433/H

Tribunal Pénal International pour le Rwanda
International Criminal Tribunal for Rwanda

ICTR-96-03-R
08 December 2006
(433/H – 416/H)
P.T.

IN THE APPEALS CHAMBER

Before: Judge Fausto Pocar, Presiding
Judge Mohamed Shahabuddeen
Judge Mehmet Güney
Judge Andrésia Vaz
Judge Theodor Meron

ICTR Appeals Chamber
Date: 08 December 2006
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Registrar: Mr. Adama Dieng

Decision of: 8 December 2006

Georges Anderson Nderubumwe RUTAGANDA

v.

THE PROSECUTOR

Case No. ICTR-96-03-R

Decision on Requests for Reconsideration, Review, Assignment of Counsel, Disclosure, and Clarification

Office of the Prosecutor:

Mr. Hassan Bubacar Jallow
Mr. George Mugwanya
Ms. Inneke Onsea

The Applicant:

Mr. Georges Rutaganda, *pro se*

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda
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1. The Appeals Chamber of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Serious Violations Committed in the Territory of Neighbouring States, between 1 January and 31 December 1994 ("Appeals Chamber" and "Tribunal", respectively) is seized with five requests, filed by Georges Rutaganda ("Mr. Rutaganda").

I. BACKGROUND

2. In its Judgement of 26 May 2003, the Appeals Chamber confirmed Mr. Rutaganda's convictions for genocide and extermination as a crime against humanity, entered an additional conviction for serious violations of Article 3 common to the Geneva Conventions, and upheld his sentence of life imprisonment.[1] In upholding the convictions of the Trial Chamber, the Appeals Chamber affirmed the Trial Chamber's findings that Mr. Rutaganda distributed weapons and aided and abetted killings in Cyahafi sector; ordered, committed, and aided and abetted in crimes committed in the area of the Amgar garage; participated in the massacres at *École Technique Officiel* ("ETO"); and participated in the forced diversion of refugees to Nyanza and the subsequent massacre there.[2]

3. On 13 April 2006, Mr. Rutaganda filed a consolidated motion containing a request for reconsideration, review, and for assignment of counsel.[3] The Prosecution filed a Consolidated Response[4] to the Request for Reconsideration, Request for Review, and Request for Assignment of Counsel on 23 May 2006, and Mr. Rutaganda filed a Consolidated Reply on 7 June 2006.[5] In

[1] *Georges Rutaganda v. The Prosecutor*, Case No. ICTR-96-3-A, Judgement, 26 May 2003 ("*Rutaganda* Appeal Judgement"); *The Prosecutor v. Georges Rutaganda*, Case No. ICTR-96-3-T, 6 December 1999 ("*Rutaganda* Trial Judgement"). The Appeals Chamber also overturned a conviction for murder as a crime against humanity. *See Rutaganda* Appeal Judgement, paras 490-507.

[2] *Rutaganda* Appeal Judgement, paras 294-489.

[3] *Requête aux fins d'une demande en reconsidération et/ou en révision de l'arrêt rendu le 26 Mai 2003 par la Chambre d'Appel dans l'affaire Rutaganda c/ Procureur (ICTR-96-3-A) et, en réparation du préjudice cause par la violation par le Procureur des règlements du Tribunal; Requête aux fins de voir la Chambre d'Appel trancher sur la question de commission d'office d'une assistance juridique à M. Rutaganda*, 13 April 2006 ("Consolidated Request"). For clarity, the Appeals Chamber refers to each of the three requests separately in the text as: Request for Reconsideration, Request for Review, and Request for Assignment of Counsel.

[4] Prosecutor's Response to "*Requête aux fins d'une demande en reconsidération et/ou en révision de l'arrêt rendu le 26 mai 2003 par la Chambre d'Appel dans l'affaire Rutaganda c/ Procureur (ICTR-96-3-A) et en réparation du préjudice cause par la violation par le Procureur des règlements du Tribunal*" and "*Requête aux fins de voir la Chambre d'Appel trancher sur la question de commission d'office d'une assistance juridique à M. Rutaganda*", 23 May 2006 ("Consolidated Response").

[5] *Réplique de l'Appelant au* "Prosecutor's Response to '*Requête aux fins d'une demande en reconsidération et/ou en révision de l'arrêt rendu le 26 mai 2003 par la Chambre d'Appel dans l'affaire Rutaganda c/ Procureur (ICTR-96-3-A) et en réparation du préjudice cause par la violation par le Procureur; Requête aux fins de voir la Chambre d'Appel trancher sur la question de commission d'office d'une assistance juridique a M. Rutaganda*, 7 June 2006 ("Consolidated Reply").

addition, on 17 August 2006, Mr. Rutaganda filed a Request for Disclosure,[6] and the Prosecution filed its Response to the Request for Disclosure on 28 August 2006.[7] Mr. Rutaganda filed his Reply to the Request for Disclosure on 8 September 2006.[8]

4. In addition, on 26 October 2006, Mr. Rutaganda filed a Request for Clarification.[9] The Prosecution filed a Response on 1 November 2006,[10] and Mr. Rutaganda replied on 13 November 2006.[11]

II. DISCUSSION

A. Requests for Reconsideration and Clarification

5. In his Request for Reconsideration, Mr. Rutaganda requests the Appeals Chamber to reconsider its Judgement, arguing that the Appeals Chamber erred in its treatment of his arguments challenging the Trial Chamber's findings on: (1) his role in distributing weapons in connection with the killings in Cyahafi sector; (2) his role in the detention and killing of Tutsis at Amgar garage; and (3) his "humanitarian acts" which negate his genocidal intent and mitigate his sentence.[12] In making this request, Mr. Rutaganda invokes the Appeals Chamber's inherent jurisdiction to reconsider its decisions in order to prevent manifest injustice.[13]

6. While Mr. Rutaganda seeks to rely upon the Appeals Chamber's inherent power to reconsider its own decisions, that power does not extend to final judgements. This limitation on the power of reconsideration was clearly established by the Appeals Chamber of the International Criminal Tribunal for the former Yugoslavia in the *Žigić* Reconsideration Decision[14] and followed

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[6] *Requête aux fins de voir le Procureur divulguer l'identité complète, les déclarations non caviardées et autres documents pertinent des témoins à charge dans l'affaire Rutaganda*, 17 August 2006 ("Request for Disclosure").

[7] Prosecution's Response to "*Requête aux fins de voir le Procureur divulguer l'identité complete, les declarations non caviardées et autres documents pertinent des témoins à charge dans l'affaire Rutaganda*", 28 August 2006 ("Response to Disclosure Request").

[8] *Réplique par l'Appelant au* "Prosecution's Response to '*Requête aux fins de voir le Procureur divulguer l'identité complete, les declarations non caviardées et autres documents pertinent des témoins à charge dans l'affaire Rutaganda*'", 8 September 2006 ("Reply to Disclosure Request").

[9] *Requête urgente en clarification suite à la décision de la Chambre d'Appel rendue dans l'affaire Zigić (IT-98-30/1-A) le 26 juin 2006*, 26 October 2006 ("Request for Clarification").

[10] *Réponse du Procureur à la "Requête urgente suite a la décision de la chambre d'appel, rendu dans l'affaire Zigić (IT-98-30-1/A) le 20 juin 2006 déposée par Georges Anderson Nderubumwe Rutaganda"*, 1 November 2006 ("Response").

[11] *Réplique par l'Appelant a "la Réponse du Procureur à 'la Requête urgente en clarification suite a la décision de la Chambre d'Appel, rendue dans l'affaire Zigić (IT-98-30/1-A) le 20 juin 2006'"*, 13 November 2006 ("Reply").

[12] Consolidated Request, paras 13, 14, 26-111.

[13] Consolidated Request, paras 16-25, citing *The Prosecutor v. Zdravko Mucić et al.*, Case No. IT-96-21-A*bis*, Judgement on Sentence Appeal, 8 April 2003, paras 48-58 ("*Mucić et al.* Appeal Judgement").

[14] *The Prosecutor v. Zoran Žigić*, Case No. IT-98-30/1-A, Decision on Zoran Žigić's "Motion for Reconsideration of Appeals Chamber Judgement IT-98-30/1-A Delivered on 28 February 2005", 26 June 2006, para. 9 ("*Žigić* Reconsideration Decision"). *See also The Prosecutor v. Tihomir Blaškić*, Case No. IT-95-14-R, Decision on Prosecutor's Request for Review or Reconsideration, 23 November 2006, paras 79, 80 ("*Blaškić* Review Decision").

by this Appeals Chamber in the *Niyitegeka* Reconsideration Decision.[15] In his Request for Clarification, Mr. Rutaganda argues that this precedent should not be applied to his case as to do so would be a retroactive application of law.[16] The Appeals Chamber is not satisfied that Mr. Rutaganda's argument constitutes cogent reasons in the interest of justice for the Appeals Chamber to depart from the jurisprudence established in the *Niyitegeka* case.[17] Existing procedures for appeal and review set forth in the Statute provide sufficient safeguards for due process and fair trial.[18] Accordingly, Mr. Rutaganda's Request for Reconsideration and Request for Clarification are dismissed.

B. Request for Review

7. In his Request for Review, Mr. Rutaganda asks the Appeals Chamber for review of his final judgement based on several alleged new facts, which he claims undermine his convictions and his sentence.[19] He submits alleged new facts related to the events in Cyahafi sector and near the Amgar garage, the findings of the Trial Chamber relating to his genocidal intent, and his sentence. With respect to his convictions for other events, including the massacres at ETO and in Nyanza, Mr. Rutaganda asks the Appeals Chamber to draw inferences from the alleged errors highlighted in his submissions that his convictions on the basis of those events are also questionable, and indicates his intent to file further requests for review when additional new facts are discovered.[20]

1. Standard of Review

8. Review proceedings are governed by Article 25 of the Statute and Rules 120 and 121 of the Rules. Review of a final judgement is an exceptional procedure and is not meant to provide an additional opportunity for a party to remedy its failings at trial or on appeal.[21] Review may be granted only when the moving party satisfies the following cumulative criteria: (1) there is a new fact; (2) the new fact was not known to the moving party at the time of the original proceedings; (3) the lack of discovery of that new fact was not the result of lack of due diligence by the moving

[15] *The Prosecutor v. Eliézer Niyitegeka*, Case No. ICTR-96-14-R, Decision on Request for Reconsideration of the Decision on Request for Review, 27 September 2006, pp. 1-2 ("*Niyitegeka* Reconsideration Decision"). *See also Blaškić* Review Decision, paras 79, 80.
[16] Request for Clarification, paras 5-22.
[17] *See The Prosecutor v. Zlatko Aleksovski*, Case No. IT-96-14/1-A, Judgement, 24 March 2000, paras 107-109. *See also Blaškić* Review Decision, paras 79, 80.
[18] *Niyitegeka* Reconsideration Decision, pp. 1-2.
[19] Consolidated Request, paras 112-249.
[20] Consolidated Request, paras 115, 116.
[21] *Eliézer Niyitegeka v. The Prosecutor*, Case No. ICTR-96-14-R, Decision on Request for Review, 30 June 2006, paras 5-7 ("*Niyitegeka* Review Decision"). *See also Jean-Bosco Barayagwiza v. The Prosecutor*, Case No. ICTR-97-19-AR72, Decision (Prosecutor's Request for Review or Reconsideration), 31 March 2000, para. 43 ("*Barayagwiza* Review Decision").

party; and (4) the new fact *could* have been a decisive factor in reaching the original decision.[22] In wholly exceptional circumstances, the Appeals Chamber may grant review, even where the second or third criteria are not satisfied, if ignoring the new fact *would* result in a miscarriage of justice.[23]

9. The Appeals Chamber recalls that a "new fact" refers to new information of an evidentiary nature of a fact that was not in issue during the trial or appeal proceedings.[24] By the phrase "not in issue", the Appeals Chamber has held that "it must not have been among the factors that the deciding body could have taken into account in reaching its verdict."[25] In other words, what is relevant is whether the deciding body knew about the fact or not in arriving at the decision.[26]

2. Alleged New Facts relating to Cyahafi Sector

10. The Trial Chamber convicted Mr. Rutaganda, in part, for his role in distributing weapons to *Interahamwe* on 8, 15, and 24 April 1994 in Cyahafi sector.[27] Mr. Rutaganda's role in distributing weapons and the subsequent attacks in Cyahafi sector forms part of his conviction for genocide and extermination as a crime against humanity.[28] Mr. Rutaganda appealed the findings related to the distribution of weapons, challenging the notice provided in the Indictment for three separate incidents of weapons distribution as well as the credibility of witnesses.[29] The Appeals Chamber rejected Mr. Rutaganda's ground of appeal against the Trial Chamber's factual findings.[30]

11. In his Request for Review, Mr. Rutaganda points to several alleged new facts that came to light in a trial judgement of a Rwandan court in the case of Théogène Rutayisire ("*Rutayisire* Judgement") which, in his view, could have been a decisive factor in his case with respect to the three incidents of weapons distribution on 8, 15, and 24 April 1994 and the subsequent attacks in Cyahafi sector.[31] The alleged new facts arising from the *Rutayisire* Judgement relate to the factual findings on the events in Cyahafi sector and the credibility of the witnesses in Mr. Rutaganda's case.

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[22] *Niyitegeka* Review Decision, paras 5-7. *See also Blaškić* Review Decision, para. 7; *The Prosecutor v. Zoran Žigić*, Case No. IT-98-30/1-R.2, Decision on Zoran Žigić's Request for Review under Rule 119, 25 August 2006, para. 8 ("*Žigić* Review Decision"); *The Prosecutor v. Mlađo Radić*, Case No. IT-98-30/1-R.1, Decision on Defence Request for Review, 31 October 2006, paras 9-11 ("*Radić* Review Decision").

[23] *Niyitegeka* Review Decision, para. 7; *Blaškić* Review Decision, para. 8; *Radić* Review Decision, para. 11; *The Prosecutor v. Duško Tadić*, Case No. IT-94-1-R, Decision on Request for Review, 30 July 2002, paras 26, 27 ("*Tadić* Review Decision").

[24] *Niyitegeka* Review Decision, para. 6. *See also Blaškić* Review Decision, paras 14, 15; *Tadić* Review Decision, para. 25.

[25] *Niyitegeka* Review Decision, para. 6. *See also Blaškić* Review Decision, paras 14, 15; *Tadić* Review Decision, para. 25.

[26] *Blaškić* Review Decision, para. 14.

[27] *Rutaganda* Trial Judgement, paras 195-201, 385-386.

[28] *Rutaganda* Trial Judgement, paras 402, 416.

[29] *Rutaganda* Appeal Judgement, paras 294-341.

[30] *Rutaganda* Appeal Judgement, paras 306, 315, 321, 331, 338, 340, 341.

(a) Alleged New Facts Related to the Factual Findings on the Events in Cyahafi Sector

12. Mr. Rutaganda submits that the *Rutayisire* Judgement concerns the same events as considered in his case related to the Cyahafi sector but provides a starkly different account than his trial judgement of how and when these events unfolded and of who spearheaded them.[32] According to Mr. Rutaganda, the *Rutayisire* Judgement refers to a single distribution of weapons and attack on 16 April 1994, and places blame for this on Michel Haragirimana, the former *conseiller* of Cyahafi sector.[33] Furthermore, Mr. Rutaganda points to witness testimonies cited in the *Rutayisire* Judgement, which do not mention him distributing weapons in Cyahafi sector or the following attacks for which he was convicted.[34]

13. The *Rutayisire* Judgement and the allegation that its factual findings are inconsistent with the findings of the Trial Chamber do not warrant review. In its Judgement, the Appeals Chamber considered and rejected Mr. Rutaganda's claim that only one distribution and attack occurred in Cyahafi sector in April 1994.[35] Moreover, Mr. Rutaganda concedes that throughout his trial he maintained that local authorities were responsible for the distribution of weapons in Cyahafi sector.[36] Though the *Rutayisire* Judgement was not before the Trial Chamber or the Appeals Chamber, the alleged factual errors in the Trial Chamber's Judgement, which Mr. Rutaganda claims are illustrated by it, were considered or could have been taken into account in rendering the verdict. Moreover, the Appeals Chamber does not consider the witnesses' alleged failures to discuss Mr. Rutaganda's activities in a separate trial involving a different accused to constitute new facts for the purposes of review. As the Appeals Chamber has previously stated, "to suggest that if something were true a witness would have included it in a statement or a confession letter is obviously speculative and, in general, it cannot substantiate a claim that a Trial Chamber erred in assessing the witness's credibility."[37] Accordingly, these alleged factual inconsistencies do not constitute new facts which would allow review.

(b) Alleged New Facts Related to Witness Credibility

14. Mr. Rutaganda first points to alleged material inconsistencies between the accounts of Witnesses T, J, and AA, whose evidence underlies his conviction for these events, and their

[31] Consolidated Request, paras 144-190. Mr. Rutaganda provided a free translation into French of the Kinyarwanda version of the *Rutayisire* Judgement. The Prosecution does not contest the translation.
[32] Consolidated Request, paras 145-170.
[33] Consolidated Request, paras 147, 152-154, 159, 161, 163.
[34] Consolidated Request, paras 154-156.
[35] *Rutaganda* Appeal Judgement, paras 339-341.
[36] Consolidated Request, para. 154.
[37] *Juvénal Kajelijeli v. The Prosecutor*, Case No. ICTR-98-44A-A, Judgement, 23 May 2005, para. 176 ("*Kajelijeli* Appeal Judgement").

apparent statements before Rwandan authorities in the *Rutayisire* case.[38] Mr. Rutaganda notes that, unlike in his trial, these witnesses implicated Théogène Rutayisire rather than him as the head of the *Interahamwe* and for distributing weapons and directing the attacks.[39]

15. Second, Mr. Rutaganda refers to other credibility issues which surface from the *Rutayisire* Judgement, including findings on the general lack of credibility of these three witnesses, the possible perjury of Witnesses J and AA, and the possible role these two witnesses played in the crimes. In particular, Mr. Rutaganda notes that the *Rutayisire* Judgement held the testimony of these individuals to be contradictory and unreliable.[40] Furthermore, Mr. Rutaganda highlights that in his case, Witnesses J and AA denied providing testimony before any other authority involving him or the crimes in Cyahafi sector.[41] Mr. Rutaganda notes, however, that the *Rutayisire* Judgement reflects that these witnesses provided *pro justitia* statements to Rwandan authorities prior to their testimony in his case before the Tribunal.[42] Finally, Mr. Rutaganda submits that the *Rutayisire* Judgement reveals that Witnesses J and AA were part of a crime syndicate during the period relevant to Mr. Rutaganda's convictions and thus were accomplices whose testimony should have been viewed with caution.[43]

16. The Appeals Chamber notes that Mr. Rutaganda's arguments pertain to witness credibility, which was heavily litigated throughout the proceedings in his case.[44] Nonetheless, the Prosecution does not dispute that the points raised by Mr. Rutaganda related to witness credibility are new facts or that he lacked awareness of them during the original proceedings. Rather it takes issue with Mr. Rutaganda's diligence in raising these matters and further asserts that none of these points could have impacted the outcome in his case.[45] Additionally, it argues that the findings in the *Rutayisire* case are not binding on the Tribunal and that Mr. Rutaganda's assertion that Witnesses J and AA committed perjury is not supported by a review of the record.[46]

17. In assessing the credibility of Witnesses T, J, and AA, the Trial Chamber and, subsequently the Appeals Chamber, were not aware that these witnesses apparently gave such statements to Rwandan authorities on the distribution of weapons and the criminal responsibility for attacks in

[38] Consolidated Request, paras 146, 147, 152, 157, 163, 178-190. Mr. Rutaganda notes that Witnesses T, J, and AA never appeared before the trial court in Kigali, despite its repeated efforts to obtain their testimony, because they would have been publicly disavowed. Consolidated Request, paras 179-181 (citing *Rutayisire* Judgement).
[39] Consolidated Request, paras 147, 152, 157, 163.
[40] Consolidated Request, paras 157, 159, 163.
[41] Consolidated Request, paras 158, 182-185.
[42] Consolidated Request, paras 183, 185.
[43] Consolidated Request, paras 178, 187.
[44] *See Rutaganda* Trial Judgement, paras 195-201, 226, 227, 252-261; *Rutaganda* Appeal Judgement, paras 307-341, 345-396. *See also The Prosecutor v. Georges Rutaganda*, Case No. 96-3-A, Defense Appeal Brief, 1 May 2001, parts VI, VII.
[45] Consolidated Response, paras 125, 126.
[46] Consolidated Response, paras 127, 128, 133.

Cyahafi sector. Therefore, these statements were not in issue during the trial or appeals proceedings, and thus constitute new facts. The Appeals Chamber also accepts that Mr. Rutaganda was not aware of these statements during the original proceedings given his undisputed submissions that he only recently discovered the *Rutayisire* Judgement.[47]

18. Nonetheless, the Appeals Chamber is not satisfied that Mr. Rutaganda acted with the requisite diligence in discovering and bringing these issues forward. Mr. Rutaganda explains that he became aware of the *Rutayisire* Judgement only by chance when reviewing a volume of Rwandan trial judgements.[48] Mr. Rutaganda submits that he could not have obtained the judgement earlier given security concerns, which prevented his counsel from undertaking investigations in Rwanda.[49] Moreover, he notes that the Prosecution would have been fully aware of the *Rutayisire* case given the overlap in witnesses and events, and that it thus failed to disclose this information to him, preventing him from learning about it sooner.[50]

19. The Appeals Chamber does not find Mr. Rutaganda's explanation concerning his diligence convincing. The Rwandan trial court conducted proceedings in the *Rutayisire* case from January 1998 and pronounced its judgement on 22 February 1999.[51] At this same time, Mr. Rutaganda was engaged in trial proceedings before this Tribunal.[52] The Rwandan trial court rendered the *Rutayisire* Judgement almost ten months before Mr. Rutaganda's trial judgement and nearly three and a half years before the Appeals Chamber heard oral arguments in his appellate proceedings.[53] Mr. Rutaganda's explanation that security concerns prevented his counsel from traveling to Rwanda is both unsupported and unpersuasive. To the extent that there is any validity to Mr. Rutaganda's claims, it was incumbent on his counsel to request a stay of the proceedings until appropriate arrangements could have been made to undertake any necessary investigations in Rwanda. In other words, Mr. Rutaganda had the burden to exhaust all measures afforded by the Statute and Rules to obtain the presentation of this evidence.[54] Mr. Rutaganda has not demonstrated that he has done so. At this late stage, the Appeals Chamber will not accept a claim that unspecified security concerns rendered the possible credibility issues arising from the *Rutayisire* case undiscoverable or inaccessible despite an exercise of due diligence. Moreover, Mr. Rutaganda has not demonstrated that the Prosecution was in possession or even aware of the *Rutayisire* Judgement.

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[47] *See* Consolidated Response, para. 114.
[48] Consolidated Request, para. 114.
[49] Consolidated Request, para. 120.
[50] Consolidated Request, para. 118.
[51] Consolidated Request, Annex IV.
[52] Mr. Rutaganda first appeared before the Tribunal on 30 May 1996. His trial opened on 18 March 1997. The defence case commenced on 8 February 1999. His trial ended on 17 June 1999. *See Rutaganda* Trial Judgement, paras 7, 8, 11; *Rutaganda* Appeal Judgement, para. 5.

20. In addition, the Appeals Chamber is not satisfied that this case presents wholly exceptional circumstances warranting review. In light of the finding of lack of due diligence, the Appeals Chamber may grant review only if ignoring the new facts *would* result in a miscarriage of justice.[55] In this case, the Appeals Chamber is not satisfied that the *Rutayisire* Judgement can definitively establish the credibility issues advanced by Mr. Rutaganda. First, the *Rutayisire* Judgement results from a separate proceeding against a different accused.[56] Second, the pre-trial statements, which these witnesses apparently provided to the Rwandan authorities, are only alluded to in the *Rutayisire* Judgement and are not relied upon as establishing its findings. As Mr. Rutaganda notes, the three witnesses did not in fact appear as witnesses in the *Rutayisire* case.[57]

21. Moreover, even assuming that the *Rutayisire* Judgement could cast sufficient doubt on the evidence of Witnesses T, J, and AA, the Appeals Chamber is not convinced that this would disturb the finding of Mr. Rutaganda's culpability for the distribution of weapons and subsequent attacks in Cyahafi sector. First, the Trial Chamber did not rely on the evidence of Witness AA in making findings on these events. Moreover, the testimonies of Witnesses J and T underlie the findings for the distributions of weapons on 15 and 24 April 1994, respectively.[58] The Trial Chamber did not rely on any of these impugned witnesses, however, in support of its findings that Mr. Rutaganda distributed weapons on 8 April 1994[59] and thus, the findings for this event would remain undisturbed. Second, the Appeals Chamber considers that Mr. Rutaganda's conviction and life sentence equally and independently rest on his role in the massacres at ETO and in Nyanza, which do not rely on the evidence of these witnesses. In particular, the Appeals Chamber recalls that it declined to revisit Mr. Rutaganda's life sentence, after quashing a conviction of murder in his appeal, noting in particular the gravity of the events in Nyanza alone.[60] Therefore, granting review based on the alleged credibility issues related to Witnesses T, J, and AA relating to the distributions of weapons and attacks in Cyahafi sector would not alter the findings related to Mr. Rutaganda's role in the attacks at ETO and in Nyanza and, ultimately, his convictions and life sentence for

[53] Mr. Rutaganda's trial judgement was rendered on 6 December 1999, and the Appeals Chamber heard arguments on 4 and 5 July 2002. *See Rutaganda* Appeal Judgement, paras 5, 9.
[54] *See, e.g., The Prosecutor v. Duško Tadić*, Case No. IT-94-1-A, Judgement, 15 October 1999, paras 52, 53, 55.
[55] *Niyitegeka* Review Decision, para. 7; *Radić* Review Decision, para. 11; *Tadić* Review Decision, paras 26, 27.
[56] *See also The Prosecutor v. Clément Kayishema and Obed Ruzindana*, Case No. ICTR-95-1-A, Judgement, 1 June 2001, para. 143 ("two judges, both acting reasonably, can come to different conclusions on the basis of the same evidence") ("*Kayishema and Ruzindana* Appeal Judgement").
[57] Consolidated Request, para. 180. The Prosecution, however, seems to suggests that Witness T in fact appeared at the trial in Rwanda. *See* Consolidated Response, para. 129. The Prosecution's contention, however, does not appear to be supported by the text of the *Rutayisire* Judgement.
[58] *Rutaganda* Trial Judgement, paras 176-180, 193, 197, 199.
[59] The distribution of weapons on 8 April 1994 is based on the evidence of Witness U. *Rutaganda* Trial Judgement, paras 188-192, 198. Moreover, the Trial Chamber also noted the evidence of Witness Q, which it found reliable, who testified that it was common knowledge that Mr. Rutaganda distributed weapons. *Rutaganda* Trial Judgement, paras 194, 195.
[60] *See Rutaganda* Appeal Judgement, para. 592. In particular, the Appeals Chamber recalled that, of the 4,000 persons in Nyanza, only approximately 200 survived the massacre.

genocide, crimes against humanity, and serious violations of Article 3 common to the Geneva Conventions.

22. Accordingly, the Appeals Chamber dismisses Mr. Rutaganda's Request for Review based on the new facts related to the events in Cyahafi sector.

3. Alleged New Facts Related to the Amgar Garage

23. The Trial Chamber convicted Mr. Rutaganda for genocide and crimes against humanity, in part, based on his role in the detention and killing of Tutsis in the vicinity of his offices at the Amgar garage.[61] Mr. Rutaganda appealed these findings, primarily challenging the Trial Chamber's assessment of the underlying evidence of Witnesses Q, T, and BB.[62] The Appeals Chamber rejected Mr. Rutaganda's appeal.[63]

24. Mr. Rutaganda seeks review of his convictions based again on alleged new facts arising from the *Rutayisire* Judgement, which he submits could have been decisive in considering the factual findings for the events related to Amgar garage.[64] In particular, Mr. Rutaganda points to the credibility issues impacting Witnesses T and AA, as discussed above.[65] He also notes that no witness in the *Rutayisire* case, despite proximity and familiarity with the area, mentions the killing of Tutsis near the Amgar garage or Mr. Rutaganda's responsibility for crimes committed in that area.[66]

25. In addition, Mr. Rutaganda points to affidavits supplied by Mr. Amadou Démé, a former intelligence officer with the United Nations Assistance Mission in Rwanda ("UNAMIR"),[67] according to which the Amgar garage appeared to be an ordinary place of business.[68] Mr. Rutaganda notes that Mr. Démé's observations concerning the Amgar garage further call into question the credibility of witness accounts about the crimes which occurred there.[69]

26. The Appeals Chamber does not consider that the alleged silence of witnesses in the *Rutayisire* case with respect to Mr. Rutaganda's activities at the Amgar garage or Mr. Démé's observations during a brief visit to the Amgar garage amount to new facts.[70] The Appeals Chamber observes that Mr. Rutaganda presented similar evidence concerning the lack of prisoners at the

[61] *Rutaganda* Trial Judgement, paras 228-261, 388, 389, 406.
[62] *Rutaganda* Appeal Judgement, paras 342-396.
[63] *Rutaganda* Appeal Judgement, paras 359, 368, 376, 379, 384, 392, 396.
[64] Consolidated Request, paras 171-177.
[65] Consolidated Request, paras 172, 178-181, 184-190.
[66] Consolidated Request, paras 173-176.
[67] Consolidated Request, paras 112, 191-209, Exhibit V.
[68] Consolidated Request, paras 204, 205.
[69] Consolidated Request, paras 208, 209.
[70] *Cf. Kajelijeli* Appeal Judgement, para. 176.

Amgar garage during his trial.[71] Thus, this is not a new fact, as it was in issue during his original proceedings.[72] Moreover, for the reasons set forth above, the Appeals Chamber is also not satisfied that the alleged credibility issues advanced by Mr. Rutaganda with respect to Prosecution Witnesses T and AA warrant review.[73]

27. Accordingly, the Appeals Chamber dismisses Mr. Rutaganda's request for review based on the alleged new facts related to the events at Amgar garage.

4. Alleged New Facts Related to Genocidal Intent

28. Mr. Rutaganda seeks review of the findings on his genocidal intent on the basis of the alleged new facts contained in several affidavits supplied by Mr. Amadou Démé and Ambassador Clayton Yaache, the former head of UNAMIR's Humanitarian Affairs Cell ("Démé Affidavits" and "Yaache Affidavit", respectively).[74] Mr. Rutaganda submits that the new facts contained in these affidavits could have played a decisive role in the Trial Chamber's findings on his genocidal intent.[75] The Démé Affidavits recount Mr. Rutaganda's role in negotiating the safe passage and evacuation of refugees from the *Hôtel des Mille Collines* to RPF held territory on 3 May 1994.[76] According to his affidavits, Mr. Démé sought and received Mr. Rutaganda's urgent assistance to prevent an imminent massacre of the refugees by a mob of assailants during the evacuation at great personal danger to Mr. Rutaganda.[77] The Yaache Affidavit corroborates Mr. Démé's account of Mr. Rutaganda's role during the transfer of refugees and concludes that Mr. Rutaganda played a "key role" in saving the lives of the evacuees.[78] In addition, Mr. Rutaganda points to a statement, signed by him and broadcast on Radio Rwanda on 25 April 1994, wherein he appealed for calm.[79]

29. In the Appeals Chamber's view, the Démé and Yaache Affidavits as well as the Radio Rwanda broadcast simply constitute additional evidence of issues previously considered and, therefore, fail to provide a basis upon which review may be granted.[80] Mr. Rutaganda testified at

[71] *Rutaganda* Trial Judgement, paras 239-241.
[72] *Niyitegeka* Review Decision, para. 6. *See also Tadić* Review Decision, para. 25
[73] Furthermore, the Appeals Chamber recalls that the Trial Chamber refused to rely on Witness AA's testimony when it determined the evidence insufficient to support the charge that Mr. Rutaganda stationed *Interahamwe* at a road block near the entrance of the Amgar garage. *See* Trial Judgement, paras 205, 209-211, 219, 225, 226. Additionally, the Appeals Chamber ignored testimony provided by Witness AA when it overturned the Trial Chamber's findings that Mr. Rutaganda killed Emmanuel Kayitare. *See* Appeal Judgement, paras 490-506. Thus, striking Witness AA's testimony would have no effect on Mr. Rutaganda's convictions related to killings at the Amgar garage.
[74] Consolidated Request, paras 112, 191-217, Exhibits V, VI.
[75] Consolidated Request, paras 207, 209, 217.
[76] Consolidated Request, paras 197, 198.
[77] Consolidated Request, paras 198-208.
[78] Consolidated Request, paras 212-214.
[79] Consolidated Request, paras 242, 243, 244.
[80] *See The Prosecutor v. Hazim Delić*, Case No. IT-96-21-R-R119, Decision on Motion for Review, 25 April 2002, para. 11 ("If the material proffered consists of additional evidence relating to a fact which *was* in issue or considered in the original proceedings, this does not constitute a 'new fact' [...], and the review procedure is not available.").

length during his trial about his role in the evacuation of the refugees from the *Hôtel des Mille Collines*.[81] In addition, Mr. Rutaganda challenged the reasonableness of the Trial Chamber's findings on his genocidal intent on appeal pointing to evidence of his assistance to Tutsis during this period.[82] The Appeals Chamber recalls that, in concluding that Mr. Rutaganda had genocidal intent, the Trial Chamber emphasized his direct participation in the widespread attacks and killings committed against Tutsis who were systematically selected for killing because of their ethnicity.[83] The Appeals Chamber dismissed Mr. Rutaganda's challenge to the findings on his genocidal intent,[84] bearing in mind the evidence and arguments related to his assistance to Tutsis during this period.[85] The Appeals Chamber recalls the view it expressed at the time: "a reasonable trier of fact could very well not take account of some of the illustrations provided by the Appellant, which appear immaterial within the context of the numerous atrocities systematically and deliberately perpetrated against members of the Tutsi group."[86]

30. Accordingly, the Appeals Chamber finds that Mr. Rutaganda's assistance to UNAMIR on behalf of the refugees at the *Hôtel des Mille Collines* and his appeal for calm on 25 April 1994 do not constitute new facts for the purposes of review because the issues raised by this material were considered during his original proceedings.[87]

5. Alleged New Facts Related to Sentencing

31. Mr. Rutaganda also seeks review of his sentence based on a number of alleged procedural irregularities which he submits could have impacted his sentence.[88] The Appeals Chamber addresses each in turn.

(a) Alleged Illegal Detention

32. Mr. Rutaganda seeks review of his sentence based on an alleged 171-day period of illegal detention following his initial arrest in Zambia.[89] He claims that, despite having received asylum in Zambia, Zambian authorities arrested him on immigration charges on 10 October 1995, verbally informing him at the time of his arrest of the Tribunal's interest in prosecuting him.[90] He notes that

[81] T. 22 April 1999 pp. 63-80, 182-187.
[82] *Rutaganda* Appeal Judgement, paras 532-537.
[83] *Rutaganda* Trial Judgement, para. 399.
[84] *Rutaganda* Appeal Judgement, paras 530, 531.
[85] *Rutaganda* Appeal Judgement, paras 532-537.
[86] *Rutaganda* Appeal Judgement, para. 537. *See also The Prosecutor v. Miroslav Kvočka et al.*, Case No. IT-98-30/1-A, Appeal Judgement, 28 February 2005, paras 232-233 (noting that evidence of political tolerance, affiliation with Muslims, and being married to a Muslim would not preclude a reasonable trier of fact, in light of all the evidence, from finding that the accused held a specific discriminatory intent toward Muslims).
[87] *Niyitegeka* Review Decision, para. 6. *See also Tadić* Review Decision, para. 25
[88] Consolidated Request, paras 219-249.
[89] Consolidated Request, paras 112, 133-143.
[90] Consolidated Request, para. 133.

on 22 November 1995, the Prosecutor filed a request under Rule 40 of the Rules to provisionally detain him for ninety days pending investigations and the confirmation of an indictment.[91] Mr. Rutaganda explains that on 12 January 1996, a Zambian judge ordered the release of other Rwandans arrested with him, confirming the illegality of their arrest.[92] Mr. Rutaganda submits, however, that he remained illegally detained until 29 March 1996, when the Prosecution provided him with his indictment.[93]

33. Invoking the Appeals Chamber decisions in the *Barayagwiza*, *Semanza*, and *Kajelijeli* cases, Mr. Rutaganda submits that this violation would have had an impact on his sentence had it been adduced at trial.[94] He argues that he has not raised this issue until now due to professional negligence on the part of his counsel who failed to challenge the illegal detention at the outset of the proceedings and who also failed to make sentencing submissions.[95]

34. The Appeals Chamber recalls that Mr. Rutaganda first raised allegations of illegal detention in his Notice of Appeal,[96] and accordingly this allegation does not constitute a new fact, as it could have been taken into account in the Appeals Chamber's judgement.[97] However, while this allegation was raised in the Notice of Appeal, it was not addressed in his appeal brief. In addition, during the appeals hearing, Mr. Rutaganda's counsel confirmed that he had abandoned his appeal against the sentence.[98] Accordingly, this argument has been waived.[99] Moreover, Mr. Rutaganda has failed to demonstrate that his counsel's decision to withdraw this argument on appeal constitutes professional negligence that would result in a miscarriage of justice. In such circumstances, the Appeals Chamber declines to consider this issue further.

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[91] Consolidated Request, para. 134.
[92] Consolidated Request, para. 135.
[93] Consolidated Request, para. 136.
[94] Consolidated Request, paras 136, 142.
[95] Consolidated Request, paras 137, 141, 143.
[96] *The Prosecutor v. Georges Rutaganda*, Case No. 96-3-A, *Acte d'Appel*, 26 January 2000, para. 5 ("Notice of Appeal").
[97] *Niyitegeka* Review Decision, para. 6. *See also Tadić* Review Decision, para. 25.
[98] *See Rutaganda* Appeal Judgement, para. 586, n. 1081.
[99] *See, e.g., Eliézer Niyitegeka v. The Prosecutor*, Case No. 96-14-A, Judgement, 9 July 2004, para. 199 ("In general 'a party should not be permitted to refrain from making an objection to a matter which was apparent during the course of the trial, and to raise it in the event of an adverse finding against that party.' Failure to object in the Trial Chamber will usually result in the Appeals Chamber disregarding the argument on grounds of waiver."), quoting *Kayishema and Ruzindana* Appeal Judgement, para. 91. The Appeals Chamber observes that Mr. Barayagwiza, Mr. Semanza, and Mr. Kajelijeli each challenged their unlawful detention at the earliest opportunity. *See, e.g., Jean-Bosco Barayagwiza v. The Prosecutor*, Decision, 2 November 1999, paras 3, 8; *Laurent Semanza v. The Prosecutor*, Case No. ICTR-97-20-A, Decision, 31 May 2000, paras 10, 17, 114-121; *The Prosecutor v. Juvénal Kajelijeli*, Case No. ICTR-98-44-I, Decision on the Defence Motion Concerning the Arbitrary Arrest and Illegal Detention of the Accused and on the Defence Notice of Urgent Motion to Expand and Supplement the Record of the 8 December 1999 Hearing, 8 May 2000.

(b) Alleged Disclosure Violations

35. Mr. Rutaganda points to other procedural irregularities in his case, which in his view could impact on his sentence.[100] He submits that the Prosecution failed to disclose the *Rutayisire* Judgement as well as interviews with Michel Haragirimana and Joseph Setiba, which are allegedly exculpatory.[101] He argues that, according to information in his possession, the Prosecution had custody of this material.[102] In addition, he complains that the Prosecution failed to disclose a transcript of his Radio Rwanda statement, dated 25 April 1994, in which he appealed for calm.[103] As discussed above, Mr. Rutaganda claims that this transcript would have negated his genocidal intent.[104]

36. To establish a violation of the Rule 68 disclosure obligation, the Defence must: (1) establish that additional material exists in the possession of the Prosecution; and (2) present a *prima facie* case that the material is exculpatory.[105] Initially, as the Prosecution submits,[106] Mr. Rutaganda has not demonstrated that the Prosecution was in possession of the *Rutayisire* Judgement at any relevant point or that it is in possession of exculpatory statements of Michel Haragirimana and Joseph Setiba. The Appeals Chamber recalls that Rule 68 does not impose an obligation on the Prosecution to search for material of which it does not have knowledge.[107]

37. With regards to the Radio Rwanda transcript dated 25 April 1994, the Appeals Chamber finds that the Prosecution failed to fulfill its obligation under Rule 68 to make appropriate disclosure of material in its custody. Mr. Rutaganda's submissions indicate that this transcript was transcribed on 21 January 2000 and was disclosed by the Prosecution in several other cases before the Tribunal.[108] The Prosecution does not dispute this or that the transcript could have included material tending to exculpate Mr. Rutaganda.[109] The Prosecution offers no explanation as to why it failed to disclose this material to Mr. Rutaganda. The Appeals Chamber recalls that the Prosecution

[100] Consolidated Request, paras 219-249.
[101] Consolidated Request, paras 233, 234, 246, 247.
[102] Consolidated Request, paras 246, 247.
[103] Consolidated Request, paras 243, 245.
[104] Consolidated Request, paras 242-245.
[105] *Kajelijeli* Appeal Judgement, para. 262.
[106] Prosecutor's Response, paras 143, n. 188, 145.
[107] *The Prosecutor v. Miroslav Bralo*, Case No. 95-17-A, Decision on Motions for Access to *Ex Parte* Portions of the Record on Appeal and for Disclosure of Mitigating Material, 30 August 2006, para. 30 ("*Bralo* Appeal Decision"). However, the Prosecution must actively review the material in its possession for exculpatory material. *See The Prosecutor v. Édouard Karemera et al.*, Case No. ICTR-98-44-AR73.7, Decision on Interlocutory Appeal Regarding the Role of the Prosecutor's Electronic Disclosure Suite in Discharging Disclosure Obligations, 30 June 2006, paras 9, 10 ("*Karemera et al.* Appeal Decision").
[108] Consolidated Request, para. 242.
[109] Prosecutor's Response, para. 144.

has a positive and continuous obligation under Rule 68 of the Rules.[110] The Appeals Chamber finds that the Prosecution acted in violation of its obligation to disclose in this case. However, even when the Appeals Chamber is satisfied that the Prosecution has failed to comply with its Rule 68 obligations, it will examine whether the Defence has actually been prejudiced by such failure before considering whether a remedy is appropriate.[111] For the reasons mentioned above in considering Mr. Rutaganda's request for review of the finding on his genocidal intent, the Appeals Chamber does not consider that the Prosecution's failure warrants a remedy that would impact on Mr. Rutaganda's sentence. Thus, the Appeals Chamber denies Mr. Rutaganda's request for review of his sentence based on this disclosure violation. However, the Prosecution should take this as a clear warning that, in the future, the Appeals Chamber may impose appropriate sanctions should it be found to be in violation of its Rule 68 obligation.

(c) Alleged Presentation of False Evidence

38. Mr. Rutaganda also claims that the Prosecution presented false evidence in his case.[112] He points to Prosecution exhibits related to the geographic and topographical aspects of the Amgar garage and its surrounding area, which he claims do not comport with reality.[113] In addition, he also refers to an 11 January 1994 cable sent by General Roméo Dalliare to the United Nations headquarters in New York providing an assessment, based on his intelligence sources, that the *Interahamwe* was organized, armed, and prepared to kill up to one thousand Tutsis within a twenty minute period.[114] Mr. Rutaganda explains that this evidence was tendered by the Prosecution through an expert witness Professor Filip Reyntjens.[115] Mr. Rutaganda points to recent defence evidence in the *Bagosora et al.* trial, which he claims undermines the credibility of this exhibit.[116] The Prosecution rejects Mr. Rutaganda's allegations as unsupported by evidence.[117]

39. The Appeals Chamber considers that Mr. Rutaganda has failed to provide an evidentiary basis to support his allegations that the Prosecution presented falsified evidence at trial.[118] The Appeals Chamber also notes that Mr. Rutaganda has not identified any finding related to his

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[110] *Karemera et al.* Appeal Decision, para. 10. *See also Ferdinand Nahimana et al. v. The Prosecutor*, Case No. 99-52-A, Decision on Appellant Jean-Bosco Barayagwiza's Motion Requesting that the Prosecution Disclosure of the Interview of Michel Bagaragaza Be Expunged from the Record, 30 October 2006, para. 6.

[111] *See, e.g., Kajelijeli* Appeal Judgement, para. 262; *The Prosecutor v. Radislav Krstić*, Case No. IT-98-33-A, Judgement, 19 April 2004, para. 153; *Bralo* Appeal Decision, para. 31.

[112] Consolidated Request, paras 219-231.

[113] Consolidated Request, paras 219-223.

[114] Consolidated Request, paras 224-227.

[115] Consolidated Request, para. 224.

[116] Consolidated Request, paras 228-231.

[117] Consolidated Response, paras 139, 140, 141, 142.

[118] The Appeals Chamber notes that Mr. Rutaganda has submitted sketches, which he argues highlight the irregularities of the Prosecution exhibits. In the Appeals Chamber's view, Mr. Rutaganda's sketches are merely extensions of his argument and fail to provide evidentiary support for his claim.

criminal responsibility implicated by these assertions. Additionally, Mr. Rutaganda's submissions seek to re-litigate the authenticity and credibility of evidence and do not present new facts upon which review may be granted. Accordingly, these arguments do not warrant review.

C. Request for Assignment of Counsel

40. In his Request for Assignment of Counsel, Mr. Rutaganda asks the Appeals Chamber to direct the Registrar to assign Ms. Sarah Bihegue as his counsel under the Tribunal's legal aid system in order to assist him in pursuing post-conviction relief.[119] In support of this request, he argues that this assignment of counsel is in the interest of justice given the demands of his case.[120] Furthermore, Mr. Rutaganda alleges that, in violation of Article 82 of the Rules of Detention, the Tribunal has frustrated his attempts to freely communicate with counsel of his choice, who has agreed to represent him on a *pro bono* basis, notwithstanding his repeated pleas to the Registrar and the President to grant access.[121] In the alternative, he requests the Appeals Chamber to order the Registrar to allow him unimpeded access to counsel of his choice who has agreed to represent him on a *pro bono* basis.[122]

41. The Appeals Chamber recalls that review is an exceptional remedy and that an applicant is only entitled to assigned counsel, at the Tribunal's expense, if the Appeals Chamber authorizes the review.[123] Nonetheless, counsel may be assigned at the preliminary examination stage, normally for a very limited duration, if it is necessary to ensure the fairness of the proceedings.[124] Mr. Rutaganda has already made extensive and detailed submissions supported by a number of exhibits in his Request for Review. The Appeals Chamber is not satisfied that additional briefing would be of assistance in the present inquiry. In such circumstances, Mr. Rutaganda's Request for Review does not warrant the assignment of counsel under the auspices of the Tribunal's legal aid system.

42. Nonetheless, as a general matter, Mr. Rutaganda may be assisted by counsel in connection with a request for review at his own expense or on a *pro bono* basis provided the counsel files a power of attorney with the Registrar and satisfies the requirements to appear before the Tribunal. The Registry informed Mr. Rutaganda of this in its letter dated 21 October 2004, explaining that his former counsel could contact him.[125] Thereafter, Mr. Rutaganda filed a notice to the Deputy

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[119] Consolidated Request, paras 250, 266 (*see also* prayer for relief para. S).
[120] Consolidated Request, para. 264.
[121] Consolidated Request, paras 252-263.
[122] Consolidated Request, prayer for relief para. S.
[123] *Eliézer Niyitegeka v. The Prosecutor*, Case No. 96-14-R, Decision on Niyitegeka's Urgent Request for Legal Assistance, 20 June 2005 ("*Niyitegeka* Counsel Decision").
[124] *Niyitegeka* Counsel Decision.
[125] The Registry informed Mr. Rutaganda of as much in its letter to him dated 21 October 2004, explaining that his former counsel could contact him. *See* Consolidated Request, Annex XVI (Letter from Aminatta N'gum, Acting Chief of the Tribunal's Defence Counsel and Detention Management Section, to Mr. Rutaganda, dated 21 October 2004).

Registrar indicating that he had retained his former counsel to assist him.[126] Even putting aside that Rule 44(A) of the Rules refers to the counsel filing a power of attorney, Mr. Rutaganda has not pointed to any instance after that point where he was denied access to his counsel.[127] The Appeals Chamber further observes that, in his request, he refers to the *pro bono* assistance which he received from his former counsel during this period.[128] Accordingly, the Appeals Chamber declines to consider further Mr. Rutaganda's alleged violations of his right to communicate with counsel. In any event, as a general rule, such matters should first and foremost be addressed by the Registrar.[129]

D. Request for Disclosure

43. In his Request for Disclosure, Mr. Rutaganda seeks the disclosure of the full identity and unredacted statements of all Prosecution witnesses called in his case, which he submits was not done or, at least, not done in a timely fashion.[130] In addition, he requests the Appeals Chamber to order the Prosecution to search for statements made by these witnesses before Rwandan judicial authorities and to disclose such statements to him.[131] In this respect, Mr. Rutaganda notes that the Prosecution has carried out similar searches in other cases.[132]

44. The Prosecution responds that it provided Mr. Rutaganda with unredacted copies of statements and the full identities of the witnesses at the time of their testimony in accordance with the Trial Chamber's witness protection order.[133] Moreover, it submits that it does not possess any exculpatory statements made by witnesses in the *Rutaganda* case before Rwandan authorities. It further argues that it has no obligation to obtain such material from Rwanda.[134]

45. The Appeals Chamber considers that Mr. Rutaganda's request for disclosure lacks merit. The Trial Chamber concluded that the Prosecution had fulfilled its obligations to disclose witness

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[126] Consolidated Request, para. 261, Exhibit XVIII.
[127] Mr. Rutaganda refers to an incident in March 2005. However, his correspondence refers to a communication with his sister. *See* Consolidated Request, para. 262, Exhibit XIX.
[128] *See* Consolidated Request, para. 114 (noting that the Démé and Yaache Affidavits were obtained as a result of the "persistent and voluntary research carried out by his former Defence team.").
[129] *Cf. The Prosecutor v. Zeljko Mejakić et al.*, Case No. IT-02-65-AR73.1, Decision on Appeal by the Prosecution to Resolve Conflict of Interest Regarding Attorney Jovan Simić, 6 October 2004, para. 7 ("The Registrar has the primary responsibility of determining matters relating to the assignment of counsel under the legal aid system.").
[130] Request for Disclosure, paras 5, 11-35.
[131] Request for Disclosure, paras 5, 36-40.
[132] In this respect, Mr. Rutaganda points to the case of Hassan Ngeze where the Prosecution obtained statements made before a Gacaca proceeding of Witness EB. *See* Request for Disclosure, para. 39. In Annex D to the Request for Disclosure, Mr. Rutaganda submits the cover page of this confidential disclosure. The Prosecution argues that this constitutes a breach of the witness protection order in Mr. Ngeze's case and asks the Appeals Chamber to order the Prosecution to investigate this alleged breach for contempt. *See* Response to Disclosure Request, paras 20, 22. The Appeals Chamber, however, declines to issue such an order. The Appeals Chamber observes that Annex D, submitted by Mr. Rutaganda, is simply a cover page related to the disclosure and contains no identifying information. Mr. Rutaganda asserts that he did not receive any protected information. Reply to Disclosure Request, para. 27. Based on the material before it, the Appeals Chamber sees no reason to question this averment.
[133] Response to Disclosure Request, paras 4, 8-16.
[134] Response to Disclosure Request, paras 4, 17-22.

statements and identifying material.[135] To the extent that this conclusion was erroneous or that the modalities for disclosure were objectionable, it was Mr. Rutaganda's prerogative to bring this issue to the attention of the Trial Chamber in the first instance and, if necessary, to raise it on appeal.[136] The Appeals Chamber declines to consider such complaints in review proceedings. As the Appeals Chamber previously held, the Prosecution has no obligation to obtain judicial material related to its witnesses from Rwanda.[137] Though the Prosecution has made such inquiries of its own accord in some cases, these voluntary efforts do not expand the nature of its disclosure obligations.

46. The Appeals Chamber notes that many Trial Chambers, in the exercise of their discretion, have requested the Prosecution to assist the defence and use its good offices in order to obtain such material in the interests of facilitating the trial proceedings.[138] Mindful of the exceptional nature of review proceedings, the Appeals Chamber denies Mr. Rutaganda's request to order the Prosecution to obtain this material from Rwanda. Accordingly, the Appeals Chamber dismisses Mr. Rutaganda's Request for Disclosure in its entirety.

III. DISPOSITION

47. For the foregoing reasons, Mr. Rutaganda's Requests for Reconsideration and Clarification, Request for Review, Request for Assignment of Counsel, and Request for Disclosure are denied.

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

Done this 8th day of December 2006,
At The Hague,
The Netherlands.

Judge Fausto Pocar
Presiding

[Seal of the Tribunal]

[135] *See The Prosecutor v. Georges Rutaganda*, Case No. 99-03-T, Decision on the Defence Motion for Disclosure of Evidence, 4 September 1998, pp. 2, 7, 8.
[136] *Rutaganda* Appeal Judgement, para. 192.
[137] *Kajelijeli* Appeal Judgement, para. 263.
[138] *The Prosecutor v. Aloys Simba*, Case No. ICTR-01-76-T, Decision on Matters Related to Witness KDD's Judicial Dossier, 1 November 2004, paras 11, 15.

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REGISTRY AT THE HAGUE
Churchillplein 1, 2517 JW The Hague, The Netherlands
Tel: + 31 (0) 70 512-8225 / 8237 Fax : + 31 (0) 70 512 -8932

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CHAMBRE D'APPEL - PREUVE DE NOTIFICATION

Date: 8 December 2006	Case Name / *Affaire:* Georges RUTAGANDA Case No / *No. de l'affaire*: *ICTR-96-3-R*	THE PROSECUTOR v. Georges RUTAGANDA

To: / *A:*

✖ **In Arusha**

APPEALS UNIT
✖ Ms Félicité Talon,

APPEALS CHAMBER
✖ Judge / Juge Fausto Pocar, Presiding
✖ Judge / Juge Mohamed Shahabuddeen
✖ Judge / Juge Mehmet Güney
✖ Judge / Juge Andresia Vaz
✖ Judge / Juge Theodor Meron

✖ Ms Catherine Marchi-Uhel
✖ Mr Roman Boed
✖ Concerned Associate Legal Officers
✖ Ms. Fatou Fall

DEFENSE
✖ Accused / *accusé* : Mr. Georges A. N. RUTAGANDA (complete CMS4 Form)

✖ Lead Counsel / *Conseil Principal*: *(name / nom)*
✖ In Arusha (complete CMS 2) ☐ Fax Number:
✖ E-mail:

✖ Co-Counsel / *Conseil Adjoint*: *(name / nom)*
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