hamberw ill considert he Appellant,ss pecific contenti.onsin
tunr.#z a- Alleeed Errors in the Assesomenot f prosscution Evidouce 2L7- The Appellani submitst
hat the Trial Chambere rred in relying ou witnessesw ho lid.#3 He also submitst hat theitriaf
Chambers rredb y admittingt estimonieso f Prosecutionw itnessesw ho .i ili f;rt Jud.gsmentp,
nas.24f-l}.4- " Trial Judgemcutp, aras.2 9%315. -l Tiial Juagcurentp, ara i3t 5 ;: Trial Judgemengp
arasr5 41-544. * Trial Judgementp, ara*\$ 43. '.: Tti"I Judgenrcorp, arast5 54, 557- "l Trial
Judgeucnt,p ara-p 60, ;].l Nod* of Appe4 para*. 141 -f 29; Appellanf s Briof, paras.I g5_225.
Appella*'s Briet, pams.1 88-225s, p-p ara 211. *,Appellant's Brief, porai 191. * Appcllfit's Brid,
paral2t 1. *j Respondcnr'sB rief, pa+a"L 27. t' 43 The App.llant's coulcdtiont hat his aljibi raiseda .r
casonabled oubt wiII be consiitcredb elow in chapter Di eppaiant's Bric! parar1 91. 59 CaseNo.:I
CTR-Ot-7+A 2 February2 009

'09 02/02 12:08 FAI 0031705128932 ICTR @oaa, ; +5t\fr I 444 colluded amongst himself o
implicate him: and that the inconsistencies in the evidence, if true, would implicate the Prosecution witnesses as
reasonable doubt as to his involvement in the attack on the Ntarama Church on 15 April 1994.⁴⁴⁵
1. Alleged Facts Relating to Prosecution Witnesses Who Lied 'Witnesses 2L8' The Appellant's "guilt",
that Prosecution BMI and BMK lied and that the Trial Chamber relied on explaining or accepting in
consistency with their testimonies. (a) Witness BMI in zLg. Witness BMI testified that on 15 April
1994, the Appellant, in the company of soldiers, gendarmes, and Interahamweas, attacked the
Ntarama Church. Further, the witness described the Appellant as a "commander" who directed the
attack. The Trial Chamber accepted Witness BMI's evidence as to the Appellant's involvement
in the attack on the Ntarama Church. The Trial Chamber considered that there were
similarities between Witness BMI's account of the events and the accounts of the three other
Prosecution Witnesses BML, BML, and BMK who testified about this attack. ff : 220. The Appellant
contends that Witness BMI used false claims that the Trial Chamber provided an explanation for
or Witness BMI's "lies" without any basis in the evidence. 221- The Prosecution responds that
even if the Trial Chamber did find that it had not been proved beyond reasonable doubt that
testified by Witness BMI, the Appellant issued, on 9 April 1994, an order to kill Tutsis and loot their
property, the Trial Chamber has discretion to accept other aspects of the witness's evidence. 223
222. The Appellant argues that the Trial Chamber did not believe Witness BMI when he testified
that at a meeting in Gatoro Cell on 9 April 1994, the Appellant ordered the killing of Tutsis and
the looting of their property. On this regard, the Trial Chamber stated that "Witness BMI was
not clear" in testimony not only to the alleged meeting in April 1994 but also to an event further
Lg 2 *I Appelbm's Brief, para. 200 OS. Arundelart's Brief, para 209; l T, ?9 August 2002 pp.2 5, 2 6.T
hoAppellants' submissions are inconsistent with the evidence. # the consistency of the photographs
of the Interahamweas' brief, para. 20g. Appellant's Brief id par. i Sg, 1 96199. ; * Irl
Ind_gcreng paras. 269-274, summarizing Witness BMI's testimony. *e Trial Judgment Da\$-272
Trials diurnal, * bos. fl frin r"asemenidqn Qg+- 'rr Appellant's Brief, para 196. [l] lpfr"tt*t's!
[ef, para 198, referring to Trial Judgment, para-2 29. "Response of s Brief, para, 129. 6a
Appellant's Brief, para 19e; Corrigendum to the Appellant's Brief, para-Z _ : 60 Case No.: ICTR-
01-7, Lh, 2 February 2009 si \r-r.(

02/02'09 L2:09 FA.X0 031705128932 ICIR B oss +50lfl and rhat his "testimdnly also raised other issues".45T5h e Tria] Chambers tatedt hat even if someo f the discrepanciesin Iris testimony could be ascribedt o the fact that he was not accustomedto court proceedingsa nd thaf he had communicationp roble,ms,#6th e witness's seemingc onfi:sion of rwo different meetingsr emainerja matter of coucern.6?T he Trial Cbambert ook into accountt he lack of corroboratinge videricea nd concludedt hat the allegationr elating to the rneetingi n Gatoro cellul.e hadn ot beeup rovedb eyondr easonabldeo ubt.a5fl 223- The Trial Chamber'sr easoningd oesn ot suggeststhat it found WiuressB MI to be dishonest or to otherwise lack credibility. Rather, it suggestst hat the Trial Chamber consideredt hat rbE substanceo f the witness's evidence,p articularly sinceh e was the only wimesst o testify aboutt he allegedm eetingi n Gatoro cellIuJe,d id not supporta finding beyondr easonabled oubt in relatiorr to this allegatiou.T his Fndiog did aot precludet he Trial Chamberf rom consideringa nd relying oa 'Witress BMI's eviddncei n relarion to other allegations-A s alreadyr ecallet it is trot unreasonable for a Trial Chsmb"ir to accept some parts of a wi0aess'st estimony while rejecting ott..rs.4se Conuequentlyt,h e Aplrlrant's argumentis rejected. 224. The Appell4ut fi:rthcr argues that there is a discrepatrcyb etween Witness BMI's prior statemento f 4 Mayi 2001460a nd his testimony at trial in reJationt o the br:rning doun of his htruse.#IT he AppealsC harnbeqr otest haut he evidencea t trial wsst hat the wiuress discovercdth ar 2 his house was burned down on 14 April t9g4 The witncss's prior statemento f 4 May 2001 indicates that his house was burned down on 8 April 1994.463T he Appellanr also arguest hat 'Witness BMI denied meetinga member of the Prosecutionr ,eama fter 18 January 2ffi,yet the Prosecutiou'sw ill-say statementsin dicatc that the wiress informed the hosecution on 23 Januar;r 2006 and 26 January2 006 that there were errors in his wriEen statement.@A review of the fsansgriptsin dicatet hat, under cross-examinationlh, e wifiresst ostified that he arrived in Arushao u 16 January2 006 and met thc Prosecutiono n 18 January2 006 aud that he did not meet with the Prosecutiono n23 o126 January2 0A6J6 225- Having observedW itness BMI in court, the Trial Chamberc onsideredt hat the wiress was not accustomedt o'court pmceedings and had prproblemssc ommunicating and that some jl rtia Judgemengp ara-|2}B. I fria hrdgcucnl pan'nZS. *' Trid Judscmenl' o1aanta 2a2.292-9,23o. 11!f i't Jud!,eorent, "t' Sees uprapara-8 8, f*;' A e p p p p c e lla ti" n " t t ' - s s P B t r F i e f - f , . p p * a ra- 1 1 9 9 7 7 , - r cfering to Exhibit D19 ccrntainingW itnessB MI's staremenot f 4 May 2001- j fii-ar tuagr-*t p;,ms.2 27, %n - q'ExhibitDlga- * SeeExhibilsD 20, D2l: 6 T. 3t January2 CfrSp. 2. 6l CaseNo.:I CTR-OI{4-A 2 Febrnrar2 009 \tr{

02/OZ '09 12:10 FAI 0031705128932 ICTR @o os +4qfi inconsistenciesc ould be attributedt.o this.6 The Trial Charnbere xpresslyt rotedt he inconsistencies relating to the date Wimess BMI's housc was buroed down and tbe dare when he met with the Prosecutionp rior tq his testimo\ y.467T he Appeals chamber recalls that it fall5 qfthin the Trial Chamber's discretion to determinirrew hether an inconsistencyi s sufEcient to cast doubt on a witness's credibiliry!#8 The Atr4r1lant's argumentsf ail ro show thar the Triar chamber erred in assessiuwg itnessB MI's credibilifya ndi n relying on his evidence. I 226- Wiuress BMK restified that, on 14 Alril lgg4, he attendeda meeting chaired by rhe Appellant at the Nt4rama sector office.@ H"lsat"o that rhe Appellant openedt he meering by announcingt he dcath of the PresideotjToT he witness also statedt hat the Appellanr addrossedth e Tutsis at the meeting arrd claimed that they were ihe onesw ho kiled the presidem

a r nd tfrat they were "going to pay tbr that"jTt Witncss BMK further tesrifed that, on 15 April L994, the Appellaug in the companyo f Interaturwe ands oldiers,a rrived itr Ntaramas ectoro n boardclo ne of six buses-a?H2e stated that the afiaclcer\$,n cluding the Appellan! emergedf rom the buses arrd startcdt o shoota t thd refugeesa?w3h o werei n rhe vicinity of the NtaramaC hgrcb,t he sectoro ffrce, and the school.aTo 227- The Trial Cn4*Uo found that it had not beene stablishedb eyondr easonabled oubt that the Ap'pellanth reatene.d.futrsei fugeesin a meetiuga t the Nhrama sectro fffice on 14A pri1 !gg4.s5 It 'ould reasonedt hat a threat of this nafire be of a dramatiec harabtera nd rrot easyt o forget" and. that it was "signifirtt" thot only one of the rhreeP rosecutionw itnessesw ho testified about this meeting, Witne.ssB I\4K,{?6m entionedt his threath.oTTT :neT rial Chamberf ound neverthelessn, o basist o concludetb at WitnessB MK licd.a78 228. The Appellant contendsr hat WitressB MK lied and "Eied to implicate thiml falsely"i n the eventsa t the NtaramaC ll:rch.41eI n this rcgard,h e claims ttnt tie witnessa lso falsely restifiedt hat f ttiat Judgementp, ua.'?29- : lj Trial Judgeeant,p arz^1 229f,n - 288- w SerombaA uDeaIf udgemcur, para- 115, referriug to^fungaruta Apryul Judgemenq pta_ 443;M usemaAppcal JHdeTT,,p"ti. tg; irt"uw lppeat tua!*t*t, purL +n; Krrirume Appeal Judgcrrenl para. 156. :: Trid Judgenentp, ara'237. "tar. :j: Trid Judgcmenpl,a ra,238. Triol Judgcrnenpt are.p38- ::: :*": Trtsl Judgcoent, paxs-i262. Trial Judgmeug para-263. Trial Jrxlgenenqp an-262- :: " Trial Judgeoent,p ara-,253. '.j See Trial JudgemtnI para.? 5.3. ljl Trial Judgened,p ara.2 53. :l: Trial Judgemcnrp, *" boz. "" Alpellanf s Brisf, par.r:1 99- CssuNo-I:C TR-01-7+A 2February 2009 Y-d4- I '09 02/02 12:11 FAI 0031705128932 ICTR @oez ++8ln 'thrqatened the Appellant thousandso f Tutsis" at a meeting the clay before thc artack on the NtararnaC hr:rc1r-4o, 229' The Prosecutionr espondst hat everri f the Trial chamber found that ir had nor beenp roven beyond reanouablct toubt that the Appellant threatenedT utsi reflrgees,i t did not couclude that WinessB MK's entieree videncew asn ot credible.arl 230- The Appeats'Cha-mbecro nsiderst hat the fact that the Trial Chamberd id not rely on this witness's testimonyl aboutt he Appellant tbreatheningT utsis at this meeting doesn ot ,oean that his testimonya boutt he Appollant's involvomenti fl the attacka r the Ntara4a Churcho n 15 April 1994 Iackedc redibility. As stateda bove,i t is not unreasonablefo r a Trial chamber ro accepts ome p arts of a witness's testirnonyw hile rejecting others,42C onsequenflyr,h o Appellant has failed to show 'witness that the Trial chamber erredi u rclyng in part on BMK's evidence. 2. 231- The Appellant submits that the Trial Cha:nber erred in law by grtmining, withour corroboratign"t he testimonies of ProsecutionW itnessesB ML, BMJ, BlvIIq and BMI, despite having fottud implicitly that it was likely that there was coUusiona mong rhem.s3H c assertst hat these wiresses colluded to implicate him.f8aT he Appellanr arguest hat there we,rcd erails in the witnesses't estimonicst hu they would notihave rememberedw ithout discussingt hom with each other' particularly siuce they testified to af, eveut which had occrrrrredt twelve yearsc arlier.*t Th" Appellant \$tatest hatiall fou wifircssesr esiifiedt hat, on 15 Apfil 1gg4,b usesw irh soldiersa nd Interahamwea rrived in Ntarama and that the Appellant atighted from the secoudb us carrying a long rifle and wearirig a long coat.46H e submitst hat Winesses BML and BlvLJw ere interviewed on the samed ay andratt he samel ocation, 1 ud t hat.ona nothero ccasion'WihesseBsM I and BMK were also interviewedo n the sa.aed ay and ratt he samel ocation-#7T hc Appellant also claims that WitnessesB MI and'B ML made similar

l'corrections"t o their statementsa, s well 4s simil* 'txistakes",ott *d that there were shiking similarities in the descriptionst hey provided.aeeH e arguest hat the discrpancyi n th'e testirnionieso f the four witresses with regard to their ..mutual 2E. Ausus2t 00Si. zO- -a'8R1c ^s--p oncle, nt's. *B ri-c':f , para. , L : 2 ^ 9. -----l e See-n/praparaE_E . lt3 nppeUanG Bricf. paras.z e},224. *Appe[ffiL's Brief, paras2- 04.2 05. * Alryellant's Brid par;L2 .02. '* Appcllant'sB rief, parz-2U2. "" Appellant'sB rief, para.1 95. ttt A'fpel]aor's Bnet;q!2gl- The Appcllaat ctaims tbat both wituessesin itially sitlted that Bizimaaa wss a school 4 {^ e r ecor aadl ater changed'thcirs tatenenGr c say thal he was l,prison airector- appctl*t's Brief, p-or Zm, 53 CaseNo.I:C TR-01-74A 2Fbruary2 009 FrL

02/02 '09 12:11 FAI 0031705128932 ICTR @o oe ++iln 'nsuspicious" acquaintancesi's a.nda ssertst
 hat Witness BMI admitted that they all stayedi n the same wihess protection house while in
 Anrsha and even shared their meals.o9To h" Appellant submits that the only rational conclusion
 hat could be rlrwn from this is that rhe witrressesh ad discussedth e events'andt hat their
 attemptt o deny this fact shouldh ave urged.r heT rial Chambert o dismisst heir testimoniesin
 their entirery.4l 232. The Appellant also submits that paiaographs 250 atd 307 of the Trial
 Judgemeutc ontairr conbadictory fuidings.ae' He arguos ttrat io no"guph 250 of the Trial
 Jud,gemen!t he Trial Chamberd id not exiluOe that therem ight hfve beenc ollusioa, while in
 paragraph3 D7 ofthe Trial Judgoment,t he Triql Chamber found no for rhe Defence conrgntion
 that rhe wihesses ibasis discussedth e eventsb cforet estifying.ae3 I 233. The Prosecutionr
 eslrcrndsth at the Trial Chambcrp roperly dismissee{ as "uufounded,,,t ho Appell.aot'sa lligation of
 collusion.aeaIt submits that rhe Appellant's arguents do not show an error otr the part of the
 Trial Chamberasa nd arguest hat the fact that there were similarities in the dcscriptionso f the
 eventsb y WimessesB MK, BMJ, BML, and BMI doesn ot in itself amountr o collusion.aff 234. The
 Appeals Chambern otes that collusion can be defined as afl agreemetrqu sually secret, between
 wo or mofe personsf or a fraudulent,u nlawful, or deceiffirl purpose.onI f an agreement between
 witnesses ifor the purpose of untnrthfirlly incriminating an accused were indeed establishedt"h
 eir evidencew ould have to bc excludedp usuant to'Rr:Ie 95 of the Rules.4s I-u thE present
 instance, thb Trial Chamber rejectd the possibiliry of collusion berweeu the for:r -tl eppetorr's
 Brief, pafti. 203. *'Applbnes Brief, pard.Z 0+. '* Noticao f app"rt, pares.1 69.1 70. "]'Notice of
 Appcal,p aras.1 69,1 70- 'l Respondent'Bs rief, p+ss- 132"137. aei Rcsinndent'sB def, iara- t32. "**
 Respondent'Bsr icf, para 133. '[te "" Appesls chamber notest hst Bleck's Law Dictionary, 6P Edition
 definesc ollusion as "[a]n ageemc't between ts'o or tDoreP crsonst o deflrud €. Pcf,sono f his rights
 by the forqrs of law, or to obraitra n ob-juenctta tdnU'nArfa co by law. It implias lbs existnceo f
 fraud of sosre kiud, the enlioymont of fraudulent means, or of -*, for the AggonplisbEc ot of an
 unlavfirl pr.apose", 1t8 Rule 95 of the Rules statos:" No evidoces hall bo admissibleif obtainedt ry
 methodsc hich cflsts ubshntial doubt on its rcliabili9 or if its udmissioni s antitbcticsl g, Td would
 seriopsly aryegr. the integnrty of rhe proceeOia_g_s, , See, also, mutatism utandis,N ahimanae t aL
 whqe the AppealsC hanber disnissed tne tcsGony of a uitncss insifar as ii was not corroboratedb y
 other atxliblo evidencg lraviug found that cvelr if tle eyidnccew as ..insufEcicut t " ooUfitr, with
 certaintyt bal lthis Ttness] wss paid for bis t.sti**y rgainst lthe accused]i,t [was]n onethelessc
 mJt , 'i ;;;; this possibility' which undegirbty castsd oubt on ttre crertiuitiy of tiris witness.:'rt UI""

rulea that .:if rbc Trial Chamber had beesa waroo f the fact that thc proseculor's i nvestigatorq uestionedtl re wibess' moral characters, uspcctingh im qf having beeui nvolvecli n qhe _ subcnation o f oderer witnesscsa nd of being preparcdt o tesdfy in retum for uronly _ tne Triat Chambcr would have bcta bound to find that thscs maEersc asii*6* doubt on [rhic wiuess'sl oediUifity. Hence,l ikrc any reasonabletr icr of fa"q it would hgvo disrcgardedh is testimouy,o r at leasti orill bavo,q,rir"d thutit be corroborafdb y other cndible evidence,"N ahimanae t aL ltppealJ udgeuenr,p ara 545- I CaseNo.I:C TR-0I-74A 2Februnry2 009

02/02 '09 12:12 FAI 00q1705128932 ICTR @o os +46lfr Prosecutionw itnessest esrifying about the events is Ntarama.oeTt h" Trial Chamberh eld that ir could not "exclude lhat the witnessesm ay have discussedt he events of L994,i n spite of [theirJ general denials of Ulling dotre so".S@It took into accormtt hat two of the wiesses gavn their respectives tatementdto investigatorso n the sarned ay at thc samep lace aud that the orhert wo gave their statementso n dnotherd ay at the samel ocatioo.solI t also consideredt hat all four witnesses lived in the samea reh,t ravelled togethert o Anrshai n connectionw ith the rrial, aud had their meals together in the safc ihouse- s2H o*"rrur, the Trial. Chamberr easonedt hat the differencesi n the testimonieso f the fohr winressesd id not supportt he allegation of collusionso3a nd concludedt hat there was no basis ito nnd that they colluded to untruthfirly implicate the Appellants@ The Appellant hasf ailed to show thar the TrialC hambere rredi n reachingt his conclusion, i 'Ine 235. Furr}rermore, appears Chamberi s not convincedb y the Appellant's claim that the Trial Chamberc ontradictedit self at paragraphs2 50 and 307 of the Trial ludgemenLT he Triat Chamber consistenflys tatedin iboth parapraghtsh at it did not excludct he possibilityt hat the witnessesm ay havej ointly discussortth e eventso f L994b ut that there was insuffi.cientb asist o concludet hat they colluded amongstt hemselvesin order to unruthfirly implicate rhe Appellaul Consequently,r he Appellant's argumen{is rejected- i3- AlleedI nconsistencieins rhek oseuctionE vidence 236. The Appellant contendst hat the inconsistencicsin the evidenceo f WitnessesB MK BML, BMI, and BMJ raise h reasonableoubt as to his allegedi nvovementi n the anacko u the Ntarama Church on 15 April i Lgg450as nd that the Trial Chamber down-playedt hese inconsistenciesb y finding explauations i f or ttrem-506H e also suggestst hat the forensic leporfF tenderedb y the Prosecutiorra s well ft" Tlial Chamber'so bsenrationsd ruig its site visit are inconsistentw ith 1u the evidenceo f the PJosecutionw ihesses.soA* Iso in this regarrdh, e claims that ProsecutiouW imess BME testified that th; Appellant was not presenti n Ntaro-a in the morning of 15 Aprif t994,bvt tather that he was iniNyamir:robo.5oHe e also contendsth at rhe site visit showed,w ith respectt o i ::i'rffilr. T Tti"I Judgementp alf.l 25-0-S. eea \o-Trial Judgemengp afs. 308 ("[als observedp reyiously,i r ca- onobt e excluded that -thc w itesses may baye discusscdt he eveffs of 1994,e itba prviously or in connecrioaw in mveUing to anrsha g: taking their mestst ogclrtreer."). rw Trial Judgcrlenpl ara.'250 J T rrial Judgemenrp, ara-p ,50- T ruot Judlernenr,1"r".b so. fsl mat ludgonenqb ara bot. appurai-rl Bry! pfi". lot.The Appellant assenst hat ne Triirt chanbsr elamined txese inconsisteucies a t p^aragraph2s9 3 to 303 of qheT rial Judgcmenl JI Noticc of Appeadp arai. t50, t6z_ 'u' Ilfihibit P30- ; JI l eppeUant'sB ricf, p*"s. +l,ZVt.)uY Appellcnt'sB rief,p nrni? -lo, CaseNo:-I CTR}I-7+A 2February2(W

09 02/02 12:13 FAX0 03170512E932 ICTR @ozo ++51fr "that Ntaram4 it was impossible to see the school from the rear of the c5'rch was more damaged than 1\$ ftonf'.510 The Appellant submits that this „could mean that the attackers came from the hill rather than from the road".511 The Appellant further contends that since "the doors of NATRACOM buses opened to the right and not to the left, as asserted by the witnesses suspected of collusion - if the buses were coming from Kigali, the prosecution witnesses who testified on the circumstances of the attack could not have seen the people who were alighting from them.512 237 - The prosecution," responds that the differences and variations in the testimonies of these witnesses can be reasonably explained.513 It submits that the Appellant has not demonstrated that there are no reasonable explanations to justify these discrepancies and variations.514 238- The Appeals Chamber recalls that a Trial Chamber, as the primary tier of fact, has the responsibility to consider inconsistencies that may arise among the testimonies of witnesses.515 In undermining this responsibility, the Trial Chamber is required to consider any explanations offered for these inconsistencies when weighing the probative value of the evidence.516 In the present case the Appellant does not specify any of the alleged inconsistencies, but refers generally to paragraphs 293 to 303 of the Trial Judgement where, he notes, the Trial chamber examined the inconsistencies.517 The Trial Chamber held that the former Prosecution witnesses described the attack similarly in terms of location, time, attackers, mode of transport, and the Appellant's presence.518 It considered that these were variations in the evidence in relation to the Appellant allegedly addressing the attackers, but held that these variations did not affect the credibility of the witnesses.519 The Trial Chamber reasoned that these witnesses may not have heard some parts of the Appellant's "alleged statement because their positions were different" and also because "their memories may vary due to the lapse of time since the event".520 The Appeals Chamber accepts that different people may see and hear things differently from different vantage points.521 Consequently, the Appeals Chamber is not satisfied that the Appellant has demonstrated that the Trial Chamber's finding is unreasonable.522 In the Appellant's Brief, para.4 3- ""Appellant's Brief, para.44 3. li Appellant's Brief, para.4 3. ""Respondent's Brief, para.1 35. i: Simba Appeal Judgment! para.I 03. "" Muhimana Appeal Judgment, para.5 E; Nyiritegezi Appeal Judgment, para_9 6_ It? Appellant's Brief, para.209. :: Trial Judgment, para-294- :: Trial Judgment, para-295- :*:^: Trial Judgment! para 295. See Gacumbizi Appeal Judgment, para-8 e referring to Nyiritegezi Appeal Judgment! para t+2. Case No.,: ICTR/01-7+A 2 February 2 @

' .. ::). '05 02/02 L2:14 FAI 0031705128932 ICTR @ozt ; +++/fr I 239. With regard to the Appellant's contention that it was impossible to see the Ntarana school from the Ntarama Church, the Appeals Chamber notes that the Appellant is merely reiterating an argument which he already presented at trial and which was fully addressed in the Trial Judgment. The Defence challenged BMK's testimony, who stated that, from his vantage point, somewhere in the nailley, below the Ntarama school, he saw the Appellant attacking the Ntarama Church on the morning of 15 April 1994. The Trial Chamber, in assessing the credibility of Witness BMK considered the evidence of Defence Witnesses 7-AC and N (Z) to the effect that it was impossible to see the school from the church because the trees and banana plantations were blocking the

viw.sB The Trial Chamber concluded that Witness BMK was credible on this point. In reaching this conclusion, the Trial Chamber took into account the following elements: Witness AC was not in a position to assess the visibility conditions; Witness BMK who, "as a 'considerable distance from the school, towards the church', stated that while there was an eucalyptus forest nearby, at this location the land was free of vegetation." The Appeals Chamber finds that the Appellant has failed to show how the Trial Chamber erred in its assessment of Witness BMK's testimony on this point. The Appeals Chamber refers to the finding of the Trial Chamber and notes that it legitimately exercised its discretion in determining which version of the events relating to the attack on the Ntarama Church was credible. ss 240' With respect to his argument that the forensic report tendered as a Prosecution exhibit is inconsistent with other Prosecution evidence in relation to the attack on the Ntarama Church, ss 26th the Appellant asserts that the forensic report indicates that the weapons found at the site were a machete, a knife, several clubs, one lance, and one broken arrow; that the assault took place through holes made below the windows with the massacre taking place in the middle of the Church; and that most of the victims were killed with machete or blows to the head. ss 27th the Appellant also states that it is evident from the site visit and the photographs in the forensic report that the attacker entered the Church through the front" which faced the hill. ss 28th he claims that this scenario is in conformity with the Defence evidence that the attack commenced on Kinkori Hill and that the Tutsis were chased to the Ntarama Church, and that it is inconsistent with the prosecution's evidence that the attackers arrived at the Church in buses, ss 9 Z'ugust 2006 p. 15. : Tdal Judeempt. oara- 305- :: Triat ludlenenr, i ara- pos. * , Secs uoraosra! O- . fl eppetiant' Bs ri.f, puas. t 9/Z-1'94, zm, Z}g. llj appaU"r's Brief, para 194. appellant's Brief, pui ZVl. It]4i nprnllant's Brief, para. Z OI. 67 Case No.: ICTR-01-7ZLA 2 February 2009 Y4r 'l

'09 02/02 L2:15 FAR 0031705128932 ICTR @otz +\$|fr 24t. The Prosecution responds that the forensic report is not conclusive regarding the weapons that were used by the attackers. ss 242- The Trial Chamber is primarily responsible for assessing and weighing evidence presented at trial and it is incumbent on the Trial Chamber to take an approach that considers most appropriate in this regard. ss 53hl Presently, the Trial Chamber had the discretion to consider the forensic report in its assessment of the totality of the evidence. While the Trial Chamber acknowledged the existence of the forensic reports, it only referred to it in relation to its finding that, at Ntarama, a large number of refugees were killed. ss Although certain evidence may not have been required, to by a Trial Chamber, in the particular circumstances of a given case it may nevertheless be reasonable to assume that the Trial Chamber took it into account. ss 243- The Appeals Chamber agrees with the Prosecution's submission that the forensic report is not conclusive regarding the weapons that were used by the attackers, and that the forensic doctors identified the cause of death only from the skulls they had analyzed. ss 37th the Appeals Chamber further notes that the forensic report does not otherwise contradict the Trial Chamber's findings, based on Prosecution evidence, that the attackers of Ntarama Church used guns, additional weapons and grenades. ss 5to In deed,, the forensic report acknowledged that the number of bodies examined is appreciably less than the number of people killed. ss 37 The forensic report also notes the existence of the impact of shrapnel "on the corner of the building". ss 10th the Appeals Chamber

'09 02/02 12:15 FAX0 031705128932 ICTR @ozt +4Lff hill flqss not necessarily contradict the Trial Chamber's findings that the Appellant and other assailants came in buses and that the Appellant "encouraged a group of Interahamwe soldiers to hurry up and attack the refugees" assembled in the church. Finally, the Appeals Chamber finds that since the question at stake is related to the chronology of the attack the Appellant could not have been prejudiced by the absence of a record of the interview on this point. V+5' The Appellant claims that Witness BME testified that the Appellant was not in Ntaramabur rather in Nyamirambo on the morning of 15 April 1994. The Appellant's first contention is that in finding that the Appellant was at Ntarama on 15 July 1994, the Trial Chamber failed to address the conflicting evidence by Witness BME, who alleged that on 15 April 1994, between 9 a.m. and 10 a.m., Karera was instead in Nyamirambo. The Appellant avers that if believed "this testimony conflicts with the Prosecution's allegation that he was in Ntarama on the same day." 246- The Appellant merely reiterates an argument that he presented at trial and that the Trial Chamber addressed and dismissed. 5# He does not show how the Trial Chamber erred in doing so. The Appeals Chamber notes that Witness BME's testimony that the Appellant was at Nyamirambo between 9:00 a.m. and 10:00 a.m. does not conflict with the testimony of prosecution Witnesses BMK and BMI that the Appellant at the Ntarama church on the same day at or around 10:00 a.m. - 5# However, while the Trial Chamber found that, for example, BME credible with regard to her testimony that she saw the Appellant instructing a large crowd to kill Tutsis and destroy their houses, it found it likely that Witness BME erred regarding the precise date of the event in view of her traumatic situation and thus refrained from entering a specific finding as to the date and time of that event based on her testimony. In these circumstances, it was within the discretion of the Trial Chamber to consider that Witness BME's testimony that the Appellant was in Nyamirambo on 15 April 1994 did not raise any reasonable doubt as to his presence in Ntarama on the same day. The Appellant has therefore failed to show how the Trial Chamber erred in not considering that Witness BME's evidence raised a reasonable doubt as to his involvement in the attack on the Ntarama church on

15 April 1994. vl:7. Accordingly, the Appellant's submission is sub-ground of appeal.]] ft- Judgement!p :l,rar,2. 92, iL5- l'" Ttrial Judgemmlp ara"3 15- l--"" j A ppenent'sB rid, psra 210. Bridin Reply,p ua- 54. * Al4rcllant' s Brief, para-1 l l. ll f* Ilrl l'dgencot, para. lqg, refcrring to DefeuccC losingB rief, para_2 29. !'-See T rial Judgemcnpqa ra 142. l] ,SeeT rial Judgeurcnp,a ras2. 62,269_ :l TrtuI Judgemenrp, ara^s1. 47, 159. * Trial ludgenen! para-1 60. CaseNo.:I CTR41-7+A 2February2009 y4_L

'Og 02/02 L2:16 FAI 0031705128932 ICTR @ozt +qlfr AlIeged Errons in the Assessmenot f DefenceE vidence 248. The Appellant contendst hat the evidencep resentedb y the Defenco, through Witnesses NKZ ml.7AC. MZN, and DSM, reoderst he Trial Chamber'\$f indings unreasonable,sHe e provides his account of the testimonies of thesejve wiesses,t* but orrly makes spccific argulllents in relation to Witnessesl ll(2, 7-W andi7 itcJsr The Appellanr arguest hat the Trial Chambere rred in law by failing to consider" a reasonablep robability" offered by his alibi that he wffl not presenta t the attack ar the NtaramaC hurch5sza nd by failing to acceptt he coaoborating testimonics of the Dbfencew ihesses who testified dhath e did.n ot participatei n this anack553H e assertst hat this cvide'encer aises a reasonabled oubt tn the Prosecution'sc ases5a4n d that the Trial Chambere rred in finding that he participatedi n the attack in view of the inconsistenciesi u the testimonies of the Prbsecutionw iktessesw hen weigheda gainstt he probative valuo of the Defence evidence.\$s 249. The Prosecution responds that the Appallant's submissions should fail as they are insufEcienrr o call into questio the Trid Chamber'sa pproachin assessingt he Defeacee videnceo r the reasonablenesso f the impugued findings.5s6 'Wiheesscs 250. NKZ arrdZ H both tqstified that \$ey participatedi n thc attack and did not see the Appellant.ssTT he Appellant challengesth c Trial bhanrber'.so hservationt hat ir was possiblef or him to hep resontw ithout WihipssesN I(Z andZ H seeingh i-.558T hc AppcalnC hanrhenr otesf lurt in assessiugt b e evidenceo f Wiheess l\ilQ, the Trii,cbamber rook into accountt hat the witness, wa,sn ot certain about the date of the attack but learneda bouti t from otXers,t hat be had seent he Appellant only once before, when the Appellant wis bourgmestreo fNyanrgengec orumuue and that it was not clcar wheu in this period (foom L975t o 1990)t he witnessh arl seenh i-.55s Thc Trial appcUaot'sB riel,p ans,2l2-219. f * {li"u-tls eli9i' iaras. 213-219-T he Appellant aes€f,tsi nte:r a?athat'wiuressN g2, who perriciparedin tlp anack, testified that he did not see_tlrA ppcllant and tbatrhe appeuaai was not mentionedt nthc Gicdca turrings in relatioa to thc al'tack wimess ZII, who participabd in the anicr, did uot see the Appellaat and also did not bear tlut tho A *c p o p m e m lla i n fie t w e as involved iu the attack when he an€udod ttrc Qacaca hearings]-Wihecss zrtrg, *no faniApateA i" similar t'o that of tlrc Grcaca co*1""_(igUg oddgd) as well tbe Grcaca bearingsa nd who bpar " d Y*ry prisonerst estify about the Ntruana attackq including cd,nfssionosf " Wiin i oesses NKZ aatt Zfff, aia not hear tbc Appcllant's name:nentimed io relation to this anack unr it iccchuy when foru personsr utuming from Anrsba t"tn"a lo his involve,:ncnqW ihcss IUZN, a sotrdierw bo wa-r ".Tri1\$d-sf genocide_tq stified that he did not bcar that tbe Appellant wasi uolved in the anac\ ond witaess DSM. a poticb ofncl, aia not hear of trc appeuant being involved in the artlck \$-r AppeDant's Brie{ pat*- 212-219. :: Th; Appellanr's s'ulmissious alibi wirr be actchcssdi ;bolow in Ch4prcr IX. l3 epperirit's Brief, pra.223. li npp"U."t's Brief, ltara-223.]]'Notice of Appcal,W rz. L77.]]] nespoorteot'sB ricf, para 148. ll: Trial Ju<lgemcotp, ans. 279, 282, 283,286- Iltpu"u*i's

Brifc,p arai.i t, rai";^[ro ni"r Judgemepna! in:-o o. 55t Ti'ar.lurtgcmcn!p -u* SOg, CascNo:-I CIR-0f-?
+A 2 February2 009

02/02 '09 L2:17 FA.X0 031705128932 ICTR @ozs Molfr Chambe'ra lso took into accountt hat the witnessw as trot presentw hen the arbck commertceda nd would not therefore have observedt he Appellaut's arrival.s@F urthermore,t he wiess did not observea ny buses,w hich contradicts the consistenet videoceo f four hosecution witnesses.5T6hl e Trial chamberc oncludedth at'witnessN KZ's evidenceh ad ..limited w eighf'.i62 'Witness 25L- In relation to zftl, the Trial Charnbert ook into accountt hat a friend had pointed out the Appcllant to the wiess wheu the Appellant was bourgm^estrea ndthat between1 97ga nd 7994 the wiess had seent he Appcllant on only three occasious.56T3h e Trial Chamberc onsidercd that under theses ifcumsta.ncesth, e witness's ability to recognizet he Appellant in the midst of ..a high numero f perspsnf lrrnnins helrer-skeltet" w ould be Umiteda nd that the wirness'sa ssumption that ThadddeS ebuhindow, ho by the witness'sa ccountl ed the afiack,sew ould havep oinredo ut the Appellant to the witness was speculative.s6T5h e Trial Chamberc orrcludedt bar the witness's evidenceh ad limitod reliability.566 252- It is within a Trial Chamber'sd iscretiont o accepto r reject a wikress'st estimonya fter secitg the wifiresst qstify and observingh im 6lher underc ross-exnmination.tT6ht e Appellanth as 'Winresses failed to showt hatt hc Trial Chambore rredi u assigningli miffi weightt o tbe evidenceo f NI(Z andZ IH. 253. In relation to Witness ZAC, the Appellant atgust hat thehc Trial Chambe,r'sa sssesmenot f 'biased this witrress'se videnced emonstratedit s mannt" when it reasonedth at the eviderrrcew as of limilsd significanceb ecauseit was hearsay.56W8i tness Z{Ctestified that he was a prisonerw ho. chairedt he "tJrumali comminee" andl istenedt o the coufessionsm adeb y WituessesN I(Z and ZIH and thbree other prisonersr clatirrg to the Ntarama attacks.s6Ien addition, the witnoss listened to approximatelytw enrj'civilian pnsonersd escribet he Ntaramaa ttacksa t rhe Gacacaproceedings and" accordingt o him! rone of them nontioned the Appellant.flOT he witness assertedth at it was only in the Gacacap roceedingsi n 2005, and afier baving testified before rhe Tribunal, that fo'r stuvivors indicated hat the Appellant was presenta t the attacksi n Ntarama.ttl The Trial Chamber ff matr "aer-*p"..509. :: Tdd Judgcncnt,p ara-;309.]_ *T rid Judgcocnt,p ara.,309- :: Trid Jutlgcurenpt,a ra.3l0- :: Ttiel Judgcneutp, ers-2 83. :l 5;1 6 0 rT' riin"l rluuddgeiennenegn iip aarraa-- ;3 311 00.. sJf,j ll mr s ri * ad o t r lr r uu r d b aieg -t me p me "i u i e " t u a i iqaa g rr . aa m 33 ro 11 t 00.. udggm?t para- 116,r eferring w Aktyesu AppeaJl udgemen! pta_ 147, "*" A;4rcllarrt's Bric,f, paral 227. li r.ia Judgemefuiur,r az, tl. j: Trial JudgeocnLp xa" 287- " Trial JudgemcnLp ara.2 88- 7l CaseNo.:I CTR-01-7+A 2 February2 009 Y/r

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oncludedt hat it fisd "limifed significance"b ecauseit was "hearsay"e vidcnce.fl 254. The Appealsp
hambern otest he Appellant's arguneflt concerninb ias on behalf of the Trial ChamberJ udges,A
q statedi n previousj udgernentso f the Appeals Cbamberso f this Triburrall and tbc ICTY, it is for
thb appealing party allcgng bias to rebur the presumptioas f imFartiality enjoyed by Judgeso f the
Tribunals.v3L r this reqpectt,h e AppealsC hamberc ousistentlyh eld thatt herei s'? high thresholdt
o reachi n order to robut the presumptiono f imFarrialiq/'thar attachesto a Judgeo r a
Tribunal.sTa 255. In supporto f his contentjont trat the Trial Chambe,wr asb iase{ rhe Appellant

argued that the Trial Chamber did not hesitate to convict him "solely on questionable hearsay evidence, and sometimes by unreliable hearsay, but was not swayed by the honest and consistent testimony of an individual like Witness 2 AC". 575 The Appellant's protest of paragraphs 162, 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.

02/02 '09 12:18 FAI 0031705128932 ICTR @otz ryillfr C. Conc[rsio-n 258. The Appeals Chamber finds that the Appellant has failed to demonstrate any effort in the Trial Chamber, respectively, findings in relation to his participation in the meeting at the Ntarama sector office on 14 April 1994 and his participation in an attack at the Ntarama Church on 15 April 1994. Accordingly, these grounds of appeal are dismissed in their entirety. n/p/peUa"rsE ric! pua-?!22- f"l" Sees upapara-39, 73 C-nsNo o-: ICTR-01.7+A ZFebruaxy20C8

02/02 '09 12:19 FAX0 031705128932 ICTR @oze +s71fr Yiff. ALLEGED ERRORS RELATING TO THE KII f,AqG OF TUTSIS IN RUSTTASETC OPIMUNE (GROIII{DS OFAPPEAL L AD{DT AND GROUND OFAPPEALz,IN PART) 259. The Trial Chamber found that many Tutsis were killed in Rushashic communes starting on 7 April 1994. The Trial Chamber found that the Appellant was aware that, from that date, roadblocks had been set up in Rushashic communes where Tutsis were killed, to the Trial Chamber also found that between April and July 1994, the Appellant held meetings in Rushashic communes where he raised money for weapons, encouraged youths to join the Interahamwe, and urged the commission of crimes against Tutsis. The Trial Chamber found that in April or May 1994, the Appellant brought more than twenty guns to the Rushashic commune office, which were subsequently used to kill Tutsis at roadblocks. ssB2a sed.o n thesel

02/02/09 12:20 FA.IO 031705128932 ICTR @ozs #bln In making this finding, the Trial Chamber relied on Prosecution witnesses B MR, BivIM, BMO, and BIL. G.587W held that the Trial Chamber did not rely solely on the aforementioned findings to enter a conviction against the Appellant, it considered its finding in holding that the Appellant's conduct during the meeting held in Rushyitsa between April and June 1994 a manifestation of instigating genocide and extermination as a crime against humanity. Similarly, the Trial Chamber's finding is relevant to its finding that he brought about the Rushyitsa massacre which were aimed for the use of the roadblocks. See I 263. The Appellant's contention that, as the Trial Chamber held in preferring Prosecution evidence to Defence evidence in order to hold that the Appellant was present in Rushyitsa before 19 April 1994 and was aware that there were [a]t least 100 Tutsis were being killed from April onwards. To the contrary, the Appellant's submission below, I 264. The Appellant further submits that the Trial Chamber's finding that the decision to erect roadblocks could not have been taken without consultation with senior officials at the prefecture office did not, support the Trial Chamber's finding that he was aware of the existence of roadblocks before 19 April 1994. The Appellant states that he could not have been one of those "senior officials" because he had exercised no authority in Rushyitsa prior to his appointment as prefect of Kigali prefecture on 17 April 1994, and he did not have a direct link with the commune authorities. I 265. The Appellant also submits that Prosecution and Defence witnesses' resorted to the Trial Chamber with diametrically opposite testimonies regarding the killings at roadblocks. According to the witnesses, the Appellant "was indifferent to the killings at roadblocks", whereas Defence witnesses testified that he "did his best, and not without success, to try

Judgemeal, paru- 363-376. ss Triat Jud'g"-orC p.ri- 546, referring to rhc findings in Section II-6-3 of the Trial Judgenrent (sec Trial Judgementg ara.3 76);Tiial Judge,ncutp aras-5 5r "' Trid fudce,menl oar.t s+l - tn Notice ofapgrl paras.1 88-190A, ppcltant's l*f, paras.2 &243. The title of tlris subground of appeal(Notice "'Tbe of Apperl, p 20, title of Sectioo 7 -L: Gramber eoed b frnding that Ka-reraw as inyolvcdln setting up roadblocksa t Rushashi";iA ppcllanf s Brief, p. 42" of Section7 -l:,'Ttrc Trial Chamba erredb y finding that KteA was involved in tho ercction of roadblocksi a is misleading,W hile the rirclc refie,rsto allegede nors in finding that the Appellail wasi nyolved in seningu p in Rushasl4t he Appellut hasn ot developedt his arguucnt in his Appellaaf s Brief andl in fact, bas il that the Tria] Chambcr mado-n e finding to -qic etfecl Appilarrt's F_.ief, p atr 239, referriag to Trial Judgoon! 367. !l ryi nX"section(sB) i ano (C)o ndhnpr"irX 'f" NoUci of Appeal,p anis-r n, tf3. Notice of Appea! para-1 92.I n this regard recalls Witness BMIT's accountt har the communea utlroritiesh ad ' s * l fEarizuazdD tLu uruutua ufthe nrrdblocks, Noricc pafa- 194 rcfe,rriagt o Trial ludgcment,t mrn. j Z7. :*n^t he Arppellaut rders to the tesrimonyo f WitnessesB MR BMM, BMB, BMO, andB MN. Alrycllanr's -B^;iepf,a ms.22623l. sei Th; Appellant refers ro his own tcstimoay as as the tes'imonyo f DefenceW itnessesY N'/.yq., yAII, and MZR Appe)lants' Brief, pans. 232-21t. o'o Appcllant'sB rief. pofi.z40- 15 CasoNo-:I CTR-01-7+A 2 !-ebuury 2009

02/02 '09 L2:20 FAI 0031705128932 ICIR @o eo +?5ft to pacrfy the region where he was s[a[iouid",5e7The Appellant finally submits that the Trial Chamber "presumed his liability" and "accqrdd weight only to the evidencew hich supportsa finding of thc Appellant's liability"-se8 266. A review of the Trial Iudgementr reveals,h owever,t hat the Trial Chamberd id not "presu.ue his liability" or rely,on its imFlicit finding bc was a senior official at the prefectureo fEce to concludot hat the Appellant koew about the on of roadblocksi n Rushaship rior to 19 April 1994. Instead it relied on the evidence of WitncssesB MM, BMR andB MO, who saw hirn xl roadblocks.sge 267. AccordinglY,,thissu b-groIndo f is dismissed. B. 26E, The Trial Cha.mberfo und that April and June 1994, thc Appellant held severtl meetings in Rushashic ornmrne,w here he Boney for weapous,e ucouragedy ourhsr c join the Interalmwe, arrd.uged the commission of qhmcs againsl Tutsis.ffi The Trial Chamber found that "[t]hese statementsi nstigated ftg ssmmissi(rn of crimes against Tutsis", that "[a]s an authority figure, Karera's encourageureutw ould have alsubstantial effect in the kiltings which followed" and that "ft]is tbreats ageinsl those who did not participate in anti-Tutsi acts wo'ld be taken seriously."@lT he Trial Chamberr elied oo ti"r" facnral fu*tr in convicting the Appllant for instigatingg enocirlea nde xterminationa sa crimea gainshr umonity;tr2 269. The Appellatit submirst hat the Trial Chamberc ommiftede rrors of Iaw and fact ia meking theses findings.60T3 hj AppealsC harnberw ill ionsider eaclo f thesea llege de nors ia firm. 270. The Trial Chamberf ound that "[a]t tlre Rwankubas ecoudarys chooli n April 1994,Karera spokei n favour of establishinga nd reinforciug roadblocksa nd encouragedth e youth to co-operate with the army."66 It founcl that "[t]his was done in a period when Tutsis were being targeteda t 5n Appellansf Brief,v ara.,240. lll Ni,ii* of Appoa!ia ra"s1. 89,1 90, "' Tfial Juclgcmcor:l.a ras3. 68-370. f mar Jud[cmenpt,a ns.4 L7,5 46. :- . Trial Judgcmenpt ara.5 46. * t4+ Iudgemeni paras. 5a6, 54E, 555 (rcferring to Trial Judgement,S ectiou II-6 and to the legal flndiqgs oo gcncide),557. ; * 6 * 0 3 rNr-.o:-t iceo -4f Aa-p-^p-t eal.p- ^a-- ras,r1 n9o 8,-2 A0r 1,42^.% ;A^

ppc "llant'sB rief, paras.2 45-ZSB. Trial Judgcmntp, an" 4L7. Seeu Iso Trial Judgcmcnl para-4 06, CaseNo,I:C TR-01-7+A 2 February2 009 A4(

02/02 '09 L2:21 FAX 0031705128932 ICTR E oer +o+1fr roadblocksby Interlwmwr.t\$0'Iam akingt his finding,t be Trial Chamberreliedo n the evidenceo f Witness BlvD.606T he Trial cbamber also consideredt he AppoDant'st estimony "that he held a pacification meetinga t the schoolo r22 or 23 April" and did not find it convincing "[t]o the extent this is allegedt o haveb eent he samem eetinga s tbc one referredt o by WitnessB MB."6ot The Trial Chamberf urther foudt tlmt "lhls evidencet hat it was decidedt o remover oadblocksf rom certain places[in Rushashi]l wasl unclear,a ndn ot corroboratedb,y other evidence".flt 271. The Appdlant submitst har the Trial Chambere rred in law and in fact when it rejectedh is accountc oncerningt he allegedm eetingi n Rwankrba in Apil 1994.60He e conterrdrst haq contrary to tho Trial Chamber'sf inding, his testimonyw as corroboratedb y WitnessY Alf.6r0 The Appellanl flrther submis that the Tlial Chambere rred in law io relying on the uncorroboratede videncoo f Witness BMB while requestngc orroborationf or the Appellanl's testimony.6ttT he hosecution respondst hat ttre Appcllant hasn ot demonstratedtb at the Trial Cbamberra busedit s discretion,6l2 272. The Appellant's contentiont hat the Trial Chauber erred in fact in failing to find that his testimony was corroboratedb y Wirress YAlI is unfounded.W hile the Appellant testified about a meetingh eld at Rwankubas econdarys chooolo n 22'ot 23 Aprit 1994,t13W itr"ss YAlI testified abouta meetingh eld in the sccondw eeko f May lgg4inRushashi coDlm.une,uwtoit hourd escribing more specifclly the location where the meeting was hclt or the personsw ho allegedly a\$ended it6lt Thus ttre fact that the Trial Chamberd id not rrake a fincling to the effect that Witnessy AlI referredt o the sa.nrcm eetinga s the Appellant and thereforec orroboratedth e latter's accountreveals no effor. 'Witness 273. Turning to the Appellant's contentiont hat the Trial Chambere rred in accepting BMB's uncorroboratedt estimony, the Appeals ChamUerr ccalls that ir is well establishedt hat a Trial Chamberh ast hc discrction to decidei n the circumstaueso f eachc ascw hetherc orroboration of evidencei s necessary.6tTeh e Trial Chambere bsewedt hat Witness BMB was about sixteen meEesa way from thc Appellqnt when listeningt o his speecha nd was satisfiedt Sat t5e wirneSS f triat Juclgc,ncnlg ara-4 17. :: Trisl Judgcnrcn!p ara-4 06, i friut ludgeuren! paras.3 92,406. f'* Trial Judgenent,p srs- 406, roferring to Trial JudgementS, ectiont r.6.3. A;pellaut's Bricf, pat*?52, lil4pp"l*t's Brief, plr:a-2 52.r eferrng to Trial Judgementp, ara"3 99. lij Noticeo f Appeal,p aras2- 0Q 201.A ppellanr'sB rief. paras.Z 5f, ZSZ. i'l Respondmt'sB rief, para t58- lii r*n Judgeoeup,t rz-3 sa,- ': T. 11M ay 2006p p-6 7-7Q;T. 12Mry 2QO6p . 2, :!l T. 1l May 2006p p.6 7- 7o;T - L2l[lay 2V)6p - 2- o'o,See .ruprcp ara.4 5. i 7i CaseNoI.C: TR-01-7+A 2 February2 009

02/02 '09 12:22 FILX0 031705128932 ICTR @o ez ffi3[fr "must have heard what ho sflid".6r?T he Appellant challengest h e Trial Chambetr'sre lianceo n \Miuess BMB's 0estimonyo n the sole basis that it lacked corroborationw ithout advancinga ny reason why WibressB MB's testimony would have required corroboration.A s noted above, :rceptanceo f and relianceo n uncorroboratede videncqp er se,d oesn ot constitutea n error in law. 274. The Trial Chamberr ejectiont he Appellant'st estimonyi n reLationt o this incident uoting that it was uncleara nd not corroboratedb y other ovideuce-6ltitr tight of WitnessB IvIB's accountl which the Trial Chamberf ound credible,a nd in light of its obsenrationsa boutt he Appellant's tesrimonyi n relation to rhis

incident, the Appeals Chamber does not find that the Trial Chamber acted unreasonably in rejecting the Appellant's uncorroborated testimony. Accordingly, this sub-ground of appeals is dismissed. 2. As for the grounds related to the Meeting Held at Rushashi Subprefecture Office in June 1994. The Trial Chamber found that "[a]t the Rushashi [sub-prefecture] office in June 1994, 'work' Karera asked whether he had been one, which in that context meant the killing of Tutsis, and asked why Vincent Mundyandamutsa [sic], a moderate Hutu belonging to the MDR party, had not been killed. In making this finding, the Trial Chamber relied on the account of Witness BMB which it found credible, noting that it was generally in conformity with the witness's prior statements to investigators. 6m 276. The Appellant submits that the Trial Chamber erred in fact and in law in making this finding. 62 The Appellant contends that according to Defence Witness YCZ and YAH, he had in fact protected Vincent Mundyandamutsa. In his view, the Trial Chamber erred in law by failing to find that their testimonies on this point shed reasonable doubt on the Prosecution's evidence. 6- The Appellant also submits that the Trial Chamber committed an error of fact in its assessment of the credibility of Witnesses YCZ and YAH. 6% He argues that the Trial Chamber's approach shows bias. 65 The Prosecution responds that the Trial Chamber correctly rejected the evidence given by Witnesses YCZ and YAH that the Appellant had protected Vincent Mundyandamutsa. 6 11 The Trial Judgement, para. 406. 3: Trial Judgement, para. 406. 4 The Trial Judgement, para. 417. 5 The Trial Judgement, para. 417. 6 The Appellant's Brief, paras. 25-30, 33-35, 37-40, 42-44, 46-48, 50-52, 54-56, 58-60, 62-64, 66-68, 70-72, 74-76, 78-80, 82-84, 86-88, 90-92, 94-96, 98-100, 102-104, 106-108, 110-112, 114-116, 118-120, 122-124, 126-128, 130-132, 134-136, 138-140, 142-144, 146-148, 150-152, 154-156, 158-160, 162-164, 166-168, 170-172, 174-176, 178-180, 182-184, 186-188, 190-192, 194-196, 198-200, 202-204, 206-208, 210-212, 214-216, 218-220, 222-224, 226-228, 230-232, 234-236, 238-240, 242-244, 246-248, 250-252, 254-256, 258-260, 262-264, 266-268, 270-272, 274-276, 278-280, 282-284, 286-288, 290-292, 294-296, 298-300, 302-304, 306-308, 310-312, 314-316, 318-320, 322-324, 326-328, 330-332, 334-336, 338-340, 342-344, 346-348, 350-352, 354-356, 358-360, 362-364, 366-368, 370-372, 374-376, 378-380, 382-384, 386-388, 390-392, 394-396, 398-400, 402-404, 406-408, 410-412, 414-416, 418-420, 422-424, 426-428, 430-432, 434-436, 438-440, 442-444, 446-448, 450-452, 454-456, 458-460, 462-464, 466-468, 470-472, 474-476, 478-480, 482-484, 486-488, 490-492, 494-496, 498-500, 502-504, 506-508, 510-512, 514-516, 518-520, 522-524, 526-528, 530-532, 534-536, 538-540, 542-544, 546-548, 550-552, 554-556, 558-560, 562-564, 566-568, 570-572, 574-576, 578-580, 582-584, 586-588, 590-592, 594-596, 598-600, 602-604, 606-608, 610-612, 614-616, 618-620, 622-624, 626-628, 630-632, 634-636, 638-640, 642-644, 646-648, 650-652, 654-656, 658-660, 662-664, 666-668, 670-672, 674-676, 678-680, 682-684, 686-688, 690-692, 694-696, 698-700, 702-704, 706-708, 710-712, 714-716, 718-720, 722-724, 726-728, 730-732, 734-736, 738-740, 742-744, 746-748, 750-752, 754-756, 758-760, 762-764, 766-768, 770-772, 774-776, 778-780, 782-784, 786-788, 790-792, 794-796, 798-800, 802-804, 806-808, 810-812, 814-816, 818-820, 822-824, 826-828, 830-832, 834-836, 838-840, 842-844, 846-848, 850-852, 854-856, 858-860, 862-864, 866-868, 870-872, 874-876, 878-880, 882-884, 886-888, 890-892, 894-896, 898-900, 902-904, 906-908, 910-912, 914-916, 918-920, 922-924, 926-928, 930-932, 934-936, 938-940, 942-944, 946-948, 950-952, 954-956, 958-960, 962-964, 966-968, 970-972, 974-976, 978-980, 982-984, 986-988, 990-992, 994-996, 998-1000.

02/02 '09 12:23 FAI 003170512E932 ICTR @o ec ffizls 277. A review of the Trial Judgement reveals that the Trial Chamber explicitly considered that "Witnesses YCS [sic] and YAH testified that Vincent Mundyandamutsa, Tutsi, was protected by Karera", but rejected their testimony. 2 ET The Trial Chamber assessed the evidence given by these witnesses as follows; Witness YAH testified about the meeting at the Uy Kftara in May 1994 saying that the commune had become calm. However, he also stated that his wife continued to be threatened by bandits. This contradiction weakens his credibility. Furthermore, the witness said that the meeting in the third week of May in Musasa was chaired by Karera's civil defence officer, who was responsible for recruiting youths to reinforce the military. Witness YCZ also said that Karera and a military officer were the key speakers at the outdoor meeting in Musasa in June 1994. It is surprising that meetings held, led by the Military and civil defence, were aimed at contributing to reconciliation and pacification, rather than encouraging youths to join the rebellion. The Chamber has some doubts about the two testimonies. 27 E. The Appeals Chamber sees no error in the Trial Chamber's assessment of the evidence of Witnesses YAH and YCZ. The Appellant has not submitted any argument to demonstrate that it was unreasonable for the Trial Chamber to prefer the Prosecution evidence on this point. Furthermore, the Appellant has failed to advance any argument in support of his submission that the Trial Chamber's reasoning shows bias. Conclusion 279, For the foregoing

eaqonstth is srr of appeal is dismissed. c. eventsr egardingm eetingsh eld in Rushashbi gtweenA pril andJ une1 994.63B0a sedo n the evide,nce grven by the Prosscutionw itnesses,t he An'fiellant nores, the Trial Chamberf ound that between April andJ rme7 994,h e particrpatedin six mebtngsi n Rushashid r:ring which he incited the looring and killing of Tutsis.oslo n the other handlhr ootur rhat the Triffl Chamberd educed& om his testimony arrd the evidence given by Defe,ncew itnesses rhat he might have participated in 'lacification meetings"i u Rushashia nd Musdsa-63T2h e Appellant contendst hat the Trial Chamber erredi n law by failing to addresst he conflictiirg evidncnei rr respecto f the meetings,a ndb y failing i I I I I Itl I T_Tny""t from the coDtoxt of this paragrapathr at lhc Trinl Gamber was rcrertin! to Witacssy CZ fr fri{ {uagcr entrp ara-3 74, re,ferruigt o Trial JudgenientS ecriont r-6_4 "- Trial Judgrnrentp, ara.4 16. llapprU-rs Brief, para.2 +z- I o" Ab!!Tl'-s- Briei. puas- 245 Geferrinst o Trial fr|oe**f paras-3 ?9-389),247 (rcfcning to Trial Jurtgeuent, oaras4- 01417)- tt' epry-ITqi nrtef, paras-2 46 (rcfening to Trial. frloge-eoL paras. 390 No),241(refcrring to Trial Judgementr, paras.402,403). I CaseN o.: ICIR-01-74-A 2February2009 Srr-

02/02 'Og Lzi24 FILX0 031705128932 ICTR @o en wll fr to conclude ttrat it cast a reasonableoubt on the Prosecutione vidence,63h3 particular, the Appellant challengest he Trial Chamber:'ss tatementt hat it would "focus on the meetingsa t which IGrcra" accordiug to the hosecution \$/ itnesses,a llcgedly was present".@ Hc submits that this statefiIentr evealst hat the Trial Chamberi ncorrecfly assessedth e evidencca nd "might have even shiftedt he burdeno f proof'to him, raisingt he issueo f bias.635 281. Tho Appellant arguest hat the Tdal Chamberin the Mpanbara cascsw as facedw ith a similar situation where the witaesscsg ave two different versions of eveuls, one in which the accused encouragedk illings and the other in which he discouragcda tacks.t36T he Appellant notes rhat in that case the Trial Chambrg ave the accusedt he benefit of the doubt in light of the conflicting evidence,a nd contendst hat the Trial Ctamber in his cases houldh ave at least articulatedi ts reasons for not relying on the conflicting evidenceir had previously accepted.637 282. The hosecution responds that the Appellant's arguments ^ro premised on ^ misintcrpretationo f the facts and of tho Trial Chamber'sf indiug.638lt submitst hat the Appellant merely summarizcst he evidenceo f Prosecutiona rrd Defencc witnessesa s recountedi n the Trial *another Judgemenat nd suggests way to assestsh e evidsuc" w ithout establishiuga ny erroro n lhc part of the Trial Gamber-53eIt arguest hat the fact that Prosecutiona nd,D efencew itnessesg ave cmtradietorya ccountso f the eventsd oesn ot in irselfi mply a reasonabldeo ubt-640 283. The Trial Cnt-Uut assessetdh e Defenceee videncere latngt o the'f,>acificatiomn eedng\$"in detail-flI V/ bile it fodnd that thesem eetingse, xcaptf or onc,e2d id not relatet o any of the meetings' allegeddb y the Prosecution,ft3it notedt hat the evidencce ould "arguablyt brow somel ight" on whflt the Appcllant may have said at other meetings.s When reaching its findings about the incriminating meetingsh eld in Rushashi,t he Trial CIrarnbere xplicitly statedt hat it did not "exclude that [the] so-callcdp acificationr neetrngsw ere held" and that it "assessedth e totaliry of the evidence"o n this point.#t 6t Noqce of Appea! para- 198;A ppellonf s B:ief, patas.2 7 -29, 249, %i0: Brief in Reply, puras.7 7, 78. The Appellanr contendst hat ttre only reasonablein frcnce the Trial Chnnher could havem edef rom-rfiu **idence was o* siilil* to 1p infrcncem adob y tbc Trial Cbauber in,Mpanhara- 6il AppeUant'sB ricf, para 2zt{1c. iting Triul Juigernent,p aras. 4(/,415- 1- Appelbnf s

Brief, Wra. 248, I"l App"tror's !"f-, para.2 43,p oinring b MpanbtpaTrinl Judgementp, atas. fu65.7\ Io.' o e pputta"t'sBlef, puas.T1,28,r eferringt o MpambaraTrialJ udgemCnpqa rls-70,lu,146. Respondcut'Bs ricf, paro-1 51. o" Rcspondent'Bs ricf, paras,1 52,1 53. f ResponclentB'sr icf, para.I 53. *l trirt fudgencnr,p &s. Wz, 4ft3,4Ls,416- ;3i.+ lu(Uacnt, para 406. Seein fra Sub-section2 , discnssi'g allegede rors rclariug b this meeting. i" Tdal Judgcurenpl aras4. 15,4 16- * Triel Juasqnenqp ara.4 04. nr Tri.l Judlemeati,a ra- aLl - ; EO CaseNo.I:C TR-01-7+A ZFbruary2009 {(r(-.

02/02 '09 12:24 FAI 0031705128932 ICIR @o es ffi01fr 284. In acceptingt hat "pacification meetings" had taken placqffi the Trial Chanbcr observed 'bot trat the evidencw as clear as to whcther suchp acificationm cctingsw ere aimeda t preventing crimcs beiog committedb etweent he Hunrs(for iustauceb y tJreA bdsesofr omRuhengeria gainsrt be Abambogo),p reventingi nfiItratiorr by ur*nown persons,a chievfurgre conciliatioub etweene xueme and moderateH unrs, or mitigating animosiryb enveenH utu and Tutsi."&7 However, the sole fact that the Trial Chamo-cmr aden o determinativec onclusiour egardingt he purposeo f thesem eetings does not constinrrca n error. In the instant case,t he remaining doubt about the ptrpose of these metings was to ths beilefit of the Appellant"b ecausetl r Trial Chamberm adei ts findings basedo n the presuption that such meetingsh ad takenp lace.tr It is implicit from the Trial Judgeuentt hat the Trial Chauber considered the fact that the Appellaat held these "so-called pacification meetings"w as not irreconcilablew ith the fact that hc participaredi n other meetiagsi n Rushashi.ee It is well estabJishctdh a Trial Chamberd oes,noth ave to articulatee very stepo f its reasoning.6s0 Takiog into accountt hat the aim of the "so-calledp acification meetings"w as unclear,t he Appeals Chamberf inds no rnerit in the Appellant's contention ttrat the Trial Chamberf ailed to provide a reasorred opinion with regarrd to the alleged conflict between the evidence regarding the 'lacification meetings" and the evidence in relation to thc Appellant's participation in meetings eucouragingc rimesi n Rushashi. 285. A review of the Trial Iudgementf irrther revealst hat the Appellant cired the Triat Chamber's statementt hat it would focus on the meetings alleged by the Prosecutiono ut of conrext. The Appeals Chamberf inds that fis statement6ls imply reflects the Trial Chamber'sa pproacht o first. considert he ovidencer elatedt o the meetingsa ll'egedb y the Prosecutiorn and to subsequentlya ssess whether the Defence evidencce ast reasonableoubt on it As noted abovo, the Trial Chamber explicitly recognizedt hat statementsth e Appellautmadea t meetingsw hich did not form part of the hosecutios's casem ight haves omer elevancea s to\what he [was] likely to haves tatede lsewhere in the sane period" and it thus explicitly consideredth e Defenceee videncein this regard.6"The Appellant has not demonstratedth at tIrc Trial Chamber'sa pproachs howsb ias or that it shifte<lt he burdeno f proof. Accordingly,t his submissionis dismissed. !-lmal Judgemcnrp, an-,375 - :: Trial Judgenentp, ara-,375- :: Tliat Judgeaeutp, arasl3 75,417. *t Trial Iudgmrnt, poro,.4\7- !ee, ialsT aftq thc Trial Charnber'sf rndbgs thar (i) ar the sectrxo' flico in RuShaShr!h e APpeIla+ pullicly ora{\$ the looting a.od tbn killing of Thtsis; (ii) outsiae the commuoc ot6ce, tre sought contribntionsf or yerpoq in order Doq ght the Inkototy, their accompliccsa nd ihe MRND oppoDcutsa; nd (iii) outsize Olp communc ofrice, hc lought crrotribu[ous anrl ncouraged hunCeOss f ndrhaiggiatyg-futdbcnrat anJ iusincss leadcrs to fight the Inkotanyi nayingt har rhen: shouldb e no sunrivorsa t tlc roadblocks -" SimhaA ppeal

Judgment, para. 152. The Trial Judge's order at para. 404. The Trial Judgment, paras. 404, 405, 406. The
 Criminal Record: ICTR-01-74-A 2 February 2009

'09 E on 02/02 12:25 FAX 031705128532 ICTR +211fr 286. The Appeals Chamber finds that the Appellant has not substantiated his allegation that the 'classification evidence' that he participated in meetings is incompatible with evidence that he was involved in the killings in Rushashia and Nyamirambo. Although the Trial Chamber did not make a specific finding on how the Appellant could have been involved in the killings in Rushashia and Nyamirambo while he participated in "so-called participation meetings", this omission does not amount to an error. The Trial Chamber legitimately exercised its discretion in determining which version of events was more credible and the Appeals Chamber deferred to this finding. 281. Accordingly, the Appeals Chamber dismisses this sub-ground of appeal. D. Alleged Errors relative to the Distribution of Weapons 288. The Trial Chamber found that during April and May 1994, the Appellant transported weapons to the Rushashia community centre and that these weapons were given to the co-trainees and subsequently reached the Interahamwe at the roadblocks, where they were used to kill victims. 653 The Trial Chamber held that "flying bricks" the Appellant assisted in the killing of Tutsis and convicted him pursuant to Article 6(1) of the Statute for aiding and abetting genocide and, extermination as a crime against humanity. 652 Under his First Ground of Appeal, the Appellant submits that the Trial Chamber erred in law in entering its conviction for aiding and abetting genocide, extermination as a crime against humanity based on this event. 653 The Appellant primarily contends that he did not have adequate notice of these charges in that his allegation of weapons distribution in Rushashia was not pleaded in the Amended Indictment, 654 He also argues that the Trial Chamber erred in its assessment of the evidence. 655 The Appellant finally submits, under his Seventh Ground of Appeal, that the Prosecution failed to establish a nexus between the Appellant and the events at the roadblocks. 656 With respect to the lack of adequate notice, the Appellant submits that the allegation that he distributed weapons in Rushashia did not feature in the Amended Indictment and that, as a matter of law, the omission of this allegation could not have been cured by timely, clear, and consistent information. 657 The Appellant's Brief, paras. 5-7, 548, 555, 557. Notice of Appeal - paras. 15, 205-219 Appellant's Brief, paras. 5-7, 548, 555, 557. Notice of Appeal - paras. 15, 205: Appellant's Brief, paras. 259-274.] Notice of Appeal - paras. 9-15, 6210; Appellant's Brief, paras. 5-286. *o Notice of Appeal - para. 191; Appellant's Brief, paras. 244. 82 Case No.: ICTR-01/74-4, 2 February 2009 St.-I, r.-.

02/02 '09 12:26 FAX 0031705128932 ICTR @o ez +zBlfr information. 658 He claims that this omission could have been cured only through an amendment of the Amended Indictment which the Prosecution failed to request. 291. The Prosecution responds that the Trial Chamber correctly found that the Appellant had received sufficient notice of the allegation of weapons distribution in Rushashia and that any defect in the Amended Indictment had been cured by subsequent timely, clear, and consistent information provided to the Appellant. 292 The Prosecution submits that the distribution of weapons in Rushashia was not a new charge but rather a material fact underpinning the charges of genocide and extermination as crimes against humanity. 292. The charges against the accused and the material facts supporting those charges must be pleaded with sufficient precision in an indictment so as to provide notice to all

accused.6'6\$4l hethcr a fact is "material" delrnds on the nature of thp Prosecution'sc ase.66T5h e Appcals Chasrberh as previously held that wherc it is allegedt hat the accusedp lanrred,i nstigated,o rd'eredo, r aided and abenedi n the plaming, preparation,o r exccu[on of the allegedc ri\$es, t]re Prosecutionis required to identify the "particular acts" or "the particular courseo f conduct" on the part of rhe accused which forms the basisf or the chargesin question.6tr 293. An indictment which fails to set forth the specifi.cm aterial facs underpinningr he charges againstt he accusedis det'ective.*t Tho defectm ay be curedi f the hosecution providest he accused with timely, clear, arrdc onsistenti nformation detailingt he factual basisu nderpinningr be charge,668 However,a clear distinctionh as to be drawn betweenv agueness\$isn an indictment and au indictment omitting certainc hargesa ltogether.treW hile it is possible,a s stateda bove,t o remedyt he vagueness f^ Notice of Appeal,p aras.\$ I5, 205; Appellant's Brief, pans- ?65, 267. I Appellant's Brief, pan 267;A T- 26 Aryust 2008p p. 52,53. fr Appellant'sB rief, para"2 59;A T- 28 August2 008p . 52- * Rcspndent'Bs rief, paras2- E,3 8, * Respondent'Bs rief, paras,3 6, 37; AT. 28 August2 008p . 34. * -Mt*urgi Applul Judgeueut, para. 1E; SerombaA ppeat Judgcmenqp aras, 2?, 10o. Sec also Simba Appcal Judgemengp srs- 63, rcfening to luluhintatzaA ppeal Judgemeogy ans- 76, 167, 195; Guuntlieri Appeat Judgdcnq para 49. @ Nohi^-ro et al_Appea!J udgerneulp ata.322;N dindabahiziAppeaJt udgccren!p ara 16;N tag*zra d aL Appea| Judgenent,p az.23. * seromba AppnalJ udgemerr,p ata-2 7, attng Ntagerurae t al. Appca| Judgemengp orr- 25. wt Nlagenca et al. Appe.dJ udgemcut pan- Ei NiyitegekaA ppsel Judgement,p :ra. 195; KupreJLiEe t al. Appaat lH'iffitlTrljfuoge-*t, n aca2- o,r cferdtgtosa romb { a p pear J udgcmcnpla ral oq sinba AppatJudgemeot, para- 64; Muhimano Appgal Judgement,p ras- 76, 195. 217; Gactnrtti*i A,ppealJ udgeneut, para. +1, SZc arso Ntagentrae t al AppcsIJ udgemenpt aras.2 8,65. * Ntagerurae t aL,eyrycxJl "fgj'menCp ata,.32S- eea leoM wwyt AppesfJ udgcurenpt,a ra.Z O,6 rinlBagosora et dL, Decieiono n Aloys Ntubakuzc'sI nterlocutery Appcat ou Quostionso f Law Raisixl by lhe29 June2 006 Trlaf Ctauter f Decisios qn Motion for Exclusiono f Evidence,p arn.3 0. CaseNo.I;C TR-OI-7+A 2 February2 009

02/02 '09 12:27 FILX0 031705128932 ICTR E oee +x7lr of an indictment, omitted charges can be into fie iudictuent only by a formal flo amendmenpt ursuantt o Rule 50 of the Rules- 294. The Trial Chamber found that the dishibution weaponsi n Rushasbid id not form part of tbe Amended Indictment and tha! as a material fact ing the coutrts relating to genocide and extei:nation as a ctime against hr::manity, it have been pleaded therein.6t Howevef,, the Trial Ctramberf urther found that the Appellaut suffisient notice of this allegati,on through the Prosecution Pre-Trial Brief and the of the anticipated tctimonies of 'Wituesses BMA, BLY, BMM, and BMN, which annexedt o the ProsecutiouP re-Trial Brief, as well as the ProsecutionO peningS tatement.fl2 ial Chamberf ound that since the Defence *at - had no uole during thc trial"673 objected to admission of evidouce concenring the distri.butiono f weaponsi n Rushashi,t he burdeno f had shifted to it to*defionstrate that lack of notice prejudiced Karera."fl4 The Trial held that the Defencc failed ro moot this burden.6?5 295. Noue of the paragraphsi n tho Amended makes an allcgation of weapons distributon in Rushashi. The Amerreded includes two allegations of weapons disuibution. Paragraphs9 and l0 allegc that the larrt disnibuted weaponst o commune police or civilian militias in Nyaminrmbo and thar as consequenceo f his conduc! many Tirts

civilians were killed by communop olice or itias and local resideutsi n Nyamirarnboi n Aprit and May 1994.616 Paragraphs2 5,26, and the Amended Indictment allege that from 7 April 1994, the Appellant organized and ordgred i campaign of exterminatiou against Tursi civilians iu the commup.eo f Nyanrgengow, hich inclu inter alia, the distribution of firearmst o cosrmunep olice.6uT hesep aragraphsa .reD .ovt ague,i specifically describet he circumstanceso f two particularincideutso f weaponsd isfibtion in other than Rushashi.678 296. Ttcrefore, in allegiog the distibution of in Rushashi,t he hosecution Pre-Trial 's Brief, the annexed wihcss summaries, and the OtrleningS tatementd id not simply add flo Nta_gerurear al-Apral ru\$gme\$ perz-32. Seca lso Mutaiji eppear Judgemcoqp ara-2 0, sitin| Ba.gosorae t al., Decision on Aloys Nrabalcuz.eI'sn terlocutoryA ppeal or Question!o f-taw naisea ty tfri 29 JuneZ OOEm irf Chamberi pecisioa on Modon for Exclusiono f Evidencq para 30. I trt t Jud,geroenpta ras4. 18,a l9- 'l: Trial Judgementp ant a20,421. f,t The Triol cr'o-r'cr noted that "[o]nly [& Dcfence] Closing iti".t.*oi"ed an objection-. Trial Judgenenqp ara- 421. I 11 tri*t Judgemaugp ara-4 2t. I "j"- Trial JuCgcEcDtp, ara-4 21. I f.,6 nnenoe,ilndicurlenq paras.9 , 10. f, Amendedl ndicErent, ians. 5-Z?. il tq Appealsc bt-qo notes rhat the Triul Grasrber addresse<i.lo nvo tliflorcot sectionso f the Trial Jrtrtgermentrh e allegation in paragraphs9 and 10 of tbt' Ancodcd Iqdicment See Trial Judgcrnent,. Secrion4 .14, addressing the 84 Crsc No.: ICTR{L-1+A 2 February2 009

02/02 '09 12:27 FAI 0031705128932 ICTR @o es +zlefr greater detail to a more general allegation already pleadedi n the Amended ftrdictnenl Rather, these submissionse xpanded the chargeqs pecifically pleaded in the Amended Indictment by cturging an additionali ncident of weaponsd istribution at a new locatiou. Thjs is an impermissible, defaAo amendrneuot f the AmendedI ndictment 297. For the forgoing reasons,t he Afpcals Chamberf inds that the Trial Chamber erred in finding that, as a matter of law, the hosecution's post-indictmentc ommunicatronsould cure the failure to include tho allegation of the Rrushashi weaponsd istribution in the AmoodedI ndicment and ttrat they in fact did so. The Appeals Chambert herefore need not addresst he Appellant's remaining argtunentsu nder thc First aud SeventhG roundso f Appeal in relation ro the Rushashi weaponsd istribution. The AppealsC lrambeng rantst he First Groundo f Appeal and reversesin part the Appellant's convictions for aiding and abottiug genocidea nd exterminationas a crime against humanityi rr so far as they are basedo n the Rushashwi eaponsd istribution. E-AIleed Error.tsr elatfug to the Murder of Gekuru. CozseZerof Kimisauge Sectot 29E. Relyingo n'WifrrsseBsM R, BMO, BMN, andB MVI,67telt e Trial Chamberfoundrb at in April or May 1994 Karcra said to the Interahsnwe aLt bc Kinyari centrc ros.dblock t}tat Gakuru, the canseiller of Kiurisange sectff, wari an Inkotarryi or Inyewi ald ordcred that he be arrested By dohg so, Karcra left him in the hsnds isf Intrcaltqywe. Under thc p'rcvailing circuastance.q bc musl havc rnder-sioqd thct Gakrru wouldibe killed.ffi Zgg. The Trial Chrimbcrc oncludedf roni the Appcllant's conducta t severall ocarioqs,i ncluding 'the the incident at the Kinyari centrer oadblocl that principal perpetratorsa s well as Karera hacl thc intention to kill prior to the act sf filling.'d8l It found.t trat by thesea cts,t he Appellant "intended to bring aboutt hc deatho f thesep ersotrso ria t the very leastw as aware of the substaftiall ikelihood that murder would be commined as a result of his conduct."682B ased on this event" thc Tria] Charuberc onvictcdt he Appdplant for instigating and aiding and abettingm uder as a cttime against hum-.nity.683 300. The Appellant submits that

the Trial Chamber erred in law in entering this conviction.⁶⁵ In this section, the Appeals Chamber considers three principal questions arising from the Appellant's contentions discussed below: (i) whether the Trial Chamber erred in relying on prosecution Witnesses BMR, BMO, BMN, and BMM despite contradictions between their testimonies; (ii) allegation of weapons distribution in Ny'miranbo; and Trial Judgement, section 6,5, addressing the allegation of, weapons distribution in Rushashi I rriuruuge-eBr, Paras 4. y56, *The Judgement, para-4 56- f] friat Judge, nentp, ara-5 60- :: Trial Judgementp, ara-5 60- u* Trial Judgementp. aras5- 60,5 61, I 85 CaseNo.[:C TR-01-7+A 2 February 2009 I

02/02 '09 12:28 FAX0 031705128932 ICTR @o so +ulr whether the Trial Chamber erred in rejecting the Appellant's testimony without providing adequate reasons; and (iii) whether the Trial Chamber erred in holding him responsible for instigating and aiding and abetting Gakun's murder when it was unable to determine the place, the date, and the perpetratorst hereof. L Alleged inconsistencies between the Testimonies of Witnesses BMR, BMO, BMN and BNOvi 301. The Appellant submits that the Trial Chamber erred in assessing the evidence by finding that he was involved in the killing of Gakun: nr.685H e contends that the Trial Chamber, mainly relied on the testimonies of Witnesses BMR and BMO to construct the narrative of this event" and alleges a number of contradictions between the testimonies.⁶⁶ H e submits that the Trial Chamber erred in law in failing to address these contradictions.⁶⁷ The Appellant submits that in light of the differences between the various accounts given by the witnesses, the Trial Chamber erred in finding that the allegation was proven beyond reasonable doubt.⁶⁸ 302. The Appellant, in particular, highlights the following inconsistencies: - Witness BMR testified that the event occurred at the end of May 1994 while Witness BMO testified that it was sometime in April 1994;⁶⁹ - Witness BMR testified to having seen Gakun arrive in a Toyota Corolla while Witness BMO claimed he saw a Peugeot 505.⁷⁰ The Appellant submits that the Trial Chamber relied on the evidence of Witnesses BMR and BMO who allegedly had seen the Appellant using Gakun's vehicle after he had been killed. In his view, this finding "is of little relevance" in light of the contradictory accounts regarding the vehicle driven by Gakun, as well as the fact that the Appellant owned a car similar to the car described by Witness BMO.⁷¹ - Witness BMR testified that the conseiller, his wife, and a driver were inside the car while Witness BMO testified that he saw the conseiller, his wife, and their two children.⁷² 303. The prosecution responds that the Appellant has not advanced any argument establishing that the passage of time, referred to by the Trial Chamber, was not a reasonable explanation for justifying the discrepancy in the testimony regarding the precise date and time relevant to the events. Notice of Appeal paras. 211-220; Appellant's Brief, paras. 281-290. * Appellant's Brief. para. 290. ¶ Appellant's Brief. para. 291. s7 Appellant's Brief, para. 289. ¶ Notice of Appeal para. 219. ¶ Notice of Appeal para. 216, ¶ Notice of Appeal para. 216; Appellant's Brief, para. 284. - ¶ Notice of Appeal para. 217; Appellant's Brief paras. 284, 286. g^ CaseNo.: ICTR-01-7+A 2 February 2009

02/02'09 12:29 FAI 0031705128932 ICTR @o sr +z+1fr that led to the killing: of 6"gn.o\$ It submits that the Appellant has failed to challenge the common features of the witnesses' accounts accepted by the Trial Chamber. In its view, the Trial Chamber duly assessed the evidence before it, including the Appellant's arguments and the alleged discrepancies.⁷³ 304. As a preliminary matter, the

Appeals consider that the alleged inconsistencies should be viewed against the backdrop of the numerous similarities found by the Trial Chamber in Witnesses BMR's and BMO's accounts which are not challenged on appeal: Both testified that the conseiller arrived at the Kinyari centre roadblock in a white sedan car with others, that Karera and a man called Visney SimFarilubwabo were then, that Karera was asked to confirm the co-defendant's identity, that he ordered his arrest and detention, and that the conseiller was later killed. These two witnesses, as well as Witness BMM, also said that the Grers. had the power to save the co-defendant. It is noted that they both saw Karera use Gakur's car after he was killed. Moreover, contrary to the Appellant's contention, the Trial Chamber explicitly addressed the alleged inconsistencies and noted that "[i]n light of the important similarities outlined above, the Chamber does not consider these discrepancies significant." It further explained that "[c]onsiderable time has since the event and the witnesses may have recalled the date and passed perceived the vehicle differently," 61 I 305. It is within a Trial Chamber's discretion to assess any inconsistencies in the testimony of witnesses, and to determine whether, in the light of the overall evidence, the witnesses were more reliable than the accused. The Appellant has not advanced any reason to demonstrate that the Trial Chamber's explanation was unreasonable. I 306. The Appellant then submitted that Witness BMR testified that the Appellant had stated that the passengers at the roadblock were Tutsis whereas, according to Witness BMO, the Appellant did not mention their ethnicity. The Appellant then contended that this contradiction is particularly significant because it is central to the allegation that he told the Interahamwe that the roadblock that Gakur was a Tutsi. 700 jf Noti'e of Appeal, para. 216; sB rief, para. 284, @ Resiondert's Brief. para. 170. f5 triarfuag"o*cp *i. jso. fl ftirr luallemenla, r as+. sr, + sz. *' Trial Judgeuengp ara. 152. lseJcec s \$u u D p r4 i , p ga n la . 11 J S J. S. T Noti'r of Appeo! para. 2 16; Appellanr'sB rief, paro-2 84. 7@ Appellanf s liriari, iara zA5-CaseN o-: ICTR-01-74-A ZFebrury 2009

02/02 'OS L2:30 FAI 0031705128932 ICTR @o sz l. ttr Itqq lk't1tt 307. The Trial Chamber explicitly addressed this difference and considered it insignificant. 70 It explained that "[b]oth witnesses conveyed that Karera created an impression that the conseiller or his companions were Tutsi or accomplices." The Appellant has not explained why this explanation by the Trial Chamber was unreasonable. 308. The Appellant submitted that Witnesses BMR, BMO, BMM, and BMN also differed in their testimonies as to the date and time when they had learnt about Gakur's murder. 70 H3 e submitted that Witness BMR learned at 3 p.m. from people who "seemed" to have been eyewitnesses to these killings that the detainee had been killed. 7@ According to the Appellant, Witness BMO heard "Witness" later when he returned to the area but the conseiller and his wife had been killed. 31414706 had seen after 6 p.m., on a date he could not specify, four individuals killed at the commune office following an order from the Appellant. Witness BMN testified that she saw Gakuru at the commune office at 1 p.m., that he was led away, and that she saw him again at the prison. Witness BMN further testified that she later heard some Interahamwe boasting that they had killed Gakur. 309. The Appeals Chamber fails to see how the fact that the witnesses learned about the murder of Gakuru at different times and occasions presents a contradiction in their accounts. Moreover, the Trial Chamber addressed the alleged contradiction between Witnesses BMR's, BMO's, and BMM's testimonies on this point in the Trial

02/02/09 12:30 FAX0 031705128932 ICIR @o sc +zzLA 311. The Trial Chamber did not explicitly address this matter. The Appeals Chamber calls that minor inconsistencies commonly occur in witness testimony without rendering it unreliable and that it is within the discretion of a Trial Chamber to evaluate the testimony and to consider whether the evidence as a whole is credible, without explaining its decision in every detail. 71 In light of the Trial Chamber's detailed analysis of both similarities and differences in the witnesses' accounts, the Appeals Chamber finds that the alleged inconsistencies are minor. The Trial Chamber's failure to address this issue does not render its reliance on the witnesses erroneous. 31.2. Accordingly, the Appellant's appeal on this point is dismissed. 2. Alleged Failure to Provide Reason for Rejecting the Appellant's Testimony I 313. The Appellant alleges that he testified at trial that he knew Crakun but that he had never heard that Calqrru was present or that he was in Rushashi. The Appellant submits that the Trial Chamber erred in law in failing to justify its decision to reject his testimony on this point. 713 "Trial 314. The Appeals Chamber has previously held that if a Chamber did not refer to the evidence given by a witness, even if it is in contradiction to the Trial Chamber's finding, it is to be presumed that the Trial Chamber assessed a new issue and the evidence, but found that the evidence did not prevent it from arriving at its actual findings." 714 The Trial Chamber explicitly noted that it based its finding on the totality of the evidence, including the Appellant's testimony. The Appellant has not shown that the Trial Chamber acted unreasonably by not explicitly discussing this evidence, particularly in light of the fact that the testimony was limited to denying the allegations against him. 716 Accordingly, his appeals are dismissed. 3. 315. The Appellant submits that the Trial Chamber erred in law in finding that it had been proven beyond reasonable doubt that he had instigated and aided and abetted Gal's murder when in fact it was unable to determine the place, the date, and the perpetrators of that crime. 11 The Appellant submits that the elements of the modes of responsibility for which he was held responsible were not established. The Appellant contends that the evidence does not reflect that those persons who received his instructions were his accomplices. Brief, para. 263. The Appellant's

ricf,p an-?89. "" Sees upra para- 20- lfl fdl Judgeoenrp, ara-456- ji] Trial Judge'menpt,a n-48- jij Noticeo f Appeal p8\22V,.r'rppllant'sB rief,p aras.288,289A;T .28 Augusr2008p p.Tt,59- "" AT. 28 August 2008 p- T7. T\e French originol vrsion of lhc transcripts r efl,ectst hat Counscfl or the Appellanr makesr efe'renco!o the Trial Judgemenitn Orii. SeeA T - U August 2008 p. 35 of ths Reoch transcripts, CaseNo-:I CTR-01-7+A 2Februar2y 009 ! I

'05 02/02 L2:31 FAI 0031705128932 ICTR +2;IH 'tontribution" comm.itteda ny c",-e.?t9I -nh is view,iit was impossiblet o establisht e ele,meutosf aidins and abetring since it was unknown who evenfually killsd Gahuu on whose orders, and whcre be was killcd.72H0 e submitst hat accordiugt o the Prosecutione videnceh e never askcdt har Gakurub e kilted, but merely instrctedt lrat he be taken awaya nd detaiaed.T2l 316. The hosecution respondst hat the Appellant prompted, the Interlunnte tocommit the offeoce, and that he at least knew that Gakuru was likely to be ti'ri,ed.TnI t submits that the Appellant did not merely facilitate the killing of Gakuflr, and that Gakuru had hoped that the Appellant would sa'lrhei s Lfie.ffi'When the Appellant was askedt o confrm Gakuru's identity, ttre Appellants aid that Gakuruw as an "Inyenzf'.In the Prosecution'sv ieuw this statemeuitn dicatedt o the Interahamwe that they had to kill Gakuru.?uT he Prosecutiona lso refe6 to Witness BMR's testimony,w hich the Trial Chamberf ound credibld: hccordingt o that wiraess," thesep eoplew ould be taken to a place where everythiugw as taken away from them, their clothes,s hoes,w atchesa nd so orl,a udt hen they were killed."ff 3L7. fre aaus reus of "instigating" implies prompting anotherp ercon[e c]6mmila u offence.72[6t is not necessaryto proYet }at the crime would not haveb eenp erpetatcd without the involvemento f the accused;t is sufftcient to demonstraterh at the instigationw as a factor substantiallyc ontibuting to the couducto f anotherp ersonc omrningtlt re ctime,?z? 318' Conuary to the Appellant's coattention,t he speciflc identifi.cationo f the pcrpetrators,w ho wcre identified in the Trial Judgementa s Interaharnwe,w s not required for a fiuding that rhe Appellant instigated the killing of Crakunl h any event, the Trial Chambcr did ideutiff the perPetratorsI-t is implicit, but certain, in tbc Trial Judgementt har the Trial Chamberf ound that Gakuru was killed by the Interalmwa who were informed by the Appellant that Crakgnrw as atr "Inyenzf' and who receivedh is ordert o arresth im. The Trial Chamberf ound that ..[b]y doing so, Karera left him [GaktEr] in the hands of. haerahanwte" ar.d that "[u]nder the prevailing circumstances, e must have understoodt hat Gakunr woud bc killed",728T tat the Trial Chamber 11 ar. 2EA ugust2 ffi8 p. 2it. :1 AT- 28 August2 Cf,8p . Tl. :': AT. 28A ugus2t 008p . 27- :: AT.28A ugus2t 008p . a0. :: AT. 28 August2 008 p. aO- : AT. 2EA ugust2 008p , 40. i'^* N-,% Augnst2 008p - 40, citing T. I Fcbruary2 e6p. V+- Nahinana et aL Appeal Judgemengp ara 4gO yfinaafallZi Appeal Judgemen! psra- I17; Korclii arzd Cerkez Appeal Judgemag pta- T7, 'o' Nahimoia et aL AppalJudgemeut, para.4 {10;G annrbitsiAppeal Judgcrneutp, are 129; Kordic md AerlezAppeal Judgcmengp ur-?J- ' ^ Tial Judg encnt, para,4, 56 - 90 CaseNo.I:C TR-0I-7+A 2Fehruary2009 \-t_L 02/02'09 12:32 FAX0 031705128932 ICTR @o es +u)l made such a finding is imPlicit furi ts recollection of the evidenceo f WitnessesB MO ottd BMN-72e While it would have been preferablct br the Trial Chambcr to explicitly statet hat ir idenrified tha perpetratorso f Gakiru's murder as being the Interahnnnvet o whom the Appellant indicated that Gaknru was an "Inyenzf,' and who receivedt he order to arresth im, this omissiond oesn ot amorht to an error. 319.

02/02/09 12:33 FAX 0031705128832 ICTR @o so I+NIH specifically assisting and providing moral support to the principal perpetrators. Furthermore, in light of the evidence adduced, the Appeals Chamber finds no error in the Trial Chamber's finding that the Appellant traCt Aer equisitef trensr ecL 323. For the foregoing reasons, the Appeals Chamber grants his sub-ground of appeal in part and reverses the Appellant's conviction for instigating murder as a crime against humanity based on this event. The Appellant's conviction for aiding and abetting murder as a crime against humanity based on the killing of Galcuruis upheld. F. Conclusion 324. The Appeals Chamber grants the Appellant's First Ground of Appeal and reverses the Appellant's conviction for aiding and abetting genocide and extermination as a crime against humanity, based on the alleged widespread distribution in Rushashi of mmune. 325. The Appeals Chamber grants the Seventh Ground of Appeal, in part, and reverses the Appellant's conviction for

02/02 '0s L2:34 FAX0 031705128932 ICTR @o se H+lf of tirnes" he was seeni n Nyakinama"t he possibi)ity of travelling by road from Ruhengeria t that tim6, 41fl the credibility and reliability of Frosecutione vidence.TaHl e also arguest bat accordingt o the Trial Chamber'sr casoning,h e wasr equiredt o prove beyondr easonabLd,eo ubt that he did not at any time between7 ud 19 April 1994l eaveN yakinama,i f his alibi were to be accopted."oHne claims that the Trial Chamber erred in its aualysis of the evideaceb y simply compariug the credibility of Prosecutiona nd Defence evidence.T4aes well as ia its finding that the Defence witnessesw ho tcstified to the alibi had

credibility problems.⁷⁵⁰ 329. The Prosecution responds that the Trial Chamber committed no error in its statement of the applicable law⁷⁵¹ and that there is no merit in the Appellant's argument that the Trial Chamber misdirected itself in the application of the legal standards and evidential burden when considering the alibi.⁷⁵² It argues that the approach adopted by the Trial Chamber is consistent with the established jurisprudence of the Appeals Chamber, and that the Appellant has not demonstrated that the Trial Chamber erred in its assessment of proof in relation to his alibi.⁷⁵³ The Prosecution asserts that the Trial Chamber committed no error in considering the credibility and reliability of the witnesses and correctly placed the burden of proof on the Prosecution.⁷⁵⁴ 330. The Appeals Chamber recalls that where an alibi is pleaded, an accused denies that he was in a position to commit the crime for which he is charged because at the time of its commission, he was not at the scene of the crime, but elsewhere.⁷⁵⁵ It is settled jurisprudence of the two ad hoc Tribunals that in putting forward an alibi, an accused need only produce evidence likely to raise a reasonable doubt in the Prosecution's case.⁷⁵⁶ The onus remains on the Prosecution to prove beyond reasonable doubt the facts underpinning the crimes charged.⁷⁵⁷ In doing so, it is incumbent on the Prosecution to establish beyond reasonable doubt that, despite the alibi, the facts alleged are nevertheless true.⁷⁵⁸ Appellant's Brief, para. 303. j] Appellant's Brief, para. 304. " Appellant's Brief, para. 306. j] Respondent's Brief, para. 185. * Respondent's Brief, paras. 72, 76, The Prosecution also submits that the Trial Chamber's findings of the factual findings in relation to the alibi evidence towards the end of the Trial Judgment are correct. The onus of the reversal of the burden of proof and an error of the Trial Chamber, Respondent's Brief, para. 60 (T.D.; on appeal). j] 3 Respondent's Brief, para. 186. * Respondent's Brief, para. 206. 7! Kaiiicti npp4 Jir<lgcurengp ira. 42, citing Niyagelra Appeal Judgment, para. 66 citing Kayistenu and Nyandaru Appeal Judgment, para. 106, i; {y::f^*1ry_l{l9g*,\p8a.6Q rcferrinst o Knyishcmaa rzdR, uzittu tla. Appeal Judgment, para. 186. r3- :'^:: Nrytkgeka Appeal Judgment, para. 60. Niyitegeka Appeal Judgment, para. 60, referring to Musema Appeal Judgment, para. 202, 94 Cse No.: ICTR-01-74-A 2 February 2009

'09 E oss 02/02 12:35 FAI 0031705128932 ICTR, - rnl- ry6ffi 331' In the present case, the Appeals Chamber is satisfied that the Trial Chamber correctly enunciated the law applicable in relation to the burden and standard of proof concerning an alibi⁷⁵⁹ by stating that an accused need only produce evidence likely to raise a reasonable doubt in the Prosecution's case. The alibi defence is a separate defence - the burden of proving beyond reasonable doubt that, in fact, the facts alleged are nevertheless true remains on the Prosecution.⁷⁶⁰ 332. With regard to the Appellant's contention that the Trial Chamber erred by failing to consider his testimony and alibi first, the Appeals Chamber notes that at the beginning of the section on alibi in the Trial Judgment, the Trial Chamber stated that "[n]otwithstanding [the] strength of the Trial Judgment, in making its factual findings, it has assessed the Prosecution and Defence evidence in its entirety.⁷⁶¹ It then went on to analyze in detail the Appellant's testimony and alibi.⁷⁶² The Appeals Chamber therefore finds that the discussion of the Appellant's alibi towards the end of the Trial Judgment does not indicate that it is the burden of the Appellant. 333. The Appellant argues that the Trial Chamber erred when it considered the issue to be, and accordingly assessed, whether the witnesses eliminated the reasonable possibility that he remained in the area at Nyakina 7

and 19 April 1994. The Appellant contends that the Trial Chamber relied in its finding of his alibi by first considering the prosecution's evidence tendered to, discredit it. In this the Appellant argues that this approach imposed a burden of proof on him, as he was required to produce "more convincing alibi evidence, than the prosecution's evidence to discredit his alibi." 334. The Appeals Chamber notes that the Trial Chamber articulated the issue to be whether the evidence of Prosecution witnesses who testified to seeing the Appellant in Nyamirambo sector, Ntarama sector, and Rushashi communities eliminated the reasonable possibility that the Appellant remained consistently in Nyamiramba in Ruhengeri prefecture. 7. The Trial Chamber further explained that in its view, this depends on how frequently [Karera] was observed in Nyamiramba whether he could use the roads to the outside, "and, also, the reliability and credibility of the witnesses: Eayyara and Appert, Udsemail, * - Lt; Musema -- ppe Jaurdge, menpta, rc-? -052, 06_:: Tidjudgement, pan'462- | jll Trid Juasemenpaga rr-i+52. 'u I In_tngi| Uoductoryp ,l9grf,plso f t{rec haprur 4 s * #ri" g rte events in Nyamiramba on 17 April 1994, h cT fial Ch&116er P&ciqcd thatt bDA ppellint prcse'nteadn alibi 'f surjaauizea N s defeucsT. rial Juctgcurrnprf rr.- El,2zz. For each factuafl -rndbga. ndw benel pplPtute theT rial chorrt* eystonaticattsyr rmila"i?eb{to r-hrb ch osecudoua ndD efe'cc evidencea, ndd iscussetdh em" It also specifies call-cyo usidereg: ary4gt* to.ti**i-t"rrTtia Judgcuunrp, r as. 30, 34,48,49,&,65,21731LM,t33,27s-n8,3. ?n,34| g4s,3n,ii{,4g4,,tul,4g6,'4it4;A - -' +lB), and lrisatibi(rze T * r ialJ udgeurc*t ry*. 4:26,81:t2J,222,275t)t rou\$oot rher riu r"4eme"i *.A A , p p p p c e l l l l a a n n t t l ! ' s r s ! c ! , p * r ? ? i ; Driefi n Rcplv.p rra"l f ; nT. 2sa usurtz ooep . te- Brief,p ara3- 03. I ""*I 4 T p r p ia "u l J r u "t d 's g e B m r i e e n f p , t p a , o r a r a 5 3- 0 0 0 3 . ; A T. zEA usus2r 0Ogp- . | t 6. 95 CaseN o.:iC tn-Or-z+n 2 February 2009 I S44

02/02 '09 12:38 FAI 0031705128932 ICTR @r oo +6l H Prosecution's evidence placing him in Nyamirambo and Ntarama sectors and Rushashi community. 7. 335. The Trial Chamber found that the reasonable possibility that the Appellant remained "consistently and exclusively" in Ruhengeri prefecture is eliminated by the "credibility issues raised in connection with Defence evidence", as well as the "reliable and credible evidence" which placed the Appellant in Nyamirambo sector, Ntarama sector, and Rushashi community during this period, 768. Consequently, the Trial Chamber concluded that there was no doubt that the Appellant was present in Nyamiramba and Ntarama sectors and Rushashi community when the crimes were committed. The Trial Chamber's approach is consistent with the legal standards discussed above. Therefore, the Appeals Chamber finds that the Appellant has failed to demonstrate any error on the part of the Trial Chamber in this regard. 336. The Appellant finally argues that the Trial Chamber's reasoning erroneously suggests that for his alibi to be accepted he had to prove beyond reasonable doubt that he did not leave Nyamiramba between 7 and 19 April 1994. 7. In this regard, the Appeals Chamber notes that the Trial Chamber's finding that the "credibility issues" in relation to the alibi evidence, coupled with the "reliable and credible" Prosecution evidence placing the Appellant in Nyamiramba, Ntarama, and Rushashi, together eliminated the reasonable possibility that the Appellant remained consistently and exclusively in Ruhengeri prefecture. The Trial Chamber's conclusion imposing the obligation on the Appellant to prove beyond reasonable doubt that he stayed permanently in Nyamiramba between 7 and 19 April 1994. 337. Contrary to the Appellant's contention, the Trial

Chamber did not conclude that the Appellant returned every day to Nyakinama. Instead, it found that the Appellant could travel on the morning and return "on some days".⁷⁷ The Trial Chamber found that there were significant gaps in the alibi evidence allowing for his presence on some days at the crime sites.⁷⁸ There is no indication that the Trial Chamber considered that the Appellant must necessarily have undertaken the journey from Nyakinalina to the crime site and back on the same day, between the morning and the afternoon.⁷⁹ The Trial Chamber's assessment of the Defence evidence about accessibility of the roads does not contradict this interpretation. The Trial Chamber focused on whether it was likely that [the] Judge ordered para 500. j]] Trial Judgment, para-510-j]] Trial Judgment, para-510. "" Appellant's Brief, para- 303 at T. 28 August 2008 p. 15.; Trial Judgment para-510- "" Trial Judgment para-505, !-; See Trial Judgment para-505. 'In The Appeals but not test be following statement' It is important that [Witness Yartk] did not see (or hear) every &y, that he testified that he occasionally missed the program-"(footnote omitted). Trial Judgment, para-505. Case No.: ICTR-Of-7+A February 2009 Sk--

'09 @r or 02/02 12:36 FAX0 031705128932 ICTR H+1ft possible to travel at that period between N yakinama and the crime sites and not whether it was feasible on the same day. Consequently, the Appeals Chamber finds no merit in the Appellant's argument. 338. This sub-ground of appeal accordingly is dismissed. B' Alleeed Drrors relsting to the PoqqibiHtyo f Travellitrg from Ruhenseri 339. The Appellant submits that the Trial Chamber erroneously assessed the Prosecution's evidence concerning the possibility of travelling from Ruhengeri to Kigali after 6 April 1994. The Appellant argues that the Trial Chamber determined, in error, that Defence Witness KNK corroborated the evidence of Defence Witnesses BBA and KBG that the main road between Ruhengeri and Kigali was blocked but that an alternative road was available passing through Gitarama. 77 T6 The Appellant also contends that speculating on the possibility of travelling from Ruhengeri to Kigali, without evidence that such a journey was actually undertaken, does not impair the reasonable possibility that he remained in Ruhengeri. 117 The furtherer argues that the Trial Chamber's finding that he moved around without difficulty because of his position and the fact that he could use an official vehicle is not supported by evidence. In addition, he asserts that the Trial Chamber erred in finding that he was at the Ntaraua Church on the morning of 15 April 1994 while accepting his alibi that he was in Ruhengeri every day in the morning and after 4 p.m. The Appellant suggests that the evidenced demonstrates that it was impossible for him to undertake in such a time-frame the 410 kilometre return journey from Ruhengeri to the Ntarama Church through the itinerary accepted by the Trial Chamber which would have meant passing through Gitarama town, Kigoma commune, and Ngenda commune, as it was the only possible route. 340. In response, the Prosecution submits that the Trial Chamber correctly found that Witness KNK's evidence corroborated the evidence of Witnesses BBA and IBG on the point of the accessibility of the Ruhengeri-Kigali road. 78 The furtherer submits that the Appellant adduced no tangible evidence to demonstrate that it was impossible to travel during the period in question, and the evidence adduced by both parties was that although travel was difficult it was possible to bring all equipment to the

SA August 2008 paras-22- [] Appellant's Brief, para-299- [] Appellate's Brief. para 300. Appellant's Brief, paras-301. 302. [] Brief in Reply, paras.50-52. [] Brief in Reply, paras.50-52 []

02/02 '09 12:38 FAX0 031705128932 ICTR @r oc ryLlfr evidence that he actually took such a
 5ouney.7s The Appeals chamber disagrees.T he Trial Chamber excluded the reasonable
 possibility that the Appellant remained consistently and exclusively"i n Ruhengeri.Telol reachingt
 hesef inrtirrgrst,h e Trial Chamber considered the evidence of a number of witnesses and reasonedt
 hat "it was possible to travel from Nyakioama to Nyamirambo,t hrough Gitaram4 without using
 the main Ruhengeri-Kigali road,,l?9t2h at ..Karera cottld have travelledf rom Nyakinafia to
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 influential goveilrmetrtp osition aud was well k'oua he would have passedro adblocksw ithoutm
 ajorp roblems.T% 347' The Trial chamber also considered the credibilirity of the Defenceee
 videnceia relation ro the Appellaut beig in:Nyakinama and the reliability arrd credibility of rhe
 prosecution,s e vjdence which placedh im ar'Nyamiramboa nd Ntaramas ectoma nd Rushashic

oulmuuert he locationso f the crimcs.TeTsh e AppealsC hasrbert hereforef inds that the Appellant ha^sfa iled to show that the Trial Chambrcr ommitteda n error in reachingt his conclusiou. 348. The Appellant finally contendst hat the Trial Chamber's finding that he moved around without difficulty by virtue of his position arrd uhf act ilrat he could use an official vehiclp is not supportedb y cvideucea ndi s the,reforeen oneous.teHca ving cousideredth is finding,rt tlr"Appcals Chambern otes that while the Tdal Chamberd id not cite any evidencei n reLrariotno it, ther.ew as relevant evidence on the record supporting this conclusion. The Appeirls Chamber notes, for instance,t hat when the Appellant testifie4 he statedt har on the moruing of 7 April 1gg4 he was recognizeda s an authotiry by one of the "gcndarrnes"m arudnga roadblock and could continueh is Savel after his vehicle had been checked.TeTsh c Appeltant also testified thar on 7 April L994,h e travelled tthrough "tbree roadblocks and one mili6py check-point".DeT herefore, the Appcals Chamberf inds no mcrit in the Appellant's argumenl 349. The Appeals ctrarnber notcs rhar the Trial chamber generally did not embark otr an assessmenot f the "me neededt o u-avel& om Nyakinama to thc crime sccnesc.ffi However, the 3App"tt*Cs Brief, para-3 00. ::: Trial Judgementpt ara,510. '::: Trial Judgeocnqp ara.5 06. jj' Tlial Judgcorenlp ars-,507. jj] Trial Juagemenpl rra-'508. ':'- Trial Judgeucnt,p aras5. OG.5IO- Apellant's Brief, paras.3 01.3 02 Dt Ttisl Judgenonq;ara 508 whch reads: . ,[---] Howevec,a s Karera had,a a r.nflusgti4lg overasental position and was well lrrpwn, the Chamberc oosiderst hat ne-would have passedr cadblocks cootro1cdb y Interaltamtte, gerulantnsasoldierosr civilians, arlou-1.major p robt"ms.T bc'useo f an-o-trr"io,rehicle, which S4era said thath e bartw hile in Rr:hcngeri,w ould facilitati tii rt""ut:J ? jT.2:August2006p. tF. :o:*T . % Auguer2 006p . t7 . SeeT rial Judgementp, ht"s- 506, 507- CaseNo.:ICTR-0I-7&A 2 February2 ffi9 \f-,**

02/02 '09 12:39 FAX0 031705128932 ICTR @na +nlfr Appeals Chanber finds fthat the Trial Chamberd id not necossariyc oncludet hat the Appellant had to travel from Nyakinamat o the srimcs sitesi n Nyamiramboo r Ntaramao n thc samed ay. Rather, its fiuding that "Karera could have lived in Ruhengeri, but travelled during the daytime to Nyanrinrmboo r Ntaranras ectorsr, etrrrningo n sorrred ayst o the Nyakinamac afipus by 4.00p .d'80t doesn ot precludea n interpretationt bat althougho n somed ays he retunrcdt o Nyakinamab y 4.00 p.m., on other daysh e navelled from Nyakinamat o a crime site andr enrnedo n anotherd ay. C, Alleged Errors in lFe Assessmenot f the Evidence on Alibi 350. The Appellant contends that the Trial Charrrbere rroneously found that the Defence wiwesses who testified to his alibi had credibility problems.soHz u statest hat the contradictions 'Witnesses relating to Defence ATA and KD arc tdvial when compared to the problems of credibiliry affecting the Prosecutionw itnesses.80H3e also arguest hat the Trial Chamberd id not provide goodr easonsf or doubtingt he alibi evidace.sG 351. The Prosecutiorrre spoudst hat thE Trial Chamberh as unfeneredd iscretioni n assessingth e evidencep resentedb y the parties,a nd that the Appellant has failed to demonshateiu what way the Trial Chambera busedth at disctctiott.sos 352. WitnessA TA testified that shee nrolled in school a week after her asival in Ruhengeria nd thar the Appellant was at homew hen she left for schoola t 7.00 a.m. and wherrs ber eturneda t 3.00 or 4.00 prn.t06T he wiuresss ated that in mid-April L994,t he Appellant was appointedp refect and begann avelliag to Rushashi.smT h" Triat Chamberf or:nd that the wirness's testimouyc ould only relate to a few days since she starteds choola round1 4 April 1994a

and the Appellant was appointed as Trial Judge Fomenko para. 505. @ Appellant's Brief. para. 306. s Appellant's Brief. para. 306- I alle Urot's Brief, para 507. u Respondent's Brief. para. 210. :t6 Trial Judge Matp, n a- +sz- Drring her testimony Witness A TA stated that when she was going to school she would leave her home at about 7 a.m. and would return home at evening after school. She has been attending classes at the school at 8 a.m. and that the distance between her home and the school was quite long. The class started at about 2 p.m., and she 'was able to go to school between 3 p.m. and 4 p.m.'" V/ben returning from school she found the Appellant at home. She further testified that from 7 April 1994, the Appellant had no specific work because he was at home in Ruhengeri and that during the period when she was going to school the Appellant 'was with us. At that time he had no other work to do, so he didn't go anywhere' T. 5 May 2006 p. 6. " n" THal Judgement, para. 471. 2f-e e: T, 5 May 2005 p. 6 to Q. As for your father, in April 1994 he was the best of your collection, a brother in law in Ruhengeri? A TA- (---) I remember that in the middle of April he informed us that he had been appointed as director of Kigali Rural Prefecture. Q. Do you remember whether he, in the week of 10 April? d I remember that he was there because of the period I no longer saw him in April. but during the weekends- that is, on Sunday or Saturday, he came back to see us. Q. And when did he leave again? d I said that he would arrive on Saturday and return to Ruhengeri on Monday morning. q. (...) For how long did you live in Kigali; travel to Ruhengeri? 9 R/S Bashie and from Ruhengeri back to Ruhengeri? A, As I have already said, he went to Ruhengeri in April and returned to Ruhengeri in early July. l. 100' Caso No.: I CTR-01-?+A 2 February 2009 qq4

02/02 '05 L2:39 FAX 031705128932 ICLT @r os +lolt prefect on 17 April 1994. The Trial Chamber further noted that the witness was less specific about the period before 14 April 1994 stating that the Appellant stayed at home all the time. ss 353. Witness KD testified that between 7 April 1994 and mid-April 1994, the Appellant occasionally left his son's house at the Nyakina camp, campus of the Rwanda National University to watch television at the university campus or to visit professors, but he never left the campus and did not visit the subprefecture office in Ruhengeri. *f np witness stated that after mid-April, she started a business and that the Appellant was at home when she left for work in the morning and when she returned home or to the office from work. l. 10 The Trial Chamber took into account that the witness stated that the Appellant did occasionally leave the houses and that during the period of 7 to 15 April 1994, she had not yet started her business. ss 354, The Appeals Chamber recalls that it is within a Trial Chamber's discretion to accept or reject a witness's testimony, after seeing the witness, bearing the testimony, and observing him/her under cross-examination. In 13 the present case, the Appeals Chamber finds that the Appellant has failed to demonstrate that the Trial Chamber erred in the assessment of the testimonies of Witnesses A TA and KD. 355. The Appellant further argues that the Trial Chamber did not advance any reason for doubting the evidence deduced in support of the alibi. 814 The Appeals Chamber disagrees. In its assessment of the relevant Defence witnesses, the Trial Chamber articulated that there were 'credibility issues'. 815 In relation to KD, the Trial Chamber was of the view that inconsistencies in her testimony affected her credibility. ss 178 The Trial Chamber was also of the view that Witnesses KD and ATA sought to

exaggerated the Appellant's presence in Rrrhengeri. In relation to Defence Witnesses BA and YI\4K the Trial Chamber considered that their evidence * Trial Judgment, para 501. re Trial al\4K dg\frut, Para-483, The Appellant testified that the prefect's office was in Rgshashi. Trial Judgment, para. 342. Set the testimony of Witness K D: T. E Ma1-2006p .n.Q.1.-j So is it your testimony that "O"zt Einp.il to the 15th of April. which is the middle of April during which approximately eight days, he did *. go to the prefect's office? A. He did not go there. During the period I. mj'tef, had not yet started any commercial activities. up until he left for RuhashyCh e did not meet the complainant 1- "oF", "T"r"i9a,lq J"u_d?gtJerm entp, para-483, Set the testimony of Witness K D: T, 5 May 2006 p, 45. (e. from what time to when did you were involved in this small business? A It depended on when he had gone to the prefect's office to the market to buy, but we started at 10 a.m. and we closed at 5 p.m. or 5:30 p.m. t.;.1 Q. Vfu* you left your wife at home in the mornings, was your father there? A . Yes, I left after breakfast a day after the trial Judgment, para. 502. :: Trial Judgment para 502. ii)seronba xypal-Judgment para I I6, rafeni4g to Akayew Appeal Judgment, para 147. "" Appeal's Brief, para-JU7,nT. 28 August 2009 E- 24- :: first Judgment para-510-] Trial Judgment, para. 502 "Trial Judgment, para-503. 101 Case No.: ICTR-01-7+A 2 February 2009 I SLUL I

'09 @r os 02/02 12:40 FAX0 031705128932 ICTR 4MIH did not reliably indicate that the Appellant remained consistently in Rubeugqi. The Appellant has not shown how the Trial Chamber based its decision in making these findings, 356. Therefore, this ground of appeal is dismissed. D.1 Conclusion 357. The Appeals Chamber finds that *,f appellant has failed to demonstrate any error in the Trial Chamber's reasoning and findings in relation to the Appellant's alibi. Therefore, this ground of appeal is dismissed in its entirety- 8th Trial Judgment, paras. 504. 505. 102 C,ascNo.: ICTR-01-7+A 2 February 2009 Su{

- 02/02'09 12:41 FAX0 031705128S02 ICIR @r oz +Dslfr X' ALLEGED ERRORS RELATING TO THE TRIAL CHAMBER'S LEGAL FINDINGS (GROUND OF APPEAL TO) 35E. Under this ground of appeal, the Appellant submits that the Trial Chamber's legal findings are erroneous and "must obviously be revisited in the light of admissible evidence".sle 359' The Appeals chamber observes that all of the arguments advanced under this ground of appeal challenge the Trial Chamber's findings. The Appeals Chamber has already addressed these arguments in the respective sections of this Judgment. There is no additional argument presented under this ground of appeal, or further discussion warranted. 360. However, the Appeals Chamber, proprio motu, has considered the question of whether the Trial Chamber erred in using its findings that the Appellant was responsible for the killings of Joseph Khabaye, Murekezi, Jean Bosco Ndingutse, and Patatin Nyagarari in support of the convictions entered under Count 1 of the Amended Indictment for genocide and under Count 3 for extermination as a crime against humanity. The Appeals Chamber invited the parties to address this issue at the appeal hearing. 361. The Appellant did not directly address this issue. The Prosecution submits that it was permissible for the Trial Chamber to use its finding on the killings of these four individuals in support of the Appellant's conviction for genocide and extermination since the Appellant had received

irnelly, ctenr,a nd sufEc,iennt oticc that thesek illings were to be userli n supporto f rhese, charges-82In3 this respect,t he Frosecufionc onteudst hat the AmendedI ndictuieut has to be read as a whole,s%a nd that the ProsecutionP re-Trial Brief discussedth e factual allegationsb y location, including Nyamirambo,r attref,t tran with rcspectt o eacfr count. According to the prosecution, t lre Appellanr was thereforeg iven proper notice that these f our individuak were f,mongt he victims of lus genocidala nd exterminationc ampaigna t that locatio!.\$fi I 362. The Appeals Chamberh as already quashedn e Chamber'sf indings in relation to rhe ffriat killings of JosephK ahabaye,J ean Bosco Ndingutse, {no faatn Nyagataref or other reasoos.sfi Therefore,i t need only considerw hethcr it was permi{sible for the Trial Chdmber to corrict the 8re Notir" of Appeal,p ara-243, * Sces uDra Ctrailr;rsV to IIL i*IT a ft agrfgrnupiration ofrho Appeal Hearing,p - 2 Defetw addrcssedth e issue of the defectsi n thcAmeoded witbout mnrlng direct referecce to lhe sufficiency of notice relatiug to the tillings of lhc four indivj which were chagcd under Count 4 of the AsrendedIndictocnt for mrucltr as a criue against humanity_ AT. August2008p p.52-54- * AT.28 Augrut2008p .37. w NI-28 Augustz @Ep-37. * AT.28 August2 008p . 38- t03 CaseNo.:I CTR-O]-7+A 2February2ffi \U,(

02/02 '09 12:42 FAX0 031705128932 ICTR @r oe ryrH Appellant for genocide and exterminatioua s a crime against humaaity based on rhe murder of Mtuekcz. 363- The Appeals Chambern otes that the allegationo f the muder of Mr:rekezi is only madea t paragraph3 3 of the Amended Indichrent iu support of Couot 4 for murder as a crime against humanity. The Appeals cha:rrber fiEther notes that, ar trial, rhe Defence objected that „several allogatioasr elating to eventsi n Nyamiramboa nd Rushashia re too vague or flot uentioaed in the Indictment or relate only to count 4 (murder) [and that the] [e]vidence in support of these allegationss hould thereforet re excludedo r consideredo nly with respectt o the murder chargd,..l2l The Trial chamber rejectedr heD efe,nceo bjectiono n the groundsr hac t--.1 the Defcnced id aot object to any of thin evidencea t the ti.ne it was adaitt&d or at Urec loseo f the hosccution cese Nor did it ruake a geocral pre-tial objectioo Rather, tn" bofroo CIakr:s tbosee xclusiour cquestsf or the first tinc in its closiug submissionsI.t off* * *pi*"tioJ* failing to objctt le rhi-ce videncea t rhe time it was Jmirted tr a[a lat&r poiEt fuing rha trial proceedingsT' he Chamberf nds that thErei s no rcasonabl,aEx planationf or ita Defenco-'sla ck of objectionsa t al earlicr stagei n thc tsial. ID the exerceio f its diicretiog ir bous tUatt lte burdeno f proof has shifted to the Defeocet o denonseattet hat the lack of notice gcjudiced rbc Accusedi o rhep reparatio no fhis defeucc-E 3&. Subsequentlyt,h e Trial Chamberc onsideredt he Defenceo bjection in connectionw ith the allegation of killings at Nyamirambo on 7 April Lgg4.82Teh E Tliat Chamberf ound "it clear thar Counts\ ,2 and3 includec ventst hat occurredo n 7 April [1994]".s3Wo henc onsideringth e alleged lqillingso f JosephK ahabayeF, 6lix Dx, Murekezi,J eanB oscoN dingutsga ndP alatinN yagatare,s3r the Trial Chambe'rd iscussedw hether paragraph3 3 of the Amcnded Iodictuent pl.leadedr hese events with sfficient specifi city.B' However, the Triat Chamberd id not coosider whcther the allegatioussc outainedi n this paragraph,u nder Count 4 (mruder) could also sutrryorth e cbargeso f genocidea nd extccminationa s a crime againsth umanity. 365. In MwwyL the Appeals Chambero bscrvedt hat "the Prosecution'sf ailure to expressly statet hat a paragraphin the Indichcnt supportsa particular count in the Indicunent is indicative that ttre allegationi s not

charged as a crime". The Appeals Chamber considers that the said where a particular allegation is charged under a particular count only. In the present case, the Amended Indictment put the Appellant on notice that the Prosecution was charging him for the following offences: paras 214. *Defence Closing Brief paras 93-197, 318-319; final closing arguments (24 November 2006 paras 2-4). The Defence stated that the allegations of killing in the indictment count (paras 214-215) "were brought into consideration of the fact that the Defence is losing the trial, para 197. See also the Trial Judgment paras 5-6, 7, 8, 9, 10, 11, 12, 13, 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.

02/02 '09 12:42 FAX 031705128932 ICTR @r os +061fr murder of Murekezi only under Cor. 4. In view of this, there is some basis for argument that by reading the Amended Indictment alone, the Appellant would not have understood that he was also charged for the same fact under Counts 1 and 3. In regard to the Amended Indictment, the Prosecution lists the identity of a finite number of victims, and was able, when it sought to amend the Indictment, to specify the circumstances of their murder. It chose not to list Murekezi's killing in the statements of facts pertaining to counts alleging genocide and extermination as a crime against humanity. The Appeals Chamber has previously held that "[e]ven in cases where a high 'impractical degree of specificity is [...] since the identity of the victim is information that is valuable to the preparation of the defence case, if the Prosecution is in a position to name the victims, it should do so." 84 366. Turning to the Prosecution's submission that the Amended Indictment has to be read as a whole, the Appeals Chamber notes that while the statement of facts supporting Count 4 incorporates the statements of facts supporting Counts 1 and 3, the reverse is not true. The statements of facts supporting Counts 1 and 3 do not incorporate the statements of facts supporting Count 4. This lack of reciprocity might have added to the impression that Murekezi's murder was not incorporated into Counts 1 and 3 of the Amended Indictment. 367. The Appeals Chamber further notes that the process of amending the initial Indictment might have laid the groundwork for confusion on this issue. Originally, Murekezi's killing was listed in a statement of facts pertaining to both Counts 3 and 4. However, this statement of facts was eventually severed and Murekezi's killing was subsequently mentioned only in the statement of facts applicable to Count 4. While the rationale for the severing of the original, combined statement of facts did not centre on Murekezi, the amendment may have given the message that Murekezi's killing related only to Count 4 of the Indictment, rather than serving as a key basis for the gravest of the charges involved. The Prosecution's decision not to refer to Murekezi at all in Counts 1 and 3 of the Amended Indictment, especially in the context of the Indictment amendment process, further supports the conclusion that the Prosecution intended to leave to the Appellant the impression that the Prosecution, rather than the Appellant, requested authorization of the present Counts 3 (extermination as a crime against humanity) and 4 (murder as a crime against humanity) and that the Appellant should seek clarification of the Indictment, rather than the Prosecution, to amend the Indictment, paras 1-2, 3.5-3.7, because the Trial Chamber granted the Prosecution's request to allow the

cumulative leading of Counts 3 and 4, the deletion of some paragraphs, sections and words, in the insertion of names of victims in order para_graph. The Trial Chamber also instructed the Prosecution to specify the location, the date and the names of the doctored photographs and to clarify the facts which are interdicted. It is the charge of the Prosecution to prove the crime against humanity (emphasis added). It is clear that "such clarification should include the names of the victims, the location of the crime and the date of the crime." The Decision of the Appeals Chamber and the Prosecution's Request to Leave to Amend the Indictment Rule 50 of the Rules of Procedure of the Trial Chamber. 12 December 2005. 5. The Amended Indictment incorporating the Trial Chamber's instructions, was filed on 19 December 2005. See the Prosecution v. François Karera, Amended Indictment, 19 December 2005, The concise statement of facts supporting Counts 3 and 4 was severed and the murder of Murekezi was no longer mentioned. Under Count 3, only, the evidence led under Count 4 - Compare Amended Indictment pp. 5, 6, with the original. i. 105 Case No.: ICTR-01-74-A 2 February 2009

02/02 '09 12:43 FAX 0031705128932 ICTR @r ro +05k resulted in a vagueness with potentially serious consequences for the preparation of the Appellant's defence. In these circumstances, the Appeals Chamber considers that reversal of the affected convictions is appropriate. 368. The Appeals Chamber further notes that the Amended Indictment was issued on 19 December 2005, several days after the filing of the Prosecution Pre-Trial Brief. As a result, while the Prosecution Pre-Trial Brief included a summary of anticipated witness testimony, the text of the Prosecution Pre-Trial Brief and the summaries referred to either the Indictment or the draft Amended Indictment annexed to the Prosecution Motion to Amend the Indictment, but not to the Amended Indictment itself. Turning to the Prosecution's contention that the Prosecution Pre-Trial Brief presented factual allegations by location, including Nyamirambo, rather than with respect to each count, the Appeals Chamber does not see how this argument is capable of demonstrating that any defect in the Amended Indictment relating to the facts underlying Counts 1 and 3 was cured by the Prosecution Pre-Trial Brief. 369. In a world of limited legal resources, the Appellant's counsel might have focused more attention on Murekezi's killing had this key material fact been more specifically linked to a larger number of counts concerning crimes such as genocide and extermination as a crime against humanity, which on their face appear even more serious than murder. Instead, the Amended Indictment may have given the opposite impression. This error and the confusion it has generated justify reversal of the Appellant's convictions under Counts 1 and 3, insofar as they rely on the murder of Murekezi. 370. Accordingly, the convictions are quashed. See Ntakirutimana Appeal Judgment. The Trial Chamber, 12 December 2005. See the text of the Prosecution Pre-Trial Brief, which was filed after the Prosecution Motion to Amend the Indictment merely refers to the indictment without specifying the reference to the Initial Indictment or the draft Amended Indictment. 106 Case No.: ICTR-01-74-A 2 February 2009 q-{

02/02 '05 12:45 FAX 031705128932 ICTR @ttz +nl 374. The Appeals Chamber notes that the Appellant's submission regarding the Prosecution's failure to disclose relevant information is not a violation of his right to a fair trial without undue delay, as raised for the first time in the Appeal Brief and the Brief in Reply. In light of the fact that the Appellant failed to "indicate the substance of the alleged facts" in his Notice of Appeal, as required by Rule 17E of the Rules, the Appeals Chamber finds that the Appellant's arguments do not warrant a finding that the fairness of the proceedings is in jeopardy and that the Appeals Chamber declines to consider them. Chamber 375. The Appeals Court first turns to the arguments raised in the Notice of Appeal under his ground of the effect that the Trial Chamber was tainted by the evidence it heard in the Renzaho case while deliberating on the Present case. The Appeals Chamber notes that, at the appeal hearing and in response to a question raised by the Appeals

Chamber, the Appellant declared that he had not abandoned this ground of appeal. B5T3h r Appeals Chamber finds that the explanations given by the 'Formerly Appellant for re-instating his ground of appeal which it had dropped' in the Appellant's Brief are unconvincing. However, in light of the particular circumstances of this case and absent an objection by the Prosecution, the Appeals Chamber will address the Appellant's argument concerning the alleged lack of independence and impartiality. 376. The Appellant argues that in light of the positions respectively held by Tharcisse Renzaho and the Appellant in April 1994, respectively, and the locations where they allegedly committed crimes, the facts of both cases are linked. The Appellant submits that the Trial Judges heard witnesses in the Ruzatwacase who had previously testified in his trial and that by doing so they lost the appearance of independence and impartiality. The Appellant alleges that when hearing the same witnesses in different cases, the Trial Judges would eventually be incapable of distinguishing the witnesses' testimonies. 377. In Nkhitarrab et al., the Appeals Chamber recalled that [t]he right of an accused to be tried before an independent tribunal is an integral component of his right to a fair trial as provided in Articles 19 and 20 of the Statute. [...] the independence of the Judges of the Tribunal is guaranteed by the standards for their selection, the method of their conditions of service and the immunities they enjoy. The Appeals Chamber further notes that the independence of the Tribunal as a Judicial organ was affirmed by the Secretary-General at the time when the Tribunal was created and so the Chamber reaffirms its institutional independence: namely that the Tribunal is entirely independent of the organs of the United Nations and of any State or group of States. According to the Appeals Chamber and considering the Appellant's Brief, paras 320; Brief in Reply, paras 59-68. 'AT. 28 August 2008 p. 57. T. 28 August 2008 p. 56, 57. *1 Appellant's Brief, para. 520; Brief in Reply, para. 67. -o Notice of Appeal. paras. 245-251 - tr 7 AT- z. eugp. 2008 p. 57. 108 Case No.: rCTR-OI-7+A 2 February 2009

'09 @r rc 02/02 12:45 FAX 031705128932 ICTR +02LH that there is a strong presumption that the Judges of the Tribunal take their decisions in full independence, and it is for the Appellant to rebut this presumption. 378. The Appeals Chamber notes that Judges of this Tribunal are sometimes involved in trials which, by their very nature, cover overlapping issues. In this regard the Appeals Chamber previously held that [i]t is assumed, in the absence of evidence to the contrary, that, by virtue of their training and experience, the judges will rule fairly on the issues before them, relying solely and exclusively on the evidence adduced in the particular case. The Appeals Chamber agrees with the ICTY Bench that "a judge is not disqualified from treating a case in which he or she has previously been involved" out of the same series of events, here he is proposed to decide relating to these events in both cases. Accordingly, the fact that the Trial Judges heard the Ruzahoca, while at the same time, they participated in deliberations on the Appellant's case does not in itself demonstrate a appearance of bias on the part of the Trial Judges. 379. For the foregoing reasons, this ground of appeal is dismissed. 1-j\ anirrvrr-ct al- Appeal Judgment, para. 28 (cited on omitted). Nahimuta et al. Appeal Judgment, para. 78. * Nahimaru, et al., Appeal Judgment (para. 78 (cited on omitted). 109 Case No.: ICTR-01-7+A 2 February 2009 i

02/02'09 12:46 FA.X0 031705128932 ICTR @r rt I +ilfn xff. ALLEGED EI{RORSR ELATTNGT O SENTENCTNG(G ROI{D OF APPEAL 12) 3E0. The Trial Chamber sentenced the Appellant to life imprisonment for the crimes of genocide and extermination under as crimes against humanity-861 381. The Appellant submits that the Trial Chamber committed a n error of law in sentencing him to imprisonment for the remainder of his life.8@T he Appellant claims that „[t]he numerous errors of law and fact that affect the [trial] Chamber's findings are such that the Trial Chambers should have acquitted the Appellant, and a sentence should never have been imposed on him.„s6H3e posits an alternative actual conclusion that in his view, the Trial Chambers should have each [aiming that "[t]his version of [the] factual finding is also as plausible as that made by the Trial Chamber."i6In the alternative, the Appellant argues that the Trial Chambers should have imposed a reduced sentence as a basis for the Appeals Chamber to substitute the current sentence with an 8fl "appropriate sentence". 3E2. The Appellant further submits that the Trial Chamber did not take into account the factors it should have considered in determining the sentence.s6Tto this end, the Appellant points to factors that according to him should have mitigated his sentence but were not considered by the Trial Chamber: the "pacification meetings" which he held in Rushashi; his efforts to ensure the safety of Vincent Munyinda; a well-known RPF supporter; 870th time (thirteen months) spent in detention; a finding of no culpability during the Trial Chamber's deliberations; 87 and the fact that being sentenced for the remainder of his life, the Appellant is not in a position to benefit from the reduction of the sentence granted by the Presiding Judge regarding the delivery of the Trial Judgment, 872 list of Judges, para 585. IX!o{ of Appeal, para 255; Appellant's Brief, paras. 321-326. I Notice of Appeal para 2-50. I appellant's Brief, para 324. N Alrllant's Brief para. 326, II Notice of appeal, para 63. *ADDellant's Brief, para 26- ffl tbir', p of appeal para. 25r. f woUceo f AFca[Wra. 21}iAppella:rr's Brief, para 325. ,r, lpgn*:'.s Bri{, ry* 1T (yher9.t hc Appellant challenge the Trial Chamber's actual findings). Notice of Appeal, para 254; Appellant's Brief, para 326. "; J'- Notice of Appeal, para 251' €s.e! paragapn 25d the Appellant submits that "[t]he Trial Chamber did not take into account [-] the fact that the Presiding Judge of the final hearing had stated: 'the delivery of the indictment on 7 December 2001, and the Appellant to be given credit for the period he spent in detention since his arrest in Kenya, 4 years and 16 days-' 110 CaseNo.:ICTR-01-7+A 2 February 2009 Q,r

'09 E rrs 02/02 12:47 FAX0 031705128932 ICTR No 383. The Prosecution responds at this ground, appeals should be summarily dismissed because the Appellant advances no argument to demonstrate that the Trial Chamber failed to exercise its discretion adequately or that it committed a manifest error in determining the sentence.873 384. The Appeals Chamber will first address the merits of the Appellant's arguments against the Trial Chamber's determination of the sentence and then will consider how its findings on the Appellant's convictions impact the sentence. 385. Article 24 of the Statute allows the Appeals Chamber to "affirm, reverse or revise" a sentence imposed by a Trial Chamber. However, the Appeals Chamber recalls that Trial Chambers are vested with a broad discretion in determining the appropriate sentence. This stems from their obligation to tailor the sentence according to the individual circumstances of the accused and the gravity of the crime.874 Generally, the Appeals Chamber will not substitute

I 02/02 '09 12:47 FAX0 031705128932 ICTR @r ro nqln Appellannr's prerogative to idntify any mitigating circumstances in stead of directing the Trial Chamber'sa ffention, tot he recordi n geueal. 389' The Appeal d Chamber further finds thar in pointing to rhe "pacification meetiags", in Rttshashia nd to his,allegede tffortst o ensurct he safety of Vincenr Mnnyandamuts4t he Appellant merely Presentsf acnral assemionsw ithout showing how rhe mitigating circumstancesw ere undervaluedb y the Triar chamber. Therefore,r be Appellant has not demonskatedt hat the Trial chamber cornminediad iscarniblee rror in its assessrnenotf the individuat mitigating circ'mstances. This sub-gror:ndo f appeali s accordinglyd ismissed. 390. The Appeals Chamberc onsiden that, in senlencing,t he Trial Chanrbrcrc orrectly took into account tle gravity of the offences and the degree of liability of the convicted persorr,87t8le iDddividual circumstanceso f the Appellant, and his role in thc crines, includiug any mitigating circumstances,sTaes well as the senterrcingp racticeso f thc Tribunal and furR w^r,da-8sIot found it appropriatet o impose the ma:timum sentence.ssTt he Appellant makesn o submissions uggesting that thc eimes for which he was convicteda re not grave.T he Appeals Chamberr ecalls that even wherem itigatingc ircumstancoesx ist,a Trial Chamber'lisn ot precludedfr om irnposinga sentence of life irnprisonmenqwh ere the gravity of the offence requires rhe

imposition of the maximum sentence provided for."8& Mhdful of the gravity of the Appellant's crimes, the Appeals Chamber does not find any discernible error in sentencing. 391. Turning to the Appellant's claims that the Trial Chamber erred in sentencing him to life imprisonment when, the charges against him were not proven beyond reasonable doubt, the Appeals Chamber recalls that it has upheld a number of the Appellant's grounds of appeal and has reversed several of the Appellant's convictions, namely: for aiding and abetting genocide and extermination as a crime against humanity, based on the alleged weapons distribution in Rushashi community; for ordering genocide and extermination and murder as crimes against humanity, based on the alleged murder of Joseph K. Ntabaye, Jean Bosco Ndingutse, and Paulin Nyagatare; and for instigating murder as a crime against humanity, based on the murder of Gakuruki. In addition, the Appeals Chamber, proprio motu, has reversed the Appellant's convictions for ordering genocide and extermination as a crime against humanity, based on the killing of Murekezi. 392. Therefore, the question before the Appeals Chamber is whether it should revise the sentence imposed by the Trial Chamber in view of the findings made in this Judgment. It is a matter of principle, paras. 574, 575. :: Trial Judgment, paras. 574-575, 582, * Trial Judgment, paras. 574-584. I I 112 ; Case No.: ICTR-01.74-A 2 February 2009 ¶ 11, r. 1

02/02 '09 12:48 FAX 031705128932 ICTR @ttz ffi\In 393, The Appeals Chamber considers that the crimes for which the Appellant remains convicted on appeal are extremely grave: they include genocide and extermination and murder as crimes against humanity, and resulted in the death of a large number of civilians. It considers that the Trial Chamber exercised its discretion to impose a single sentence reflecting the totality of the criminal conduct of the Appellant instead of imposing concurrent sentences, as a result of the seriousness of the outstanding convictions, the Appeals Chamber finds that the reversal does not warrant a reduction of the sentence imposed by the Trial Chamber. 394. The Appeals Chamber has considered the mitigating and aggravating factors discussed by the Trial Chamber, and concludes with the Trial Chamber that the aggravating factors outweigh the mitigating factors. 395. The Appellant is unsubstantiated content that in assessing the Sentence, the crime spent in detention during the Trial Chamber's deliberations should have been taken into account is also dismissed. The Appellant has not demonstrated how the deliberations period in this case calls for a reduction of sentence. 396. Accordingly, the Appeals Chamber affirms the Appellant's sentence of imprisonment for the remainder of his life. 397. The Appeals finally dismisses the Appellant's claim that the sentence deprived him of the benefit of any credit based on the period already spent in detention. Rule 101(C) of the Rules states that "credit shall be given to the convicted person for the period of his imprisonment, during which the convicted person was detained in custody pending his surrender to the Tribunal or pending trial or appeal". This provision does not affect the ability of a Chamber to impose the maximum sentence, as provided by Rule 101(4) of the Rules.] rrial Judgment, para. 585. E: yiyit: g:f2A. ppd lucilcurnt, para. 26? nq uotiug M wema Apryna J l ud, gcmenpl ara. 396. I Saa Trial Judgment, paras. 1. 92. 315, 376, 456-." Trial Judgment, para. 585- * Trial Judgment, para. 585. 113 Case No.: ICTR-01-74-A 2 February 2009

'09 E rre 02/02 12:49 FAX0 031705128932 ICTR 3qvla XilI. DISPOSITION 398. For the foregoing reasons, the Appeals Chamber pursuant to Article 24 of the Statute and Rule 11g of the Rules; NOTING the written submissions of the parties and their oral arguments presented at the hearing on 28 August 2008; SITTING in open session; ALLOWS the Appellant's First Ground of Appeal and REVERSES the Appellant's convictions for aiding and abetting genocide and extermination as a crime against humanity, based on the alleged widespread distribution in Rwanda of the Appellant's Fifth Ground of Appeal and REVERSES the Appellant's conviction for ordering genocide and extermination and murder as crimes against humanity, based on the alleged orders of Joseph (Kabanda), Jean Bosco Ndingire, and Paulin Niyagatare; PROPRIO MOTU, REVERSES the Appellant's convictions for ordering genocide and extermination as a crime against humanity, based on the killing of Murekezi; ALLOWS, in Part I the Appellant's Seventh Ground of Appeal and REVERSES the Appellant's conviction for instigating murder as a crime against humanity, based on the murder of Gakuru; DISMISSES the Appellant's appeal in its entirety; AFFIRMS the Appellant's conviction for instigating and committing genocide during the attack against the Tutsi refugees at Ntarama on 15 April 1994; AFFIRMS the Appellant's conviction for instigating and committing extermination and murder as crimes against humanity through the killings of Tutsi refugees at Ntarama on 15 April 1994; AFFIRMS the Appellant's conviction for ordering murder as a crime against humanity based on the killing of Murekezi; AFFIRMS the Appellant's conviction for aiding and abetting murder as a crime against humanity based on the killing of Gakuru; AFFIRMS the Appellant's convictions for instigating genocide and extermination as a crime against humanity, based on his alleged conduct at meetings held in Rushashi between April and June 1994. AFFIRMS the Appellant's sentence of imprisonment for the remainder of his life, subject to credit being given under Rules 101(D) and 107 of the Rules for the period in which the Appellant was deprived of his liberty for the purposes of this case, that is from 20 October 2001; 114 Case No.: ICTR-01-7-A 2 February 2009

02/02 '09 12:50 FAX0 031705128932 ICTR @r re , 316/H I RILES that this Judgment shall be enforced immediately pursuant to Rule 119 of the Rules; and ORDERS, in accordance with Rules 103(B) and 107 of the Rules, that the Appellant is to remain in the custody of the Tribunal pending his transfer to the state in which his sentence will be served. Done in English and French, the English text being authoritative. Signed: Fausto Pocar, Mohamed S. Habbab, Mehmet G. Dhey, Presiding Judge, Judge Liu Daqun, Theodor Meron, Judge Judge : Done this 20th day of February 2009, at Arusha, Tanzania. [Seal of the Tribunal] 115 Case No.: ICIR-01-7-A 2 February 2009

02/02'09 12:50 FAI 0031705128532 ICTR @tzo Tqsln XfV. AIYI\EXA: PROCEDURAL BACKGROUND 1. The main aspects of the appeal proceedings are summarized below. A. Notice of Appeal and Briefs 2- The Trial Chamber presided by Judge Tadić in this case on 7 December 2002 and rendered its decision in writing on 14 December 2002. 3. On 21 December 2002, the Appeals Chamber denied the Appellant's request that the time limit for filing his notice of appeal accrue from the date on which the Trial Judgment was served on him and on his Liaison Counsel in French but granted proprio motu an extension of time of seven days. On 9 January 2003, the Pre-Appeal

judged eniedr he Appcllant's requestf mreconsideration of the 2l Decembs 2007 Decisiona ndf or a firther extensiono f rime.z 4. Tbc App"lilarlt frIed his Notice of Appeal ou 14 lanuary 20083a nd his Appellant's Brief on 7 April 2008.40 u l{ May 2008,t he Prosecutioufi ted irs Responde,nrB'sr ief.sT he Appellantf iled his Brief in Reply on,2J uue2 008.6 B. AssiEmentof.Iudees 5. Otr 14 Deceuibet2 007,thefo tlowing Judgesw ere assignedto heart hc appeal:J udgeF ausro Pocar, Presiding; Judge Mehmet Giinefi Judge Liu Daqun; Judge Thcodor Meron; and Judge V/olfgang Schomburg.TJu clgeF austop ocari ssueda n order designatingh irnself as the Pre-Appcal Judgei n this case,8S ubsequentlyo,n 19J une2 008,J udgeM ohamedS hahabuddecwtra s assignedto replaceJ udgeV / olfgdng Schomburgw, ith immediatee ffect.e l^ry:=g_g FrangoisK arcra's Motiol for Extosiono f Time fc Filing the Notico of Appeal issuedo. n 2l Decembc2 007. The French aaniGtiot of the Trial Judguaeot was liled on 19 May 200fi- i ^9fli"l on Requ-cstfso r Extension of Time for Filing thc Notice of Appcal and/or for Rccousideration9, January 2008 CP January2 00ED ecision"). 'Dcfence Notice dAppeal, filed tu French(Avis d'AppeDo n 14 January2 008. 'Appellanf s Brief, filed in Rench (Minpire d'eappel (Article 24 fu SaM, RdgleI 11 du Rdghmc* de proe€clure et de Prcwe) on ? April 2008.jThe Appcllant initially submitleda n Alpcllant's grief ou 2E Maich !,QQgth nr exceededr lc word lini: lt! 9f4 by ,tho Tribuual's ksctice Direction on Ge Length of Briefs and Mori,ons * app"rl bi approximately7 ,000 wo{s- The Appcllant did nol seeka dvancea utbmizationt o exceedt be word limit but suiiiueO i gotion regardinge fo"f o" qlFy qf filing hie AppollantrsB rief. Thc he-Appeaf Judged ismissedt bis modou and d*-ry{ 6l tt Appellant uust file sn ancuded motion complying with rbc **a limir o! z aprl 200g. SscD octsion 9n Motiou for Leavet o Ex€eed the Wcd r init 3 Apfil 2008-] ResponaeofsB rief, fled on 16lv1ay2 003. " Brid iD Rcply, fleo iu Rccrch (Rdpliquea u Mdttttoired e |Itxhr6) on 2 Jr:ne2 00E- ' ordsr Assign;'g Judgest o a csse boforet he AppealsC tamber. 14 Deccmber2 007. t Oraer Oasilletirg a PrCappoat Jdgu, 18 Decembc2 007. 'Order Roplainga Judgorina Caseb efortc he eppealsC banbcr,1 9J une2 00B. il6 CaseNo.:I CTR-01-7+A 2 Februar2yo o9 t4--

02/02 '09 12:51 FAX0 031705128932 ICTR @tzt 3qh.ln c. Motion related to the Admission of Additional Evidence 6' on 28 August 2008, the Appellant filed a Motion for Additional Evidence.loT he hosecution opposedt his mrltion and requestedir s dismissal.rt on 6 octobc 200g, the Appeltant filed areply.tz On29 Octoberz o{S,theA ppealsC bamberd ismissedrh eA ppcllant,sm otion.t3 D. HearineoftheABpeal 7. pursuant t o a schedutingo rder of I July 200g,r4t he AppcalsC trambrh eardt he panios, oral argnnrentso o iE august 2008 in Aru,sh+ Tanzatia. On 22 Septembc 200E, the Appeals Chamber graated an'oral motion submined by the Defence at the appeal hearings req'esting the Appeals Chambcr to recognize as validly filed the Appellant's Appeal Book and Book of Authorities, submined to the Regsty on 4 August 200g.16 To kesat Additional Evidescq Fled in Freoch (Requ\te extr&nementu rgente \$'-!' Defcnse.eytfirc dep rdsenterd esi ldmnts d,ep reuves upplamentaireso) n 28 augusi ZigB. Itosccutor's Rcryoose! o Appellant Karera's,'RequeEa frenQmznt urgentea c b D€fense auzfru de pr€senur tiEls iliments de preuves upphmenlaire!', Elcd on 16 SeptemUeZr OOE. " R"ply to the kosocutor's Responsoto Appellant-farcra's_'Req.ut.tee firEmarnenut rgeng da ta Dlfense auxfins de pr€scMer det €anptzts de pretnte .tuppl4mentairey'f,i lud_- Frcdh (Riplique d la r€pinse du procfrcur a ta.i eqtgt-e' f{-l

enlyeaurf.ent! dc la D4fetuea uxlins de prdser*erd es ilEnzcntsd ep reuves uppiëmentaires) oa 6 Octoucrz 6Og. uec\$lotr oE the Alrpellail,'s Rcquestt o AdEit Additional Evidencecp ursuant t o Ruls ll5 of the Rules of Itocedure aadE vide,ncc2, 9 Octobër, 200E- 'flf Scleagins Ord91. ^!J ury 200t- .iee also: Orda- Iorkeparatioa of Appeal Hearing 20 August 200g. AT. 2EA ugusr2008p p:29-31. - Decision on the Appollant's oral Motiou ro Declareh is Appcal Book andB ook of .rruborities validly File4 22 September2@8- ; ll7 CaseN o.: ICTR-01-72+-A 2 Febrnary2 009 i' tl

'0s @tzz 02/02 L2:52 FAX0 031705128932 ICTR ffi\ln i)(V. AI\NEX B: CITED MIffBRIALSAI\ID DEF"INED TERMS : A. Jurisprndence 1, ICTR ABayesu Tltc Prosecutorv - Jean-PaulA kayesu,C aseN o. ICTR-96-4-A, fudgementf,1 June ZlOL ("Akayesu Appeal Judgementf) Bagosorae fal Tlu Prosecutorv . Bbgosorae t aL, CaseN o. ICTR-9841-AR73,D ecisiono n Aloys Ntabalrrze's InterlocutoryA ppeal,onQ uestionso f Law Raisedb y the 29 June2 006 Trial ChamberI Decision on Motion for Exclusionono f Evidence,1 8 Septembe2r 006 Gacumbitsi Sylvestre Gacurnbitsi v- Tlrc Prosecutor, Case No. ICTR-2001-6+A, Judgement,7 July 2006 ') (" Ga c u rnbit si AppealJ udgementf Kajelijeli fwinal Kaielijeli v., The Prosecutor, Case No. ICTR-98 | tr\ r\ Judgemreng2 3 Nlay 2Q05 ') ("K aj el ij eI i Appeal Judgementf tr(*rnuhauda Jeand e Dieu Kamu.lwдав. The ProsecuforC, aseN o. ICTR-95-54A-A,J udgement1, 9 September 2005(* K amulunda Appeal Judgeinent") Karemera ef aL The Prosecutor v. Edowrcl l(arernera et al.,Case No. ICTR-98-4+ARZ3.B, Decision on Interlocutory Appeal Regarding'Wimess Proofng ll May ZOOT Kayishernr nnd Ruzindana The Prosecutor v- Cl'dment Kayishenn awl Obed Ruzindaru, Ca.seN o. ICTR-95-1-A, Judgementr (Reasons), 1 Jurre 200t ("Kayislrma and Rrtzintlana AppealJudgement'), IIE C:rsoN o:- ICTR-OI-74-A 2 February2 009 i \.-

02/02 '09 12:52 FAX0 031705128S32 ICTR @tzc 31zln Mpambara The Prosecutor v. Jedn Mpartbara. Case No. ICTR{1-65-T, Judgementf 1l Septcmbetr 2006 (* Mp ambara T lial Judgement") Muhimana Milcaeli Muhilnarta',v. The Prosecutor, Case No. ICTR-95-18-A, Judgenen\ Zl May 2007 ') (* Muhimatta AppeatiJ udgemcnf Musema Alfred Musema v. Prosecutor,c ase No. IcrR-gGl3-A, Judgernren!1 6 November2 001 Inc ') (" M use maA ppeal Jqdgemeuf Munrnyi T-harcisseM nruryi v. The Prosecntor, CaseN o. ICTR-00-55A-A, Judgemeng2 9 August 2008 (" Iltu[vunyi Appeal Jridgement") NTshimaDeC taL Ferdinand, Nahinanh,, fean-Bosco Barayagwizn and, Hassan NgeTe v. The Prosecttor, Case NO- ICTR-99-52-A" Judgbment 28 November 2(D? (*Nahimana et al. Ap@,lJudgeurenf") Ndindgbahizi Emmaruzl Nainaanniziv- The Prosecutor, Casc No. ICTR{I-71-A, Judgement,1 6 Jmuwy 2007 (" N dind aba ha i Appeal Judgement") Niyitegeka Eliizer Niyitegelu v. The Prosecutor, Case No. ICTR-96-14-A, Jud,gemcnl g July 2004 (* N iy heg elu Appeal iud,gemenf ') Ntagenrra ef aL Tte Proseculor v. Andri Nlagerura, Emmanuel Bagambikf, and, Sanuel Imanishimwe, Case No. IcrR-99-46-, Judgenen\7 July 2006 ('^Ntagerura et al" Ap6,arJudgementf) 119 CaseNo-I:C TR-01-7+A zFebflary 2009 \L(-L t' I'

02/02 'OS L2:53 FAI 0031705128932 ICTR @tzt rln 31 Ntakirul"nqne Th.eP rosecutorv . ElizaphanN takinthnanaa nd Girard Ntakirutinuna, CasesN os. ICTR-95-10-A and ICTR-96-1?-A iudgement, 13 Deceurberz O(4C 'NtakirutimanaAppealJ udgement") Rutaganda GeorgesA ndersonN derabwrweR utagandov.T heP rosecutor,C aseN o. ICTR-9G3-A, Judgement 26Mary 2003('Ruta'gandaA ppeal Judgomenf") Semanza LaurentS ernanrtv .77reP rosecutor,CasNe o.

ICTR-97-2G/AJ* udgemenq2 0 May 2005("Semanza AppealJ udgement"), Seromba The Prosecutorv - AthanaseS eromba,C aseN o. ICTR-2001-66-A,f udgeme,ot1, 2 March 2008 (Se r on ilta Appcal Judgement") Simba Alays Sirnbav . The Prosecutor,C aseN o. IpTR-01-76-A, Judgemen!2 7 Noveurber2 007 (*Sirnba AppealJ udgement")' I I I I | 2.ICTY Aleksovski Prosecutorv . Zatlco'AleksovskiC, aseN o. ft-SS-t+tt-AR73, Decisiono n Prosecrrtor'As ppeal on Admissibitityo f Evidence,1 6 FebnrarYW \$ 1-etelcswskiDecision) I .I BlagojevidanJdo kic I ,t Pro.reantorv . Vidoje Elagoiai€ and DraSal fokii, CaseN o. IT-02-60-4,,J udgemon,9t May 2007 ("Blagojni6 and Joki[AplnalJudgement") ; Bls5kid Prosecutor,v.T ilamir Blngkii, CaseN 'o. q-95-1+A, Judgcmnt2 9 July 2004(* Bla\$a*CA ppeal Judge,rnenf') CaseNo.:I CTR-0I-74JA 2Fbruary 2009

02/02 '09 12:53 FAI 0031705128932 ICTR @tzs sqoln deletici Prosecutorv . kjniltDelali| et al.,C aseN o. It96-21-A Judgement2, 0 Febalary2 OOt(Aekbi6i Appeal Judgenrent") Furundijja Prosecutorv . Anto'Furmdijja, ca.seN o. IT-95-L7|L-A,J udgeme,o2gr Jdy 2000("Fuwddijja Appeal Judgernent"); cslid : Prosecutor v. StaniblavG alii, Case No. IT-98-29-A, Judgement 30 November 2006(,Galii Appeal Judgement"), KordiCand derkez: Proseartor v. Darioi Kordid and,M ario ierkeT, Casc No. n-95-L4n, fudgemen! 17 Decem.ber 2ffi!, (*Kordii and iytcezAppeal Jud.gomenf') Krsdd Prosectrtorv . Radisiav Krsti6,C aseN o- IT-98-33-A,J udgement1, 9 April Z004(* Krstii Appat Judgemenf') KupreSkiief alL Prosecator v. hrdt Ruprelkii et al, Case No. IT-95-16-A, Judgcmnt,2 3 Octobor 2001 ("Kupre{kii et al. AppealJ udgemenf') Kvotke ef alL Prosecutor, . *tt osjlat,K voilca et al., CaseN o. IT-98-30/1-A, Judgemeng2 8 February2 005 : ("KvoElca et al. Appeal Judgernent") Liwajetal. ; - Prosecutor'v- FatmirLinni et al, Case No.IT-03-6GA, Judgcrnent,22 Septembw2oc,T(„Limaj et al Appealiudg"*"#1 12L CaseN o.: ICTR-0I-74-A 2 Fbruary2 009 \\$.,(| li

02/02 '09 12:54 FAI 0031705128932 ICTR @tza 3Ff,ln I\{artii Prosecutor v. Milati Marti1, CaseN o. IT-95-II-A, Judgemen! 8 October 200g (*Manii Appal Judgemenf) Neletilii and Martinovid Prosecutor v. Mladen Naletilif ard. Vinko Manirtoyi{, CaseN o. IT-98-34A,, Judgerneu! 3 May ?.N6 (*Naletili(and Martinovii AppealJ udgement") Orid Prosecutor v. Nair Ori(, Case No. IT-03-6E-4" Judgemeng3 Jr:ly 2008 (*Ori6 Appeal Judgement") Prln,(e taL Prosecutorv . Jadra4lcoP rlii et al, CaseN o IT-04-74,D ecisiono n kosecution's Appeal against Trial Chmber's Order on Contact between the Accused and Counsel drrritrS an Accused's TesrimouyP ursuant'toR ule 85(C), 5 Septenbor2 00E ('Prlif et al., Decision of 5 Septembcr 2009"), Stakii : Prosecutor v. Milothir Stakii, Cese No. ff-gl-2+T, Judgcnenr, 31 luly 2003(-StahC TdaI Judgement") Prosecutor v. Mibmir Staki(, CaseN o. fT-g7-24-A, Jud.gemenl2 2 March 2006 ("Stakii Appeat Judgement") Vasiljevid Prosecutorv . Mitar Vasilievii, CaseN o. IT-98-32-A,J udgc,men2t,5 FebnrarY2 004 ("Vasiljevii' i Appeal Judgemenf') B. Defined Terms and Abbreviations I The Prosecutor v. Francois Karera, Case No- ICIR-01-74-I, Amended Indictnerit Amended Indicrment, dated 19 December 2005 Appellant Francois Karera CaseNo.I:S TR-01-74A 3 Fbruary2 009 R-t{-

I 02/02 '09 12:55 FA-X0 031705128932 ICTR @tzt 3ss/n The Prosecutor v. Francois Karera, Casc No. ICTR-01-74-A, Appellant's Brid Appellant's Brief, filed in French on 7 April 2008 (Mdmoire d'Appeld e FrancoisK arcra) Transcriptp age from Appeal hearingsh eld ou 28 August 200gi n FratEois Karera v. TheP rosectrtorC, aseN o. ICTR-01-74-A.A ll AT, referencesa re to thc official English franscript, unless o\$rorwise indicated The Prosecutor v. Francois Karera, Case No.

ICTR-01-24A, Brief in Reply Reply to the Respondent's Brief, filed in French (Réplique au Mémoire de l'Intimé) on 2 June 2008 cf, F-atin: conferl (Comparc) Defonce The Appellant, a rrdr/ort he Appellant's counsel ExhibitD /Exhibit, P Defence Exhibit / Prosecution Exhibit FAR Rwandan Armed Forces to. footnote International Tribunal for the Prosecution of Persons Responsible ICTY for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 The Prosecutor v. François Karera, Case No. ICTR-01-74-I, Indictment Indictment dated 2 August 2001 The Prosecutor v, François Karera, Case No. ICTR-01-Z+T, Karera Final Trial Defense Counsel's Closing Arguments, filed confidentially on 10 November. Brief 2006 Kigali Prefecture of Kigali Kigali-Ville Procureur Hefecture de la Ville de Kigali Mouvement révolutionnaire national pour le développement [before July 1991] MRND Mouvement révolutionnaire national pour la démocratie et le développement after July 1991 The Prosecutor v. François Karera, Case No, ICTR-01-Z+A, Notice of Appeal Detbnce Notice of Appeal, filed in French on 14 January 2008 (Avis d'Appel de la Défense) para- (paras,) paragraph (paragraphs) Prosecution Office of the Prosecutor The Prosecutor v. François Karera, Case No- ICTR-01-74-T, The Prosecution Final Trial Brief Prosecutor's closing Brief filed confidentially on 10 November 2006 t23 Case No.: ICTR-01-74-A 2 February 2009 I

02/OZ '09 12:55 FAI 0031705128932 ICTR @r ze 38v In Prosecution Pre-Trial The Prosecutor v., François Karera, Case No. ICTR-01-74-I, The Brief, Prosecutor's Pre-Trial Brief, filed on 12 December 2005 TTu Prosecution v. François Karera, Case No, ICTR-01-74-A, Respondent's Brief Response, lrt'iB rief, filed on 16 May 2008 Rules Rules of Procedure and Evidence of the ICTR RPF Rwandan Patriotic Front Statute of the International Tribunal for Rwanda established by Statute Security Council Resolution 955 (1994) I Trial Transcript page from hearings In Prosecutor v. François Karera, Case No. ICTR-01-74. All references are to the official English transcript unless otherwise indicated The Prosecutor v. François Karera, Case No. ICTR-01-74-T, Trial Judgement Judgement and Sentence, 7 December 2007 I I International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens responsible for genocide and other such violations committed in the territory of neighboring States, between 1 January 1994 and 31 December 1994 I. IN United Nations t%+ Case No.: ICTR-01-74-A 2 February 2009

COURT MANAGEMENT ADMINISTRATION DES CHERES Arusha International Conference Centre P.O. Box 016A, Arusha, Tanzania B.P. 016A, Arusha, Tanzania, tel: 2555 7504207-1510 4367-702r 1 2129 632 850 Fax: 2555 7504000 t04307r3 1 2129 632 84,8149 PROOF OF SERVICE- BY FAX PREVIOUS NOTIFICATION. CHAMBERED 'APPEL Date: 02/02/2009 Case Name/ affaire: Karera tCTR-01-74-A Case No/ no. de l'affaire: To: Appeals Chamber Support Unit, The / Juge Fausto Pocar, Presiding A: Hague: / Juge Mohamed Shahabuddeen, - Mr. Koffi Afande / Juge Mehmet Güney, - Mr. Ramadhan Ti. Juma / Juge Theodor Meron - Ms. Rosette Muzigo-Morrison / Juge Liu Daqun ACCUSED/ DEFENSE [I Accused I Accus' Karera ses/voir'cMs4 X Lead Counsel/IC onseil Principaux, Garmelle Marchessault In Arusha / iArusha (hsae: /vhc!M SF3a)x : ! Co-Counsel/ onseil/ dioint ! Arusha (see/voir'cMS3) E Fax: OTP' BUREAU DU PROCUREUR Hassan Babaca Jr allow, Prosecutor R. K. Aggrey, Chief of Prosecutions B. Majola, Deputy Prosecutor

DonW ebsterS eniorTriaAl ttorneyin chargeo f case: (Enamel The Hague t La Haye E Arusha (see/ rcr?c MS3) El Kigali From: flJP. Fom6t6(C hiefC, MS) El F. A. Talon(Appeals/TeamIV) De: E other CC: I Registrar D ol\$, NY I D.R egistrar EP&PA EIQTRS pokesperson DSAR E WVSS E DCMS ECSS ESADR E OthET Subject@ing documenb I Veuillezz trouver en annexel es documentss uivants: Obiet: Documentsn ameI titrc du document DateF iled/ Dafe Pages enrregistrO JUDGEMENT 02t0212009 5141A- 387/A ffiALLFAxTRANsM|SsloNsHEETsMUstBEANNEExEDToTH|SFoRMHo.ot pagest ransmiftedin ctudingt his covers heetI Nombred e pagesf ransmisesp, age de garde comprise:1 11 fn case of trlnsmissiond ifficulties,p leasec ontact:C entralR egistry/ En casd e difricult6d e fransmissionv, euillezc ontacter Tel: 212-9634 828 ext. 5333,5 063 Fax: 212-9632 848 Email:g iani@un.org or lipscombe@un.org CMS3 F

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CASE PAGE <https://chat.esheria.ai/case-law/rwanda/fran-ois-karera-v-the-prosecutor-2009>

Prepared on 23 October 2026 · Esheria