

RWANDA / JUDGMENT

PROSECUTION v. HABYARIMANA

RLR V.3-2024

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PROSECUTION v. HABYARIMANA

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Text

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PROSECUTION v. HABYARIMANA [Rwanda COURT OF APPEAL – RPAA/GEN 00008/2019/CA – (Rugabirwa, J. P., Tugireyezu and Kaliwabo, J.) February 28, 2020] Criminal procedure – Detention and release – Provisional release – A person detained in the context of enforcement of the penalty of imprisonment he/she has been sentenced to cannot be provisionally released on grounds of unlawful detention by investigation organs. Criminal procedure – Criminal liability – Acquittal – No accused can claim that a judgment from another court acquitted him/her as long as they have not been involved as a party. Law of evidence – Evidence in criminal cases – Testimony – Probative value of testimony – The determination of the probative value of testimonial evidence following the hearing of witness declarations – A judge may consider certain parts of testimony and reject other parts – In the event witness declarations from two witnesses contradict each other after the hearing of witnesses, it is the court that determines which witness declarations are valid. Criminal procedure – Genocide and crimes against humanity – Crime of Conspiracy to commit genocide – Although it is not provided under Rwandan law, the connivance to commit genocide amounts to the offence of conspiracy to commit genocide. Facts: This case was initiated for the first time before the Intermediate Court of

Nyarugenge, whereby Habyarimana was accused of committing offenses with the intention of conspiracy, planning, inciting others, supervising, and leading genocide or other crimes against humanity while he was exercising a leadership role in the MRND political party up to the level of City of Kigali Prefecture. This Court found him guilty of the acts of inciting, formation of a criminal gang, and leading the barricades where Tutsi people were killed with the intention to commit genocide and crimes against humanity. Concerning the objection he raised regarding the fact that he had been detained unlawfully, the Court rejected it on the grounds that he raised it in violation of the law. The Court sentenced him to the penalty of life imprisonment with reclusion. The defendant lodged an appeal to the High Court, Specialized Chamber for international and transnational crimes, alleging that the previous court disregarded the fact that he had been imprisoned unlawfully, was tried without legal assistance, and the court heard the merits of the case without prior examining the objection he raised. The High Court held that such an objection should have been examined first, but at this level of appeal, it would not entertain it because the case has already been tried on its merits. Regarding the new charges, the defendant requested that they should not be subject to trial on the grounds that they were introduced in the appeal claim by the prosecution despite falling beyond the scope of the appeal. The High Court found that according to the content of the pieces of evidence submitted by the prosecution, they fall within the scope of his appeal claim because they pertain to his participation as one of the leaders of the MRND political party. This includes being present in meetings that planned genocide, selecting the youth, providing training and equipment. Consequently, these are not new charges except for his role in the establishment of the RTLM radio station, which should not be examined because he was not charged with it at the trial court. Therefore, it decided that he is guilty of the offences of conspiracy to commit genocide and complicity in genocide for having incited to commit genocide and provided equipment used for committing genocide. However, it found him not guilty of heading barricades where Tutsi people were killed, for which he was convicted by the Intermediate Court. The High Court maintained the penalty of life imprisonment with reclusion that he was sentenced to by the trial court.

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As a result, he lodges an appeal to the Supreme Court, but his case was transferred to the Court of Appeal established by the reform of the judiciary. In his appeal, he maintained that he had been unlawfully detained, which the prosecution refutes because he was sentenced to life imprisonment with reclusion. They argue that the fact that such a decision was taken without citing the relevant law does not have any effect, especially as this involves a defect in the form of the judgment and not in its substance. Held: 1. A person detained in the context of enforcement of the penalty of imprisonment he/she has been sentenced to cannot be provisionally released on grounds of unlawful detention by investigation organs.

2. No accused can claim that a judgment from another court acquitted him/her as long as they have not been involved as a party.

3. It is the duty of the court to determine the relevant pieces of evidence after hearing the witnesses – A judge may consider certain parts of testimony and reject other parts – In the event witness declarations from two witnesses contradict each other after the hearing of witnesses, it is the court that determines which witness declarations are valid.
4. Although it is not provided under Rwandan law, the connivance to commit genocide amounts to the offence of conspiracy to commit genocide. Appeal with merit. The ruling of the High Court, Specialized Chamber for international and transnational crimes is reversed in parts. Statutes and statutory instruments referred to: Organic-Law N° 01/2012/OL of 02/05/2012 instituting the penal code, article 132. International covenant on civil and political rights of 16 December 1966, article 14. Convention on the Prevention and Punishment of the Crime of Genocide of 09 December 1948, article 3. Law n° 027/2019 of 19/09/2019 relating to criminal procedure, article 155. Law n° 30/2018 of 02/06/2018 on jurisdiction of courts, article 105. Article n° 30/2013 of 24/05/2013 relating to criminal procedure, article 184. Law n° 15/2004 of 12/06/2004 on evidence and its production, article 65 and 119. Cases referred to: Prosecution v. Bandora Charles, RPA 0001/12/CS, rendered by the Supreme Court on 22/03/2019. Prosecution v. Ngirumpatse Mathieu and Karemera Edouard, ICTR-98-44-T. Prosecution v. Simon Bikindi, ICTR -2001 -72 -T. Prosecution v. Yussuf Munyakazi, ICTR-97-36A-A. Prosecution v. Georges Anderson Nderubumwe Rutaganda, ICTR-96-3-A. Prosecution v. Jean Paul Akayesu, ICTR -96-4-T. Prosecution v. Seromba Athanase, ICTR-01-66-A. Prosecution v. Ntagerura André and co-accused, ICTR-99-46-A. Prosecution v. Musema Alfred, ICTR-96-13-T. Prosecution v. Nahimana Ferdinand and co-accused, ICTR-99-52-A.

Judgment

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BRIEF BACKGROUND OF THE CASE [1] Habyarimana Jean was the president of MRND (Mouvement Révolutionnaire National pour le Développement) in the Prefecture of the City of Kigali and a member of the political bureau of that political organization at the national level. He is accused of committing the acts of conspiracy, planning, inciting others, supervising, and leading genocide or other crimes against humanity while being a member of the leadership of MRND at the level of the City of Kigali. Specifically, he is alleged to have formed a criminal gang by selecting youths to receive military training and providing them with equipment used to kill Tutsi people. He is also accused of participating in meetings planning genocide and supervising the barricades extending from Nyabugogo to Muhima to APACOPE School, where many victims, including Rutayisire alias Tigana, were killed. [2] The judgment was initiated for the first time in the Intermediate Court of Nyarugenge on 01/03/2016. This Court tried the case RP GEN 0002/15/TGI/NYGE and found Habyarimana Jean guilty of the acts of inciting, forming a criminal gang, and heading the barricades where Tutsi people were killed with the intent to commit genocide and crimes against humanity. The Court held that the objection regarding the unlawful detention raised by Habyarimana Jean could not be given merit because he raised it irregularly and

sentenced him to life imprisonment with reclusion. [3] Habyarimana Jean was dissatisfied with the ruling and lodged an appeal to the High Court, Specialized Chamber for international and transnational crimes¹, alleging that the Intermediate Court disregarded the fact that he was unlawfully detained, tried without legal assistance, and that it proceeded to try the case on its merits without prior examination of the objection he raised. [4] In addition, in his appeal, Habyarimana Jean alleged that the High Court disregarded the fact that he should not be charged with the offence of formation of a criminal gang because it was time-barred. He also claimed that he was convicted on the basis of irrelevant witness declarations that were sought with the objective of securing his conviction, and that the witnesses were not summoned to the hearing. Furthermore, he argued that the Court refused to allow the prosecution to present some exculpatory documents, including the hearing minutes on provisional detention and release, and the investigation carried out by the prosecution in Muhima sector. [5] In the judgment RPA GEN 00002/2016/HCCI rendered on 28/04/2017, the High Court recognized that the Intermediate Court should have first examined the objection raised by Habyarimana Jean about his unlawful detention. However, at the appeal level, the High Court stated that it would not examine it because the trial of the merits of the case has already been conducted, and Habyarimana Jean was sentenced to life imprisonment with reclusion. Therefore, the examination of that objection is not likely to have any effect. [6] Regarding new charges that Habyarimana Jean alleged to have been brought at the appeal level by the Prosecution, and not within the scope of the appeal, he requested them to be rejected. These charges include the meeting he is accused to have held with Renzaho Tharcisse for planning genocide, the role of MRND in the planning of genocide, membership in the shareholders of RTL (Radio Télévision Libre des Mille Collines), and leading attacks in different locations across the county except at Muhima. The Court found that the contents of the evidence provided by the prosecution fall within the scope of his appeal because they relate to his role as one of the leaders of the MRND political organization. This includes his participation in meetings planning genocide, the selection and training of youth, and providing them with equipment, which are not new charges, except for his role in

¹ In this case, "High Court" shall be used to refer to the "High Court, Specialized Chamber for international and transnational crimes."

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establishing RTL, which should not be examined since he was not charged with it before the trial court. [7] The Court decided that Habyarimana Jean's appeal has merit in parts and held that he is guilty of the offence of conspiracy to commit genocide and complicity in committing genocide for inciting to commit genocide and providing munitions that were used to commit genocide. However, the Court found him not guilty of leading the barricades where Tutsi people were killed, as declared by the Intermediate Court of Nyarugenge. It upheld the life imprisonment with reclusion sentence imposed on him by the trial court. [8] Habyarimana Jean was dissatisfied with the ruling and lodged an appeal to the Supreme Court, requesting it to examine several issues. He raised concerns about being unlawfully detained, the High Court's decision without considering the precedents of the International Criminal Tribunal for Rwanda

(ICTR)2, not being given adequate time for cross-examination of inculpatory witnesses, and the High Court's disregard of the declarations of exculpatory witnesses. Additionally, he claimed that the High Court made a mistake in declaring him guilty of the offence of conspiracy to commit genocide. [9] After the establishment of the Court of Appeal, Habyarimana Jean's appeal was transferred to the Court of Appeal in accordance with article 105 of Law n° 30/2018 of 02/06/2018 determining the jurisdictions of courts³. It was recorded with the docket number RPAA/GEN 00008/2019/CA. [10] The hearing of the case was originally scheduled for 13/11/2019, but on that day, it was postponed because the judges were participating in training. It was rescheduled for 18/11/2019, but since then, the hearing has been repeatedly postponed for various reasons. The hearing of the case resumed in public on 09/01/2020 and 13/01/2020. Habyarimana Jean was assisted by Counsel Nyirihirwe Hilaire, and the prosecution was represented by Rudatinya Nyangezi Gaspard, a national prosecutor. II. ISSUES FOR DETERMINATION Issues that should be determined in this case are as follows: - Whether Habyarimana Jean is unlawfully imprisoned; - Whether the case law of Matayo Ngirumpatse and Edouard Karemera, tried by TPIR, would exculpate Habyarimana Jean from criminal liability for the conspiracy to commit genocide. - Whether the High Court should have summoned Nyiringondo Epaphrodite and Mbarushimana Vincent for cross-examination with Habyarimana Jean in any way, and whether the instant court should also summon them for cross-examination. - Whether the High Court disregarded witness declarations exculpating Habyarimana Jean. - Whether the High Court made a mistake in declaring Habyarimana Jean guilty of the offence of conspiracy to commit genocide and the offence of complicity in genocide, and providing munitions used to commit genocide.

1. Whether Habyarimana Jean is unlawfully imprisoned

2 Tribunal Pénal International pour le Rwanda. 3Article 105, paragraph 1: From the day this Law comes into force, except cases already under trial, all cases that are no longer in the jurisdiction of the court seized are transferred to the court with jurisdiction in accordance with the provisions of this Law.

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[11] Habyarimana Jean and Counsel Nyirihirwe Hilaire, who assists him, state that in paragraph 12 of the appealed judgment before this court, the High Court found that the Intermediate Court should have priorly addressed the objection raised by Habyarimana Jean before the trial court regarding the fact that he was unlawfully imprisoned before the trial of the merits of the case. This was specified by article 105, paragraph 3 of the Law n° 30/2013 of 24/05/2013 relating to criminal procedure that was in force at the time of the trial of the said case. However, the High Court did not rectify such irregularity. Instead, it explained that it would not take any action regarding it because he is in prison based on the judgment that sentenced him to life imprisonment with reclusion. Therefore, the High Court immediately proceeded to hear the case on its merits before making a decision on such an objection. Additionally, it did not cite the legal instruments it referred to in reaching such a decision. They request this court to address such objection and release Habyarimana Jean

provisionally before the hearing of the merits of the case. [12] Habyarimana Jean explains that he was apprehended on 20/12/1996 based on the list of genocide fugitives of the 1994 genocide. He was incarcerated on 12/03/1997, and an arrest warrant MAP)4 was issued for him on 02/04/1997. However, he claims that he was never brought to court for the purpose of provisional detention. Instead, it was only in the year 2009 when he learned that there was no dossier for his case. He alleges that the Director of Prison at the time, named Gahima Rusa, and the prosecutor at the Intermediate level, named Ndibwami Rugambwa, kept him in prison unlawfully based on expired arrest warrants. This caused him psychological torture as he was coerced to admit to offenses he did not commit and implicate his colleagues. Habyarimana Jean also claims that during this time, he was deprived of the right to be tried while free and the right to legal counsel. He states that he intends to file a separate claim before a competent court to seek justice and have these civil servant leaders punished according to the law. Additionally, he seeks damages, even if symbolic, for the 20 years of imprisonment he endured unjustly. [13] Habyarimana Jean and his legal counsel argue that, based on articles 78 (8°) and 96, paragraph 3 of Law n° 027/2019 of 19/09/2019 relating to criminal procedure, he should be provisionally released before the trial of the case. They contend that the judge's provisional detention order has never been issued, and as per Article 19 of the Constitution of the Republic of Rwanda, he is still considered innocent. They request the instant court to consider the case law RP 00036/2017/HC/KIG rendered by the High Court on 06/12/2018 between the Prosecution vs Nshimiyimana Diane Rwigara and Mukangemanyi Adeline Rwigara, as that court released the accused despite being provisionally detained. [14] The Prosecutor argues that Habyarimana Jean is not unlawfully imprisoned because he was sentenced to life imprisonment with reclusion, as even held by the High Court in paragraph 12 of the appealed judgment. They further contend that the fact that the judge did not mention the provisions of the law they applied to reach such a decision is a drafting issue and not a defect in the judgment itself. [15] He also argues that Article 96, paragraph 3 of the Law N° 027/2019 of 19/09/2019 relating to criminal procedure cannot be relied upon in this case, as Habyarimana Jean did not appeal against the provisional arrest warrant. Moreover, even before the High Court, Habyarimana Jean was no longer provisionally detained, as he lodged an appeal against the judgment that was tried at the second instance level, which sentenced him to life imprisonment with reclusion. This means that he should remain in the same imprisonment situation imposed by the previous courts and should therefore proceed with his second appeal while being in prison, in accordance with Article 184, paragraph one of the Law n° 027/2019 of 19/09/2019 relating to criminal procedure that was in force at the time Habyarimana Jean was under trial. However, if he wishes to sue the persons who unlawfully imprisoned him, he would need to file a separate claim before the competent court in accordance with Articles 144 and 145 of the

4 Mandat d'arrêt provisoire.

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Law n° 027/2019 of 19/09/2019, as mentioned above. This is because the Court of Appeal does not have trial jurisdiction over actions related to unlawful imprisonment. [16] He further argues that the case law between the Prosecution vs Rwigara Diane should not be considered as a precedent in this case. In the Rwigara Diane case, she was released after being declared innocent, but in contrast, Habyarimana Jean is currently imprisoned because of the enforcement of the judgment that sentenced him to life imprisonment with reclusion, as previously clarified.

DETERMINATION OF THE COURT [17] Article 184, paragraph one of the Law n° 30/2013 of 24/05/2013 relating to criminal procedure that was into force at the time when Habyarimana Jean's case was pending trial, provides that the accused held in provisional detention before the detention judgement is rendered, remains in detention notwithstanding his or her appeal⁵. [18] The ruling of the judgment appealed before this Court, in paragraph 12, indicates that the High Court held that even though the Intermediate Court of Nyarugenge did not address the objection raised by Habyarimana Jean regarding the fact that he was unlawfully imprisoned before the adjudication of the merits of the case according to the law, the High Court asserted that it would not examine such objection raised at the Nyarugenge Intermediate court level, which had sentenced him to life imprisonment with reclusion for the offenses he committed. Instead, the High Court stated that it should examine his grounds of appeal to establish whether or not they are founded. After hearing the case on its merits, the High Court decided that Habyarimana Jean is guilty of the offense of conspiracy to commit genocide and complicity in committing genocide for inciting to commit genocide and providing ammunition used to commit genocide. The court sentenced him to life imprisonment with reclusion, as mentioned in paragraphs 145 and 147 of the appealed judgment. [19] The Court is of the view that although Habyarimana Jean was unlawfully imprisoned as decided by the previous courts, it should not examine this issue to establish whether he would benefit from provisional release before the trial of the current case. This is because such a release would not benefit him in the context of serving out the sentence of life imprisonment with reclusion he received for the offense of genocide he is accused of. This indicates that the previous court did not make any mistake when ruling that Habyarimana Jean should remain in prison while he appealed his case. All these imply that he would not be provisionally released before the trial of this case, according to the provisions of article 187, paragraph one of the aforementioned law. [20] The Court deems that it cannot rely on the judgment RP 00036/2017/HC/KIG rendered by the High Court on 06/12/2018 between the prosecution vs Mukangemanyi Adeline Rwigara and co- accused, as raised by Counsel Nyirihirwe Hilaire assisting Habyarimana Jean. This is because in that ruling, the accused were released after being declared innocent of the offense of causing uprising or unrest among the population for which they were prosecuted. In contrast, in the instant case, Habyarimana Jean was imprisoned due to being sentenced to life imprisonment with reclusion by the trial court and appellate court, as explained above. Whether the case law of Matayo Ngirumpatse and Edouard Karemera, tried by TPIR, would exculpate Habyarimana Jean from criminal liability for the conspiracy to commit genocide⁶

⁵This is the same provision that changed to become article 187, paragraph one of the Law n° 027/2019 of 19/09/2019 relating to criminal procedure providing that “The accused held in provisional detention before the detention judgement is rendered, remains in detention notwithstanding his or her appeal.” ⁶Matters regarding the classification of this offense shall be addressed in the instant case in Part II.5.

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[21] Habyarimana Jean, assisted by Counsel Nyirihirwe Hilaire, lodged an appeal alleging that the High Court declared him guilty of the offense of conspiracy to commit genocide, disregarding the judgment ICTR-98-44-T tried by the International Criminal Tribunal for Rwanda (ICTR). The ICTR ruling stated that before the date of April 8, 1994, there had been no occurrence of conspiracy to commit genocide with regard to Matayo Ngirumpatse and Edouard Karemera, as well as other high political leaders of MRND. [22] Habyarimana Jean defended himself, arguing that since it was established that the high leaders of MRND did not conspire to commit genocide, he, as a leader of MRND at the City of Kigali level, should not be held liable for forming the group of Interahamwe and providing them with military training with the purpose of committing genocide. He further contended that the prosecution failed to prove any concertation and conspiracy he may have had with his deputies or any other person with the intent to commit genocide. [23] Habyarimana Jean requested that, for this reason, the first paragraph of Rule 9 of the rules of procedure of the International Criminal Tribunal for Rwanda should be applied. This rule states that no person should be tried by a domestic court for acts that gravely violate international humanitarian law if they have already been tried by the International Criminal Tribunal for Rwanda for the same criminal acts. [24] The Prosecution replied that the case law of Ngirumpatse Matayo and Karemera Edouard does not benefit Habyarimana Jean in any way. Instead, he selectively considers only the part of the ruling that he believes benefits him, disregarding the fact that paragraph [201] of this judgment established that Ngirumpatse Matayo, as a leader of MRND, had the power to supervise the acts of Interahamwe. Additionally, the witness HJB confirmed that Habyarimana Jean himself played a role in the selection of young people to join the group of Interahamwe. [25] The Prosecution pursues that the International Criminal Tribunal for Rwanda decided that the leading committee of MRDN at the national level could not transmit the message to the partisans without passing it to the president of the party at the prefecture level⁷. They clarify that Habyarimana Jean is not prosecuted for merely being the leader of Interahamwe; rather, he is held liable for the role he played in the formation of this group and training it militarily with the intent to exterminate Tutsi, and these actions were revealed in various meetings. DETERMINATION OF THE COURT [26] Article 155 of the Law n° 027/2019 of 19/09/2019 relating to criminal prosecute, paragraph 2, provides that Prosecution cannot be instituted if the accused proves that they were subject to a final judgment delivered abroad (on the offence they are prosecuted for). [27] Article 14, paragraph 7 of the International Covenant on Civil and Political Rights (ICCPR) of December 16, 1966 stating that No one shall be liable to be tried

or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.⁸

7 ICTR-98-44-T, the case between Prosecution vs Ngirumpatse Mathieu and Karemera Edouard, paragraph 201: “De plus, la Chambre juge peu probable que le Comité National Provisoire ait pu, sans l’implication du président préfectoral s’adresser aux militants du MRND”. 8 Art. 14 point 7 du Pacte International du 16 Décembre 1966 relatif aux droits civils et politiques ratifié par le Rwanda par le Décret-loi N° 8/7bya5 du 12 Février 1975.

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[28] Basing on the case ICTR-98-44-T rendered by the International Criminal Tribunal for Rwanda and the elements of evidence produced, Ngirumpatse Matayo and Karemera Edouard were found guilty of genocide, crimes against humanity, and homicide for their role in the formation of the Interahamwe militia and providing it with military training. They were also found guilty of conspiring to exterminate Tutsi people, based on evidence presented and discussions of various meetings where MRND leaders and partisans participated and tagged Tutsi people as enemies. However, the Court clarified that their criminal liability cannot be engaged for actions that occurred before April 8, 1994.⁹ Nevertheless, in the appeal, that court held that Karemera Edouard and Ngirumpatse Matayo are guilty of genocide, inciting to commit genocide, crimes against humanity, and murder committed after April 18, 1994, in furtherance of executing the joint criminal enterprise. Therefore, Karemera Edouard and Ngirumpatse Matayo were not declared not guilty of those acts, as alleged by Habyarimana.¹⁰ [29] Additionally, the Court of Appeal observes that the trial chamber of the International Criminal Tribunal for Rwanda had initially found Ngirumpatse Matayo and Karemera Edouard not guilty of the offense of conspiracy to commit genocide based on actions that occurred before April 08, 1994. However, at the appellate chamber (ICTR-98-44-A), the decision of the trial chamber was changed. The appellate chamber held that Ngirumpatse Matayo is guilty of conspiracy to commit genocide, while maintaining the decision that Karemera Edouard is guilty of conspiracy to commit genocide, at least from May 25, 1994.¹¹ This implies that the appellate chamber considered the pieces of evidence regarding each individual's actions, which is the same approach the High Court took in Habyarimana Jean's case before declaring him guilty.¹² [30] The High Court finds, therefore, that whether it is the genocide, conspiracy to commit genocide, crimes against humanity committed for the execution of the joint criminal enterprise, or conspiracy to commit an offense, Ngirumpatse and Karemera Edouard were not declared innocent of them, as alleged by Habyarimana Jean, except for criminal actions that occurred before April 8, 1994.¹³ Therefore, the ground of appeal raised by Habyarimana Jean, claiming that as the former leader of MRND at the City of Kigali level, he should not be found guilty of conspiracy to commit genocide as long as Ngirumpatse Matayo and Karemera Edouard, as top leaders of MRND, were not declared guilty, lacks merit. [31] The Court further finds that the ground of appeal advanced by Habyarimana Jean, whereby he requested to respect Article 9 of the Statutes of the International Criminal

Tribunal for Rwanda¹⁴, lacks merit because he had not been involved as a party in the judgment ICTR-98-44-T that definitively declared Ngirumpatse Matayo and Karemera Edouard not guilty of the conspiracy to commit genocide. The holdings of this case concern Ngirumpatse Matayo and Karemera Edouard only, as the persons who are involved in it, and they are, by the same reason, protected by Article 9 as stated in this paragraph, in the event they would be accused of the offenses for which they had already been judged. This is the same provision as stated in Article 155 of Law no. 027/2019 of 19/09/2019 relating to criminal procedure. The second paragraph of this article states that prosecution cannot be instituted if the accused proves that he or she was subject to a final judgment delivered abroad for the same offense he is accused

9 ICTR-98-44-T Case between the prosecution vs Ngirumpatse Mathieu and Karemera Edouard, paragraph 1573: *Aucune déclaration de culpabilité ne serait dès lors être prononcée relativement aux faits survenus avant le 8 avril 1994.* 10 ICTR-98-44-A Case between the prosecution vs Ngirumpatse Mathieu and Karemera Edouard, paragraphs 146-156. 11 ICTR-98-44-A between the Prosecution vs Edouard Karemera and Mathieu Ngirumpatse, Paragraph 745: “The Appeals Chamber has reversed the Trial Chamber's finding that Ngirumpatse was responsible for conspiracy to commit genocide, but has upheld the Trial Chamber's finding that Karemera was responsible for conspiracy to commit genocide by at least 25 May 1994.” 12 See the case RPA GEN 00002/2016/HCCI. 13 The role of Habyarimana Jean in the actions that occurred before April 8, 1994, is going to be examined in Part II.5 of this case. 14 “No person shall be tried before a national court for acts constituting serious violations of international humanitarian law under the present Statute, for which he or she has already been tried by the International Tribunal for Rwanda.”

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of. However, Habyarimana Jean does not demonstrate that he was judged by the International Criminal Tribunal for Rwanda. [32] Based on the foregoing provisions of the law, the explanations, and the opinions of legal scholars advancing that only parties prosecuted for the same facts are protected by the principle of “res judicata”¹⁵, the Court of Appeal finds that Habyarimana Jean's ground of appeal, asserting that the High Court disregarded the application of the judgment of Ngirumpatse Matayo and Karemera Edouard despite him being declared not guilty of the offense of conspiracy to commit genocide, is groundless. 3. Whether the High Court should have summoned Nyiringondo Epaphrodite and Mbarushimana Vincent for cross-examination with Habyarimana Jean in any way, and whether the instant Court should also summon them for cross-examination. [33] Habyarimana Jean states that the High Court declared him guilty based on the witness declarations of Nyiringondo Epaphrodite and Mbarushimana Vincent without summoning them for cross-examination, arguing that their statements are doubtful. He explains that the testimony of Nyiringondo Epaphrodite should be invalidated because it is contradictory. Before the prosecution, Nyiringondo Epaphrodite never mentioned the “Comité de Crise,” but he talked about it during his testimony at the time of the investigation in Kanombe Hospital where he was admitted. Furthermore, he brought in the names of other

witnesses that he did not mention before the prosecution. [34] He further argues that the witness declarations issued by Mbarushimana Vincent before investigation organs should be invalidated. This is because he did not address them to the High Court for cross-examination to be carried out. Instead, the court was unable to locate him as he stated that he could not provide testimony until he met with Nyiringondo Epaphrodite, who used to employ him in the Cooperative of tire repairers. He, therefore, requests the instant court to summon them for cross-examination. [35] Habyarimana Jean explains that the testimony of Nyiringondo Epaphrodite should not be considered. Nyiringondo Epaphrodite stated that he went to register with the councillor of Muhima sector at the time of the recruitment of young persons to join the Interahamwe group. He claimed to have seen the attendance of the "Comité National Provisoire" of Interahamwe in the first phase, including Habyarimana Jean, Ngirumpatse, and Kabuga. Additionally, he said he saw the attendance of Munyakazi, who was the commander of gendarmerie, and Renzaho Tharcisse, who was the Prefet of the City of Kigali, in the second phase. However, Habyarimana Jean disputes these statements, asserting that those meetings did not occur. According to Habyarimana Jean, Nyiringondo Epaphrodite would not have been able to attend them due to being a Tutsi and a member of Parti Libéral (PL). [36] He further argues that Nyiringondo Epaphrodite declared that, in those meetings, Habyarimana Jean instructed the Councillor of Muhima sector to list the young people desirous of joining the Interahamwe. However, Habyarimana Jean would not interfere with Interahamwe actions because they had a president, vice-president, and secretary. Another thing he mentions is that the Councillor of Muhima Sector, who was a civil servant, or Renzaho Tharcisse and Munyakazi, who were soldiers, would not join political organizations. This was because such affiliations were done only during the period of MRND, which was a state party.

15 Michel Franchimont, Ann Jacobs et Adrien Masset, *Manuel de procedure pénale*, 2eme éd., Larcier, 2006, pp.978- 981: "Pour qu'il y ait "autorité de la chose jugée" du pénal sur le pénal, il faut que la demande soit formée contre les mêmes parties en la même qualité et que les prévenus soient poursuivis pour les mêmes faits que ceux qui ont déjà fait l'objet d'un jugement. Il n'y a pas d'autorité de la chose jugée entre co-auteurs et complices s'ils sont poursuivis séparément. La décision rendue précédemment ne peut ni leur nuire ni leur profiter, même si cela débouche sur des décisions contradictoires".

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[37] He explains that, in his testimony, Nyiringondo Epaphrodite declared that he was prepared to incriminate Habyarimana Jean in the Gacaca court. However, he did not do it because he realized that Habyarimana Jean was listed in the first category of genocidaires that were supposed to be tried in regular courts. He wonders why Nyiringondo Epaphrodite did not provide such testimony in writing at that time. [38] He pursues the argument that Nyiringondo Epaphrodite stated that Kamatamu used to invite young people to train themselves to be Interahamwe. However, afterward, Nyiringondo Epaphrodite declared that Kamatamu invited them to go and watch over security instead. Furthermore, he points out that the prosecution declared that Habyarimana Jean was a member of the "Comité de

Crise," while another witness named Mukagatare declared that such a "Comité de Crise" never existed. [39] He added that Mbarushimana Vincent stated that a meeting was held in which Habyarimana Jean and Ngirumpatse attended, calling on young people to be militarily trained. Mbarushimana Vincent further stated that Habyarimana Jean took those people to Camp Kigali using his own vehicle, a Land Rover model. Additionally, he claims that Habyarimana Jean had previously fired Tutsi people, as supported by Nyiringondo Epaphrodite. However, Habyarimana Jean would not be able to bring those young people to Camp Kigali using his own vehicle because there were too many of them. [40] Counsel Nyirihirwe Hilaire, assisting him, states that based on Article 111 of Law no 027/2019 of 19/09/2019 relating to criminal procedure, which provides that the benefit of doubt is given to the accused, the testimony of Nyiringondo Epaphrodite and Mbarushimana Vincent should not be given merit. He argues that their statements align themselves with the prosecution, and they did not declare it before the court, which deprived Habyarimana Jean of the opportunity to ask them questions face to face. [41] He further states that based on Article 62 of Law no. 15/2004 of 12/06/2004 relating to evidence and its production, which provides that testimonial evidence is statements made in court, Nyiringondo Epaphrodite and Mbarushimana Vincent should be summoned to appear before this Court to provide their testimony. This will allow Habyarimana Jean and his legal counsel to ask them questions. He argues that Nyiringondo Epaphrodite provided his testimony while in Kanombe hospital where he was admitted, but Habyarimana Jean was not given the opportunity to contradict him because he was not there. Furthermore, he states that although Mbarushimana Vincent was missing, he should be summoned again before this court to provide his testimony and undergo cross-examination. If he remains missing, the conclusion should be drawn that he is definitively missing. [42] The Prosecutor argues that, based on Article 86 of Law no. 30/2013 of 24/05/2013 relating to criminal procedure, evidence in criminal cases is based on all the facts. Furthermore, according to Article 65 of Law no 15/2004 of 12/06/2004 relating to evidence and its production, only the court can assess the relevance of testimonial evidence. Consequently, he notes that Nyiringondo Epaphrodite and Mbarushimana Vincent should not be summoned again as witnesses before this court because the testimony they made before the investigation organs is relevant. This is supported by another testimony made before the High Court by Nkubito Isaac, HJA, HJB, HJC, HJD, and HJE, as indicated by paragraphs 35 to 39 and 47 of the appealed judgment. Additionally, the prosecutor contends that Habyarimana Jean was given enough time to ask them questions as he wished, and they provided answers. [43] He explains that the High Court attended to Nyiringondo Epaphrodite in Kanombe Hospital, where he was admitted, and asked him all the questions that Habyarimana Jean intended to ask him, to which he replied. Afterward, the court read Nyiringondo Epaphrodite's declarations to both Habyarimana Jean and the prosecution, who also retorted about them.

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[44] He continues to explain that the High Court summoned Mbarushimana Vincent for cross-examination, but it did not occur because he did not appear. The summons contained in the file stated that he is no longer present at his former domicile. Nevertheless, he argues that Mbarushimana Vincent's testimony is relevant because it was provided before the investigation organs in compliance with the law. [45] He adds that even if Nyiringondo Epaphrodite and Mbarushimana Vincent are summoned before this court, it would serve no purpose because they have already provided their testimony before the investigation organs and the High Court. Moreover, he argues that their declarations are relevant as they are supported by the testimonial declarations made by other witnesses that are in the dossier.

DETERMINATION OF THE COURT [46] Article 119 of the Law n° 15/2004 of 12/06/2004 relating to evidence and its production provides that in criminal cases, evidence can be established by all means of fact or law provided they are subject to adversarial proceedings. In addition, article 62 of the same law provides that testimonial evidence consists of statements made in court by an individual regarding what he or she personally saw or heard that is relevant to the subject matter of the trial. [47] Again, article 65 of the above stated law provides that the court assesses with discretion the relevance, pertinence and admissibility or rejection of testimonial evidence. It is not bound by the number of witnesses. It shall mainly consider their knowledge of facts and the objectivity and sincerity of their declarations. [48] The legal scholars clarify that though the principle of adversarial procedure permits opposing parties to contradict and discuss the evidence collected during the preliminary phase of the criminal trial, but, the trial judge may base his conviction on those elements of evidence without necessarily being repeated orally and adversarially during the hearing by the interrogated witnesses.¹⁶ [49] It is noted in the case file that before the prosecution on 24/10/2014 and the High Court on 23/11/2016, during the investigation at Kanombe Hospital where Nyiringondo Epaphrodite was admitted, the latter explained that Habyarimana Jean played a role in selecting youth for interahamwe, who received military training. Subsequently, these youth were involved in the killing of numerous Tutsi individuals, including Rutayisire Deo, also known as Tigana, Gasongo, Munyankindi, and Vénantie. [50] It is further noted that following that investigation, the court reconvened for a hearing on 08/12/2016. During this hearing, both Habyarimana Jean and the prosecution were given ample time to respond to the testimony. In his response, Habyarimana Jean argued that the testimony given by Nyiringondo Epaphrodite during the initial investigation should not be taken into account, as it contradicts the statement he had given before the prosecution on 24/10/2014. [51] It is also evident from the file that Mbarushimana Vincent, also known as Gasongo, provided a testimony to the prosecution on 24/10/2014. In this testimony, he implicated Habyarimana Jean in the process of gathering youth from Muhima and Kimisagara, transporting them to Camp Kigali, and

16 Michel Franchimont, Ann Jacob et Adrien Masset, Manuel de Procédure Pénale, Liège, Belgique, 2012, p.758: “Le caractère contradictoire de la procédure permet, certes, aux parties de contredire et discuter les éléments recueillis au cours de la phase préliminaire du procès pénal, mais (...) le juge du fond peut fonder sa conviction sur des éléments de l’information et de l’instruction qui ont été recueillis non contradictoirement et qui ne doivent pas nécessairement être repris oralement et contradictoirement à l’audience”.

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providing them with firearms training. According to his statement, between 10/04/1994 and 13/04/1994, these interahamwe youth were responsible for the killing of the Inkotanyi cadres. [52] Furthermore, it is observed in the file that the hearing of the case was repeatedly postponed to various dates, including 20/10/2016, 24/10/2016, 01/11/2016, and 11/11/2016, to allow the High Court to hear Mbarushimana Vincent, also known as Gasongo, as a witness, as per the request of Habyarimana Jean. However, this witness failed to appear due to lack of information about his residence. Nonetheless, Habyarimana Jean was granted ample time to respond to the testimonies he had given before the prosecution on 24/10/2014, as well as those of Nyiringondo Epaphrodite mentioned in paragraphs [20], [52], [53], [98], [99], and [108] of the aforementioned judgment. [53] Moreover, in paragraph 36 of the judgment under appeal, the High Court clarified that the testimonies provided by Nyiringondo Epaphrodite and Mbarushimana Vincent, also known as Gasongo, as mentioned previously, should be regarded as evidence supporting the assertion that Habyarimana Jean was among the individuals involved in the selection of interahamwe youth for military training. Their testimonies are significant as they affirm their direct knowledge of the selection process, despite being sidelined due to their Tutsi ethnicity. The court also determined that such testimony should be accorded weight, as it finds support from other witnesses, including Nkubito Isaac, HJA, HJB, HJC, and HJE. These witnesses corroborated that Habyarimana Jean was actively involved in the selection of youth for military training. This involvement was facilitated by the bourgmestres of various Communes and Sectors, as motivated by him. They further detailed that a meeting took place at the MRND party headquarters located in Muhima, specifically the Kabuga building, before the youth were subsequently sent for military training. These clarifications were provided by the witnesses in paragraphs [37], [38], [39], [40], and [41] of the appealed judgment. [54] In accordance with legal provisions and the opinions of legal scholars, the Court determines that during the case proceedings, Habyarimana Jean was granted ample opportunity, as highlighted in paragraphs [20], [52], [53], [98], [99], and [108] of the appealed judgment, to challenge the testimonies presented by Nyiringondo Epaphrodite and Mbarushimana Vincent, also known as Gasongo. Additionally, exercising its discretion under Article 65 of Law no. 15/2004 of 12/06/2004 relating to evidence and its production, the Court has deemed these testimonies credible. They find support in the accounts provided by other witnesses, including Isaac, HJA, HJB, HJC, and HJE, as elaborated in paragraph 41 of the aforementioned judgment. It is evident that the Court made a reasoned decision in relying on the testimonies of Nyiringondo Epaphrodite and Mbarushimana Vincent, which were documented in the affidavit established by both the prosecution and the High Court for

investigative purposes. In criminal cases, evidence can be established by all means of fact or law provided they are subject to adversarial proceedings, as stipulated in Article 119 of the aforementioned law. This underscores the point that there is no necessity to summon Nyiringondo Epaphrodite and Mbarushimana Vincent, particularly considering the unavailability of Mbarushimana Vincent due to his unknown whereabouts, as previously explained. Therefore, it is unnecessary to call them for cross-examination in this case, given the circumstances. [55] The Court concludes that the validity of the declarations made by Nyiringondo Epaphrodite and Mbarushimana Vincent, also known as Gasongo, rests upon their alignment with alternate forms of evidence presented through the testimonies of multiple witnesses, as mentioned earlier. This assessment should be conducted in conjunction with other evidentiary elements contained within the case file. Such a comprehensive analysis is crucial to determining the extent of Habyarimana Jean's involvement in the offenses for which he was found guilty by the High Court. This matter will be further elucidated in the subsequent paragraphs of this case. [56] The Court concludes that Habyarimana Jean's assertion that Nyiringondo Epaphrodite's testimony should not carry weight due to its contradictions lacks merit. The inclusion of statements

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pertaining to the "Comité de crise" before the High Court and the introduction of names of witnesses not previously mentioned to the prosecution does not substantiate a contradiction in his statements. Rather, it is evident that Nyiringondo Epaphrodite's addition of these details is likely a consequence of the passage of twenty years since the occurrence of the 1994 genocide against the Tutsi. This extended time span between the events and his testimony provided before the prosecution on 24/10/2014, as well as before the court on 23/12/2016, offers a plausible explanation for the inclusion of these elements. This also aligns with the conclusions of the judgment ICT-2001-72-T in the case involving the prosecution and Bikindi Simon, who was tried by the International Criminal Tribunal for Rwanda (ICTR) on 02/12/2008. In this judgment, it was elucidated that the existence of contradictions or minor errors in witness statements, or even instances where these statements differ from earlier declarations, should not diminish the credibility of the testimony. This phenomenon may arise due to the considerable passage of time between the occurrence of the offense mentioned in the indictment and the actual presentation of the testimony before the court¹⁷. [57] The Court concludes that, furthermore, the aforementioned court did not err in its consideration of Nyiringondo Epaphrodite's testimony. It deliberated on a portion of his testimony that implicated Habyarimana Jean in the selection of interahamwe youth for military training, while omitting another segment. This action aligns with the provisions of Article 65 of the aforementioned Law. This article empowers the court to exercise its discretion in evaluating the relevance, pertinence, admissibility, or rejection of testimonial evidence, particularly by assessing the witnesses' understanding of the facts and their objectivity and sincerity in delivering their statements. This also corresponds to the decision rendered in the judgment ICT-2001-72-T of the prosecution versus Bikindi Simon, as mentioned earlier. In this case, the International Criminal Tribunal for Rwanda (ICTR) established that a segment of the testimony can be considered valid as long as it is the portion that holds

credibility¹⁸. 4. Whether the High Court disregarded witness declarations exculpating Habyarimana Jean [58] Habyarimana Jean, assisted by counsel Nyirihirwe Hilaire, states that there exists exculpatory evidence in his favor that was disregarded by the High Court. This evidence includes the testimony provided by Setiba Joseph, the former Interahamwe President in Kigali Sector. Setiba Joseph declared that the person named Turatsinze Jean Pierre was the chairperson of Interahamwe in Kigali Ngali. He further stated that Turatsinze Jean Pierre prevented Interahamwe who were attempting to attack his home, where Tutsi sought refuge. Setiba Joseph explains that the distribution of ammunition to those Interahamwe used to take place in the barracks where training sessions were held. This implies, therefore, that Turatsinze Jean Pierre was not the person in charge of dispatching the ammunitions to Interahamwe, as he was wrongly accused of doing so. [59] He continues by stating that another witness, named HJD, who was the president of Interahamwe in the Nyakabanda sector, was summoned to provide exculpatory evidence regarding the testimony given by the HJC witness. This HJC witness was a well-known Interahamwe member, as confirmed by the ALJ witness designated by the International Criminal Tribunal for Rwanda, as well as HJE in the High Court. In the testimony of HJC, he asserted that a resolution was reached during a meeting to expel the Tutsi who remained within the sectors and villages. This meeting supposedly occurred on 15/05/1994 and was chaired by Renzaho Tharcisse. However, the High Court disregarded the testimony

17 ICTR –2001 -72 –T between the Prosecution vs Simon Bikindi, paragraph 32: “La Chambre reconnaît qu'il s'est écoulé une longue période entre la date des faits allégués dans l'acte d'accusation et celle des dépositions à l'audience. Ainsi, le manque de précision ou l'existence de contradictions mineures entre les dépositions de différents témoins ou entre la déposition d'un témoin et ses déclarations antérieures, n'ont généralement pas été considérés comme jetant nécessairement le discrédit sur ces dépositions”. 18 ICTR –2001 -72 –T between the prosecution versus Bikindi Simon, paragraph 32: “Même si elle a parfois décidé de ne pas se fonder sur certains aspects de la déposition d'un témoin, la Chambre a néanmoins retenu d'autres parties de celle-ci jugées fiables et crédibles”.

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of HJD, who maintained that the meeting on 15/05/1994 had never taken place. Instead, HJD claimed that the meeting had occurred on 20/05/1994 at Nyakabanda School. The purpose of this meeting was to recruit Interahamwe members in order to support soldiers and reclaim Mburabuturo, which had been seized by the Inkotanyi forces. [60] Habyarimana Jean argues that another witness's testimony, which was also disregarded by the High Court, is that of Mucanda Vital. Mucanda Vital declared that Habyarimana Jean was the person responsible for conducting the meetings, which used to include Hutu, Tutsi, and Twa individuals. However, the court chose not to consider his statements during deliberation. [61] Concerning the meeting of 16/01/1994, Habyarimana Jean explained that following the RPF attack, mistrust arose between Hutu and Tutsi populations, accompanied by preexisting tensions between Abakiga and Abanyenduga groups, as well as district-based conflicts involving the MDR political party of Kayibanda and the MRND led by Habyarimana Jean. Thus, the purpose of this meeting was to alert the Interahamwe

to remain vigilant. Habyarimana Jean explained that the ideology of "Hutu Power" originated from the statements made by Karamira during the meeting of 23/10/1993. This meeting aimed to mobilize the entire population, including Hutu, Twa, and Tutsi, to condemn the assassination of President Ndadaye and he (Habyarimana Jean) delivered a speech during this meeting. [62] Counsel Nyirihirwe Hilaire, assisting Habyarimana Jean, states that in the exculpatory testimony in favor of Habyarimana Jean, the witnesses indicated that he was not the individual who played a role in the meetings that incited Hutu to kill Tutsi and in the preparation of the genocide. The prosecution is unable to provide evidence that demonstrates Habyarimana Jean's involvement in inciting Hutu individuals to commit genocide against Tutsi. Consequently, he has requested the prosecution to provide a cassette recording, excerpt, or a written testimony that tangibly proves his alleged role. He further states that his client was pronounced guilty due to his alleged involvement in the meeting held at Nyamirambo stadium, where Hutu individuals were supposedly incited to commit violence against Tutsi. However, the actual purpose of the meeting was to condemn the death of Ndadaye, who was the president of Burundi. While Habyarimana does not deny being present at the event or delivering a speech, he maintains that his intention was to provide comfort to the general population and to discourage the youth from engaging in harmful actions. [63] The Prosecutor argues that the statements made by Setiba Joseph are inconsistent with the testimonies of various witnesses, including HJE, HJA, and even Habyarimana Jean himself, as detailed in paragraphs [69] to [77] of the appealed judgment. The High Court provided numerous reasons for rejecting these witness statements, thereby casting doubt on their reliability. It is perplexing that Setiba Joseph, who initially informed the prosecution during prison interviews that he was unfamiliar with Habyarimana Jean, later claimed before the court that he knew him and that he had not committed any wrong during the genocide against the Tutsi. These glaring contradictions are precisely why the High Court chose not to place reliance on his testimony. [64] He proceeds to argue that the testimony provided by witness identified as HJD should not be regarded as reliable. According to him, Habyarimana Jean has not presented any evidence proving that he was genuinely the president of Interahamwe in Nyakabanda. In contrast, the High Court has found the statements of the witness HJC credible, as he had participated in the meeting that supposedly incited Hutu to commit violence against Tutsi. Habyarimana Jean himself mentioned HJC as a witness in an attempt to absolve himself from guilt. Furthermore, there is another individual he attempted to involve as a witness, who affirmed that he never incited Hutu to harm Tutsi but instead encouraged unity among them. This assertion is, however, untrue because in various meetings where the incitement of Hutu against Tutsi took place, Habyarimana Jean repeatedly stated that the enemies of Burundi are the same as the enemies of Rwanda. He encouraged Hutu to unite against the perceived enemy, the Tutsi, which

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he expressed during the meeting on 16/01/1994, as documented in paragraph [569] of the judgment involving Karemera Edouard and Matayo Ngirumpatse. [65] Regarding the distribution of ammunition, the prosecutor contends that despite Habyarimana Jean's assertion of having

exonerating witnesses on his side, the High Court thoroughly outlined his involvement, as documented in paragraphs [69] to [77] of the appealed judgment. Considering that Habyarimana Jean held a leadership position within the MRND at the City of Kigali level, a political party known to have Interahamwe members, dismissing any role he played in the distribution of ammunition used during the genocide would be a mistake. This is because he was frequently engaged in various meetings with other leaders, including those involving military leaders, in all the agenda. [66] The Prosecutor presents that the statements made by Habyarimana Jean, inciting Hutu individuals to unite and combat the perceived enemy during the meetings held on 23/10/1993 and 16/01/1994, are documented in paragraphs [521], [522], [514], [517], [518], and [519] of the judgment involving Karemera Edouard and Matayo Ngirumpatse. Additionally, in paragraph [524] of the same judgment, it becomes clear that he expressed the concept of Hutu power ideology. He explains that during the meeting of 16/01/1994, as highlighted particularly in paragraphs [573] and [574], Habyarimana Jean declared his intention to provide a document outlining the conflict between Hutu and Tutsi, along with the methods of punishing the perceived enemy, which in this context were Tutsi individuals. He goes on to argue that it was the witness HJC who clarified that Councillor Karushara Rose had requested firearms during the meeting, and Habyarimana Jean did not dispute her statement. This lack of contradiction implies his endorsement of her appeal, signifying his involvement in inciting people to partake in acts of genocide and providing support for such actions. DETERMINATION OF THE COURT [67] Article 65 of the Law n° 15/2004 of 12/06/2004 relating to evidence and its production provides that it is the court that assesses with discretion the relevance, pertinence and admissibility or rejection of testimonial evidence. It is not bound by the number of witnesses. It shall mainly consider their knowledge of facts and the objectivity and sincerity of their declarations. [68] From the case file, it is evident that in the appealed judgment, Setiba Joseph, HJD, and Mucanda Vital asserted that there was no collaboration between Interahamwe and the MRND political organization's leadership. They also stated that no political party leader played a role in selecting the youth who underwent military training. However, the High Court dismissed these statements as unsubstantiated, as even they themselves acknowledge that there were joint activities carried out by Interahamwe and MRND members. These activities included participating in meetings, providing security services to party supporters during gatherings, participating in demonstrations, and encouraging youth to join the MRND¹⁹. [69] Habyarimana Jean asserts in his appeal that the High Court found him guilty of playing a role in the genocide committed against the Tutsi population in Rwanda in 1994, despite the testimonies of exonerating witnesses such as Setiba Joseph, HJD (referred to under this name for security reasons), and Mucanda Vital. The present court shall therefore determine whether the High Court indeed disregarded these statements. Regarding the witness, Setiba Joseph [70] From the case file, it is evident that during the hearing on 28/02/2017 before the High Court, Setiba Joseph clarified that he and his colleagues, who were part of Interahamwe, did not maintain a

¹⁹ Judgment RPA GEN 00002/2016/HCCI, paragraph [42].

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permanent collaboration with the MRND party. Their interaction was primarily confined to situations involving gatherings and demonstrations in Kigali. During these events, they were dispatched by the Interahamwe leadership to receive guidance from the top cadre of the MRND party at the City of Kigali level. He emphasized that Turatsinze Jean Pierre was the individual who maintained a close collaboration with the MRND party and acted as a liaison between them and the national leadership. He further stated that he had never witnessed Habyarimana Jean participating in Interahamwe activities. Instead, he recalled seeing Habyarimana Jean present at gatherings held at Stade Régional in Nyamirambo in 1993. Habyarimana's role in those instances was to oversee the welcome of visitors. Concerning the training and provision of firearms to the Interahamwe, Setiba Joseph stated that such tasks were the responsibility of soldiers. These soldiers were also in charge of transporting them to Gabiro. He further indicated that none of the political party leaders used to be present for these activities. [71] As detailed above, Habyarimana Jean asserts in his appeal that Setiba Joseph, who held the position of Interahamwe president in Kigali Sector, exonerated him. Setiba Joseph clarified that Turatsinze Jean Pierre served as the leader of Interahamwe in Kigali Ngali. It was Turatsinze who prevented Interahamwe from attacking Habyarimana's home to search for Tutsi individuals he had assisted in hiding. Additionally, Habyarimana Jean explains that the distribution of firearms was conducted within military camps, and as such, he played no role in their dispatch. [72] The Court of Appeal determines that the fact Setiba Joseph mentioned Turatsinze Jean Pierre as the president of Interahamwe in Kigali Ngali does not necessarily constitute exoneration for Habyarimana Jean. This is because Habyarimana Jean was not specifically charged with holding the position of Interahamwe President, making it unnecessary for Setiba Joseph to contradict such a charge. Instead, Habyarimana Jean was convicted of various offenses stemming from his role as the president of the MRND party in the City of Kigali prefecture. This included charges of conspiring to commit genocide and being complicit in genocide by inciting and distributing firearms used in the genocide. These charges were based on testimonies provided by Nkubito, HJE, HJC, HJB, HJA, Mbarushimana, and Nyiringongo during the investigation and court proceedings. [73] Regarding the assertion that Setiba Joseph prevented Interahamwe from attacking Habyarimana Jean's residence in search of hidden Tutsi individuals, the Court finds that this question was posed during the inquiry into the role of the MRND leadership at the barricades. Habyarimana Jean was not convicted of leading barricades where Tutsi individuals were killed. Furthermore, the possibility of him hiding Tutsi individuals does not serve as exculpatory evidence, as it does not negate the other actions constituting the offense of genocide for which he was found guilty by the High Court. [74] Regarding the dispatch and training of firearms to Interahamwe, the Court of Appeal acknowledges that, as the High Court also recognized, Setiba Joseph's statement contradicts that of Nkubito Isaac. Nkubito Isaac, the former president of the MRND party in the former Kacyiru Commune, was cross-examined during the hearing on 28/02/2017 before the High Court. He explained that after the meeting held at Nyamirambo stadium in 1993, there were subsequent trainings of MRND and PSD (Parti Social Démocrate) youth, known as Abakombozi. They would convene at the MRND permanent office for meetings, where they were informed that

the enemies were Tutsi individuals. Following this, they received training in Gabiro after being briefed by Habyarimana Jean. Therefore, he indicated that while he personally witnessed certain actions mentioned in his statements, others were based on hearsay. [75] The Court finds, as the High Court has also determined, that Nkubito Isaac's statements should be considered credible. This is further supported by the testimony of HJA, who was interrogated at the same time. HJA stated that the selection of Interahamwe youth was conducted by representatives of the MRND at the sector and cell levels, including individuals like Kaboyi Jérémie, who served as the councillor of Nyamirambo sector, and Karushara Rose, who was the councillor of Kimisagara Sector. These representatives received briefings about the youth's training from the MRND leadership, which

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included Habyarimana Jean. It is noted that this has also been reiterated by HJB, who stated that he was a member of the MRND political party alongside Habyarimana Jean. HJB clarified that as a leader of this party, Habyarimana Jean could not have been unaware of the establishment of the Interahamwe youth. This youth group was initially formed in Kigali city, underwent military training, and was provided with firearms for the attacks they carried out. These trainings occurred at locations such as Kabuga building in Muhima, Bigogwe, and other places. Additionally, HJB emphasized that the same Interahamwe individuals who came from Kigali were responsible for the killings of Tutsi individuals in Bugesera, Bigogwe, Butare, and various other regions. He further asserted that he frequently observed information about these training activities, primarily in reports signed by Habyarimana Jean. [76] The Court also finds that other witnesses interrogated during the High Court proceedings, including HJC, HJE, Nyiringondo Epaphrodite, and Mbarushimana Vincent, asserted that Habyarimana Jean played a role in the distribution of firearms to the Interahamwe. For instance, HJC, who was one of the beneficiaries, stated that the distribution of firearms was preceded by a meeting on 15/5/1994, in which Habyarimana Jean participated and supported that idea raised by Karushara Rose²⁰. Additionally, HJE stated that Habyarimana Jean, as a leader of the MRND, played a role in establishing the Interahamwe wing and organizing their training. The Court further finds that during the investigation phase, witnesses Nyiringondo Epaphrodite and Mbarushimana Vincent indicated Habyarimana Jean's role in selecting Interahamwe youth, organizing their training, and distributing firearms for their use in the killings of Tutsi individuals. Additionally, the issue of firearms distribution was reiterated and affirmed in the judgment ICTR-98-44-T in the case of the Prosecution against Edouard Karemera and Ngirumpatse Matayo²¹. [77] The Court finds that, as even the High Court noted, the testimonies of Nkubito Isaac, HJC, and HJE should be given greater weight. They possess sufficient information about the events, as some of them were closely affiliated with Habyarimana Jean in the MRND party and were also Interahamwe members. In contrast, Setiba Joseph, who did not have a continuous association with the MRND to the extent of being aware of Habyarimana Jean's activities, as he claimed in his testimony, should be considered differently. [78] The Court of Appeal therefore determines that the High Court did not disregard the testimony provided by Setiba Joseph, as alleged by Habyarimana Jean. Instead, it thoroughly analyzed this testimony and concluded that it should not be given

significant weight due to contradictions with the testimony of Nkubito Isaac, HJA, HJB, HJC, HJE, Nyirangondo Epaphrodite, and Mbarushimana Vincent. The Court finds that these individuals possess ample information about the events. According to Article 65 of the law relating to evidence and its production, as mentioned earlier, it is in the court's discretion to judiciously assess the relevance, pertinence, and admissibility or rejection of testimonial evidence, taking into account the witnesses' knowledge and ability to narrate the facts. The selection of testimony based on the events corroborates the decision of the International Criminal Tribunal for Rwanda in the case of Yussuf Munyakazi. In that case, the Court relied on the evidence presented by the prosecution rather than considering that presented by the accused. This decision was made because, when discrepancies arise in the events, it is the trial court's responsibility to determine which pieces of evidence should be given credence after hearing from witnesses²².

20 He was the Councillor of Kimisagara Sector 21 ICTR-98-44-T, Prosecution against Edouard Karemera and Ngirumpatse Matayo, paragraph 444: “La chambre conclut que le Procureur a établi au delà de tout doute raisonnable qu’à compter de 1993, des armes ont été fournies aux Interahamwe pendant que d’autres étaient stockées pour leur être distribuées à une date ultérieure”. 22 ICTR-97-36A-A, Prosecution vs Yussuf Munyakazi, paragraph 118: “The Appeals Chamber recalls that, when faced with competing versions of events, it is the duty of the Trial Chamber that heard the witnesses to determine which evidence it considers more probative. Based on the foregoing, the Appeals Chamber finds that it was reasonable for the Trial Chamber to accept the Prosecution evidence over Witness Nahimana’s account.”

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Regarding the witness HJD [79] It is observed from the case file that HJD, who was provided this name for security reasons and served as the President of MRND in Nyakabanda Sector, was also interrogated during the hearing on 28/02/2017 before the High Court. HJD stated that the leadership of Interahamwe had no direct collaboration with that of MRND. However, the leadership of MRND had the option to request the presence of Interahamwe youth for meetings, and Turatsinze was responsible for such collaboration. He stated that he has no knowledge of the meeting on 15/05/1994 aimed at pursuing Tutsi people. The meeting he is aware of occurred during the last days of that month with the objective of recruiting youths who would liberate Mburabuturo mountain. This meeting was organized by the military. He further mentioned that he had never seen Mbarushimana Jean come to Nyakabanda to request Interahamwe youths. Additionally, he emphasized that MRND and its leadership at the city level did not play any role in planning or carrying out the genocide against the Tutsi. [80] The Court of Appeal observes that Habyarimana Jean claimed that he requested HJD to be interrogated in order to dispute the information provided by HJC. HJC asserted that on 15/05/1994, a decision was made during a meeting to pursue Tutsi individuals who remained in sectors and villages. However, Habyarimana Jean contends that the meeting had a different purpose – recruiting youths for the liberation of Mburabututo, which had been seized by the Inkotanyi forces. Despite his assertions, the High Court did not consider his declarations. [81] The Court of Appeal acknowledges that HJD stated that he was not aware of the meeting on 15/05/1994 intended for the pursuit of Tutsi

individuals. Instead, he claimed knowledge of a meeting held in the last days of May 1994 with the objective of liberating Mburabuturo. However, HJC clarified that the meeting on 15/05/1994 did indeed take place. It was led by Colonel Renzaho Tharcisse, Colonel Ndahimana (the army commander in Kigali City and Eastern region), and Colonel Edouard Hakizimana. HJC also mentioned that Habyarimana Jean was personally present at this meeting, which aimed to pursue Tutsi individuals in their homes. HJC stated that he was given five firearms because they were needed for these activities, based on the opinion of Karushara Rose, an opinion that Habyarimana Jean supported. Therefore, the way HJC narrates these actions suggests that he is recounting what he genuinely knows. The court considers that he has no vested interest in fabricating lies against Habyarimana Jean, particularly since he was a member of Interahamwe, a group known to be affiliated with MRND. Therefore, the Court finds that Habyarimana Jean's claims that this witness, HJD, exonerates him are untrue. This is because the meeting regarding which he alleges that HJD exonerated him is unknown to HJD himself. Furthermore, Habyarimana Jean failed to contradict the information provided by HJC, who accused him of being involved in that meeting. Consequently, the decision taken by the High Court to reject the testimony of HJD regarding this issue is justified. [82] The Court of Appeal notes that, as even the High Court has determined, the testimony provided by HJC carries more weight compared to that provided by HJD. This aligns with the decision of the International Criminal Tribunal for Rwanda whereby it held in the case of Georges Anderson Nderubumwe Rutaganda that where there are two conflicting testimonies, it falls to the Trial Chamber before which the witness testified to decide which of the testimonies has more weight²³. Regarding the witness Mucanda Vital [83] Mucanda Vital was also interrogated during the hearing on 28/02/2017. He stated that he was a member of Interahamwe at the sector level and served as their moral instructor in Gitega/Karambo sector. He explained that they used to accompany their supporters as their bodyguards, and a person

23 ICTR-96-3-A, Georges Anderson Nderubumwe Rutaganda, paragraph 501: Appeals Chamber recalled that “where there are two conflicting testimonies, it falls to the Trial Chamber before which the witness testified to decide which of the testimonies has more weight [...]”

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named Twahirwa Séraphin was responsible for briefing them about their activities, whether it was participating in demonstrations or gatherings. He declared that they had no interactions with Habyarimana Jean, except during demonstrations and gatherings. He stated that he never set foot in their meetings. The one place he remembers coming into contact with Habyarimana Jean was during a gathering held in Nyamirambo in the year 1993. During this gathering, Habyarimana Jean took the floor and stated that whether they were Batwa, Hutu, or Tutsi, they should know that the enemy of Rwanda is also the same enemy of Burundi. He emphasized that they should all condemn the assassination of President Ndadaye. [84] The Court of Appeal notes that in his pleadings, Habyarimana Jean had requested that Mucanda Vital be interrogated to explain that he was responsible for organizing gatherings that brought together the entire population, including Hutu, Tutsi, and Batwa. However, the High Court disregarded this request.

[85] Regarding the statements of Mucanda Vital, the Court notes that in the explanations he provided to the court, he stated that the leadership of MRND had no collaboration with that of Interahamwe, except for participating in demonstrations and gatherings. However, as advanced by Nyiringondo Epaphrodite, Mbarushimana Vincent, HJA, HJB, HJE, and Nkubito Isaac, Habyarimana Jean, as a leader of the MRND party in Kigali City, played a significant role in establishing the Interahamwe youth and providing them with training and firearms that were used to pursue and kill Tutsi. [86] The Court finds that regarding the gathering of 23/10/1993, Mucanda Vital stated that Habyarimana Jean's words were that they condemn the assassination of President Ndadaye²⁴ and that the enemy of Burundi is the same as the enemy of Rwanda. He mentioned that at that time, there were Batwa, Hutu, and Tutsi present. Habyarimana Jean does not dispute the fact that he spoke at that gathering. However, Nkubito Isaac, HJA, and HJE clarified to the Court that when they mentioned "the enemy," it meant Tutsi. This interpretation was also supported by the International Criminal Tribunal for Rwanda in the case ICTR-98-44-T involving the prosecution against Edouard Karemera and Mathieu Ndirumapatse²⁵. Therefore, Habyarimana Jean's speech condemning the enemy of Rwanda is an indication that he strongly incited those present to unite in fighting against Tutsi, wherever they may be. [87] The Court finds that the statements made by Counsel Nyirihirwe Hilaire, who is assisting Habyarimana Jean, claiming that the purpose of the meeting on 23/10/1993 was to condemn the death of President Ndadaye of Burundi are groundless. If such had been the case, all the speakers at that meeting, including Habyarimana Jean, have in contrast emphasized on the need to condemn the death of Ndadaye. However, the witnesses interrogated during the investigation phase and before the High Court, as mentioned above, explained that the focus of the meeting was to incite attendees to unite and fight against the enemy, who were the Tutsi. Additionally, this interpretation is supported by the testimony of witnesses ALC, UB, and AWD, who were present at the gathering. This interpretation aligns with the case between the Prosecution vs. Karemera Edouard and Ndirumapatse Mathieu, tried by the International Criminal Tribunal for Rwanda (ICTR)²⁶, where the word "Umwanzi" was defined to mean a Tutsi, as also provided in the case ICTR-96-4-T, Prosecution vs. Jean Paul Akayesu.²⁷ [88] It also finds that Habyarimana Jean participated in the meeting of 16/01/1994, as he himself explained to the present court during the hearing on 13/01/2020. This participation is evident in paragraph [573] of the case ICTR-98-44-T between the Prosecution vs Edouard Karemera and Mathieu

²⁴He was the President of Burundi since 10/07/1993 until 21/10/1993; Region week.com, visited on 17/02/2010. ²⁵ICTR-98-44-T prosecution vs Ndirumapatse Mathieu and Karemera Edouard, paragraph [537]. ²⁶ICTR 98-44-T Prosecution vs Edouard Karemera and Mathieu Ndirumapatse, paragraphs [520], [521], [522] na [524]. ²⁷ICTR -96-4-T Prosecution vs Jean Paul Akayesu, paragraph 123.

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Ndirumapatse, as referred to above. In paragraph [598] of the same case, the International Criminal Tribunal for Rwanda decisively established that on 16/01/1994, a demonstration took place at Nyamirambo stadium, during which Karemera Edouard, Ndirumapatse Mathieu, and

other top leaders of MRND were given the opportunity to speak. Members of Interahamwe were also in attendance. It is crucial to note that all the attendees expressed support for the idea of "Hutu Power²⁸." This strongly supports Habyarimana Jean's role in various meetings where the plan to unite Hutu and incite them to fight against the Tutsi population was conspired. Contrary to Habyarimana Jean's claim, this meeting was not solely intended to inform the Interahamwe to exercise caution. [89] It also finds that the arguments presented by Counsel Nyirihirwe Hilaire, suggesting that cassette recordings or extracts of written testimony should be used to establish the role of Habyarimana Jean, are unfounded. This is because witness evidence is not excluded in such cases, and the Law relating to evidence and its production stipulates that in criminal cases, evidence can be established by all means, whether factual or legal, as long as they are subject to adversarial proceedings. This demonstrates the freedom in the presentation of evidence within the bounds of the law in criminal cases²⁹. Therefore, there is no valid reason to discredit witness evidence as long as it is lawful. Conversely, Habyarimana Jean and his legal counsel have the duty to challenge witness statements incriminating him, a duty which they have failed to fulfill. [90] Considering the explanations provided above, the Court of Appeal finds that the High Court did not disregard the statements of HJD, Setiba Joseph, and Mucanda Vital. Instead, it collectively assessed them along with other pieces of evidence available in the file and found them to be without merit. Thus, the present court concurs with the decision reached by the High Court because, as indicated, there are other testimonial statements challenging the one provided by Setiba Joseph. These should be considered for the reasons clarified above.

5. Whether the High Court made a mistake in declaring Habyarimana Jean guilty of the offence of conspiracy to commit genocide and the offence of complicity in genocide, and providing munitions used to commit genocide. [91] Habyarimana Jean argues that the High Court erred in convicting him of the offense of conspiracy to commit genocide, complicity in inciting to commit genocide, and providing firearms used to commit genocide based on incriminating testimonial declarations. He points out that the International Criminal Tribunal for Rwanda held that Ndirumpatse Matayo, Karemera Edouard, as well as other top leaders of MRND, were not guilty of conspiracy to commit genocide for acts that occurred before 08/04/1994. [92] The Prosecution argues that the case involving Ndirumpatse Matayo and Karemera does not benefit Habyarimana Jean because he is not prosecuted for having been an Interahamwe leader. Instead, he is charged for the role he played in the establishment of such a group and training it militarily with the purpose of exterminating Tutsi, as proved by witnesses. DETERMINATION OF THE COURT Regarding the fact that the High Court convicted Habyarimana Jean of the offense of conspiracy to commit genocide

28 ICTR 98-44-T: [...], De l'avis de la Chambre, "Le Procureur a établi au –delà de tout doute raisonnable qu'un meeting s'était tenu au stade de Nyamirambo le 16 janvier 1994, que Karemera, Ndirumpatse et d'autres hauts responsables du MRND avaient assisté à ce meeting et s'étaient adressés à l'assistance, que des membres de la milice Interahamwe y avaient également pris part, et qu'on y avait épousé la cause de l'idéologie Hutu Power". 29 Article 119 of the Law N°15/2004 of 12/06/2004 relating to evidence and its production.

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[93] Article 132(4^o) of the Organic Law n° 01/2012/OL of 02/05/2012 instituting the penal code³⁰, as well as article 3(b) of the Convention of 09/12/1948 on the prevention and Punishment of the Crime of Genocide³¹, provide for the offence of participation and conspiracy to commit genocide. Such offence has also been clarified in various cases tried by the International Criminal Tribunal for Rwanda including that of Alfred Musema tried on 27/01/2000 where it stated that conspiracy to commit genocide consists of a resolution to act on which at least two persons have agreed with a view to committing genocide³². [94] The High Court convicted Habyarimana Jean of the offense of conspiracy to commit genocide based on Article 132(4^o) of the Organic Law no. 01/2012/OL of 02/05/2012, instituting the penal code. This conviction relied on the testimonies of witnesses who incriminated him, including Nkubito Isaac, HJA, HJB, HJC, and HJE. These witnesses asserted that he played a role in selecting Interahamwe youth who received military training and the ammunition used to kill Tutsi individuals. This took place in his presence at Muhima in Kabuga building, in collaboration with individuals such as Ngirumpatse Mathieu, Nzirorera Joseph, Renzaho Tharcisse, Munyakazi Laurent, Kajuga Robert, Rutaganda Georges, Kamatamu Euphrasie, and others. Additionally, similar activities occurred in other parts of the Kigali City prefecture, where youth were selected, trained, and provided with ammunition for use in the genocide. [95] Another element upon which the High Court relied in convicting Habyarimana Jean of conspiracy to commit genocide is the fact that he frequently held meetings with MRND party leaders at the Commune level, which he headed. During these meetings, he would brief them about the resolutions of the party's top leadership regarding the identification of the enemy and strategies for combating them. Subsequently, these leaders would relay this information to their subordinates at the Sector level. The High Court concluded that the holding of these meetings and the willingness of the leaders to transmit these messages to others indicated a consensus reached during these gatherings. It further concluded that the fact that Habyarimana Jean participated in the meeting of 15/05/1994 convened by Prefet Renzaho Tharcisse, where various individuals were invited, including Colonel Ndahimana, Colonel Edouard Hakizimana, and Councilor Karushara Rose, and where the pursuit of remaining Tutsi individuals and their accomplices was on the agenda, along with the dispatch of firearms to facilitate this act, further indicated a consensus to pursue Tutsi and their alleged accomplices³³. [96] Basing on the provisions of article 132(4^o) of the Organic Law N° 01/2012/OL of 02/05/2012 instituting the penal code and article 3(b) of the Convention of 09/12/1948 on the prevention and Punishment of the Crime of Genocide, the Court of Appeal finds that the correct classification of the offence for which Habyarimana Jean was convicted by the High Court should have been conspiracy to commit genocide, instead of plotting to commit genocide, because the plotting is not the classification provided by the law; it is rather the definition demonstrating how the offence is reached. This is also the same ruling as in the judgment RPA 0001/12/CS tried by the Supreme Court, between the Prosecution vs Bandora Charles. In this case, Bandora Charles was initially convicted of the offence of

30 Without prejudice to other provisions of this Organic Law relating to attempt and criminal participation, the following acts shall be punished by penalties provided under this Chapter [...] conspiracy to commit a crime, even when not followed by the commission [...]. The text of this article is the same as that of article 93(1°) of the Law n°68/2018 of 30/08/2018 determining offences and penalties in general. 31 [...] The following acts shall be punishable [...] Conspiracy to commit genocide (Art. 3, e of The Convention on the Prevention and Punishment of the Crime of Genocide. 32 ICTR-96-13-T, Prosecution vs Musema Alfred, paragraph 191 "... La Chambre définit l'entente en vue de commettre le genocide comme une résolution d'agir sur laquelle au moins deux personnes se sont accordées en vue de commettre un jenocide", ICTR-99-52-A, Prosecution vs Nahimana Ferdinand and co-accused, paragraph 344; ICTR-99-46-A, Prosecution vs Ntagerura André and co-accused, paragraph 92; ICTR-01-66-A, Prosecution vs Seromba Athanase, paragraph 218. 33 Judgment RPA GEN 00002/16/HCCI, paragraphs 131-133.

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plotting to commit genocide by the High Court, but the Supreme Court changed the classification to conspiracy to commit genocide.³⁴ As a matter of fact, the Court of Appeal finds that although there is a difference between the terms "conspiracy" and "plotting," in general, the classification of "conspiracy to commit genocide" used in Article 132(4°) of the above-stated Organic Law no. 01/2012/OL is the same as "conspiracy to commit genocide" expressed in Article 3(b) of the Convention of 09/12/1948 on the Prevention and Punishment of the Crime of Genocide. This classification aligns with the one adopted by the Supreme Court in the case involving Bandora Charles. [97] Regarding the fact that the International Criminal Tribunal for Rwanda, in the case ICTR-98-44-T involving the Prosecution vs Edouard Karemera and Ndirumapatse Matayo, ruled that Edouard Karemera, Ndirumapatse Matayo, as well as other MRND leaders, could not be found guilty of offenses including genocide, incitement to commit genocide, crimes against humanity, and murder committed to fulfill the joint criminal enterprise. Additionally, they could not be found guilty of the offense of conspiracy to commit genocide based on acts that occurred before 8/04/1994.³⁵ The Court of Appeal truly finds that the Appellate Chamber of the International Criminal Tribunal for Rwanda decided that liability based on joint criminal enterprise could not be established by considering acts that occurred before 08/04/1994. It is reasonable to conclude that the role of Karemera and Ndirumapatse in the acts committed before 8/04/1994 does not fall within the offenses provided by the Statutes.³⁶ Therefore, the First Trial Chamber did not err in holding that this was not the only possible resolution that could result from the pieces of material evidence, leading to the conviction of Karemera and Ndirumapatse for conspiracy to commit genocide based on acts that occurred before 8/04/1994.³⁷ [98] The Court of Appeal finds, however, that even though it was decided as such, this judgment from the International Criminal Tribunal for Rwanda does not apply to Habyarimana Jean, as he alleges. Instead, it applies to Karemera Edouard and Ndirumapatse Matayo, who were involved in that case. Therefore, Habyarimana Jean should not invoke it to allege that it acquitted him of the offenses of incitement to commit genocide, crimes against humanity, murder committed to fulfill the joint criminal enterprise, and the offense of conspiracy to commit genocide for acts that occurred before 08/04/1994, as

clarified in Part II of the instant case (II.2). [99] Regarding the offense of conspiracy to commit genocide, the Court of Appeal finds that Habyarimana Jean was convicted of that offense by the High Court based on pieces of evidence that include meetings and acts that occurred in 1993, which implies events both before and after 08/04/1994.

[100] Regarding the issue of whether evidence before 08/04/1994 can be relied upon for his conviction, the Court of Appeal finds that, while some legal scholars have confirmed that although the genocide itself was especially perpetrated on 7/04/1994 until late July 1994, it was planned long before and pursued by the masterminds, perpetrators, and their accomplices, continuing during the dry season and after crossing the border between Zaïre and Rwanda³⁸. Therefore, in this case involving

34 RPA 0001/12/CS rendered on 22/03/2019 involving the Prosecution vs Bandora Charles, paragraph 53. 35 ICTR-98-44-T Prosecution vs Ngirumpatse Mathieu and Karemera Edouard, paragraph 1573: “Aucune déclaration de culpabilité ne serait dès lors être prononcée relativement aux faits survenus avant le 8 avril 1994.” 36 Statut du Tribunal Pénal International pour Le Rwanda. 37 ICTR-98-44-A tried on 29/09/2014 between the Prosecution vs Edouard Karemera and Mathieu Ngirumpatse, paragraph 741: “The Appeals Chamber is satisfied that the considerations identified by the Trial Chamber reasonably support its finding on the reasonable possibility that Karemera's and Ngirumpatse's involvement in the pre-8 April 1994 events had not been conducted with the intent that crimes covered by the Statute be committed. Consequently, the Trial Chamber did not err in concluding that it was not the only reasonable inference that could be drawn from the circumstantial evidence that Karemera and Ngirumpatse possessed the requisite mens rea for a conviction for conspiracy to commit genocide in relation to the pre-8 April 1994 events.” 38 Géraud de La Pradelle, *Imprescriptible: L'implication française dans le génocide tutsi portée devant les tribunaux*, France, 2005, p. 109: “ Bien sur, le génocide proprement dit a été commis pour l'essentiel, sur le territoire national du Rwanda

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Habyarimana Jean, the Court of Appeal finds that it was determined by the High Court that there are witnesses, including Nkubito Isaac, HJA, HJB, HJC, and HJE, who asserted that Habyarimana Jean was present in meetings held in 1993 and on 15/05/1994 for the purpose of selecting Interahamwe youth, providing them with military training, and firearms. These youths played a significant role in the perpetration of genocide in Kigali City and various parts of the country.

[101] The Court of Appeal finds, further, that as observed by the High Court, aside from the classification that was changed, such an offense is established by the fact that Habyarimana Jean, as an MRND president in Kigali City, played a role in various meetings he presided over. In these meetings, he conveyed to his subordinates that the enemy is the Tutsi, as clarified by witnesses including Nkubito and HJB, as mentioned above. These witnesses also conveyed this message to their subordinates. Additionally, the fact that he was present in the meeting on 15/5/1994 with the purpose of inciting the population to pursue the remaining Tutsi and accomplices, and where firearms were dispatched for such acts,

further supports this conclusion. For these reasons, the Court of Appeal concurs with the High Court regarding the conviction of Habyarimana Jean for the offense of conspiracy to commit genocide, except for the classification of the offense. Regarding the conviction of Habyarimana Jean of the offense of being an accomplice in genocide for incitement to commit genocide and the distribution of firearms used in genocide by the High Court

[102] Article 132(3⁰) of the Organic Law No. 01/2012/OL of 02/05/2012 instituting the penal code³⁹ and Article 3 of the Convention on the Prevention and Punishment of the Crime of Genocide⁴⁰ define and punish the offense of incitement to commit genocide. The acts of incitement to commit genocide were clarified in the case ICTR-2001-72-T involving the Prosecution against Bikindi Simon. It explained that public incitement to commit genocide presupposes the existence of genocidal intent on the part of the person engaging in it, and it is not necessary for this incitement to be followed by the actual act leading to genocide⁴¹.

[103] In addition, article 132(5⁰) of the Organic Law no 01/2012/OL of 02/05/2012 instituting the penal code⁴² criminalizes and punishes abetment to commit a crime, even when not followed by the commission.

[104] The High Court, having noted that Habyarimana Jean committed complicity in genocide and incitement to commit genocide through various acts as detailed above, relied on article 98 of Organic Law no. 01/2012/OL dated 02/05/2012 instituting the penal code and convicted him of complicity in genocide for inciting people to commit genocide and distributing firearms used in genocide.

entre le 7 avril et la fin juillet 1994 ; mais Il a été préparé de longue date et l'activité criminelle de ses concepteurs, comme de ses agents et complices, ne s'est pas arrêtée à la fin de l'été, une fois passée la frontière qui sépare le Rwanda du Zaïre." ³⁹ Without prejudice to other provisions of this Organic Law relating to attempt and criminal participation, the following acts shall be punished by penalties provided under this Chapter [...] incitement to commit such a crime, even when not followed by the commission [...]. The provisions of this article are the same as those of article 93(3^o) of Law N°68/2018 dated 30/08/2018 determining offenses and penalties in general. ⁴⁰ The following acts shall be punishable [...] "Direct and public incitement to commit genocide" (Art.3, c of The Convention on the Prevention and punishment of the crime of Genocide. ⁴¹ ICTR -2001-72-T Prosecution vs Bikindi Simon, paragraph 419: "Commet le crime d'incitation directe et publique à commettre le génocide la personne qui agit avec l'intention d'inciter directement et publiquement autrui à commettre le génocide, ce qui suppose l'existence d'une intention génocide. Infraction formelle, l'incitation directe et publique à commettre le génocide est punissable même si aucun acte de génocide n'en a résulté". ⁴² Without prejudice to other provisions of this Organic Law relating to attempt and criminal participation, the following acts shall be punished by penalties provided under this Chapter [...] abetment to commit a crime, even when not followed by the commission. The provisions of this article are the same as those of article 93(5^o) of Law N°68/2018 dated 30/08/2018 determining offenses and penalties in general.

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- [105] On one hand, the High Court found Habyarimana Jean guilty of the offense of incitement to commit genocide because he participated in the meeting of 23/10/1993 in which he expressed his intention to incite Hutu to unite and fight the enemy, who were the Tutsi, as clarified above. On the other hand, it found him complicit in genocide because he played a role in providing military training and firearms to Interahamwe youth. Additionally, his participation in the meeting in May 1994, where he supported the distribution of firearms to be used against the hidden Tutsi in the Cells, indicates that he provided significant support to those who killed Tutsi at barricades, in homes, and elsewhere within the prefecture of Kigali city and across the country⁴³.
- [106] The Court of Appeal finds that while the High Court convicted Habyarimana Jean of the offenses he is charged with, it believes that there should be a rectification of the classification of the offense. Specifically, it should distinguish between the offense of complicity in genocide for incitement to commit genocide. Based on the evidence presented above, Habyarimana Jean should be found guilty of complicity in genocide and the offense of incitement to commit genocide as separate and independent offenses. This is because each offense has its own constitutive elements, and the acts relied upon by the High Court to establish these two offenses are distinct.
- [107] The Court of Appeal finds, therefore, that Habyarimana Jean is guilty of all three offenses, namely conspiracy to commit genocide, complicity in committing genocide, and incitement to commit genocide. These offenses result in the ideal concurrence of offenses, as provided in article 84 of Law N° 01/2012/OL of 02/05/2012, as recalled above⁴⁴, because they all have been committed with the same intent of committing genocide. Therefore, Habyarimana Jean should be subject to a life imprisonment penalty, as provided for such crimes, instead of the life imprisonment with reclusion given to him by the High Court, as such a penalty is not provided for in Rwandan law, as per article 26 of Law n° 68/2018 dated 30/8/2018, determining offenses and penalties in general.⁴⁵
- [108] From the foregoing explanations, the Court of Appeal finds the appeal lodged by Habyarimana Jean without merit. As the High Court also noted, he did not submit any evidence contradicting the evidence relied upon by the High Court for his conviction for those offenses. Consequently, the judgment RPA GEN 00002/16/HCCI, tried by the High Court on 28/04/2017, should be upheld, except only regarding the classifications given to the offenses for which Habyarimana Jean was convicted, and the penalty. III. DECISION OF THE COURT
- [109] Holds that the appeal lodged by Habyarimana Jean is unfounded.
- [110] Holds that the ruling of the judgment RPA GEN 00002/16/HCCI, tried on 28/04/2017 by the High Court, Specialised Chamber for international and transnational crimes, is only reversed with regard to the classification of offenses and the imposed penalty.

[111] Convicts Habyarimana of the offenses of conspiracy to commit genocide, complicity in genocide, and incitement to commit genocide.

[112] Sentences Habyarimana Jean to life imprisonment.

43 Paragraph 139 of the judgment RPA GEN 00002/16/HCCI. 44 If an offender would receive several penalties of imprisonment or fine as a result of one or several acts, the judge shall apply the most severe penalty and increase its duration or the amount depending on the circumstances of the offences, but not exceeding half (1/2) in addition to the maximum of the most severe penalty. 45 Such article 26 provides that the penalty of imprisonment may be for a fixed term or for life.

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[113] Instructs that the court fees are borne to the Public Treasury.

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